

PUBLIC COMPLAINT

**The Dumping of  
Certain Fabricated Industrial Steel Components  
Originating in or Exported From  
the People's Republic of China, the Republic of Korea,  
the Kingdom of Spain, the United Arab Emirates and  
the United Kingdom of Great Britain and Northern Ireland  
and Subsidizing of  
Certain Fabricated Industrial Steel Components  
Originating in or Exported From the People's Republic of China**

**Submitted by: Supermetal Structures Inc.  
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*This document contains confidential information, the disclosure of which  
would cause commercial harm to Supermetal Structures Inc.,  
Supreme Group LP, and Waiward Steel LP*

# PUBLIC COMPLAINT

*The Dumping of Certain Fabricated Industrial Steel Components Originating in or Exported from the People's Republic of China, the Republic of Korea, the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland and Subsidizing of Certain Fabricated Industrial Steel Components Originating in or Exported from the People's Republic of China*

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## PUBLIC COMPLAINT

**The Dumping of Certain Fabricated Industrial Steel Components Originating in or Exported from the People's Republic of China, the Republic of Korea, the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland and Subsidizing of Certain Fabricated Industrial Steel Components Originating in or Exported from the People's Republic of China**

### I. Introduction

1. This Complaint is filed by Supreme Group LP ("**Supreme**"), Waiward Steel LP ("**Waiward**"), and Supermetal Structures Inc. ("**Supermetal**") (collectively the "**Complainants**") with the Canada Border Services Agency ("**CBSA**") pursuant to section 31 of the *Special Import Measures Act* ("**SIMA**") regarding the dumping of Certain Fabricated Industrial Steel Components ("**FISC**") originating in or exported from the People's Republic of China ("**China**"), the Republic of Korea ("**Korea**"), the Kingdom of Spain ("**Spain**"), the United Arab Emirates ("**UAE**") and the United Kingdom of Great Britain and Northern Ireland ("**UK**") (collectively, the "**Subject Countries**") and the subsidizing of FISC originating in or exported from China. The Complaint is supported by MacDougall Steel Erectors Inc., MQM Quality Manufacturing Ltd., Ocean Steel & Construction Ltd., and Walters Inc. (collectively, the "**Complaint Supporters**"). The Complaint is also supported by the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the "**Iron Workers**"). Importantly, members of the Iron Workers account for a significant portion of the skilled labour that is involved in the manufacturing of FISC.
2. It is submitted that the aforementioned dumped and subsidized goods have caused injury to Canadian producers of like goods and are also threatening Canadian producers with injury. The Complainants therefore request that the President of CBSA initiate an investigation into the injurious impact of the dumping and subsidization of FISC originating in or exported from the Subject Countries.

**A. Executive Summary**

3. The domestic industry producing FISC is being injured and is threatened with injury by dumped FISC from China, Korea, Spain, the UAE and the UK and subsidized FISC from China.
  4. FISC is a custom product for use in large industrial developments or projects that may be built over many years and in various phases. It is purchased directly from the FISC fabricator, generally as part of a package that typically includes drafting, engineering, and fabrication. The product is not individual pieces of steel; rather it is a complete set of precisely fabricated steel components that are assembled into a custom designed structure. A FISC purchaser may be the owner or a firm hired by the owner to provide project engineering services, to procure goods for the project and to construct the project. FISC may be sole-sourced or based on a quoting or bidding process.
  5. FISC orders are generally large and require the producer to have: (a) the drafting and engineering expertise to custom-fabricate large orders; (b) equipment and expertise to meet design requirements; and (c) sufficient production capacity to meeting schedule. As such, while there are many structural steel fabricators in Canada, only a very few produce FISC. The Complainants and Complaint Supporters comprise roughly 80% of the domestic industry producing like goods. In addition to producing FISC, many Complainants and Supporters also provide services to erect or construct FISC into a structure.
  6. Since FISC is a custom product, the pricing per unit can vary significantly. In very general terms, the price of FISC can range from approximately \$2,000/MT to \$10,000/MT. As with other steel products, Canadian purchasers of FISC require a discount from domestic prices before they are willing to purchase offshore. While the size of this discount depends on a variety of factors, it generally begins at 10% and may be as high as 25%.
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7. Domestic producers are generally aware of the projects that are being pursued or supplied by Subject Countries because domestic producers have bid on them or have subsequently been involved in erecting the FISC supplied by Subject Countries or have knowledge of the projects on the basis of their general participation in the industry.
8. The Subject Countries are all dumping FISC into Canada at significant margins. The dumping margins calculated for the Subject Countries are as follows:

<b>Country</b>	<b>Project</b>	<b>Section 19</b>	<b>Section 20</b>
China	Fort Hills – Utilities and Offsite	[	]
	CNRL Tran 4&5 – HWS4		
	Fort Hills OPP		
	Mosaic -K2 and K3		
Korea	Fort Hills – Secondary Extraction Facility	[	]
	NRWP – Sturgeon Refinery Units 50-60		
	Kearl Expansion Crusher		
Spain	CNRL U31 and U32 Facilities		
UK	Vale Long Harbour		
UAE	CNRL Unit 45 Combined Hydrotreating Unit		

9. Chinese FISC producers also benefit from significant, specific subsidies conferred by federal and sub-federal levels of government in China. The estimated subsidization rates are as follows:

<b>Project</b>	<b>Margin of Subsidization</b>
Fort Hills – Utilities and Offsite	[ ]%
CNRL – Train 4&5 – HWS4	[ ]%
Mosaic – K2 and K3	[ ]%

