



OTTAWA, December 3, 2013

STATEMENT OF REASONS

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

**CERTAIN COPPER TUBE ORIGINATING IN OR EXPORTED
FROM THE FEDERATIVE REPUBLIC OF BRAZIL,
THE HELLENIC REPUBLIC,
THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA
AND THE UNITED MEXICAN STATES**

and the subsidizing of

**CERTAIN COPPER TUBE ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

Pursuant to subsection 41(1)(a) of the *Special Import Measures Act*, on November 18, 2013, the President of the Canada Border Services Agency made final determinations respecting the dumping of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube, originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People's Republic of China, the Republic of Korea and the United Mexican States and the subsidizing of these goods originating in or exported from the People's Republic of China.

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

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SUMMARY OF EVENTS

[1] On April 2, 2013, the Canada Border Services Agency (CBSA) received a written complaint from Great Lakes Copper Inc. (GLC) of London, Ontario (the complainant), alleging that imports into Canada of certain copper tube originating in or exported from the Federative Republic of Brazil (Brazil), the Hellenic Republic (Greece), the People's Republic of China (China), the Republic of Korea and the United Mexican States (Mexico) are being injuriously dumped and that imports into Canada of certain copper tube originating in or exported from China are being injuriously subsidized. The complainant alleges that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing these goods.

[2] On April 22, 2013, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the governments of Brazil, Greece, China, the Republic of Korea and Mexico that a properly documented complaint had been received and provided the Government of China (GOC) with the non-confidential version of the subsidy complaint. The GOC was invited for consultations prior to the initiation of the investigations, pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*; however, no such consultations took place.

[3] The complainant provided evidence to support the allegations that certain copper tube from Brazil, Greece, China, the Republic of Korea and Mexico has been dumped and that certain copper tube from China has been subsidized. The evidence also discloses 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 May 15, 2013, the GOC provided written representations opposing the initiation of dumping and subsidizing investigations on certain copper tube originating in or exported from China.

[5] On May 22, 2013, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping of certain copper tube from Brazil, Greece, China, the Republic of Korea and Mexico and the subsidizing of certain copper tube from China.

[6] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain copper tube from the named countries have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods.

[7] On June 28, 2013, the Government of Mexico provided written comments with respect to the initiation of the dumping investigation of certain copper tube originating in and exported from Mexico. The CBSA addressed these comments in the *Statement of Reasons* for the preliminary determinations.

[8] On July 22, 2013, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain copper tube from the named countries have caused injury or are threatening to cause injury.

[9] On August 20, 2013, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping of certain copper tube originating in or exported from Brazil, Greece, China, the Republic of Korea and Mexico and of subsidizing of certain copper tube originating in or exported from China. On this same date, the CBSA began imposing provisional duties on imports of the subject goods pursuant to subsection 8(1) of SIMA.

[10] On August 21, 2013, the Tribunal initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above-mentioned goods had caused injury or were threatening to cause injury to the Canadian industry.

[11] The CBSA continued its investigation and, on the basis of the results, the President was satisfied that certain copper tube originating in or exported from Brazil, Greece, China, the Republic of Korea and Mexico had been dumped and that the margins of dumping were not insignificant. Consequently, on November 18, 2013, the President made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.

[12] Similarly, the President was satisfied that certain copper tube originating in or exported from China had been subsidized and that the amount of subsidy was not insignificant. As a result, on November 18, 2013, the President also made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[13] 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 from the five countries until the Tribunal renders its decision. The Tribunal has announced that it will issue its decision by December 18, 2013.

PERIOD OF INVESTIGATION

[14] The period of investigation with respect to dumping (dumping POI), covered all subject goods¹ released into Canada from May 1, 2012 to April 30, 2013.

[15] The period of investigation with respect to subsidizing (subsidy POI), covered all subject goods released into Canada from January 1, 2012 to April 30, 2013.

PROFITABILITY ANALYSIS PERIOD

[16] The profitability analysis period (PAP) covered domestic sales and costing information for goods sold from May 1, 2012 to April 30, 2013.

¹ Refer to the definition of subject goods in the Product Information section

INTERESTED PARTIES

Complainant

[17] The complainant is the sole Canadian producer of like goods in Canada.² These goods are produced at a manufacturing facility in London, Ontario.

[18] The name and address of the complainant is:

Great Lakes Copper Inc.
1010 Clarke Road
London, Ontario
N5V 3B2

[19] GLC began operations in London, Ontario, on April 21, 1958, as an extension of Wolverine Tube, Inc. of Detroit, Michigan. In 1998, it expanded by acquiring assets from Noranda Metal, which included two additional plants, one located in Montreal, Quebec, and the other in New Westminster, British Columbia. The Montreal and New Westminster facilities have since closed, leaving London as the only remaining manufacturing facility of certain copper tube in Canada.

[20] In July of 2008, GLC was bought by private Canadian investors. Since then, the company has invested over \$10 million to reduce costs, broaden product lines and enhance distribution facilities.

Importers

[21] At the initiation of the investigations, the CBSA identified 40 potential importers of the subject goods from information provided by the complainant and CBSA import entry documentation over the period of January 1, 2012 to April 30, 2013.

[22] The CBSA sent an importer Request for Information (RFI) to all potential importers of the goods. The CBSA received 10 responses to the importer RFI, with varying degrees of completeness.

Exporters

[23] At the initiation of the investigations, the CBSA identified 43 potential exporters and producers of the subject goods from information provided by the complainant and CBSA import entry documentation. The CBSA sent a dumping RFI to each potential exporter and section 20 and subsidy RFIs to each potential exporter and producer in China.

² Refer to the definition of like goods in the Like Goods section

[24] The CBSA received six responses to the exporter dumping RFI, two responses to the exporter subsidy RFI and two responses to the exporter section 20 RFI. All responses were substantially complete and were used for the purposes of the final determinations.

Surrogate Producers

[25] As part of the section 20 inquiry, surrogate country RFIs were sent to all known exporters and producers of copper tube in the Commonwealth of Australia, the Republic of Chile, the Republic of India, the Kingdom of Thailand, the United Kingdom and the United States of America. A total of 79 producers were sent RFIs requesting domestic selling and costing information for certain copper tube produced at their facilities.

[26] The CBSA did not receive any responses to the surrogate country RFIs.

Government of China

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

[28] At the initiation of the investigations, the CBSA sent subsidy and section 20 RFIs to the GOC. The GOC did not respond to the subsidy RFI or section 20 RFI.

PRODUCT INFORMATION

Definition

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

Circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube, originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People’s Republic of China, the Republic of Korea and the United Mexican States.

Circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube will hereafter be referred to as Copper Tube.

Additional Product Information³

[30] Copper Tube sold in Canada is manufactured to a variety of American Society for Testing and Materials (ASTM) standards and grades. The outer diameter range of the tube includes diameters that are within the allowable tolerances within each standard. Canadian Copper Tube standards and grades are as follow:

Table 1
Canadian Copper Tube Standards and Grades

Tube Grade	ASTM	Application
K	B88	Domestic water service and distribution, solar, fuel/fuel oil, natural gas, liquefied petroleum gas, snow melting
L	B88	Domestic water service and distribution, solar, fuel/fuel oil, natural gas, liquefied petroleum gas, snow melting
M	B88	Domestic water service and distribution, solar, compressed air
DWV	B306	Drainage waste, vent
ACR	B280, B68	Air conditioning, refrigeration
Medical Gas	B819	Medical gas uses (e.g., hospitals)

[31] There are numerous widely accepted applications of Copper Tube. These include but are not limited to plumbing, heating, cooling and medical (MED) gas use. Copper Tube produced for plumbing applications and sold in Canada must be third party certified to insure that the requirements of the standards are met. Copper Tube is produced in straight lengths and in coils, in diameters that correspond with plumbing, air conditioning/refrigeration (ACR) and MED gas applications.

[32] Tube grades for plumbing Copper Tube include:

- Type L (ordinarily used in residential and commercial potable water systems);
- Type K (typically used in underground or high pressure applications);
- Type M (ordinarily used in residential potable water systems); and
- Type DWV (drainage, waste and vent).

[33] Type L, K and M Copper Tube is primarily used for potable water applications, water recirculation systems and heating systems (e.g., solar, geothermal, etc.). Applications include above and below ground, indoor and outdoor systems and can be used in residential, commercial and industrial buildings.

[34] DWV Copper Tube is primarily used for above ground vent and drain lines.

³ Dumping Exhibit 2 (NC) – Copper Tube Complaint – Pages 4-5

[35] Tube grades for refrigeration Copper Tube include:

- ACR;
- MED-L/ACR; and
- MED-K.

[36] ACR Copper Tube is primarily supplied as soft annealed coils for various refrigeration and air conditioning applications.

[37] The subject goods do not include industrial copper tube and coated or insulated copper tube. Industrial copper tube is a custom-made product made to specific dimensions (e.g., outer diameter, inside diameter, wall thickness and length), tolerances and temper as specified by the customer and is normally made in sizes that differ from those in which Copper Tube is offered. Coated or insulated Copper Tube has a polyethylene/polyvinylchloride or foam coating.

Production Process⁴

[38] Copper Tube production process begins with the raw material, which may be either copper scrap, newly refined copper (copper cathode) or copper ingots. The choice of which raw material that is used depends on economic factors, such as cost and availability, and on the technical capabilities of the plant's melting furnaces. Copper accounts for the major cost component of Copper Tube and is traded internationally on a daily basis on two primary markets, the London Metal Exchange (LME) and the Commodity Exchange, Inc. (COMEX), a division of the New York Mercantile Exchange (NYMEX).

[39] Copper scrap is most often in the form of recycled Copper Tube, cable or wire that has been stripped of its insulation and/or baled Copper Tube that has been removed from demolished buildings. Another common form, referred to as "home" or "runaround" scrap, is the scrap that has been generated within the tube mill itself. Copper cathode is one of the purest metals in common usage, containing at least 99.95% copper. It is produced in large electrolytic cells that refine the relatively impure blister copper from smelting and refining furnaces. Copper ingots are cast from re-melted cathode or refined scrap and resemble large bricks. They are used mainly by tube mills that operate small melting furnaces, whose doors are not large enough to accommodate cathodes or large bales of scrap.

[40] The raw material is melted in a furnace, which in a large tube mill may hold up to 20 tonnes of metal. The furnace's primary function is to melt the copper and if the raw materials are only in the form of home scrap, cathode or ingots, a simple shaft furnace suffices. This type of furnace cannot be used to refine metal.

[41] In most mills, the molten metal is then transferred into a holding furnace or tundish, either of which acts as a reservoir for the casting process and allows more raw materials to be melted. The holding furnace/tundish is heated just enough to maintain the molten metal at a

⁴ Dumping Exhibit 2 (NC) – Copper Tube Complaint – Pages 8-12

constant temperature. To protect the copper from oxidation, the liquid metal surface may be covered with a blanket or with graphite powder.

[42] From the holding furnace/tundish, the copper is then cast by either the continuous or semi-continuous casting method. Using the continuous method, the molten metal is poured into a furnace where it travels into water cooled cylindrical graphite molds which force the copper to freeze quickly. As the copper cools it solidifies and is gripped and withdrawn in short steps. At the same time, more molten copper flows into the mold from behind. Slowly a solid log or hollow shell (i.e., hole in the center) of pure copper is formed. As the copper emerges from the casting machine, the log is cut into approximately two-foot sections or the shell is cut into approximately 30 to 60-foot sections. These sections, each weighing approximately 400 to 2,400 pounds, are now known as billets or shells. Using the semi-continuous method, the casting is done vertically and the operation has to be interrupted when the length of the log reaches the depth of the pit beneath the molds. In this process, the water-cooled floor of the mold cavity seals the mold until the first volume of copper freezes. Molten metal is then added to the mold at the same rate as the floor is withdrawn downward. When the resulting log reaches the desired length, the mold is withdrawn upward and the billet is removed from the pit.

[43] In a modification of these processes, some newer Copper Tube facilities utilize a cast and roll method whereby the casting mold containing a central water-cooled core produces a very thick-walled pipe (called a tube round) which is then rolled in a continuous process.

[44] The next step is to reheat the billet to approximately 1,535 degrees Fahrenheit (i.e., 835 degrees Celsius) to make the copper pliable. A rod, called a piercing mandrel, is then driven lengthwise through the center of the billet. This step is not necessary if the billet is cast as a tube round. Piercing can take place either immediately before or concurrently with the extrusion process.

[45] In mills that utilize the extrusion process, the billet heated to the proper hot-working temperature, is then placed in the chamber of an extrusion press. The horizontally mounted chamber contains a die at one end and a hydraulically driven ram at the other. The face of the ram is fitted with a dummy block that is slightly smaller in diameter than the billet. The ram may also be fitted with a piercing mandrel, or if the billet is hollow, with a rod that matches the diameter of the cast hole in the billet but is slightly smaller than the hole in the die at the opposite end of the chamber. As the ram moves forward, the copper is forced over the mandrel and through the hole in the die, causing a long hollow tube to be extruded out of the press. The length can vary depending on the capabilities of each mill. As the extruded tube emerges from the die, rollers carry it along on a run-out table so that it remains straight until it is cooled enough to handle.

[46] In mills that utilize the rolling process, the shell less than 12 inches in diameter is fed into a high reduction rolling mill, either by cylinder or continuous sleds. The rolling mill has a series of rolling heads that press on the outside of the shells causing a reduction in the outer diameter and wall thickness of the shell. Further, a mandrel is present during the rolling process to maintain a specific inside diameter of the shell. The reduced diameter shell travels down the run out table. The nose and tail of the shell are then removed leaving only a good shell. The remaining portion is coiled into a large coil and passed down to the drawing section of the mill.

[47] The drawing process simply involves pulling the hollow tube through a series of hardened steel dies to reduce its diameter. Before each step, the tube is pointed at one end to fit through the next die, whereupon it is gripped by automatic jaws attached to a drawing machine. A mandrel, which is either fixed or floating depending on the process, is placed inside the tube. As the tube is drawn through the drawing machine, the mandrel and die act together to reduce both the tube's outer diameter as well as its wall thickness. The mandrel also determines the inner surface of the tube. The tube is drawn in several stages until the desired diameter and wall thickness is attained.