10. The Complainants have provided evidence demonstrating that the dumped and/or subsidized imports of FISC from the Subject Countries have caused material injury to the domestic industry.
11. Between 2013 and the first-quarter of 2016, the Complainants lost sales to the Subject Countries amounted to an estimated 128,854 MT. The Complainants estimate that the total value of lost sales to dumped and/or subsidized Subject Goods that were delivered between 2013 and the first quarter of 2016 totalled over \$620 million.
12. As a result of aggressive price competition, Subject Country imports saw their market share rise significantly in 2013 through 2015. China's share of the Canadian FISC market was 11% in 2013 and reached 22% in 2015. Similarly, South Korea's share of the domestic FISC market was 4% in 2013, before quadrupling to 16% in 2015.
13. Capacity utilization for the domestic industry has been very low over the period of review, ranging from 38% to 40% in 2013-2015 before dropping to 28% in the first quarter of 2016.
14. The Subject Countries have undercut and depressed the pricing of the domestic FISC industry. This Complaint contains examples showing Subject Country imports undercutting the domestic producers by 15% to 70%. Competition with the dumped and subsidized Subject Goods has pushed domestic prices down. As noted above, per unit pricing can vary significantly depending on the project. However, the ultimate impact of pricing depression and erosion can be seen in the domestic industry's net profit margin.
15. In this case, the domestic industry's net profit margin declined from 14% in 2013, to 10% in 2014, to 7% in 2015.
16. These trends threaten the very viability of the industry. FISC producers require a net income in the range of [ ]% to [ ]% to be feasible in light of the risks and uncertainties

- associated with FISC production. As noted above, by 2015, the net profit margin had declined to 7% in 2015. In light of the lag-time between order placement, production and delivery, and the weak order books for late 2016 and early 2017, the industry is headed toward net losses, unless a positive finding is made in this proceeding. Even if current levels are maintained, the current profit margin is simply unsustainable in this industry.
17. This plunging profit has also had a direct impact on the employees producing FISC. Direct employment at the Complainants' facilities dropped by 12% in 2013 through first-quarter of 2016 period.
18. The domestic FISC producing industry is also threatened with injury by the dumped and subsidized Subject Goods. This is evidenced in large part by the weak order books of the Complainants. Supreme [ ]. Waiward [ ]. Supermetal [ ]. Ocean Steel [ ]. MacDougall Steel Erectors expects [ ].
19. These weak order books are also impacting [ ].
20. The weak outlook for the domestic producers is driven by the Subject Countries' domination of the Canadian market. The Subject Countries' market share jumped 19% in 2015 over 2014, with China jumping 11% from 2013 to 2015 and Korea jumping 12% over this period.
21. Further, the market conditions in the Subject Countries over the next 12 to 24 months will further incentivize producers to export increasing volumes of FISC at dumped and subsidized prices.

22. Chinese overcapacity in its steel industry is a major problem affecting markets globally and will not improve in the near future. China will continue to produce more steel than can be absorbed by its declining domestic demand. This will cause the trend of massively increased exports in 2015 to continue for the foreseeable future. China's economic fundamentals are weakening, with GDP growth slowing and construction and steel consumption following suit. With China's mining industry plagued by overcapacity GOC-led closures, and with global delays and cancellations in oil and gas projects, Chinese FISC producers will see Canada's oil and mining industries as attractive markets.
23. Chinese producers will also be incentivized to ship more steel to Canada on account of the glut of anti-dumping and subsidization complaints against them worldwide. Indeed, the American Institute of Steel Construction is publicly investigating the dumping of fabricated structural steel from a number of countries, including China.
24. Korea's GDP growth is expected to remain flat in 2015 and grow only slightly in 2016. Further, its consumption of finished steel products is expected to **contract** by 1.3% in 2015 and recover by a mere 0.7% in 2016. Korea's construction sector is forecasted to grow by only 0.4% and 1.35% in 2015 and 2016. Meanwhile, South Korea has been hit hard by Chinese steel exports. In fact, Korea was the largest recipient of Chinese steel exports in the January to October 2015 period, with Chinese exports expected to account for 24.3% of Korean steel consumption over 2015 as a whole.
25. Spain is also a significant threat to the Complainants. Spanish steel consumption in 2016 is forecasted to remain far below 2008 levels and Spanish construction is not expected to return to 2010 levels soon. At the same time, the EU is being besieged with low-priced Chinese imports. In light of continued low steel consumption, stagnant growth in EU and a significant increase in low-priced Chinese and other steel imports, Spanish producers will continue to look to export markets to offload production. As evidenced by past

Canadian projects that utilized Spanish FISC, Canada has become a target market for Spanish FISC since 2012.

26. The UK's steel producers are facing crises in their own market and their most important source for exports. Economic growth in the UK is expected to be moderate, with construction growing at a reasonable rate and infrastructure growing in 2017. However, these forecasts were arrived at before Britain's referendum vote to leave the EU. Prior to this vote, the IMF warned of the negative effect that a leave vote would have on the British GDP, and has lowered its forecast for the EU as a whole following the vote. Meanwhile, the UK steel industry is facing a crisis with Chinese steel exports dominating its home market. In such circumstances, UK producers will seek to expand export volumes to any markets that it can, including particularly Canada where it has already gained a foothold.
27. UAE FISC producers, which place a large amount of their product in oil and gas projects, are suffering from the downturn in that industry. Furthermore, decreased consumption in their traditional export markets will challenge their ability to maintain production. Saudi Arabia and Kuwait are both showing signs of a drop in construction contracts in 2016. With UAE FISC producers already being oil and gas oriented, they will be particularly incentivized to target Canada's oil patch.
28. Finally, the domestic industry is in a place where it is particularly vulnerable to being injured by Subject Imports over the next 12 to 24 months. In light of low pricing for oil and other commodities, it is expected that fewer projects will go forward in the near future and over the next few years. This expected low demand combined with the already weak order books and profits creates a very concerning situation for the Canadian FISC industry. The Complainants therefore submit that the threat of material injury is clearly foreseen and imminent.



**B. The Complainants**

29. The addresses of the Complainants are:

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30. All notices related to this Complaint should be sent to:

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**C. The Product**

31. The goods that are the subject of this Complaint are defined as (the “**Subject Goods**”):

“Certain fabricated steel products such as structural steel and plate-work components of buildings, process equipment, process enclosures, access structures, process structures, and structures for conveyancing and material handling, including steel beams, columns, braces, frames, railings, stairs, trusses, conveyor belt frame structures and galleries, bents, bins, chutes, hoppers, ductwork, process tanks, pipe racks and apron feeders, whether assembled or partially assembled into modules, or unassembled, for use in structures for:

1. oil and gas extraction, conveyance and processing;
  2. mining extraction, conveyance, storage, and processing;
  3. industrial power generation facilities;
  4. petrochemical plants;
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5. cement plants;
6. fertilizer plants;
7. and industrial metal smelters.

but excluding:

electrical transmission towers; rolled steel products not further worked; steel beams not further worked; oil pumpjacks; solar, wind and tidal power generation structures; power generation facilities with a rated capacity below 100 megawatts; goods classified as “prefabricated buildings” under HS Code 9406.00.90.30; structural steel for use in manufacturing facilities not used in applications other than those described above; and products covered by Certain Fasteners (RR-2014-001), Structural Tubing (RR-2013-001), Carbon Steel Plate (III) (RR-2012-001), Carbon Steel Plate (VII) (NQ-2013-005), and Steel Grating (NQ-2010-002),

originating in People’s Republic of China, the Republic of Korea, the Kingdom of Spain, the United Arab Emirates, and the United Kingdom.”

32. The product definition covers certain fabricated industrial steel components (“FISC”). “Industrial” is not a technical term, but a reference to the type of end use. It is a widely understood term within the structural steel industry. Goods falling within the product definition are fabricated steel components such as angles, columns, beams, girders, base plates, trusses, kits of fabricated structural shapes and “plate-work” components, such as bins, hoppers, chutes and the like, as well as related steel products that have been custom fabricated into articles suitable for erection or assembly into a variety of structures according to specific custom plans.
33. FISC is used in the construction industry for support frameworks and integrated basic processing equipment traditionally fabricated by FISC suppliers. FISC components are inherently structural.<sup>1</sup> They are components specifically designed to be assembled into a particular structure. In their simplest form, they are custom structural components that form the skeleton of a structure. These components are custom fabricated into pieces that precisely fit together to form support structures. Part of the structure or structures may

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<sup>1</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva, Waiward Steel LP.

include an enclosed structure, such as a building, or a structure that is open to the elements. Many of these components will consist of beams and columns. Columns are steel shapes used as vertical supports in a building. Beams which may not be readily distinguished from columns in terms of shape and appearance are steel shapes used horizontally in structures to provide floor support, floor beams, or connect columns girders.

34. FISC for structures in which persons will enter will comply with CSA standard S16. Industrial steel will also comply with CSA W59, a welding standard for structural steel.
35. FISC includes walkways, ladders and handrails that form part of the steel structure.
36. In some cases, FISC will include the skeleton framework and integrated structural objects supported by the framework, such as hoppers, chutes and bins.<sup>2</sup> These objects are typically constructed from steel plate and are closely related to the structure or are integrated as part of it. For example, in an oil sands project or similar open pit mining operation, large trucks will dump ore into a very large hopper that funnels the ore to a conveyor or crusher that begins preparing the ore for processing. The FISC fabricator will provide the structural steel components for the hopper structure, which may stand several hundred feet tall. It will also fabricate the hopper components from steel plate. The hopper components are large pieces of steel plate precisely fabricated in a FISC producer's facility so as to be assembled within the hopper structure. Similarly, FISC producers will supply the structure for surge bins (a process tank which holds crushed ore) and the components that comprise the surge bin. Other examples of plate-work components include ducts, chutes, bins and bents.

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<sup>2</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

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37. Plate-work refers to custom fabricated structural components made from plate. For example, a hopper would consist of a significant amount of plate-work. Some fabricated components will involve plate-work as part of the connection system or to strengthen beams. Some FISC modules also include significant amounts of plate-work depending on the design. Plate-work could also include large ducts or tanks that comprise part of the project.
38. FISC also includes structural components of heavy equipment, such as conveyance machinery.<sup>3</sup> In mining and oil sands extraction, ore and other raw materials are carried along large, heavy conveyance systems. FISC producers will fabricate the galleries, trusses, and apron feeder components for these pieces of machinery. These FISC components are structural frameworks designed to support a particular piece of integrated machinery. Pictures showing FISC utilized as part of a conveyance structure are attached to the Statement of Jim Kanerva.<sup>4</sup>
39. Whether FISC is framework components for a skeleton, a skeleton and integrated plate-work, or a framework for a large conveyor system, FISC fits within a single class of goods. The Canadian International Trade Tribunal has recognized that goods may fall within a single class even if they consist of different styles and varieties. In *Unitized Wall Modules*, the Tribunal held that curtain wall and window wall style modules consisted of single class of goods, despite their different design, pricing and physical characteristics, because they were produced on the same equipment, used the same input materials and were market to similar customers.<sup>5</sup> All FISC components and products fit along a single spectrum. They are produced on the same machinery. In many cases, they appear physically identical. They are distributed in the same channels, sold to the same

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<sup>3</sup> Confidential Attachment 1:Statement of Evidence of Jim Kanerva.

<sup>4</sup> Confidential Attachment 1:Statement of Evidence of Jim Kanerva.

<sup>5</sup> *Unitized Wall Modules*, NQ-2013-002, Statement of Reasons at para 38.

customers, and often the different FISC elements will be procured all as part of a single order. For example, in a mining operation or an ore-preparation plant in an oil sands project, the FISC can consist of galleries, skeleton frameworks, and plate-work components.