[48] As Copper Tube is sold in either a hard drawn condition in straight lengths or in a soft annealed state in coils, the next steps in the manufacturing process depend largely upon the type of product that is being produced. Copper Tube that is being sold in straight lengths will be passed through a series of straightening rolls that are arranged in a slight zigzag pattern. The rolls' positions are set such that the tube is bent slightly less at each step in the series. The Copper Tube emerges straight and ready to be cut to length. Copper Tube that is being sold in coils is treated in a similar manner, however, the only difference being the position of the rolls. For coils, they are set as to impart a bend of appropriate radius to the Copper Tube as it emerges.

[49] Copper Tube that is to be sold in coils is passed through a continuous annealing furnace or an in-line induction furnace operating at approximately 1,300 degrees Fahrenheit (i.e., 704 degrees Celsius). For continuous annealing, the furnace is essentially a long heated box filled with a protective atmosphere to prevent the copper from oxidizing. For plants without this type of furnace, a bell shape furnace is used. This furnace looks like a large cylindrical church bell, the open bottom of which can be sealed to keep the air out. Coils of tube to be annealed are stacked under the bell and heated in a protective atmosphere. Annealed Copper Tube can be visually distinguished from hard drawn Copper Tube by its matte surface finish. Aside from the appearance and stiffness, however, annealed and hard drawn tubes have the same qualities and in general act identically when in contact with fluids.

Classification of Imports

[50] As of 2012, imports of the subject goods are now usually classified in Section XV of the *Customs Tariff* under the following HS classification numbers:

7411.10.00.10	Copper tubes and pipes of refined copper for plumbing, unworked; and
7411.10.00.20	Copper tubes and pipes of refined copper, for ACR, unworked.

[51] The subject goods may also be classified under the following HS classification numbers:

7411.10.00.31	Copper tubes and pipes of refined copper - Other, unworked: - Industrial or commercial; and
7411.10.00.39	Copper tubes and pipes of refined copper - Other, unworked: - Other.

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

CLASS OF GOODS

[53] At the initiation of the investigations, after considering questions of use, physical characteristics and all other relevant factors, the CBSA was of the opinion that subject and like goods constitute only one class of goods. However, in the Tribunal's *Statement of Reasons*, dated August 6, 2013, for the preliminary determination of injury issued on July 22, 2013, the Tribunal stated that the issue of classes of goods merited further consideration.

[54] As a result, on September 5, 2013, the Tribunal requested that the CBSA collect separate information on the dumping and subsidizing of (1) plumbing Copper Tube; (2) ACR Copper Tube; and (3) MED gas Copper Tube.

[55] On September 20, 2013, the Tribunal determined that circular copper tube constitutes a single class of goods and informed the CBSA that it was no longer required to collect information on separate classes of goods.

LIKE GOODS

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

[57] Copper Tube produced by the Canadian domestic industry competes directly with, has the same end uses as, and can be substituted for, the subject goods. Therefore, the CBSA has concluded that the Copper Tube produced by the Canadian industry constitutes like goods to the subject goods.

[58] Copper Tube imported into Canada is produced to ASTM standards that in many instances dictate the outer diameter, inner diameter, wall thickness and allowable tolerances, among other things, within each of the standards. Copper Tube sold in Canada for plumbing applications must be third party certified to insure that the requirements of the standards are met.

[59] The CBSA's investigations revealed that Copper Tube sold in each of the named countries is either produced to other international standards that do not meet ASTM standards or is produced to ASTM standards that do not require third party certification and do not meet the Canadian requirements of the standards.

[60] As noted previously, copper is the major input material in Copper Tube, representing from 75% to 95% of the total cost of production of the goods, depending on the type of Copper Tube and the country of production. As a result, a slight difference in the amount of copper used to produce Copper Tube will affect both the cost and the selling price of the goods. That being said, the identification of like goods in the domestic markets of Brazil, Greece, China, the Republic of Korea and Mexico was a critical part of the final investigation.

THE CANADIAN INDUSTRY

[61] As previously stated, the complainant, GLC, is the sole producer of like goods in Canada.

IMPORTS INTO CANADA

[62] During the preliminary and final phases of the investigations, the CBSA refined the estimated volume of imports based on information from CBSA import entry documentation and other information received from exporters and importers.

[63] The following table presents the CBSA's analysis of imports of Copper Tube for purposes of the final determinations:

Table 2
Import Volumes of Copper Tube
(May 1, 2012 to April 30, 2013)

Imports into Canada	% of Total Import Volume
Brazil	5.3%
Greece	3.6%
China	17.6%
The Republic of Korea	28.8%
Mexico	8.9%
All Other Countries	35.8%
Total Imports	100.0%

INVESTIGATION PROCESS

[64] Regarding the dumping investigation, information was requested from known and potential exporters, vendors and importers concerning shipments of Copper Tube released into Canada during the dumping POI of May 1, 2012 to April 30, 2013.

[65] At initiation of the investigation, the CBSA had sufficient evidence to support the initiation of a section 20 inquiry to examine the extent of GOC involvement in pricing in the copper sector, which includes Copper Tube, in China. As a result, the CBSA sent section 20 RFIs to the GOC, all known copper producers, and exporters and producers of Copper Tube in China to obtain information on this matter.

[66] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters in China and from the GOC concerning financial contributions made to exporters or producers of Copper Tube released into Canada during the subsidy POI of January 1, 2012 to April 30, 2013. The exporters were requested to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as state-owned enterprises (SOEs).

[67] After reviewing the responses to the RFIs, supplemental RFIs were sent to each of the responding parties to clarify information provided in the submissions. In addition, on-site verifications were conducted at the premises of selected exporters during the final phase of the dumping and subsidy investigations.

[68] Details pertaining to the information submitted by the exporters in response to the exporter dumping RFI as well as the results of the CBSA's dumping investigation, including the section 20 inquiry with respect to the Chinese copper sector, which includes Copper Tube, are provided in the "Dumping Investigation" section of this document. Details pertaining to the information submitted by the exporters in response to the subsidy RFI as well as the results of the CBSA's subsidy investigation are provided in the "Subsidy Investigation" section of this document.

[69] As part of the final stage of the investigations, case briefs and reply submissions were provided by counsel representing the complainant and exporters. Details of all representations are provided in **Appendix 3** of this document.

[70] Under Article 15 of the World Trade Organization (WTO) *Anti-dumping Agreement*, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As Brazil, China and Mexico are listed on the *Development Assistance Committee (DAC) List of Official Development Assistance (ODA) Recipients* maintained by the *Organization for Economic Co-operation and Development (OECD)*⁵, the President recognizes Brazil, China and Mexico as developing countries for purposes of actions taken pursuant to SIMA.

[71] Accordingly, the obligation under Article 15 of the WTO *Anti-dumping Agreement* was met by providing the opportunity for exporters to submit price undertakings. In this particular investigation, the CBSA did not receive any undertaking proposals from exporters in Brazil, China and Mexico.

DUMPING INVESTIGATION

[72] The CBSA received complete responses to the exporter dumping RFI from the following companies:

Brazil

Parapanema S.A. (Parapanema)

Greece

Halcor Metal Works S.A. (Halcor)

⁵ The Organization for Economic Co-operation and Development, DAC List of ODA Recipients from 2011 to 2013, the document is available at:
www.oecd.org/dac/stats/DAC%20List%20used%20for%202012%20and%202013%20flows.pdf

China

Shanghai Hailiang Copper Co., Ltd. (SH Hailiang)
Zhejiang Hailiang Co., Ltd. (ZJ Hailiang)

The Republic of Korea

Nungwon Metal Ind. Co. Ltd. (Nungwon)

Mexico

Nacional De Cobre, S.A. DE C.V. (Nacobre)

The CBSA also received a complete response to the section 20 RFI from SH Hailiang and ZJ Hailiang.

Normal Values

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

Export Prices

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

Results of the Dumping Investigation by Country

[75] With respect to each of the exporters that provided a complete response to the RFI, the CBSA determined a margin of dumping by comparing the total normal value with the total export price of the goods. When the total export price was less than the total normal value, the difference was the margin of dumping for that specific exporter.

[76] For those exporters that did not submit a response to the RFI, the normal value of the goods was determined by advancing the export price by the highest amount by which the normal value exceeded the export price on an individual transaction (82.4%) for a cooperative exporter.

[77] 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 was determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e., 100%) was considered dumped. Similarly, where a given exporter's net

aggregate dumping results were zero, the total quantity of exports considered to be dumped by that exporter was zero.

[78] In determining the margin of dumping for each country, the margins of dumping found in respect of each exporter were weighted according to each exporter's volume of Copper Tube exported to Canada during the dumping POI.

[79] Based on the preceding, 100% of the Copper Tube originating in or exported from Brazil, Greece, China, the Republic of Korea and Mexico, and imported into Canada during the POI, was dumped.

[80] Details of the results of the investigation by exporter follow, a summary of each exporter's margin of dumping is provided in **Appendix 1** and the overall margin of dumping for each country is provided in **Table 3** at the end of this section.

Brazil

Paranapanema S.A.

[81] Paranapanema, S.A. (Paranapanema) is a producer and exporter of subject goods. Paranapanema is a public corporation, listed on the Brazilian Stock Exchange.

[82] Paranapanema did not sell identical or similar goods in its domestic market during the POI. Although producers in Brazil follow the same ASTM standards as in Canada, goods sold in the domestic market by Paranapanema were produced to a different ASTM standard than the subject goods sold to Canada. ASTM standards specify characteristics such as tube type, outer diameter, wall thickness, and weight. Since the model characteristics of the domestic goods did not match with the model characteristics of the goods sold to Canada, it was, therefore, not possible to determine normal values pursuant to section 15 of SIMA, based on sales of like goods in the country of export. Normal values were, therefore, determined pursuant to paragraph 19(b) of SIMA, based on an aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[83] The cost of production was determined pursuant to paragraph 11(1)(a)(i) of the *Special Import Measures Regulations* (SIMR), based on Paranapanema's verified cost data associated with the production of the subject goods exported to Canada. A reasonable amount for administrative, selling and all other costs was determined pursuant to subparagraph 11(1)(c)(ii) of the SIMR, based on verified costs attributable to the production and sale of the subject goods to Canada. The amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of the SIMR, based on Paranapanema's profitable domestic sales of Copper Tube of the same general category as the goods sold to the importer in Canada.

[84] In determining the amount for profits, a trade level adjustment was made to the domestic selling prices pursuant to paragraph 9(a) of the SIMR to account for those direct selling expenses incurred in the domestic market to purchasers at the level of trade nearest and subsequent to the importer, that were not incurred on sales to the importer in Canada. A further adjustment to the

domestic selling prices was made pursuant to section 10 of the SIMR to account for taxes borne by the like goods that were not borne by the goods sold to the importer.

[85] The total normal value was then compared with the total export price determined in accordance with the provisions of section 24 for the subject goods released into Canada during the dumping POI. The margin of dumping for Paranapanema is 24.8%, expressed as a percentage of the export price.

Greece

Halcor Metal Works S.A.

[86] Halcor Metal Works S.A. (Halcor) is a producer and exporter of subject goods. The company is a public corporation, listed on the Athens Stock Exchange.

[87] Halcor did not sell identical or similar goods in its domestic market during the POI. Producers in Greece follow European standards which are different from the ASTM standard used in Canada. Both European standards and ASTM standards specify characteristics such as tube type, outer diameter, wall thickness, and weight. Goods sold in the domestic market by Halcor were produced to completely different standards compared to the subject goods sold to Canada. Since the model characteristics of the domestic goods did not match with model characteristics of the subject goods sold to Canada, it was, therefore, not possible to determine normal values pursuant to section 15 of SIMA, based on sales of like goods in the country of export. Normal values were, therefore, determined pursuant to paragraph 19(b) of SIMA, based on an aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[88] The cost of production was determined pursuant to subparagraph 11(1)(a)(i) of the SIMR, based on Halcor's verified cost data associated with the production of the subject goods exported to Canada. A reasonable amount for administrative, selling and all other costs was determined pursuant to subparagraph 11(1)(c)(ii) of the SIMR, based on verified costs attributable to the production and sale of the subject goods to Canada. The amount for profits was determined pursuant to subparagraph 11(1)(b)(ii) of the SIMR, based on Halcor's profitable domestic sales of Copper Tube of the same general category as the goods sold to importers in Canada.

[89] In determining the amount for profits, a trade level adjustment was made to the domestic selling prices pursuant to paragraph 9(a) of the SIMR to account for those direct selling expenses incurred in the domestic market to purchasers at the level of trade nearest and subsequent to the importer, that were not incurred on sales to the importer in Canada.

[90] The total normal value was then compared with the total export price determined in accordance with the provisions of section 24 for the subject goods imported into Canada during the dumping POI. The margin of dumping for Halcor is 11.0%, expressed as a percentage of the export price.

China

Section 20 Inquiry

[91] Section 20 of SIMA may be applied to determine the normal values of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country.

[92] In the case of a prescribed country under paragraph 20(1)(a) of SIMA,⁶ 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 values of goods are not determined using domestic prices or costs in that country.

[93] 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, however, 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.

[94] 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 form the opinion that the resulting domestic prices are not substantially the same as they would be in a competitive market.

[95] For purposes of this investigation, the complainant requested that section 20 be applied in the determination of normal values for China due to the alleged existence of the conditions set forth in paragraph 20(1)(a) of SIMA. The complainant provided information to support these allegations concerning the Chinese copper sector, which includes Copper Tube. The complainant cited specific GOC policies, such as the *Admittance Qualification of Chinese Copper Smelting Industry*, *Chinese Support Plan for Nonferrous Metals Industry* and *China's Five-Year Plan*.⁷

[96] At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the complainant, from its own research and from past investigations, to support the initiation of a section 20 inquiry to examine the extent of GOC involvement in pricing in the copper sector, which includes Copper Tube. The information indicated that Chinese prices in this sector have been influenced by various GOC industrial policies. Consequently, the CBSA sent section 20 RFIs to the GOC, all known copper producers, and exporters and producers of Copper Tube in China to obtain information on this matter.

⁶ China is a prescribed country under section 17.1 of the *Special Import Measures Regulations*.

⁷ Dumping Exhibit 2 (NC) – Copper Tube Complaint – Pages 18-20

Results of the Section 20 Inquiry

[97] The CBSA received a joint response to the section 20 RFI from two related exporters/producers and their associated trading company. The RFI responses contained a number of pertinent documents, some of which were previously identified by the complainant and through the CBSA's research.