40. The product definition is based on a specific set of “end uses”. “Oil and gas extraction, conveyance and processing” includes FISC used to fabricate steel frameworks and plate-work components to support the processes and facilities used to extract resources and process them into a marketable product. It also includes FISC used to support the facilities that process oil and gas, such as refining.
  41. FISC used in mining applications include steel framework structures and plate-work components that support the equipment and processes for the extraction, conveyance storage and processing of mining resources. Processing refers to the initial process of mining resources that occurs at the mine or within close proximity and that is completed in order to market the extracted material.
  42. FISC used in power generation includes the structural steel frameworks and plate components designed to support the production and processes in electrical plants, including hydro, coal, gas and nuclear facilities. Cogeneration power plants are included. Excluded from the product definition are FISC goods for power generation plants with a capacity of less than 100 MW, wind and tidal power generation facilities and structures to support solar panels.
  43. FISC used in petrochemical plants includes the structural steel frameworks and plate components designed to support the production and processes of chemicals and material derived from processing oil and natural. This includes petrochemical based plastics, kerosene, propane and other similar goods.
  44. FISC used in cement plants includes the structural steel frameworks and plate components designed to support the production and processing of cement. Cement is a
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hardening compound used in concrete and mortar. Concrete mixing and processing plants are distinct from cement plants.

45. FISC used in fertilizer plants includes the structural steel frameworks and plate components designed to support the production and processing of chemical fertilizers. Many potash mines also process extracted resources into fertilizers and would fall under both fertilizer plants and mining operations.
46. FISC used in industrial metal smelters includes the structural steel frameworks and plate components designed to support the production and processing of ores into refined or semi-refined metals, such as aluminum and steel. The term “industrial” refers to large commercial smelting operations, as opposed to artisan or hobby smelters.
47. Structural steel for use in “commercial” structures, such as warehouses, commercial buildings, high-rises, hospitals, and cultural buildings (e.g. arenas, theatres, etc.) is outside the scope of the Subject Goods.
48. FISC may leave the production facility as components (often referred to the industry as “sticks”) or in a semi-assembled modular configuration. Modules consist of FISC components that have been partially assembled, erected or constructed into a module prior to being integrated into the finished steel structure.
49. Material conveyance structures are structures, usually shop assembled (modular), to support moving conveyor belts. They are often built as box trusses. Trusses consist of a series of welded steel sections that are used in place of conventional beams to span large areas.
50. FISC for structures in which persons will enter comply with CSA standard S16. Industrial steel will also comply with CSA W59, a welding standard.

**1. Exclusions in the Subject Goods Definition**

51. Fabricated structural steel components excluded from the Subject Goods include steel components for transmission towers, pre-fabricated metal buildings falling under HS Code 9406.00.90.30, goods covered by specified existing findings, power plants with a capacity of less than 100MW, and solar, wind and tidal power generation structures. Also excluded are structures for manufacturing or processing, other than those falling within the specified end uses.
52. *Customs Tariff* Chapter 94 provides at note 4 that, “For the purposes of heading 94.06, the expression “prefabricated buildings” means buildings which are finished in the factory or put up as elements, presented together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings.” Industrial structural steel frameworks, such as those identified in the product definition, are not “similar buildings” to housing, offices, schools, shops, sheds, garages or similar buildings. Prefabricated buildings are, however, commonly present on the physical sites of the enumerated end-uses described in the production definition. Structural steel components used within these pre-fabricated buildings are therefore excluded.

**2. Goods not falling within the product definition**

53. Fabricated reinforcing bars used in concrete structures do not fall within the production definition as they are reinforcing steel, not structural steel. Structural steel components used in buildings and structures for end uses not specified in the production definition fall outside the product definition. This includes industrial structures, such as manufacturing and processing plants, other than those falling within the specified uses described in the product definition.

**3. Production Process**

54. The primary steel products used as inputs for FISC are structural shapes, which includes angles, beams and in some cases hollow structural sections, and steel plate. Other steel

- inputs that may be used include carbon steel sheet, bar, rod, and fasteners. These input products are purchased directly from either Canadian or foreign steel mills or from service centers.
55. The structural shapes used in FISC are produced using several different methods. Steel scrap or billet may be melted in a large electric furnace and cast into beam shapes that are then hot-rolled to form a precise shape. Hollow structural sections may be produced from hot-rolled coil. Plate may also be cut or formed into structural steel components or welded or bolted into structural beams or columns.
56. The overseeing engineer on a project will design the structure and develop detailed engineering specifications of the structures to ensure the structural performance. In large projects, this role would be fulfilled by the firm with the Engineering, Procurement and Construction contract (the “EPC”). The role of EPCs is discussed below.
57. Based on the engineering specifications and plans, the FISC producer will develop detailed drawings for the various components. The FISC producer will also undertake detailed engineering including designing the connections (either welds or fasteners) to resist the required design forces, the position and size of holes in the components, the reinforcements that such holes might require, and assessing the need for and placement of stiffeners on built up members.<sup>6</sup>
58. The basic fabrication operations for FISC include, but are not limited to, the cutting to length, drilling, punching, bending, connecting and welding of steel, and the finishing of such steel into structural components.<sup>7</sup> Each component part of the product under investigation is custom manufactured for a specific project. Components can be as simple

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<sup>6</sup> Confidential Attachment 2:Statement of Evidence of Paul Zubick, Supreme Group LP.

<sup>7</sup> Confidential Attachment 1:Statement of Evidence of Jim Kanerva.

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- as a beam cut to length with a few holes punched or drilled into it. Alternatively, a component can be comprised of dozens of beams and plates of different sizes and thicknesses connected and welded into a particular three-dimensional component.
59. Production involves steel materials progressing through several stages of fabrication to produce finished components. The first stage of fabrication usually involves cutting material to length with a shear, saw or torch. At this stage the steel may also be punched or drilled. Some producers use computerized machinery to ensure precise cuts and holes.
60. The steel then goes to the layout crew which performs the welding, punching and bending operations. Drilling of structural steel is usually limited to making holes in material too thick for the punching machines, though it may be required to meet specifications in lighter material as well. A press brake is also used to form angular bends in wide sheets and plate.
61. Various components to be welded together are tacked together and checked for proper placement before welding. The thickness of the welding depends on the particular specifications. In addition to welding, component parts of a member may be fitted with fasteners. Permanent shop bolting of structural connections is accomplished with hand or power wrenches.
62. Throughout the process the assembly is checked for overall dimensions. Material is inspected again prior to final shop welding to check overall dimensions, proper positioning of all connections, and to ensure that all joints fit properly. After the welding is completed a visual inspection can be followed by the testing of welds. Such tests include magnetic particle inspection, dye penetrant inspection, ultrasonic inspection, and radiography. An independent testing laboratory may be involved in inspection prior to shipment of the steel.
63. Steel that needs to be painted or galvanized is thoroughly cleaned of loose mill scale rust and other foreign matter. The cleaning can be done with hand or power driven wire
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brushes, by flame descaling, by pickling acid treatment, or by sand shot or grit blasting. After painting the shipping mark is placed on each piece and an inspection ensures that proper identification of each structural component is clearly indicated.