[98] The following is the CBSA's analysis of the relevant factors that are present in the Chinese non-ferrous industry and which affect the copper sector, including Copper Tube.

Industrial Policies

The Admittance Qualification of Chinese Copper Smelting

[99] Issued on June 2006 by the National Development and Reform Commission, the conditions of access to the copper smelting industry were formulated according to relevant national laws, codes and industrial policies for purposes of accelerating structural adjustment, normalizing the behavior of investment in the copper smelting industry and promoting sustainable development of China's copper industry.⁸

[100] The requirements addressed the following:

- Enterprise Layout Scale and External Condition;
- Process and Equipment;
- Energy Consumption;
- Comprehensive Resource Utilization;
- Environmental Protection; and
- Supervision and Management.

[101] The conditions highlighted that newly built or reconstructed copper smelting projects must conform to the requirements of national industrial policies and plans. The conditions imposed various restrictions and requirements on smelting operations, including specification of plant layouts and production capacity, equipment requirements and limits on energy consumption.

Plan for Adjustment and Revival of Non-ferrous Metal Industry

[102] The plan issued by the State Council on May 2009, covered the planning period of 2009 to 2011. The objective of the plan was to achieve stable operation of the non-ferrous metal industry in 2009 and maintain strong growth in 2011. In addition, the plan called for further optimization of the industry structure and enhanced capacity for technological innovation in order to establish sustainable development of the non-ferrous metal industry.⁹

⁸ Dumping Exhibit 075 (NC) - Hailiang Section 20 Response – Exhibit 4

⁹ Dumping Exhibit 075 (NC) – Hailiang Section 20 Response – Exhibit 3

[103] Measures outlined in the plan include the following:

- stabilizing the market demand and production operation;
- improving the production and operating situation of enterprises;
- eliminating out-of-date copper smelting production capacity and facilities;
- restructuring enterprises through mergers; and
- guaranteeing resource capacity/supply of copper.

Industrial Restructuring and Upgrading Plan (2011 to 2015)

[104] The most recent version of the plan [Guo Fa (2011) No. 47] issued by the State Council in December 2011, covers the period from 2011 to 2015. With respect to the non-ferrous metal industry, the plan called for further elimination of out-of-date production facilities, including imperial smelting furnaces, electric furnaces, reverberating furnaces, etc., in the copper smelting field and elimination of out-of-date production processes and equipment involving recycled copper.¹⁰

12th Five-Year Development Plan for the Nonferrous Metals Industry

[105] The plan published by the Ministry of Industry and Information Technology in January 2012, forecasted increased demand for non-ferrous metals including refined copper. The main objectives of the plan include achieving progress in the restructuring and upgrading within the non-ferrous metal industry, increasing the annual industrial added value by over 10% on average and improving the industrial development quality and benefit.¹¹

[106] Specific objectives of the plan include the following:

- production output of refined copper is controlled at 6.5 million metric tonnes;
- annual production output growth rate for refined copper is targeted at 7.3%;
- elimination of out-of-date smelting production facilities and further reduction of energy consumption;
- large and medium enterprises establish technological innovation with R&D input of 1.5% of income;
- optimization of industrial layout and organization, and further increase of industrial concentration; and
- acceleration of international mining capacity and expansion of smelting capacity.

State Council Work Notice on Further Strengthening Phase Out Backward Production, Guo Fa (2010) No. 7

[107] The notice on further eliminating out-of-date production facilities was issued for purposes of carrying out the scientific outlook on development, increasing economic

¹⁰ Dumping Exhibit 075 (NC) – Hailiang Section 20 Response – Exhibit 1

¹¹ Dumping Exhibit 075 (NC) – Hailiang Section 20 Response – Exhibit 2

development and promoting industrial structure adjustment, optimization and upgrading, as well as energy savings and emission reductions.¹²

[108] With respect to the copper sector, the plan called for the elimination of the copper smelting processes and equipment, including imperial smelting furnaces, electric furnaces and reverberating furnaces.

The Catalogue for the Guidance of Foreign Investment Industries (Amended in 2011)

[109] Approved by the State Council and effective as of January 30, 2012, the catalogue sets out rules and guidance for the prospecting and exploitation of copper ores. The catalogue encourages the production of high tech non-ferrous metallurgical materials, such as Copper Tube and restricts non-ferrous metal refining of copper.¹³

[110] The GOC's policies and measures outlined above illustrate that the GOC is closely administering the nonferrous industry and the copper sector, including Copper Tube in China. The scope of the GOC's macro-economic policies and measures provide a compelling factual basis that the GOC is influencing the Chinese copper sector, including Copper Tube. The use of such policies and measures can dramatically change the demand and supply balance in the domestic market and can materially alter the domestic prices of refined copper, and therefore, the domestic prices of Copper Tube.

GOC Ownership and Control of Suppliers

[111] The complainant provided evidence in the complaint to demonstrate that the nonferrous industry in general and the copper sector in China are largely state-owned and/or controlled by the central government or by regional and local authorities. The complainant identified the following state-owned enterprises:¹⁴

- Jiangxi Copper Corporation (Jiangxi Copper), a state-owned enterprise, engaged in the production and processing of refined copper;
- Zijin Mining Group, a large-scale state-owned mining group in China involved in the production of refined copper;
- Jinchuan Group Co. Ltd., a large state-owned enterprise and producer of refined copper in China;
- Yunan Copper Group (Yunnan Copper), a unit of Chinalco, producing refined copper in China; and
- the China Nonferrous Metal Mining (Group) Co. Ltd. (Nonferrous Metal), a large scale enterprise under the management of the State-owned Assets Supervision and Administration of the State Council (SASAC) with copper mining and smelting operations in China, Africa and South America.

¹² Dumping Exhibit 075 (NC) – Hailiang Section 20 Response – Exhibit 5

¹³ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 100

¹⁴ Dumping Exhibit 001 (NC) - Confidential Copper Tube Complaint – Pages 16, para 43

[112] The CBSA identified two additional state-owned enterprises involved in the production of refined copper:

- Tongling Non-Ferrous Metal Corp. (Tongling Corp) is a large scale enterprise that engages mainly in copper mining, mineral processing, smelting, refining and copper products processing. There is information available that indicates the company receives special support from the GOC and receives preferential support from the Anhui Provincial government;¹⁵ and
- China Daye Non-Ferrous Metals Mining Limited (China Daye) is a state-owned enterprise in Hubei Province. The company is involved in the production of raw copper and refined copper with operations in southeast Hubei, the Yangtze River Delta, the Pearl River Delta, Hunan, Xinjiang, Hong Kong, Kyrgyzstan and the Republic of Mongolia.¹⁶

[113] In addition, according to the report, *Sustainable Development of the Chinese Copper Market*, the top five Chinese refined copper producers in terms of output are Jiangxi Copper, Tongling Corp., Yunnan Copper, Jinchuan Group and China Daye, all of which have been identified above as state-owned enterprises. As of 2008, the five companies represent approximately 60% of the national total output of refined copper.¹⁷ The degree of state-ownership in the copper sector provides further evidence that the GOC through extensive use of industrial policies and measures strongly influences the supply and price of refined copper.

[114] Without a complete response to the section 20 RFI from the GOC or producers of copper in China, the CBSA was not able to confirm the ownership status of the copper producers and based its decision on the best information available.

GOC Import and Export Controls

[115] At the initiation of the dumping investigation, the CBSA found evidence that the GOC maintains export controls on refined copper, the major raw material input used in the production of Copper Tube.

[116] One study reported that China is the largest consumer of copper globally. The gap between China's refined copper consumption and production has been widening over the past few years. As a consequence, China relies heavily on copper imports to satisfy its demands.¹⁸

[117] Over the past several years, the GOC has made substantial changes to import and export tariffs. Since January 1, 2008, China has eliminated the 2% tax on the importation of refined copper.¹⁹ As reported by Shanghai Metals Market, according to the *2013 Tariff Implementation Plan* issued by the State Council on December 17, 2012, the tariff rate for refined copper will be

¹⁵ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 103

¹⁶ *Ibid.*

¹⁷ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 104

¹⁸ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 107

¹⁹ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 108

maintained at 0%. On the other hand, before 2012, the GOC imposed a 5% tariff on refined copper exports; however, the export tax was cancelled in January 2013.²⁰

[118] The report, *Sustainable Development of the Chinese Copper Market*, noted that one of the guiding principles for Chinese foreign trade is to “promote the healthy development of the copper industry and copper enterprises, stop blind investment, include foreign trade policy to match the threshold requirements for copper smelters, lift VAT rebate on export of copper products with high added value and give support to exporters when they are in difficulty.”²¹

[119] The same report also identified a major policy on copper-related imports. The National Development and Reform Commission, the Ministry of Commerce and the Ministry of Finance, jointly issued a Circular on December 9, 2005, with respect to the exportation of high-energy consumption, heavy pollution products and resource products. The Circular prohibited the export of refined copper made from import copper scrap or concentrate as of January 1, 2006.²²

[120] While the GOC has stated that these types of industrial policies are intended to address environmental and resource efficiency issues, these measures are impacting the demand and supply balance in the domestic market and materially affecting the domestic prices of affected products. An analysis of the effect of export restrictions is provided in the World Trade Organization (WTO) Trade Policy Review report for China, which dismisses the effectiveness of export restriction tools in meeting the GOC stated goals and focuses on the actual impact for the affected products and industries:

*However, whether intended or not, export restraints for whatever reason tend to reduce export volumes of the targeted products and divert supplies to the domestic market, leading to a downward pressure on the domestic prices of these products. The resulting gap between domestic prices and world prices constitutes implicit assistance to domestic downstream processors of the targeted products and thus provides them a competitive advantage. Insofar as China is a major supplier of such a product, export restraints may also shift the terms of trade in China's favour. Also, some export restrictions might be imposed to pre-empt imposition of import restrictions by governments in export markets.*²³

[121] Although the export tax was cancelled in January 2013, these GOC restraints limited or prevented the export of refined copper, resulting in an artificial increase in the level of supply of refined copper in the Chinese domestic market, causing downward pressure on domestic prices during the POI.

²⁰ Ibid

²¹ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 109

²² CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 110

²³ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 111

Chinese Domestic Copper Price Analysis

[122] The CBSA requested information on copper pricing from the GOC, copper producers in China and Copper Tube producers in China. The GOC did not respond to the RFIs, nor did any copper producers. However, the CBSA did receive copper purchase prices from two Copper Tube exporters/producers in China that provided a section 20 RFI response.

[123] One indicator of the domestic price of refined copper in China is the price of copper futures traded on the Shanghai Futures Exchange (SHFE). Trading on the SHFE is only open to corporations organized and registered in China.²⁴ The CBSA obtained information from the Metal Exchange, an independent publisher of various metal prices including copper, in order to compare prices of copper in the SHFE with the LME and the COMEX. Metal Exchange is an independent publisher of various metal prices including copper.

[124] The CBSA's analysis of contract pricing indicates that COMEX prices and LME prices fluctuate closely to one another, while the SHFE prices diverge significantly above and below the prices on the other two exchanges. In addition, it is interesting to note that during periods of high copper prices, it appears that copper prices on the SHFE are noticeably lower compared to prices on the other two exchanges.

[125] The CBSA analyzed the copper cathode purchases of the two producers in China. During the period of January 1, 2012 to April 30, 2012, the two producers' purchases of copper cathode in the domestic market averaged 2.01 RMB/Kg or 4.0% and 1.66 RMB/Kg or 3.3%, respectively, below their import purchases of copper cathode.

[126] It should also be noted that, since the cost of copper can account for upwards of 95% of the total cost of production of the copper tube, a very slight difference in copper input prices can provide a significant cost advantage to the Copper Tube producers in China.

[127] Given that copper is a commodity product freely traded on the world market, this discrepancy between the exchanges further indicates that domestic prices of copper in China are not being determined under competitive market conditions. The low cost of copper in China clearly impacts the prices of Copper Tube in China, such that they are not substantially the same as they would be if they were determined in a competitive market.

Chinese Domestic Copper Tube Price Analysis

[128] The CBSA conducted a price analysis on domestic prices of Copper Tube. Although domestic price data for Copper Tube is not publicly available, since the dumping investigation involves multiple countries, the CBSA was able to obtain domestic sales information from the other four countries named in the investigation. The analysis shows that prices of Copper Tube in China were significantly lower than in the other named countries.

²⁴ CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, para 115

[129] During the POI, average prices for coil products in China were overall 14.9%, 20.3%, 4.6% and 22.9% lower compared to average prices for coil products in Brazil, Greece, the Republic of Korea and Mexico, respectively. Similarly, average prices for straight products in China were overall 26.0%, 31.7%, 12.5% and 24.4% lower compared to average prices for straight products in Brazil, Greece, the Republic of Korea and Mexico, respectively.

[130] Given that the domestic price of copper is affected by the GOC industrial policies and plans, and considering that pricing in the Chinese Copper Tube industry is determined by the cost of copper plus fabrication costs, the above evidence of price discrepancy of Copper Tube in the Chinese domestic market with other markets further supports the CBSA's opinion formed at the preliminary determination that, as with copper inputs, domestic prices of Copper Tube in China are not substantially the same as they would be if they were determined in a competitive market.

Summary of the Results of the Section 20 Inquiry

[131] The wide range and material nature of the GOC measures have resulted in significant influence on the Chinese non-ferrous industry including the copper sector, which includes Copper Tube. Based on the preceding, the President is of the opinion that:

- domestic prices are substantially determined by the GOC; and
- there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[132] Based on the above analysis, for the purposes of the final determination, the President affirmed the opinion rendered at the preliminary determination that the conditions described in paragraph 20(1)(a) of SIMA apply in the copper sector in China, which includes Copper Tube.

Normal Values

[133] As mentioned previously, the normal value of goods sold to importers in Canada is generally based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, pursuant to paragraph 19(b) of SIMA. However, since the President has formed the opinion that the conditions of paragraph 20(1)(a) of SIMA exist in the copper sector in China, which includes Copper Tube, the normal value of the goods in China could not be determined in this manner.

[134] Where section 20 conditions exist, the CBSA may determine normal values using the selling price, or the total cost and profits, 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 respecting domestic pricing and costing information relating to the like goods was not provided to the CBSA. Further, the CBSA could not use information obtained from the cooperative exporters located in Brazil, Greece, the Republic of Korea and Mexico as the models of Copper Tube sold domestically in those countries did not match the models of Copper Tube exported from China during the POI.

[135] Where normal values cannot be determined under paragraph 20(1)(c), SIMA provides an alternative methodology to calculate normal values under paragraph 20(1)(d), using re-sale prices in Canada of like goods imported from a third country. However, this provision could not be used as the importers in Canada did not provide sufficient re-sale information.

[136] As a result, the CBSA determined normal values pursuant to subsection 29(1) of SIMA, based on a ministerial specification. The methodology set forth in the ministerial specification closely resembles the methodology of subparagraph 20(1)(c)(ii) of SIMA, that is, determining normal values based on an aggregate of the cost of production, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits on sales of like goods in a surrogate country.

[137] Since copper represents the largest cost component of Copper Tube and is traded internationally on a daily basis, the CBSA determined that the average monthly settlement prices reported on the LME were suitable benchmarks for the cost of copper in China. To this, the CBSA added weighted-average amounts to account for fabrication costs to convert the copper into Copper Tube, an amount for administrative, selling and all other costs and an amount for profits based on information provided from the four cooperative exporters located in Brazil, Greece, the Republic of Korea and Mexico.

Shanghai Hailiang Copper Co., Ltd. and Zhejiang Hailiang Co., Ltd.

[138] The response to the CBSA's dumping RFI was submitted jointly by Shanghai Hailiang Copper Co., Ltd. (SH Hailiang), Zhejiang Hailiang Co., Ltd. (ZJ Hailiang) and Hong Kong Hailiang Metal Trading Limited (HK Hailiang), collectively referred to as Hailiang. During the POI, exports to Canada were produced and exported from China by SH Hailiang and ZJ Hailiang, and sold through their associated trading company, HK Hailiang. SH Hailiang and HK Hailiang are limited liability companies while ZJ Hailiang is a public company listed on the Shenzhen Stock Exchange.

[139] For each respective exporter, the total normal value as determined pursuant to subsection 29(1) of SIMA, based on a ministerial specification, was then compared with the total export price determined pursuant to section 24 for the subject goods released into Canada during the dumping POI. The margin of dumping for SH Hailiang is 7.5%, expressed as a percentage of the export price. The margin of dumping for ZJ Hailiang is 6.1%, expressed as a percentage of the export price.

The Republic of Korea

Nungwon Metal Ind. Co. Ltd.

[140] Nungwon Metal (Nungwon) is a producer and exporter of subject goods. Nungwon is a limited liability company.

[141] Nungwon sold like goods in its domestic market; however, it was unable to provide actual weight information for these goods. As mentioned previously, the cost of copper accounts for 75% to 95% of the total cost of production of Copper Tube. As a result, a slight difference in

the amount of copper used to produce Copper Tube will affect both the cost and the selling price of the goods. Any difference between the weights of Copper Tube sold domestically and Copper Tube sold to Canada must be accounted for. Therefore, the CBSA was unable to determine normal values pursuant to section 15 of SIMA, based on sales of like goods in the country of export, as there was insufficient information to make the necessary adjustments to the domestic selling prices to reflect the differences in weights between the domestic models and the models exported to Canada. Normal values were, therefore, determined pursuant to paragraph 19(b) of SIMA, based on an aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[142] The cost of production was determined pursuant to subparagraph 11(1)(a)(i) of the SIMR, based on Nungwon's verified cost data associated with the production of the subject goods exported to Canada. The amount for administrative, selling and all other costs was determined pursuant to subparagraph 11(1)(c)(i) of the SIMR, based on verified costs that were reasonably attributable to Nungwon's domestic sales of like goods. The amount for profits was determined pursuant to subparagraph 11(1)(b)(i) of the SIMR, based on Nungwon's profitable domestic sales of like goods.

[143] The total normal value was then compared with the total export price determined in accordance with the provisions of section 24 for the subject goods released into Canada during the dumping POI. The margin of dumping for Nungwon is 5.5%, expressed as a percentage of the export price.

Mexico

Nacional De Cobre, S.A. DE C.V.

[144] Nacional De Cobre, S.A. DE C.V. (Nacobre) is a producer and exporter of subject goods. Nacobre is a privately-held corporation.

[145] Nacobre sold like goods in its domestic market; however it was unable to provide actual weight information for these goods. As mentioned previously, the cost of copper accounts for 75% to 95% of the total cost of production of Copper Tube. As a result, a slight difference in the amount of copper used to produce Copper Tube will affect both the cost and the selling price of the goods. Any difference between the weights of Copper Tube sold domestically and Copper Tube sold to Canada must be accounted for. Therefore, the CBSA was unable to calculate normal values pursuant to section 15 of SIMA, based on sales of like goods in the country of export, as there was insufficient information to make the necessary adjustments to the domestic selling prices to reflect the differences in weights between the domestic models and the models exported to Canada. Normal values were, therefore, determined pursuant to paragraph 19(b) of SIMA, based on an aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[146] The cost of production was determined pursuant to subparagraph 11(1)(a)(i) of the SIMR, based on Nacobre's verified cost data associated with the production of the subject goods exported to Canada. The amount for administrative, selling and other costs was determined pursuant to subparagraph 11(1)(c)(i) of the SIMR, based on verified costs that were reasonably

attributable to Nacobre's domestic sales of like goods. The amount for profits was determined pursuant to subparagraph 11(1)(b)(i) of the SIMR, based on Nacobre's profitable domestic sales of like goods.

[147] In determining the amount for profits, a trade level adjustment was made to the domestic selling prices pursuant to paragraph 9(a) of the SIMR to account for those direct selling expenses incurred in the domestic market to purchasers at the level of trade nearest and subsequent to the importer, that were not incurred on sales to the importer in Canada.

[148] The total normal value was then compared with the total export price determined pursuant to section 24 for the subject goods released into Canada during the dumping POI. The margin of dumping for Nacobre is 23.5%, expressed as a percentage of the export price.

All Other Exporters

[149] For all other exporters that did not provide the requested information during the course of the dumping investigation, normal values were determined pursuant to subsection 29(1) of SIMA based on a ministerial specification, as in the opinion of the President, sufficient information was not furnished or was not available to enable the determination of normal values as provided in sections 15 to 23 of SIMA. In accordance with the ministerial specification, the normal values of the goods sold to the importer in Canada were determined by advancing the export prices of the goods as determined under section 24 or subsection 29(1) of SIMA by the highest amount by which the normal value exceeded the export price on an individual transaction (82.4%) for a cooperative exporter.

[150] For all of the other exporters, import pricing information available from the CBSA's import documentation was used for the purposes of determining export prices by ministerial specification under subsection 29(1) of SIMA

[151] The subject goods exported to Canada by all other exporters during the POI were found to be dumped by a margin of dumping of 82.4%, expressed as a percentage of the export price.

Summary of Results – Dumping

[152] The following table summarizes the results of the dumping investigation by country, respecting all subject goods released into Canada during the POI.

Table 3
Margins of Dumping and Volume of Dumped Goods
(May 1, 2012 to April 30, 2013)

Country	Volume of Dumped Goods as Percentage of Country Imports	Margin of Dumping*	Volume of Country Imports as Percentage of Total Imports	Volume of Dumped Goods as Percentage of Total Imports
Brazil	100%	24.8%	5.3%	5.3%
Greece	100%	11.0%	3.6%	3.6%
China	100%	11.4%	17.6%	17.6%
The Republic of Korea	100%	14.0%	28.8%	28.8%
Mexico	100%	33.3%	8.9%	8.9%

* as a percentage of export price

[153] Under paragraph 41(1)(a) of SIMA, the President shall make a final determination of dumping when he is satisfied that the goods have been dumped and that the margin of dumping of the goods of a country is not insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. The margins of dumping of Copper Tube from Brazil, Greece, China, the Republic of Korea and Mexico are not less than 2% of the export price of the goods and are, therefore, not insignificant.

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

SUBSIDY INVESTIGATION

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

[156] 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.

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

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

[159] Notwithstanding that a subsidy is not specific in law, under subsection 2(7.3) of SIMA 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.

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

[161] Financial contributions provided by state-owned enterprises (SOEs) may also be considered to be provided by the GOC for purposes of this investigation. An SOE may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it

possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

[162] At the initiation of the subsidy investigation, the CBSA identified 170 potential subsidy programs in the following eight categories:

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

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

[164] A further review during the investigation resulted in the removal of one subsidy program. Program 131: Grant for Standardizing Industrial Systems in the Nonferrous Metals Industry was determined to be a duplicate of Program 121. A further review during the investigation also resulted in nine additional programs identified.

[165] In total, 178 programs were investigated for purposes of this investigation. Information concerning these programs is provided in **Appendix 2** of this document.

Results of the Subsidy Investigation

[166] In conducting its investigation, the CBSA sent a subsidy RFI to the GOC as well as to potential exporters of Copper Tube located in China that had been identified through CBSA import entry documentation. Information was requested in order to establish whether there had been financial contributions made by any level of government including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of Copper Tube; 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. The exporters were directed to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[167] One response to the CBSA's subsidy RFI was submitted jointly by the two exporters SH Hailiang and ZJ Hailiang.

[168] As noted above, the GOC did not submit a response to the subsidy RFI, and therefore, did not provide the required information relating to financial contribution, benefit and specificity. This significantly impeded the CBSA's investigation as sufficient information has not been furnished to enable the determination of the amount of subsidy in the prescribed manner.

[169] Due to a lack of government response, subsidy amounts for all exporters were determined pursuant to subsection 30.4(2) of SIMA, based on a ministerial specification. However, in consideration of the fact that both SH Hailiang and ZJ Hailiang provided complete responses to the subsidy RFI, individual amounts of subsidy were determined under the ministerial specification for these two specific exporters based on the information provided in their submissions.

SH Hailiang and ZJ Hailiang

[170] The combined Hailiang response to the CBSA's subsidy RFI detailed individual amounts of subsidy associated with SH Hailiang and ZJ Hailiang, as each exporter received separate benefits from the GOC.

[171] The response did not include information concerning HK Hailiang, as this company is located in Hong Kong and therefore, was not eligible for benefits from the GOC.

Subsidy Programs Benefitting SH Hailiang

[172] For purposes of the preliminary determination, the CBSA estimated an amount of subsidy equal to 2.9% of the export price for SH Hailiang, based on the financial benefits received under the following six programs:

- Program 45: Grant - Cleaning-production Qualified Enterprise Reward (Subsidy of Audit Fees for Key Enterprises Cleaning Production)
- Program 79: Advanced Science/Technology Enterprise Grant (Advanced Units for Safety Production in Fengxian District)
- Program 80: Award for Excellent Enterprise (First Prize within Top 100 Enterprises in Situan Town for Year 2012)
- Program 147: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period Not Less Than 10 Years
- Program 163: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment
- Program 167: Raw Materials Provided by the Government at Less than Fair Market Value

[173] During the final phase of the investigation, the CBSA confirmed that SH Hailiang received benefits from the GOC under all six of the aforementioned programs. However, the benefits that SH Hailiang received under Program 167 were not attributable to subject goods exported to Canada and were therefore, not included in the amount of subsidy determined for SH Hailiang. As a result, the amount of subsidy for SH Hailiang was based on the benefits received under the five potentially actionable subsidy programs.

[174] The total amount of subsidy for SH Hailiang is equal to 108.35 RMB per metric tonne, or 0.19%, expressed as a percentage of the export price.

Subsidy Programs Benefitting ZJ Hailiang

[175] For the purposes of the preliminary determination, the CBSA estimated an amount of subsidy equal to 2.6% of the export price for ZJ Hailiang, based on the financial benefits received under the following 28 programs:

- Program 40: Emission Reduction and Energy-Saving Award²⁵
 - Program 40-1: Emission Reduction and Energy-Saving Award (Special Funds for Reduction of Pollutant Emission)
 - Program 40-2: Emission Reduction and Energy-Saving Award (Advanced Units within Top 30 Electricity Consumption Enterprises in the Competition of Energy-Saving contest)
- Program 51: Grant - Resources Conservation and Environment Protection Grant (Funds for Pollution Sources Monitoring Facilities in 2011)
- Program 118: Subsidy for Certification of Clean and Green Production in Zhejiang (Funds for Cleaning Production Demonstration Enterprises)
- Program 120: Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township²⁶
 - Program 120-1: Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township (Funds for Fulfill Incentive Policies on Industry for the Year 2011)
 - Program 120-2: Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township (Incentives of Circular Economy in 2011)
- Program 121: Funds for Standardizing Industrial Systems in the Nonferrous Metals Industry
- Program 122: Award for Science and Technology in Shaoxing City
- Program 125: Funds for Science and Technology Award
- Program 127: Funds for Science and Technology Award of Zhuji City
- Program 128: Funds for Patent Award
- Program 129: Funds for Key Innovation Team
- Program 132: Subsidies to Full-time Environmental Monitoring Officer
- Program 141: Special Funds for Use in the Open Economy²⁷
 - Program 141-1: Special Funds for Use in the Open Economy (Award for Open Economy)
 - Program 141-2: Special Funds for Use in the Open Economy (Reduction/Exemption of Water Conservancy Fund)

²⁵ Program 40: Emission Reduction and Energy-Saving Award was determined to be two separate programs

²⁶ Program 120: Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township was determined to be two separate programs

²⁷ Program 141: Special Funds for Use in the Open Economy was determined to be two separate programs

- Program 142: Grant to Promote Economic Innovation and Enhance Development²⁸
 - Program 142-1: Grant to Promote Economic Innovation and Enhance Development (Award for Refinancing by Rationed Shares)
 - Program 142-2: Grant to Promote Economic Innovation and Enhance Development (Incentives of Industrial Economic Policies in 2011)
 - Program 142-3: Grant to Promote Economic Innovation and Enhance Development (Funds for Award of Innovation Carrier)
 - Program 142-4: Grant to Promote Economic Innovation and Enhance Development (Funds for Award of Talent for the Year 2012)
- Program 143: Funds for Scientific and Technology Project for the Year 2011 in Zhuji City
- Program 144: Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City²⁹
 - Program 144-1: Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City (Funds for City-Grade Project in 2012)
 - Program 144-2: Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City (Funds for Award of Scientific & Technological Achievements through Identification/Review and Project of National Torch, Spark, Key New Product Program)
- Program 150: Preferential Tax Policies for the Research and Development of FIEs (Tax offsets for Research and Development)
- Program 155: Corporate Income Tax Reduction for New High-Technology Enterprises
- Program 163: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment
- Program 167: Raw Materials Provided by the Government at Less than Fair Market Value
- Program 171: Tax offsets for the investment in the acquisition of special facilities for environmental protection, energy and water conservation and work safety etc.
- Program 172: Preferential Loans From State-Owned Banks

[176] During the final phase of the investigation, the CBSA confirmed that ZJ Hailiang received benefits from the GOC under all 28 of the aforementioned programs. However, the benefits that ZJ Hailiang received under Program 167 were not attributable to subject goods exported to Canada and were therefore, not included in the amount of subsidy determined for ZJ Hailiang. As a result, the amount of subsidy for ZJ Hailiang was based on the benefits received under the 27 potentially actionable subsidy programs.