64. FISC encompasses the individual fabricated components, which are sometimes referred to as “sticks”. They can vary from short small beams with minimal processing to large pieces made up of various items welded or bolted together into a single component.
65. Labour is the variable factor that most affects the unit price for FISC. In general, the cost of material inputs into a metric tonne of FISC is fairly consistent. However, the cost of FISC per metric tonne will vary considerably depending on how many hours it takes to fabricate a tonne of FISC. For example, a large heavy beam that is cut, punched and then welded to a base plate involves relatively few man hours and thereby has a relatively low cost per metric tonne. However, if a beam of similar weight and size is cut into many small pieces, welded to various other components with complex connections, reinforced with stiffener plates, and attached to complex braces, the number of man hours increases significantly and the cost per MT of steel will increase significantly.<sup>8</sup>
66. A typical fabrication project will require between 15 and 20 hours of shop time per tonne of fabricated steel.<sup>9</sup> Plate-work can be far more time consuming and costly on a per tonne basis as there can be 40 to 80 hours of shop time per tonne. FISC generally accounts for between 5-7% of the final cost of a project.

*(a) Modularization*

67. It is common in the oil and gas and mining industries for FISC components to be partially assembled into modules prior to being shipped to the construction site. Modularization is

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<sup>8</sup> Confidential Attachment 1:Statement of Evidence of Jim Kanerva.

<sup>9</sup> Confidential Attachment 2:Statement of Evidence of Paul Zubick.

typically done outside in a module yard, the same environment in which FISC components would be assembled into a structure at the construction site. The reasons for off-site modularization are cost and safety.<sup>10</sup> Labour is expensive at many of the remote locations where FISC is installed. Further, it is more efficient and cheaper to have components fitted together in large modules at ground level, than to have individual components individually attached to a structure at great heights.

68. A module may be very large, weighing dozens of metric tons. Modules could include pipe racks, furnaces ductwork (e.g. 16'x16' ducts made from heavy plate), equipment supports or enclosures, walkway components, conveyor systems supports and hopper or chute components (e.g. walls). Further, the modules may then have various non-FISC components, such as piping, electrical conduits and other utilities, and specialized equipment (e.g. pumps, machinery etc.) attached to the semi-constructed structure at the modularization yard.
69. The modules are then shipped up to the construction site and connected to the structure. Modules produced in a yard can be up to 36 metres long, 6 metres wide and 6 metres high, and can weigh up to 100 metric tonnes. The modules are built in such a way that they can be transported by oversized trucks on a highway to be staged and eventually put together on site to form the complete project or process.
70. The modularization process completed in a yard is not the manufacturing or fabrication of FISC, but the construction of a steel structure from FISC. Construction of modules in a yard is the same as the construction of the structure in the field. It is done outside in the elements with portable tools and equipment by individuals specialized in the erection of FISC.

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<sup>10</sup> Confidential Attachment 2:Statement of Evidence of Paul Zubick.

71. As discussed below, the assembly of a module in a module yard is not the production of “like goods”. A modular yard is providing construction services, not the production or fabrication of a good. A modular service provider does not take ownership of the FISC components and then turn it into something else. Rather, they semi-erect FISC components procured by a purchaser of FISC from a fabricator of FISC in one location and that piece is then transported to its final location for installation.

**4. Product Use**

72. In industrial settings, FISC is used to construct a variety of structures including buildings and structures that support processing facilities, equipment and systems and parts used for conveyancing and material handling, including but not limited to conveyor belt frame structures and galleries and bents, bins, chutes, hoppers, silos, storage and process tanks, and pipe racks.
73. FISC for buildings and process structures is used to construct a skeleton that fulfills the load bearing function required for the erection of the building or process. Structures composed of FISC are diverse. They include modest structures requiring several hundred tonnes of steel to multistory complexes or large support structures such as pipe racks used in oil and gas facilities or giant structures to hold a hopper for processing mining resources and requiring thousands of tonnes of steel.
74. Many large structures are beam and column structures that consist of fabricated H and I shapes i.e. wide flange beams and I-beams joined in an interlocking fashion to form a rigid steel frame. Significant tonnages of FISC have been used in industrial structures such as oil and gas and mining facilities, including in support structures for large pipes, conveyancing systems used in oil and gas and mineral processing facilities, structural supports for mines, structural supports for processing facilities, and components of processing facilities (e.g. hoppers and storage tanks).

75. As discussed above, finished FISC components are shipped either unassembled or partially assembled from the fabricating facility to construction sites. Delivery of individual components requires coordination between the fabricator and the erector. Erectors are responsible for the placement and connection of the structural components at the construction site. The erector may be either an independent company or an operation related to the fabricator.
76. Delivery schedules to a project site vary significantly based on the scope and size of the project. Most often delivery begins 16 to 20 weeks from the date of contract, and delivery can occur over a few months or over one or two years, sometime more.
77. FISC, whether in stick form or modules, is produced and then delivered to the jobsite in a deliberate sequence by the fabricator in order to allow the erector to proceed efficiently. Upon arrival at a job site the FISC is checked by the erector's crew chief who determines from blueprints the order in which the material is to be placed. The crane operator lifts sections to the proper place where ironworkers secure the piece by bolting it to existing sections. Welding may also be used to make connections.

#### **5. HS Tariff Classification**

78. The Subject Goods are imported into Canada under certain Harmonized System ("HS") product codes. The specific tariff provisions under which FISC may be imported are:

7301 – Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel.

7301.20.00 – Angles, shapes and sections

10 - - - -Of a height not exceeding 635 mm

20 - - - - Of a height exceeding 635 mm

7308 – Structures (excluding prefabricated buildings of heading No. 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel

7308.40.00 Equipment for scaffolding, shuttering, propping or pit propping

10 - - - -Roof and wall support systems for mines, including yielding props, chocks, roof-bars and chock release apparatus

90 - - - -Other

7308.90.00 Structures and Parts of Structures - Other

60 - - - -Columns, pillars, posts, beams, girders and similar structural units

- - - -Fabricated building components, for the construction or repair of silos for storing ensilage:

81 - - - -Rods

89 - - - -Other

- - - -Other

92 - - - -Staircases

99 - - - -Other

7216 – Angles, shapes and sections of iron or non-alloy steel

7216.99.00 Angles, shapes and sections of iron or non-alloy steel – Other

10 - - - -L sections

20 - - - -I or H sections

30 - - - -U sections

91 - - - -Ribbed shapes

99 - - - -Other

8428 - Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics).

-Other continuous-action elevators and conveyors, for goods or materials:

8428.31.00 00 - -Specially designed for underground use

8428.32.00. - - Other, bucket type

90 - - - -Other

8428.33.00- - Other, belt type

90 - - - -Other

8428.39.00 - -Other

20 - - - -Feeders

- - - -Bulk conveyors:
  - 31 - - - -Chain type
  - 34 - - - -Apron or pan type
  - 39 - - - -Other
- 80 - - - -Other conveyors
- 90 - - - -Other

79. However, these tariff items may also include non-subject goods, and Subject Goods may also fall under additional tariff classifications.

#### **6. Exporters**

80. Public Attachment 3 lists producers and exporters of FISC from the Subject Countries.<sup>11</sup> Where available, exporters addresses and contact information are included.
81. A number of exporters are integrated steel firms that include both the milling of plate and structural sections and the fabrication of these products into FISC.

#### **7. Importers**

82. Public Attachment 4 identifies enterprises that the Complainants believe are importing Subject Goods into Canada.<sup>12</sup> Further information that may identify additional importers is available from import documentation filed with CBSA by importers of Subject Goods.

#### **8. Marketing and Distribution**

##### ***(a) Distribution***

83. FISC is a custom product for use in constructing large industrial developments or projects. FISC is not sold through distributors or resellers. Instead, the custom order is purchased directly from the fabricator. The purchaser of FISC may be the owner of a

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<sup>11</sup> Public Attachment 3: List of potential Exporters.

<sup>12</sup> Public Attachment 4: List of potential importers.

project. In other cases, the owner will contract with an engineering firm to engineer the project, procure the supplies, and construct the project. These firms are referred to as “EPCs” and their contracts are conceptually similar to Design-Build contracts. If retained, the EPC will generally procure the FISC from FISC producers. However, it is possible that an EPC will purchase FISC according to instructions from an owner.

84. FISC is a custom product sold as part of a package. The package typically includes design, drafting and engineering of the required components according to engineering plans provided by the purchaser, fabrication of the various components, and erection of the FISC components into the structure. Further, industrial FISC has high quality and testing standards. In light of the size and complexity of industrial FISC projects there are a limited number of Canadian firms that have the capacity and capabilities to compete in the industrial FISC sector.
  85. As discussed above, a producer will generally engineer the connections (whether welded or secured by fasteners). A producer will also take the overall design of the structure and draft detailed drawings and specifications for each component. A producer will also develop production and erection plans so that various components are fabricated according to when they need to be installed at an erection site. The plan will specify the order of construction, the number of cranes required for erection, their weight and numerous drawings specifying the location of the cranes as the erection progresses.
  86. Purchasers generally contract for all of the FISC for an entire project, or a distinct portion of a project. Thus, as part of the package, the FISC producer may fabricate not only the skeleton structure, but also walkways, ladders, handrails, and the like. Consequently, the only firms that can compete in the FISC market are those with the drafting and engineering expertise and the production capacity and capabilities to custom fabricate large orders of FISC.
  87. A FISC order could be as small as a few hundred tonnes; however, FISC orders are frequently for thousands or even tens-of-thousands of tonnes. On occasion, a producer
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may be asked to produce a very small amount of FISC, but this is generally for an addition or modification to an existing structure.

88. FISC may be sole-sourced or procured based on a quoting or bidding process. The quoting or bidding process may involve a pre-qualification process. Those FISC producers that are prequalified or invited to bid will then receive a Request-for-Quotation (“RFQ”). Frequently, the design of the structure is not completed at the time of the RFQ. The owner or engineer of the project may provide basic information, schematics, drawings or the like and ask for unit prices for various components such as beams or braces falling within certain ranges of size and weight. A producer will then use the information provided to estimate a unit price for each of the components. This requires methodical analysis of the information provided with detailed costing analysis of the expected cutting, drilling, welding, assembly and other labour intensive manufacturing processes that can affect the cost of FISC fabrication.
89. A purchaser may request a quote for production of FISC only or for both production and the erection of the FISC.
90. Large developments requiring FISC may cost tens of billions of dollars and take many years to complete. In such circumstances, various phases or portions of a project may be awarded to several different EPCs, and each EPC will procure FISC for its portion of a project. The supply of FISC for each distinct portion or phase of a project is generally given to a single fabricator, although the fabricator may subcontract out a portion of the job. Sub-contracting may occur for a variety of business reasons and is akin to tolling. Over the period-of-review subcontracting by the Complainants and Complaint supporters was relatively minor, represents a small proportion of total production and is inconsequential in terms of total domestic production, production capacity and capacity utilization. As the FISC producer awarded the contract is responsible for producing and delivering a complete set of components, FISC producers financial and capacity statements included with this complaint include sub-contracted production Regardless of

whether or not a portion of the job is subcontracted out, the fabricator estimates all of the costs in its bid to the EPC and is responsible for delivering the precise components to the customer.