[177] The total amount of subsidy for ZJ Hailiang is equal to 332.87 RMB per metric tonne, or 0.65%, expressed as a percentage of the export price.

²⁸ Program 142: Grant to Promote Economic Innovation and Enhance Development was determined to be four separate programs

²⁹ Program 144: Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City was determined to be two separate programs

All Other Exporters

[178] For all other exporters that did not provide a response to the CBSA's subsidy RFI, the amount of subsidy was determined pursuant to subsection 30.4(2) of SIMA, based on a ministerial specification based on:

1. the highest amount of subsidy for each of the 31 subsidy programs found to have conferred benefits to the cooperative exporters located in China; plus
2. the highest amount of subsidy for Program 167 - Raw Materials Provided by the Government at Less than Fair Market Value found at the final determination to have potentially conferred benefits to any exporter located in China that did not cooperate in the investigation; plus
3. the simple average of the amounts of subsidy for the 32 programs in (1) and (2), applied to each of the remaining 146 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[179] The subject goods exported to Canada by all other exporters during the POI were found to be subsidized by an amount equal to 25,239 RMB per metric tonne, or 31.3%, expressed as a percentage of the export price.

[180] Based on the preceding, 100% of Copper Tube originating in or exported from China was subsidized. A summary of the amounts of subsidies applicable to SH Hailiang and ZJ Hailiang is provided in **Appendix 1** of this document while the overall amount of subsidy for China is provided in **Table 4**.

Summary of Results – Subsidy

[181] The following table summarizes the results of the subsidy investigation respecting all subject goods released into Canada during the POI.

Table 4
Amount of Subsidy and Volume of Subsidized Goods
(January 1, 2012 to April 30, 2013)

Country	Volume of Subsidized Goods as Percentage of Country Imports	Amount of Subsidy*	Volume of Country Imports as Percentage of Total Imports	Volume of Subsidized Goods as Percentage of Total Imports
China	100%	12.4%	21.0%	21.0%

* as a percentage of export price

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

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

[184] SIMA does not define or provide any guidance regarding the determination of a “developing country” for purposes of Article 27.10 of the *WTO Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance.³⁰ As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. As the preceding table illustrates, the amount of subsidy found during this investigation is not insignificant.

[185] 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 DUMPING AND SUBSIDY INVESTIGATIONS

[186] Following the close of the record on October 4, 2013, case arguments with respect to the dumping and subsidy investigations were received from counsel representing the complainant and the four exporters, SH Hailiang, ZJ Hailiang, Halcor and Nungwon. Reply submissions were filed on behalf of one importer, Nolrad International Inc. (Nolrad), and five exporters, SH Hailiang, ZJ Hailiang, Luvata Monterrey, S. De R.L. De C.V (Luvata), Nungwon and Paranapanema.

[187] The issues raised by participants through the case arguments and reply submissions as well as the CBSA’s response to these issues are provided in **Appendix 3**.

³⁰ The Organization for Economic Co-operation and Development, DAC List of ODA Recipients from 2011 to 2013, the document is available at: www.oecd.org/dac/stats/DAC%20List%20used%20for%202012%20and%202013%20flows.pdf

DECISIONS

[188] On the basis of the results of the dumping investigation, the President is satisfied that Copper Tube originating in or exported from Brazil, Greece, China, the Republic of Korea and Mexico has been dumped and that the margins of dumping are not insignificant. Consequently, on November 18, 2013, the President made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.

[189] On the basis of the results of the subsidy investigation, the President is satisfied that Copper Tube originating in or exported from China has been subsidized and that the amount of subsidy is not insignificant. As a result, on November 18, 2013, the President made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA.

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

FUTURE ACTION

[191] The provisional period began on August 20, 2013, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by December 18, 2013. 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's Web site at www.cbsa-asfc.gc.ca/sima-lmsi.

[192] 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 concerning the named countries will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.

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

[194] 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*³¹ 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.

³¹ *Customs Act* R.S.C. 1985

[195] In the event of an injury finding by the Tribunal, normal values and amounts of subsidy have been provided to the co-operating exporters for future shipments to Canada and these normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods should be obtained from the exporter.

[196] Exporters of subject goods who did not provide sufficient information in the dumping investigation will have normal values established by advancing the export price by 82.4% based on a ministerial specification pursuant to subsection 29(1) 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 of subject goods who did not provide sufficient information in the subsidy investigation will be subject to a countervailing duty amount of 25,239 RMB per metric tonne, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[197] Under certain circumstances, anti-dumping and/or countervailing duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on 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.

[198] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. 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. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

PUBLICATION

[199] 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

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

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

Telephone: Nalong Manivong 613-960-6096
Ron McTiernan 613-954-7271

Fax: 613-948-4844

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

Web site: www.cbsa-asfc.gc.ca/sima-lmsi



Caterina Ardito-Toffolo
Acting Director General
Anti-dumping and Countervailing Directorate

Attachments

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

Exporter	Margin of Dumping*	Amount of Subsidy (Renminbi per metric tonne)	Amount of Subsidy*
Brazil			
Paranapanema S.A.	24.8%	N/A	N/A
All Other Exporters	82.4%	N/A	N/A
Greece			
Halcor S.A.	11.0%	N/A	N/A
All Other Exporters	82.4%	N/A	N/A
China			
Shanghai Hailiang Copper Co., Ltd.	7.5%	108.35	0.19%
Zhejiang Hailiang Co., Ltd.	6.1%	332.87	0.65%
All Other Exporters	82.4%	25,239	31.3%
The Republic of Korea			
Nungwon Metal	5.5%	N/A	N/A
All Other Exporters	82.4%	N/A	N/A
Mexico			
Nacional De Cobre, S.A. DE C.V	23.5%	N/A	N/A
All Other Exporters	82.4%	N/A	N/A

*expressed as a percentage of the export price

NOTE: The margins of dumping reported in this table are the margins determined by the CBSA for purposes of the final determination of dumping. These margins **do not** reflect the amount of anti-dumping duty to be levied on future importations of dumped goods. In the event of an injury finding by the Tribunal, normal values and amounts of subsidy have been provided to the co-operating exporters for future shipments to Canada and these normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods and amounts of subsidy should be obtained from the exporter. Imports from exporters that did not provide complete information to the CBSA during the dumping investigation and who are not listed in the table above will be subject to the all other exporters anti-dumping duty rate of 82.4%, expressed as a percentage of the export price, pursuant to a ministerial specification. Imports from exporters located in China that did not provide complete information to the CBSA during the subsidy investigation and who are not listed in the table above will also be subject to a countervailing duty rate of 25,239 Renminbi per metric tonne, pursuant to a ministerial specification. Please check the [SIMA Self-Assessment Guide](#) for more detailed information explaining how to determine the amount of SIMA duties owing.

APPENDIX 2 – SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As noted in the body of this document, the GOC did not submit a response to the subsidy RFI, and therefore did not provide the required information relating to the financial contribution, benefit and specificity. This significantly impeded the CBSA's investigation as all information has not been furnished to enable the determination of the amount of subsidy in the prescribed manner. Due to this lack of information, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA based on the best available information available to the CBSA. In consideration of the level of cooperation received from the exporters that provided complete responses to the subsidy RFI, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

This appendix consists of descriptions of the subsidy programs used by the responding exporters, followed by a listing of the other potentially actionable subsidy programs identified by the CBSA.

SUBSIDY PROGRAMS USED BY RESPONDING EXPORTERS

The CBSA has used the best information available to describe the potentially actionable subsidy programs used by the responding exporters in the investigation. This includes using information obtained from CBSA research on potential subsidy programs in China, information provided by the responding exporters and descriptions of programs that the CBSA has previously publicly published in recent *Statement of Reasons* relating to subsidy investigations involving China. Since the GOC did not submit a response to the Subsidy RFI, the information available to identify the legal instruments pertaining to the programs is limited and such references may be inaccurate or incomplete.

II Preferential Loans and Loan Guarantees

Program 172: Preferential Loans From State-Owned Banks

This program relates to the provision of preferential loans from state-owned banks. When exporters or producers of subject goods receive preferential loans at preferential interest rates from SOEs and those SOEs are considered to be possessing, exercising, or vested with governmental authority, a subsidy may be found to exist.

For the purposes of this investigation, there are three key concepts to consider when determining whether this program is applicable:

- whether the exporters or producers of subject goods to Canada received preferential loans from SOEs;
- whether the SOEs that supplied these preferential loans are considered to be possessing, exercising, or vested with governmental authority; and
- the market interest rates of loans provided by SOEs.

In terms of the first concept, the CBSA requested information from the exporters regarding information on their loans, banking information, interest rates, and maturity dates. Based on the information in their submissions, the responding exporters have received loans from state-owned banks, specifically, the Export-Import Bank of China (EXIM Bank).

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

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

According to its Web site, “the Export-Import Bank of China is a state bank solely owned by the Chinese government and under the direct leadership of the State Council”. Furthermore, the mission of EXIM Bank “is to facilitate the export and import of Chinese mechanical and electronic products, complete sets of equipment and new-and high-tech products, assist Chinese companies with comparative advantages in their offshore project contracting and outbound investment, and promote international economic cooperation and trade.”³² The above evidence clearly indicates that the EXIM Bank is considered to constitute “government” for the purpose of subsection 2(1) of SIMA.

The third concept relating to this program is the determination of the market interest rates of the loans provided by SOEs for the purposes of evaluating whether the interest rates on the loans from SOEs is considered to be preferential rates.

Having determined that there is a financial contribution, as defined in paragraph 2(1.6)(c) of SIMA,³³ the CBSA determined whether the financial contribution conferred a benefit to producers/exporters. This calculation involved the comparison of the interest rates at which the loans were provided by the government with the market interest rates of the loans in China. The CBSA determined the loan benchmark interest rate issued by the People’s Bank of China for RMB denominated loans is an appropriate benchmark interest rate for this purpose.

The CBSA determined the amount of benefit received by the exporter by comparing the interest rates on the loans received from the EXIM bank with the benchmark interest rates issued by the People’s Bank of China.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of

³² CBSA Preliminary Determinations *Statement of Reasons for Certain Copper Tube*, p. 44

³³ The government provides goods or services, other than general infrastructure, or purchases goods.

the available information this program does not appear to be generally available to all enterprises in China.

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.

III Grants and Grant-equivalents

On the basis of the available information, the following programs under grants and grant-equivalents constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. These grants confer a direct benefit to the recipient in the form of a grant and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the following grants and grant-equivalents are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy programs are not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy respecting each of these programs 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 40-1: Emission Reduction and Energy-Saving Award (Special Funds for Reduction of Pollutant Emission)

During the POI, one of the cooperative exporters received a grant for reduction of pollutant emission. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the CPC and Zhuji Municipal Government on Accelerating the Construction of “6+2” Modern Industrial System in 2011(ZHU SHI WEI [2011] No. 3)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and Zhuji Municipal Government.

Program 40-2: Emission Reduction and Energy-Saving Award (Advanced Units within Top 30 Electricity Consumption Enterprises in the Competition of Energy-Saving contest)

During the POI, one of the cooperative exporters received a grant for energy-savings. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the Chinese Party of China (CPC) and Zhuji Municipal Government on Accelerating the Construction of “6+2” Modern Industrial System in 2011(ZHU SHI WEI [2011] No. 3)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and Zhuji Municipal Government.

Program 45: Grant - Cleaning-production Qualified Enterprise Reward (Subsidy of Audit Fees for Key Enterprises Cleaning Production)

During the POI, one of the cooperative exporters received a grant for cleaning production audit fees. This program was established in a document titled ‘Implementation Scheme of Cleaner Production Auditing Subsidy Funds of Major Enterprises in Shanghai (trial).’ This program was administered jointly by the District or County Environmental Protection Bureau and Municipal Environmental Protection Bureau.

Program 51: Grant - Resources Conservation and Environment Protection Grant (Funds for Pollution Sources Monitoring Facilities in 2011)

During the POI, one of the cooperative exporters received a grant for pollution monitoring. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the CPC and Zhuji Municipal Government on Accelerating the Construction of “6+2” Modern Industrial System in 2011(ZHU SHI WEI [2011] No. 3)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and Zhuji Municipal Government.

Program 79: Advanced Science/Technology Enterprise Grant (Advanced Units for Safety Production in Fengxian District)

During the POI, one of the cooperative exporters received a grant for safety production. This program was administered by the Shanghai Municipality Fengxian District Situan Town Government.

Program 80: Award for Excellent Enterprise (First Prize within Top 100 Enterprises in Situan Town for Year 2012)

During the POI, one of the cooperative exporters received a reward for contributions to the local economy. This program was established in a document titled ‘Decision on Commending 2012 “Top 100 Enterprises” of Situan Town (FENG SI WEI [2013] No. 9)’. This program was administered jointly by the Shanghai Municipality Fengxian District Situan Town Committee of the CPC and Shanghai Municipality Fengxian District Situan Town Government.

Program 118: Subsidy for Certification of Clean and Green Production in Zhejiang (Funds for Cleaning Production Demonstration Enterprises)

During the POI, one of the cooperative exporters received a grant for being recognized as a cleaning production demonstration enterprise. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the CPC and Zhuji Municipal Government on Accelerating the Construction of “6+2” Modern Industrial System in 2011(ZHU SHI WEI [2011] No. 3)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and Zhuji Municipal Government.

Program 120-1: Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township (Funds for Fulfill Incentive Policies on Industry for the Year 2011)

During the POI, one of the cooperative exporters received a grant for scientific and technological innovation, brand building, energy conservation and environmental protection. This program was established in the document titled ‘Policies and Opinions on Accelerating the Construction of Modern Industry System and Promoting the Development of Strategic Emerging Industries (DIAN ZHENG [2011] No. 2)’. This program was administered by the Diankou Town People’s Government.