91. Price may not be the only factor upon which a purchaser will make its decision. The ability to meet schedules, transportation costs, erection plans and the ability to meet design changes may also affect a purchaser's decision. However, as discussed below, the Subject Goods have been offered at prices so low that price has outweighed these other, non-price factors.
92. The principal substitute for fabricated structural steel is reinforced concrete; however, in many industrial settings the two are not substitutable. The selection of material to be used in a structure typically occurs at an initial planning phase. Changes in the cost competitiveness of steel and concrete may influence the selection of material though it is not the sole criterion. For example, an owner's particular design may dictate the use of steel which is more versatile, and seismic conditions in the area of a proposed structure may also be a factor in the material selection, as steel has structural qualities that are often preferable in earthquake prone areas.

***(b) Import Discount Requirement***

93. Domestic purchasers of FISC will not consider procuring the supply of FISC from overseas, including the Subject Countries, unless the price is lower than domestic prices.<sup>13</sup> The discount is required to offset the risks and costs associated with offshore procurement. Risks include delivery times, component repair (e.g. if a component does not fit properly and must be repaired or refabricated), coordination between separate firms constructing and erecting the structure, financing and lines of credit, transportation

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<sup>13</sup> Confidential Attachment 5:Statement of Evidence of Jean-Francois Blouin, Supermetal Structures Inc; Confidential Attachment 1:Statement of Evidence of Jim Kanerva; Confidential Attachment 2:Statement of Evidence of Paul Zubick.

costs, and the general risks associated with a new supplier (e.g. quality, customer service, etc.).<sup>14</sup>

94. Offshore FISC supply may also frequently result in higher construction and erection costs.<sup>15</sup> For example, the domestic industry would fabricate a long, heavy but relatively very simple beam by taking a long, heavy, unworked, hot-rolled beam, cutting it to a precise size, and welding plates to each end for fastener attachments.<sup>16</sup> An offshore supplier may produce the same component by taking a lighter beam, cutting it into multiple shorter beams, fabricating plate connection to reassemble it into a single beam, and adding plate stiffeners along the channel of the beam so as to meet the loadbearing requirements. This product will meet the required engineering specifications, but is both lighter and designed to fit in shipping containers, thereby allowing it to be transported by conventional carriers. However, given that it is in multiple pieces, it may be costlier to erect that one component than the component fabricated by the domestic industry.<sup>17</sup>
95. Another factor is the particular owner or EPC. Some EPCs are more comfortable with the risks of procuring offshore FISC than others, and this will affect the level of discount required before they will consider purchasing offshore FISC.<sup>18</sup>
96. Based on the Complainants' industry experience and knowledge, they estimate that the required discount for procuring offshore material begins in the range of 10%.<sup>19</sup> However, in some cases it could be as high as 25%.<sup>20</sup>

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<sup>14</sup> Confidential Attachment 5:Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1:Statement of Evidence of Jim Kanerva; Confidential Attachment 2:Statement of Evidence of Paul Zubick.

<sup>15</sup> Confidential Attachment 5:Statement of Evidence of Jean-Francois Blouin.

<sup>16</sup> Confidential Attachment 1:Statement of Evidence of Jim Kanerva.

<sup>17</sup> Confidential Attachment 5:Statement of Evidence of Jean-Francois Blouin.

<sup>18</sup> Confidential Attachment 5:Statement of Evidence of Jean-Francois Blouin.

*(c) Imported FISC*

97. The HS codes applicable to FISC include a large volume of non-like goods. Further, there is no statistical information on FISC imports into Canada.
98. To the best of the Complainants' knowledge, FISC imports from the Subject Countries and other countries only occurs for large projects. The domestic producers are generally aware of projects awarded to offshore FISC suppliers. In some cases, the domestic industry will be asked to bid on supply. In other cases, they are not asked to bid on supply, but they are asked to bid or quote on constructing or erecting the structure. In other cases, the project may be known to domestic producers because of its size or because it is a part of a larger development on which a domestic producer is involved in some other aspect. Consequently, the number of projects for which FISC has been imported is limited and the projects are generally known to the industry.
99. Confidential Attachment 6 Consolidated Import Table compiles detailed FISC import data for the 2013 through 2016 period.<sup>21</sup> In the case of imports from [

]. In the case of other projects, the data is based on the Complainants' commercial intelligence and industry knowledge.<sup>22</sup> For projects where the domestic industry submitted a bid, the value, volume and delivery dates for a particular project is based on their bid data. In cases where no domestic bid or quote was requested, the volume, value and delivery date is based on commercial intelligence, specific information and general industry information known to the Complainants. This could include, for

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<sup>19</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>20</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>21</sup> Confidential Attachment 6: Consolidated Import Table.

<sup>22</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

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example, information acquired from erecting a particular project or information gathered from industry sources. The basis of data reported in the table, including estimates and commercial intelligence, are disclosed in the Attached Confidential Statements of Paul Zubick, Jean-Francois Blouin and Jim Kanerva.<sup>23</sup>

100. Table 1 summarizes the import volume data gathered by the Complainants and reported in Confidential Attachment 6 Consolidated Import Table. FISC volumes reported in Confidential Attachment 6 are distributed across years on a prorated basis according to the annual quarters in which the FISC was delivered or estimated to be delivered.