Program 120-2: Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township (Incentives of Circular Economy in 2011)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the CPC and Zhuji Municipal Government on Accelerating the Construction of “6+2” Modern Industrial System in 2011(ZHU SHI WEI [2011] No. 3)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and Zhuji Municipal Government.

Program 121: Funds for Standardizing Industrial Systems in the Nonferrous Metals Industry

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice on Allocating 2012 Subsidy Funds for Formulating and Revising the National and Professional Standards (YOU SE BIAO WEI [2012] No. 32)’. This program was administered by the National Technical Committee of Standardization for Nonferrous.

Program 122: Award for Science and Technology in Shaoxing City

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Circular of Shaoxing Municipal Government on 2011 Shaoxing Science and Technology Prizes (SHAO ZHENG FA [2011] No. 80)’. This program was administered by the Shaoxing Municipal Government.

Program 125: Funds for Science and Technology Award

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice of Shaoxing Municipal Science and Technology Bureau on Transmitting the List of 2011 Zhejiang Province Science and Technology Prize Winning Projects and Scientific and Technological Achievement Transformation Prize Winning Projects (or Personnel) (the part of Shaoxing City) (SHAO SHI KE [2012] No. 32)’. This program was administered by the Shaoxing Municipal Science and Technology Bureau.

Program 127: Funds for Science and Technology Award of Zhuji City

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice of Allocating the 2011 Zhuji Science and Technology Award Prizes (ZHU KE [2012] No. 21)’. This program was administered jointly by the Zhuji Municipal Science and Technology Bureau and Zhuji Municipal Finance Bureau.

Program 128: Funds for Patent Award

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice of Allocating the 2011 Patent Incentive Funds (ZHU KE [2012] No. 12)’. This program was administered jointly by the Zhuji Municipal Science and Technology Bureau and Zhuji Municipal Finance Bureau.

Program 129: Funds for Key Innovation Team

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice of General Office of Zhejiang Provincial Committee of the CPC and General Office of People’s Government of Zhejiang Province on Releasing the First Group of “Major Innovation Teams of Zhejiang Province” (ZHE WEI BAN [2009] No. 126)’. This program was administered jointly by the General Office of Zhejiang Provincial Committee of the CPC and General Office of People’s Government of Zhejiang Province.

Program 132: Subsidies to Full-time Environmental Monitoring Officer

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Evaluation Measures for Enterprise Full-time Environmental Inspectors (ZHU HUAN [2012] No. 26)’. This program was administered by General Office of Zhuji Municipal Environment Protection Bureau.

Program 141-1: Special Funds for Use in the Open Economy (Award for Open Economy)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the CPC and Zhuji Municipal Government on Accelerating the Construction of “6+2” Modern Industrial System in 2011(ZHU SHI WEI [2011] No. 3)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and Zhuji Municipal Government.

Program 141-2: Special Funds for Use in the Open Economy (Reduction/Exemption of Water Conservancy Fund)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice of Department of Finance of Zhejiang Province and Local Taxation Administration of Zhejiang Province on Further Enhancing the Preference of Local Construction Fund for Water Works for Foreign Trade Export (ZHE DI

SHUI FA [2012] No. 40)’. This program was administered jointly by the Department of Finance of Zhejiang Province and Local Taxation Administration of Zhejiang Province.

Program 142-1: Grant to Promote Economic Innovation and Enhance Development (Award for Refinancing by Rationed Shares)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Government Regarding Promoting the Innovative Development of Finance Sector (ZHU ZHENG FA [2011] No. 1)’. This program was administered by the Zhuji Municipal Government.

Program 142-2: Grant to Promote Economic Innovation and Enhance Development (Incentives of Industrial Economic Policies in 2011)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the CPC and Zhuji Municipal Government on Accelerating the Construction of “6+2” Modern Industrial System in 2011(ZHU SHI WEI [2011] No. 3)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and Zhuji Municipal Government.

Program 142-3: Grant to Promote Economic Innovation and Enhance Development (Funds for Award of Innovation Carrier)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice of Allocating the 2011 Scientific and Technological Innovation Carrier Award Funds (ZHU KE [2012] No. 20)’. This program was administered jointly by the Zhuji Municipal Science and Technology Bureau and Zhuji Municipal Finance Bureau.

Program 142-4: Grant to Promote Economic Innovation and Enhance Development (Funds for Award of Talent for the Year 2012)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Policies and Opinions of Zhuji Municipal Committee of the CPC and Zhuji Municipal Government on Further Improving the Talent and Intelligence Introduction and Talent Cultivation (SHI WEI (2007] No. 50)’. This program was administered jointly by the Zhuji Municipal Committee of the CPC and the Zhuji Municipal Government.

Program 143: Funds for Scientific and Technology Project for the Year 2011 in Zhuji City

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled ‘Notice of Allocating the Subsidy Funds for 2011 Special Hi-tech Industrial Projects and Special Scientific and Technological Cooperation

Projects of Zhuji Science and Technology Plan (ZHU KE [2011] No. 48)'. This program was administered jointly by the Zhuji Municipal Science and Technology Bureau and Zhuji Municipal Finance Bureau.

Program 144-1: Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City (Funds for City-Grade Project in 2012)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled 'Notice of Issuing the 2012 Industrial Scientific and Technology Projects and Scientific and Technological Cooperation and Achievement Transformation Projects of Zhuji Science and Technology Plan (ZHU KE [2012] No. 38)'. This program was administered jointly by Zhuji Municipal Science and Technology Bureau and Zhuji Municipal Finance Bureau.

Program 144-2: Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City (Funds for Award of Scientific & Technological Achievements through Identification/Review and Project of National Torch, Spark, Key New Product Program)

During the POI, one of the cooperative exporters received a grant under this program. This program was established in the document titled 'Notice of Allocating the 2011 Award Funds for Scientific and Technological Achievements Passing Appraisal (Evaluation) and Established Projects of National Torch Plan, National Spark Program and National Major New Product Plan (ZHU KE [2012] No. 19)'. This program was administered jointly by Zhuji Municipal Science and Technology Bureau and Zhuji Municipal Finance Bureau.

IV Preferential Income Tax Programs

On the basis of available information, the following programs under Preferential Income Tax Programs constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the following preferential income tax programs are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy programs are not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy respecting each of these programs 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 147: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period Not Less Than 10 Years

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

Program 150: Preferential Tax Policies for the Research and Development of FIEs (Tax offsets for Research and Development)

During the POI, one of the cooperative exporters received benefit under this program. This program was established in Article 30(1) of The Enterprise Income Tax Law and Article 95 of the Release of Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China by the State Council (Decree 512 of the State Council, 2007).

Program 155: Corporate Income Tax Reduction for New High-Technology Enterprises

During the POI, one of the cooperative exporters received benefit under this program. This program was established in Article 28.2 of the Enterprise Income Tax Law and Article 93 of Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China by the State Council (Decree 512 of the State Council, 2007).

Program 171: Tax Offsets for the Investment in the Acquisition of Special Facilities for Environmental Protection, energy and water conservation and work safety.

During the POI, one of the cooperative exporters received benefits under this program. This program was established in in 2008 by the Enterprise Income Tax Law and Article 100 of Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China by the State Council (Decree 512 of the State Council, 2007).

V Relief from Duties and Taxes on Inputs, Materials and Machinery

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

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the following program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

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

During the POI, two of the cooperative exporters were exempted from paying tariffs and import VAT on purchases of selected imported equipment. This program was established pursuant to the regulations of the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (GUOFA [1997] No. 37).

VII Goods/Services provided by the Government at Less Than Fair Market Value

Program 167: Raw Materials Provided by the Government at Less than Fair Market Value

This program relates to the acquisition cost of major raw materials from SOEs that are subsequently used in the production of finished subject goods. When exporters or producers of subject goods acquire raw material inputs (in this case copper cathode) at less than fair market value directly or indirectly from SOEs and those SOEs are considered to be possessing, exercising, or vested with governmental authority, a subsidy may be found to exist.

For the purposes of this investigation, there are three key concepts to consider when determining whether this program is applicable:

- whether the exporters or producers of subject goods to Canada acquired raw material inputs from SOEs;
- whether the SOEs that supplied these raw materials are considered to be possessing, exercising, or vested with governmental authority; and
- the fair market value of the goods provided by SOEs.

The CBSA requested information from the exporters regarding their purchases of input material (copper cathode), the names of the suppliers/producers, and the ownership status of these parties, where known. Based on the information in their submissions, the responding exporters have purchased copper cathode from Chinese trading companies some of which were identified as SOEs. However, the responding exporters were unable to determine the identity of the copper producers or whether or not these copper producers were SOEs.

Since the exporters were unable to establish if the copper cathode that they purchased in China was produced by SOEs, since the Chinese copper sector is dominated by SOEs and since neither the copper producers or the GOC provided the CBSA with any information to determine if these copper inputs were produced by SOEs, the CBSA will treat all domestic purchases of copper by the responding exporters as being purchased from SOEs.

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

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

All exporters were instructed to forward a supplemental questionnaire to their suppliers of copper cathode; however, none of the suppliers/producers that were identified by the exporters as SOEs provided responses. The GOC was also requested to identify the suppliers/producers of copper cathode it partially or wholly-owned and to describe the percentage of their ownership; however, the GOC did not respond to the subsidy RFI.

Various industrial and economic policies and five-year plans are factors found to have influence in the Chinese non-ferrous industry. The major objectives of these policies and plans are summarized below.

As provided in Article 36 of the *Law of State-Owned Assets of the Enterprises*, state-invested enterprises³⁴ (SIEs) must comply with all national industrial policies.³⁵ On the basis of this information, SIEs are effectively performing a public policy function through their pursuit of state plans and industrial and economic policies, thus supporting the indication that SIEs and SOEs are in fact performing governmental functions.

A further analysis of the *Law of State-Owned Assets of the Enterprises* reveals that the GOC is the only entity that may determine who is eligible to be a director or supervisor within SIEs in China, regardless of the extent of the GOC’s ownership of the SIE. The GOC sets the criteria against which management of an SIE is evaluated, measures the performance of management against the criteria, and determines the standards of remuneration for management. SIEs must also submit to audits conducted directly by the GOC.

According to the Decree of the State Council of the People’s Republic of China No. 378 - Interim Regulations on Supervision and Management of State-owned Assets of Enterprises,³⁶ Article 12 establishes that the State-owned Assets Supervision and Administration Commission of the State (SASAC) is directly subordinate to the State Council, the highest executive organ of the GOC. Article 13 establishes the main responsibilities of SASAC, including the power of appointing, terminating, and evaluating top executives of supervised enterprises, the ability to

³⁴ State-invested Enterprise: An entity in which the GOC has an ownership stake, regardless of the size of that stake, but does not wholly-own the enterprise. These definitions are based upon those set out on Article 5, *Law of State-Owned Assets of the Enterprises*. CBSA Final Determinations *Statement of Reasons for Certain Stainless Steel Sinks*, page 31, May 9, 2012

³⁵ CBSA Final Determinations *Statement of Reasons for Certain Stainless Steel Sinks*, page 31, May 9, 2012

³⁶ CBSA Final Determinations *Statement of Reasons for Certain Stainless Steel Sinks*, page 32, May 9, 2012.

draft laws, rules and regulations for the management of state-owned assets, and the capability to dispatch supervisory panels to the supervised enterprises on behalf of the state council.³⁷

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

In light of the fact that the GOC did not provide information with respect to the ownership status of suppliers/producers and no information was received from SOEs with respect to the subsidy RFI, the CBSA performed an analysis based on the information available on the record which revealed that various industrial and economic policies and five year plans are factors found to have influence in the Chinese non-ferrous industry. The exercise of meaningful control by the GOC, examined in conjunction with the performance of government functions, is sufficient to indicate that these SOEs possess, exercise or are vested with governmental authority. As such, the CBSA will consider SOEs in the copper sector to be included under the definition of “government” in subsection 2(1) of SIMA.

This program also involves the determination of the fair market value of the material inputs provided by SOEs for the purposes of evaluating whether the purchase price from SOEs is below fair market value.

Having determined that there is a financial contribution, as defined in paragraph 2(1.6)(c) of SIMA,³⁸ the CBSA determined whether the financial contribution conferred a benefit to producers/exporters. This involved the comparison of the price at which the goods were provided by the government with the fair market value of the goods in China. The CBSA has determined that the Chinese copper sector is dominated by SOEs. There is evidence that prices of copper cathode in China can be substantially lower compared to the global benchmarks. Accordingly, the CBSA has deemed that the domestic selling prices for copper cathode in China are not appropriate for the purpose of determining the fair market value of these goods.

In addition, the contract pricing of copper on the Shanghai Futures Exchange (SHFE) in China is not reflective of world prices. As such the CBSA obtained average monthly prices of copper importations from SH Hailiang and ZJ Hailiang in order to establish benchmark prices of copper cathode.

The CBSA then calculated the difference between the average monthly acquisition prices of the exporters’ purchases in the domestic market with the average monthly prices of the exporter’s copper importations at world prices. The amount of subsidy was determined by distributing the

³⁷Ibid.

³⁸ The government provides goods or services, other than general infrastructure, or purchases goods.

benefit received by the exporters over the total quantity of goods to which the benefit was attributable.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

Although the cooperative exporters received benefits under this program, the CBSA determined that the benefits received were not attributable to the subject goods exported to Canada. However, the CBSA did calculate an amount of subsidy based on the information provided by the cooperative exporters for exporters that did not cooperate in the investigation since they could potentially benefit from this subsidy with respect to their goods exported to Canada. As such, an amount of subsidy for this program 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. The amount of subsidy for this program was included in the overall amount of subsidy calculation for exporters that did not cooperate in the investigation.

OTHER POTENTIALLY ACTIONABLE SUBSIDY PROGRAMS

The following 146 programs were also included in the current investigation. Questions concerning these programs were included in the RFI sent to the GOC and to all known exporters of the goods in China. None of the exporters that provided responses to the RFI reported using these programs during the subsidy POI. Without a complete response to the subsidy RFI from the GOC and all known exporters, the CBSA does not have sufficient information to determine that any of these programs do not constitute actionable subsidies. In other words, the CBSA does not have sufficient information to determine that any of the following programs should be removed from the investigation for purposes of the final determination.

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

- Program 1: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (SEZs) (excluding Shanghai Pudong Area)
- Program 2: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
- Program 3: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
- Program 4: Preferential Tax Policies in the Western Regions
- Program 5: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 6: Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 7: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas

- Program 8: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas in Guangdong
- Program 9: Income Tax Refunds where Profits are Re-invested in SEZs and other Designated Areas
- Program 10: Preferential Tax Program for FIEs Recognized as HNTEs (High and New Technology Enterprises)
- Program 11: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
- Program 12: Services or Goods provided by Government or public bodies at the preferential prices to enterprises located in SEZs and other designated areas
- Program 13: VAT Exemptions for the Central Region
- Program 14: Tax over-refunds or over-exemptions for the water, electricity and gas consumed in the Export Processing Zone
- Program 15: Custom Duty Exemption and VAT Exemption for machinery, equipment, construction materials imported into the Export Processing Zone for the construction of production facilities (such as factory and warehouse) in the zone
- Program 16: Custom Duty Exemption and VAT Exemption for machinery, equipment, moulds/dies and the corresponding repairing parts imported into the Export Processing Zone and used for the production by Enterprises in the zone
- Program 17: Custom Duty over-refund or over-exemption and VAT over-refund or over-exemption for raw materials, parts, packaging materials and consumable materials imported into the Export Processing Zone and used for the production of exported goods in the zone
- Program 18: Export Duty Refund or Exemption for the exported goods produced in the Export Processing Zone and exported from the zone
- Program 19: VAT Refunds or Exemptions for the domestically purchased machinery, equipment and construction materials used for the production of exported goods and the construction of production facilities in the Export Processing Zone

II Preferential Loans and Loan Guarantees

- Program 20: Loans and Interest Subsidies Provided Under the Northeast Revitalization Program
- Program 21: Export Seller's Credit for High- and New-Technology Products by China EMIX Bank
- Program 22: Preferential Loan for the National/Provincial Key Science & Technology Industrialization Projects, High Technology Industrialization Projects, Science & Technology Achievements Commercialization Projects, Modern Equipment Manufacturing Industry and key Information Technology Industrialization Projects by Liaoning Governments

III Grants and Grant-equivalents

- Program 23: Innovation Fund for Medium and Small Business

- Program 24: Special fund for developing trade through science and technology of Guangdong Province
- Program 25: Special Funds for Foreign Economic and Technical Cooperation
- Program 26: Innovative Experimental Enterprise Grant
- Program 27: Superstar Enterprise Grant
- Program 28: Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”
- Program 29: Export Brand Development Fund
- Program 30: Provincial Scientific Development Plan Fund
- Program 31: Technical Renovation Loan Interest Discount Fund
- Program 32: National Innovation Fund for Technology Based Firms
- Program 33: Guangdong - Hong Kong Technology Cooperation Funding Scheme
- Program 34: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- Program 35: Innovative Small and Medium-Sized Enterprise Grants
- Program 36: Product Quality Grant
- Program 37: 2009 Energy-Saving Fund
- Program 38: Grants for Export Activities
- Program 39: Grants for International Certification
- Program 41: Grant for Market Promotion and Trade Development (Shandong)
- Program 42: Grant - Assistance for Exhibition Booth Fees (Shandong)
- Program 43: Grant - Patent Application Assistance
- Program 44: Grant - State Service Industry Development Fund
- Program 46: Grant - Provisional Industry Promotion Special Fund
- Program 47: Grant - Financial Subsidies from Wei Hai City Gao Cun Town Government
- Program 48: Grant - Water Pollution Control Special Fund for Taihu Lake
- Program 49: Grant - Provincial Foreign Economy and Trade Development Special Fund
- Program 50: Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings
- Program 52: Grant - Wendeng Government (Shandong)
- Program 53: Enterprise Technology Centres
- Program 54: Allowance to Pay Loan Interest
- Program 55: Supporting Fund for Non-Refundable Export Tax Loss
- Program 56: International Market Fund for Export Companies
- Program 57: International Market Fund for Small and Medium-sized Export Companies
- Program 58: Business Development Overseas Support Fund
- Program 59: Refund from Government for Participating in Trade Fair
- Program 60: Grant - Special Fund for Fostering Stable Growth of Foreign Trade
- Program 61: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- Program 62: Financial Special Fund for Supporting High and New Technology Industry Development Project
- Program 63: Subsidy for Promoting Energy-Saving Buildings
- Program 64: Subsidy for the Technology Development
- Program 65: Awards for the Contributions to Local Economy and Industry Development
- Program 66: Beijing Industrial Development Fund

- Program 67: Grants, Loans, and Other Incentives for Development of Famous Brands, China Top World Brands or other well-known Brands
- Program 68: Shunde Famous Brands
- Program 69: Guangdong Supporting Fund
- Program 70: Zhabei District “Save Energy Reduce Emission Team” Award
- Program 71: “Five Points, One Line” Program of Liaoning Province
- Program 72: State Special Fund for Promoting Key Industries and Innovation Technologies
- Program 73: Fund for SME (small and medium size enterprises) Bank-Enterprise Cooperation Projects by Guangdong Governments
- Program 74: Special Fund for Significant Science and Technology by Guangdong Governments
- Program 75: Fund for Economic, Scientific and Technology Development by the Government of Foshan City
- Program 76: Provincial Fund for Fiscal and Technological Innovation by Guangdong Governments
- Program 77: Provincial Loan Discount Special Fund for SMEs by Guangdong Governments
- Program 78: “Large and Excellent” Enterprises Grant
- Program 81: Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants
- Program 82: Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers
- Program 83: Supporting Fund for the Projects Used to Resolve the Important Technological Issues for Enterprises’ Production and R&D by Liaoning Governments
- Program 84: Technology Innovation Fund for Science & Technology Type SMEs by Liaoning Governments
- Program 85: Supporting Fund for the Application Technology Research in the Overseas R&D Institution/Branch by Liaoning Governments
- Program 86: Special Supporting Fund and Special Loan Assistance by Chinese Ministry of Science & Technology for revitalizing the Northeast old industrial base
- Program 87: Special Supporting Fund for Key Projects of “500 Strong Enterprises in Contemporary Industries” by Guangdong Governments
- Program 88: Fund for Supporting Strategic Emerging Industries by Guangdong Governments
- Program 89: Medium Size and Small Size Enterprises Development Special Fund
- Program 90: Medium Size and Small Size Trading Enterprises Development Special Fund
- Program 91: Special Fund for Export Credit Insurance by Guangdong Governments
- Program 92: Supporting Fund for Converting the Industry Technology Achievements/Findings by Beijing Governments
- Program 93: Special Development Fund for Beijing Cultural Innovation Industry
- Program 94: Supporting Fund for Becoming Publicly Listed Company
- Program 95: Supporting Fund for the “Working Capital” Loan Interest
- Program 96: Award for Maintaining the Growth by Beijing Governments
- Program 97: Award by Beijing Technology Trading Encouraging Centre
- Program 98: Award by Shanghai Songjiang Economic Committee
- Program 99: Supporting Fund for the Development from Guangzhou Local Governments
- Program 100: Interest Assistance for Technology Renovation Projects by Liaoning Governments

- Program 101: Interest Assistance for the Application of Information Technology by Liaoning Governments
- Program 102: Loan Guarantee Fund for Science & Technology Enterprises by Liaoning Governments
- Program 103: Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
- Program 104: Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
- Program 105: Repaying Foreign Currency Loan by Refunded VAT
- Program 106: Government Export Subsidy and Product Innovation Subsidy in Shandong Province
- Program 107: Export Assistance Grant
- Program 108: Research & Development (R&D) Assistance Grant
- Program 109: Foreign Trade Promotion Award
- Program 110: Financial Assistance for an Overseas Market Survey
- Program 111: Supporting fund provided to Service Outsourcing Enterprises for the Establishment of their Brands and the Acquisition of their International Qualification Accreditations.
- Program 112: Liaoning High-tech Products & Equipment Exports Interest Assistance
- Program 113: Grant for Developing International Markets for SMEs in Zhejiang
- Program 114: Grant for Developing International Markets and Capital Clearing Fund for SMEs in Zhejiang
- Program 115: Export Credit for Insurance Premium in Zhejiang
- Program 116: Property Tax Reduction of Urban Land Use for Companies Who Provide Employment to People with Disabilities in Zhejiang
- Program 117: Support for the Development of Welfare Enterprises and Promoting the Employment of Persons with Disabilities in Zhuji City.
- Program 119: Subsidy for Construction Projects in the Developmental and Experimental Zone in Zhuji City
- Program 123: Policy to Accelerate the Development of Modern Logistics Industry in Zhuji City
- Program 124: Grant for Industrial Transformation and Upgrading of Major Science and Technology Projects in Zhuji City
- Program 126: Award to Science and Technology Enterprises in Zhuji City
- Program 130: Special Fund for Fair Trade in Import and Export Zhejiang
- Program 133: Grant for Research and Development Centers in the Provincial-level High-Tech Enterprises in Zhejiang
- Program 134: Special Financial Fund for Industrial Transformation and Upgrading in Zhejiang (Brand Awards)
- Program 135: Award for Outstanding Industrial Products and New Technologies in Zhejiang
- Program 136: Grant for the Implementation of Quality and Technical Inspection in Zhejiang
- Program 137: Award for Advanced Companies and Individuals in the Recognition of Key Projects and Investment in Tonglin City
- Program 138: Grant to Promote and Accelerate the Economic Development in the Copper Industry in Tonglin City
- Program 139: Financial Incentives to Promote Economic Development in Tonglin City
- Program 140: One-Time Financial Support to Hailiang Copper Co., Ltd.

Program 145: Support for the Development of Welfare Enterprises to Promote the Employment of Persons with Disabilities in Zhuji City

IV Preferential Income Tax Programs

- Program 146: Preferential Tax Policies for Advanced Technology Enterprises with Foreign Investment
- Program 148: Tax Preference Available to Companies that Operate at a Small Profit.
- Program 149: Preferential Tax Policies for Foreign Invested Export Enterprises
- Program 151: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment
- Program 152: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose
- Program 153: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
- Program 154: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps
- Program 156: Income Tax Credits on Purchases of Domestically Produced Equipment
- Program 157: Preferential Tax Programs for Encouraged Industries or Projects
- Program 158: Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for FIEs
- Program 159: Tax Offset for R&D Expenses in Guangdong Province
- Program 160: Accelerated Depreciation on Fixed Assets
- Program 161: Preferential Tax Treatment for the Technology Development Expenses by Liaoning Governments
- Program 162: Accelerated Depreciation on Intangible Assets for Industrial Enterprises in Northeast Region

V Relief from Duties and Taxes on Inputs, Materials and Machinery

Program 164: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

VI Reduction in Land Use Fees

- Program 165: Reduction, Exemption or Refund of Land Use Fees, Land Rental Rates and Land Purchase/Transfer Prices
- Program 166: Deed Tax Exemptions for Land Transferred through Merger or Restructuring

VII Goods/Services provided by the Government at Less Than Fair Market Value

Program 168: Utilities Provided by the Government at Less than Fair Market Value

VIII Equity Programs

- Program 169: Debt to Equity Swaps
- Program 170: Exemptions for SOEs from Distributing Dividends to the State

SUBSIDY PROGRAMS REMOVED FROM INVESTIGATION

The following program was removed as it was determined to be a duplicate of Program 121.

III Grants and Grant-equivalents

Program 131: Grant for Standardizing Industrial Systems in the Nonferrous Metals Industry

APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS

Case arguments were received on behalf of the complainant³⁹ and four exporters, SH Hailiang,⁴⁰ ZJ Hailiang,⁴¹ Halcor⁴² and Nungwon,⁴³ by the October 11, 2013 deadline.

Reply submissions were received on behalf of one importer, Nolrad⁴⁴ and five exporters, SH Hailiang,⁴⁵ ZJ Hailiang,⁴⁶ Luvata,⁴⁷ Nungwon⁴⁸ and Paranapanema,⁴⁹ by the October 22, 2013 deadline.

The issues of contention raised by these parties are summarized as follows:

Product Definition

Case Arguments

Counsel for Halcor argued that the CBSA's Copper Tube product definition is flawed in that there is no clear distinction between subject goods and non-subject industrial copper tube. Without a clear product definition, counsel argued that there is no way to know whether the data collected and considered by the CBSA as part of the investigation is accurate and accordingly, requested that the CBSA terminate the investigation.

Counsel for Nungwon also argued that the CBSA's product definition is flawed, that it is not possible to rely on data collected and considered by the CBSA as part of the investigation and as such, requested that the CBSA terminate the investigation.

Reply Submissions

Counsel for Nolrad supported Halcor's case argument regarding the scope of the product definition, particularly with regard to the industrial goods.

Counsel for Paranapanema supported the representations made by Halcor and Nungwon concerning the scope of the product definition, particularly with regard to industrial goods and custom sizes. Counsel argued that Paranapanema has demonstrated that all of its goods sold to Canada should be treated as industrial tubes.

³⁹ Dumping Exhibit 207 (NC) – Great Lakes Copper Case Brief

⁴⁰ Dumping Exhibit 180 (NC) – Shanghai Hailiang Case Brief

⁴¹ Dumping Exhibit 178 (NC) – Zhejiang Hailiang Case Brief

⁴² Dumping Exhibit 204 (NC) – Halcor Case Brief

⁴³ Dumping Exhibit 183 (NC), 190 (NC) & 205 (NC) – Nungwon Case Brief/Representations

⁴⁴ Dumping Exhibit 209 (NC) – Nolrad Reply Submission

⁴⁵ Dumping Exhibit 211 (NC) – Hailiang Reply Submission

⁴⁶ Ibid.

⁴⁷ Dumping Exhibit 216 (NC) – Luvata Reply Submission

⁴⁸ Dumping Exhibit 215 (NC) – Nungwon Reply Submission

⁴⁹ Dumping Exhibit 213 (NC) – Paranapanema Reply Submission

Counsel for Luvata argued that the CBSA's product definition for Copper Tube clearly distinguishes between subject goods and non-subject industrial copper tube. Counsel noted that there are physical and market differences between the subject goods and non-subject industrial copper tube which affect the suitability, price, distribution and end-uses of the products.

CBSA's Response to Case Arguments and Reply Submissions

The CBSA's product definition clearly defines the goods that are subject to these investigations.

Information provided by all parties during the course of the investigations confirmed which goods were subject and non-subject. In the few instances where non-subject goods had been included in the exporters' submissions, they were removed as a result of the investigation. Import statistics were revised accordingly.

Product Characteristics for Like Goods

Case Arguments

Counsel for the complainant noted that both the ASTM standard and weight are important product characteristics when determining if there are sales of like goods in the country of export. Counsel argued that Copper Tube produced to Korean standards is not interchangeable with Copper Tube produced in Canada as it is not third party certified to ensure compliance with the ASTM standards. Counsel also noted that Nungwon's submission indicates that Copper Tube sold domestically is not produced to ASTM standards.

Counsel for the complainant argued that Korean standards are different from ASTM standards and that these differences lead to different weights and different raw material costs when comparing products. Accordingly, counsel argued that domestic sales of Copper Tube not be considered as like goods.

Counsel for the complainant further argued that should the CBSA accept Nungwon's domestic sales as like goods, the prices of those goods should be adjusted pursuant to section 5 of the SIMR to account for qualitative differences.

Counsel for Nungwon argued that the subject goods exported to Canada and those goods sold domestically are like goods, based on the company's production capabilities, practices and method of production for ASTM and Korean standard products.

Counsel for Nungwon contended that the two product characteristics identified by the CBSA, ASTM and weight, are not appropriate for identifying like goods. It argued that the ASTM standard or its national equivalent should be considered in the selection of like goods. It further argued that weight is not a physical or market characteristic of Copper Tube. As such, it requested that the CBSA disregard weight as a characteristic in its selection of similar goods.

Reply Submissions

Counsel for Nungwon disputed the complainant's arguments that ASTM standard and weight be used as characteristics in determining like goods in the domestic market. It noted that the complainant's arguments did not conform to the objective and intent of international trade obligations or SIMA.

Counsel for Nungwon argued that the definition used to determine similar goods is flawed. Counsel maintained that the requirement that the goods sold domestically meet an ASTM standard ignores the fact that there are like goods sold domestically.

Counsel for Nungwon further maintained that all of Nungwon's production is certified to meet ASTM standards.

CBSA Response to Case Arguments and Reply Submissions

For purposes of the final determination the CBSA did not consider the ASTM standard as a product characteristic in identifying identical or similar goods. Information on the ASTM standard was used as a product descriptor. In order for goods sold in the domestic market to have been considered identical goods, the following eight characteristics had to be the same:

1. Coil/Straight
2. Tube Type
3. Outer Diameter
4. Inner Diameter
5. Wall Thickness
6. Weight
7. Length
8. Tolerances

In order for goods sold in the domestic market to have been considered similar goods, the following five characteristics had to be the same:

1. Coil/Straight
2. Tube Type
3. Outer Diameter
4. Inner Diameter
5. Wall Thickness

Volume of Imports

Case Arguments

Counsel for Halcor noted that, at the initiation of the investigation, the CBSA estimated Halcor's total share of the Canadian Copper Tube market at 3.1%, or 0.1% over the de minimus threshold or volume of imports that is sufficient to allow an investigation to proceed. In light of what counsel considers a flawed product definition, it requested that the CBSA terminate its

investigation with respect to Greece as import volumes from Greece should be considered negligible.

Reply Submissions

Nolrad supported Halcor's request that the CBSA terminate the investigation against Greece.

CBSA Response to Case Arguments and Reply Submissions

As indicated above, the CBSA's product definition clearly defines the goods that are subject to the investigation. The information available at the initiation of the investigation indicated that the estimated volume of dumped goods from Greece was not negligible. Since the initiation of the investigation, the CBSA has continued to refine subject import statistics based on information obtained during the course of the investigation. Based on the information available for the final determination, the volume of dumped goods from Greece represents 3.6% of the total volume of imports, which is above the negligibility threshold.

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

Section 20

Case Arguments

Counsel for the complainant argued that there is sufficient information to conclude that with regard to exports from China, the conditions of paragraph 20(1)(a) of SIMA apply to the copper sector, which includes Copper Tube. Counsel further argued that, in the absence of sufficient information to determine normal values pursuant to paragraph 20(1)(c) or (d), normal values must be determined pursuant to section 29 of SIMA based on a ministerial specification that uses the cost of production, an amount for administrative, selling and all other costs, and an amount for profits, other than those submitted by the exporters in China.

Should the President, however, be unable to form an opinion as to whether section 20 applies in the copper sector in China, counsel for the complainant argued that determining normal values as per the aforementioned methodology is still appropriate.

Counsel for Hailiang noted that all copper used in the production of Copper Tube sold to Canada by SH Hailiang and ZJ Hailiang was imported into China at international market prices. Counsel argued that since SH Hailiang and ZJ Hailiang's costs of copper represents substantially all of the total costs of production of the subject goods, which is in line with the Copper Tube industry throughout the world, SH Hailiang and ZJ Hailiang's own costs of production should be used by the CBSA to determine normal values at the final determination.

Counsel for Hailiang further argued that the ratio used by the CBSA at the preliminary determination to cover the administrative, selling and financial expenses for SH Hailiang and ZJ Hailiang was too high and that their own administrative, selling and financial expenses should be used to determine normal values at the final determination. Counsel also argued that the ratios used by the CBSA at the preliminary determination to cover an amount for profits were too high. Since the CBSA did not disclose the basis for its determination of profits, no further comments could be made in this regard.

Counsel for Hailiang did, however, argue that the profit ratio used was not in line with market reality and that it would be impossible for SH Hailiang and ZJ Hailiang to achieve. Since the costs associated with copper represent substantially all of the total cost of production of Copper Tube, after deducting administrative, selling and financial expenses, the actual profit for SH Hailiang and ZJ Hailiang is relatively low.

Reply Submissions

Counsel for Hailiang requested that the President re-examine the information with respect to section 20 and conclude that the determination of normal values at the final determination be made using domestic selling prices and costs in China.

Counsel for Hailiang submitted that subparagraph 15(a)(ii) of China's Accession Protocol does not forbid WTO members from using Chinese exporters' costs when determining price comparability if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to the production and sale of that product. It noted that the investigating authority still has the discretion to use costs of the Chinese exporters to construct normal values, if necessary.

Counsel for Hailiang further noted that SIMA does not prohibit the CBSA from using the Chinese exporters' costs to determine normal values. It noted that normal values may be determined in such a manner as the Minister specifies, pursuant to subsection 29(1) of SIMA.

Counsel for Hailiang argued that the CBSA should use Chinese exporters' costs if it is the most appropriate method under a ministerial specification pursuant to subsection 29(1). Counsel provided an example of a recent investigation involving Galvanized Steel Wire to demonstrate that the CBSA has the discretion to use the most appropriate method to determine normal values by means of a ministerial specification under subsection 29(1). As such, counsel submitted that the verified costs of production, administrative, selling and financial costs, and profits provided by the Chinese exporters are the most appropriate. It further argued that the complainant's conversion costs are not appropriate and should not be adopted by the CBSA.

CBSA's Response to Case Arguments and Reply Submissions

For purposes of the final determination, the President formed the opinion that the conditions of section 20 exist in the copper sector in China, which includes Copper Tube. As such, the CBSA did not use sales and associated costing data from the cooperating exporters in China.

Normal values for the two exporters in China were determined pursuant to subsection 29(1) of SIMA, based on a ministerial specification. Since copper represents the largest cost component of Copper Tube and is traded internationally on a daily basis, the CBSA determined that the average monthly settlement prices reported on the LME were suitable benchmarks for the cost of copper in China. To this, the CBSA added weighted-average amounts based on information provided from the four cooperative exporters located in Brazil, Greece, the Republic of Korea and Mexico to account for fabrication costs to convert the copper into Copper Tube, an amount for administrative, selling and all other costs and an amount for profits.

Costs of Production and Weight

Case Arguments

Counsel for the complainant expressed concerns regarding the costs of copper cathode reported by Paranapanema due to its source of supply. Counsel suggested that the CBSA make appropriate adjustments to Paranapanema's reported raw material costs to account for this.

Counsel for the complainant further noted that Nungwon did not report sales and costing data for specific Copper Tube models but rather grouped several products together, assigning the same product code on the basis that any differences between them fell within the allowable tolerances within the group. Counsel argued that this approach disregards the differences in weights and costs among the products within each of the groups. As such, counsel argued that the CBSA reject this model matching methodology.

Counsel for the complainant also noted that Nungwon's submission indicated that the actual weights reported by the company were not actual weights in reality. Counsel suggested that any costs that are based on theoretical weights be subject to an upward adjustment to reflect the difference between the theoretical and actual weights since even the slightest difference will affect the production costs and may completely wipe out the margin of dumping or result in inaccurate normal values that will have no enforcement value.

Counsel for the complainant also argued that Nungwon's costs of production are unreliable as they did not account for cost differences between annealed and hard Copper Tube products.

Reply Submissions

With regard to concerns of Paranapanema's costs of copper, counsel for Paranapanema argued that counsel for the complainant did not provide any legal authority in support of its request that appropriate adjustments be made to Paranapanema's costs of copper.

Counsel for Nungwon disagreed with the complainant's claim that Nungwon's grouping create significant distortions in the reporting of costs. Counsel submitted that the costs reflect the variable costs of the input copper and reasonable allocations for administrative, selling and financial costs.

Counsel for Nungwon noted that finished straight length tubes are not weighed. Counsel submitted that it is neither practical nor necessary for Nungwon to weigh these goods as they are

sold on a theoretical weight basis. Nungwon believes that this is in accordance with standard international marketing practices.

Counsel for Nungwon noted that the issues of costing for coil and straight products were addressed and resolved with the CBSA as part of the verification of Nungwon's information.

CBSA's Response to Case Arguments and Reply Submissions

On the matter of Paranapanema's copper cathode purchases, the CBSA confirmed during the verification that the prices paid by Paranapanema covered the full costs of the cathode. As such, there is no basis for the CBSA to reject the purchase prices provided in Paranapanema's submission.

Further, with regard to Paranapanema, since the values determined at the final determination are based on actual weights and not theoretical weights, there is no issue regarding underreported costs.

With regard to Nungwon, the CBSA considered the information provided by the company and determined that it reasonably allocated costs to the product groupings based on ASTM standards. As mentioned previously, the cost of copper accounts for 75% to 95% of the total cost of production of Copper Tube. As a result, a slight difference in the amount of copper used to produce Copper Tube will affect both the cost and the selling price of the goods. Any difference between the weights of Copper Tube sold domestically and Copper Tube sold to Canada must be accounted for. However, since actual weights could not be determined, normal values were determined pursuant to paragraph 19(b) of SIMA based on the calculated weights consistent with Nungwon's production and selling practices.

Adjustments and Deductions to Normal Values

Case Arguments

With regard to Paranapanema, counsel for the complainant argued that the inland freight costs reported as a deduction from the company's domestic selling prices were based on an incorrect allocation and do not reflect the reality of freight transportation zones one would expect in a country the size of Brazil. Counsel for the complainant therefore argued that the CBSA should not allow the reported freight deductions to domestic selling prices.

Counsel for the complainant also submitted that a trade level adjustment requested by Paranapanema is not warranted.

Reply Submissions

Counsel for Paranapanema submitted that the matter of domestic freight was thoroughly examined by the CBSA during on-site verification. Counsel for Paranapanema noted that the freight transportation zones identified by the complainant are not applicable to Paranapanema and, as such, argued that the CBSA disregard the representations made by the complainant as they are not based on fact.

With respect to trade level adjustment, counsel for Paranapanema argued that the complainant's representations were vague and maintains that Paranapanema provided sufficient information to the CBSA to justify the requested trade level adjustment.

CBSA's Response to Case Arguments and Reply Submissions

The deduction for freight included in the domestic selling prices was examined by the CBSA during on-site verification. The CBSA requested that revisions be made to the freight costs to more accurately reflect the actual freight incurred on each sale. The revisions were made by Paranapanema and it provided a revised database of domestic sales that was included as a verification exhibit.

The CBSA is satisfied that the revisions accurately reflect the freight cost that was included in the domestic selling prices.

As to the issue of a trade level adjustment, the CBSA made a trade level adjustment to the domestic selling prices to account for those direct selling expenses incurred in the domestic market to purchasers at the level of trade nearest and subsequent to the importer, that were not incurred on sales to the importer in Canada.

Propensity to Dump

Case Arguments

Counsel for Nungwon argued that the CBSA should reverse its earlier determination that Korean producers have a propensity to dump. It requested that Nungwon be treated as a responsible producer participating in the export trade.

CBSA Response to Case Arguments

With respect to Nungwon, based on the provisions of SIMA and the SIMR, the CBSA determined a margin of dumping at the final determination that was based upon the information submitted by the company and verified during an on-site verification.

Amount of Subsidy

Case Arguments

Counsel for Hailiang argued that the subject goods exported to Canada were produced from imported copper under a bonded system. For SH Hailiang and ZJ Hailiang, the amounts of a particular subsidy estimated at the preliminary determination related to domestic inputs used in the production of goods sold domestically and as such, this subsidy was not attributable to the subject goods exported to Canada.

CBSA Response to the Case Arguments

For the purposes of the final determination, the CBSA determined that SH Hailiang and ZJ Hailiang received benefits from the GOC under Program 167; however, the benefits were not attributable to the subject goods and were therefore, not included in the amount of subsidy determined for SH Hailiang and ZJ Hailiang.

Collection of Anti-dumping Duties

Case Arguments

Counsel for Hailiang argued that the CBSA should change its method of assessing anti-dumping duties for SH Hailiang and ZJ Hailiang if future enforcement is necessary. Instead of comparing the fixed normal values to their corresponding export prices when the goods are sold to Canada to determine the margin of dumping, counsel requested that a set percentage be assessed to the sales to Canada based on the margin of dumping that was found at the final determination. Counsel for Hailiang maintained that using the normal value and export price methodology adds uncertainty to Hailiang's export sales.

CBSA Response to Case Arguments

Should the Tribunal issue an injury finding with regard to the dumping of Copper Tube against China, normal values for SH Hailiang and ZJ Hailiang will be determined pursuant to section 29 of SIMA based on a ministerial specification. In accordance with the specification, normal values will be based on an aggregate of the most recent average monthly settlement price of copper as reported on the LME during the period of investigation of the original investigation, an amount to account for fabrication costs to convert the copper into Copper Tube, an amount for administrative, selling and all other costs, and an amount for profits.