**Table 1: FISC Imports<sup>24</sup>**

	<b>2013</b>		<b>2014</b>		<b>2015</b>		<b>2016 (Q1)</b>		<b>2013-2016Q1</b>	
	<b>MT</b>	<b>%</b>	<b>MT</b>	<b>%</b>	<b>MT</b>	<b>%</b>	<b>MT</b>	<b>%</b>	<b>MT</b>	<b>%</b>
USA	18,869	33%	23,152	48%	11,000	16%	1,000	11%	54,021	29%
China	14,044	25%	7,512	15%	31,023	45%	4,224	45%	56,803	31%
Korea	4,880	9%	4,200	9%	23,086	33%	3,571	38%	35,737	19%
Spain	4,176	7%	4,176	9%		0%		0%	8,352	5%
UK	14,449	26%	9,425	19%		0%		0%	23,874	13%
UAE		0%		0%	625	1%	625	7%	1,250	1%
Unspecified Subject Country		0%		0%	2,838	4%		0%	2,838	2%
Germany		0%	160	0%	1,061	2%	105	1%	1,326	1%
<b>Total Imports</b>	<b>56,418</b>	<b>100%</b>	<b>48,625</b>	<b>100%</b>	<b>69,633</b>	<b>100%</b>	<b>9,420</b>	<b>100%</b>	<b>184,095</b>	<b>100%</b>

<sup>23</sup> Confidential Attachment 5:Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1:Statement of Evidence of Jim Kanerva; Confidential Attachment 2:Statement of Evidence of Paul Zubick.

<sup>24</sup> Confidential Attachment 6:Consolidated Import Table.

101. Table 1 shows that for the period of inquiry, the volume of FISC imports from China, Spain, Korea and UK all exceed the negligibility threshold of 3 %.<sup>25</sup>
102. Volumes reported under “Unspecified” are for projects that the Complainants believe were supplied with FISC from one of the Subject Countries, however, they are not certain which one.
103. Confidential Attachment 6: Consolidated Import Table lists each of the projects believed to have been supplied with imports, the volume (MT), the estimated value to the domestic industry (where available) and estimated delivery period.
104. The Complainants and Complaint Supporters were not importers of FISC over the period of review.<sup>26</sup>

*(d) Domestic Market*

105. As with imports, there is no reliable statistical data for the Canadian FISC market. As such, the Complainants have estimated the size of the Canadian FISC market based on available data. Table 2 reports the aggregate of the Complainants’ and Complaint Supporters’ volume of domestic sales of FISC. It is estimated that the Complainants and Complaint supporters comprise 80% of domestic production.<sup>27</sup> The reported imports are based on the import data gathered by the Complainants and reported in Table 1 above.

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<sup>25</sup> *Special Import Measures Act*, TSC 1985, c. S-15, s. 35.

<sup>26</sup> [

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<sup>27</sup> Public Attachment 7: Letter from Ed Whalen to Canada Border Services Agency, dated July 14, 2016.

Table 2  
**Domestic Market: Fabricated Industrial Steel Components (MT)** <sup>28</sup>

	2013	% of Mkt	2014	% of Mkt	2015	% of Mkt	2016 Q1	% of Mkt
<b><u>Domestic Sales from Domestic Production</u></b>								
Complainants and Complaint Supporters	54,616	44%	58,365	48%	58,714	41%	9,303	44%
Other Canadian Producers	13,654	11%	14,591	12%	14,678	10%	2,326	11%
<b>Total Domestic Sales</b>	<b>68,270</b>	<b>55%</b>	<b>72,956</b>	<b>60%</b>	<b>73,392</b>	<b>51%</b>	<b>11,628</b>	<b>55%</b>
<b><u>Imports</u></b>								
USA	18,869	15%	23,152	19%	11,000	8%	1,000	5%
Subject Countries	37,549	30%	25,313	21%	57,571	40%	8,421	40%
<i>China</i>	14,044	11%	7,512	6%	31,023	22%	4,224	20%
<i>Korea</i>	4,880	4%	4,200	3%	23,086	16%	3,571	17%
<i>Spain</i>	4,176	3%	4,176	3%		0%		0%
<i>UK</i>	14,449	12%	9,425	8%		0%		0%
<i>UAE</i>		0%		0%	625	0%	625	3%
<i>Unspecified Subject     Country</i>		0%		0%	2,838	2%		0%
Germany		0%	160	0%	1,061	1%	105	0%
<b>Total Imports</b>	<b>56,418</b>	<b>45%</b>	<b>48,625</b>	<b>40%</b>	<b>69,633</b>	<b>49%</b>	<b>9,420</b>	<b>45%</b>
<b>Total Canadian Market</b>	<b>124,688</b>	<b>100%</b>	<b>121,581</b>	<b>100%</b>	<b>143,025</b>	<b>100%</b>	<b>21,049</b>	<b>100%</b>

#### D. Like Goods and Single Class of Goods

106. Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as “... (a) goods that are identical in all respects to the other goods, or (b) in the absence of any

<sup>28</sup> Confidential Attachment 6: Consolidated Import Table; Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statements.

[such] goods ..., goods the uses and other characteristics of which closely resemble those of the other goods.” In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (e.g., composition and appearance) and their market characteristics (e.g, substitutability, pricing, distribution channels, end uses and whether the domestic goods fulfill the same customer needs as the subject goods).<sup>29</sup>

107. The “Like Goods” are FISC, as described in the product definition, for the specified uses set out in the product definition. In *Unitized Wall Modules*, the Tribunal held that “like goods” must be coextensive with the “product under consideration”, that is, the subject goods as defined in the product definition.<sup>30</sup> In that case, it excluded other types of building envelope systems on the basis that they were excluded from the product definition. It follows that in this case, Like Goods do not include fabricated plate-work and structural components for end uses not specified in the product definition, such as commercial buildings, residential buildings, warehouses, bridges, and cultural facilities (e.g. concert halls and arenas).
108. Fabricated structural steel sections and plate-work produced for non-like good end uses may have some similar physical characteristics to FISC. For example, both may use beams, columns and plate inputs with similar metallurgical properties. Further, these components may go through a similar manufacturing process, including cutting, drilling, bending and welding. That said, FISC steel components do have physical characteristics that are different from components used for non-like good end uses. First, FISC is often stronger and heavier than commercial steel components. Second, FISC is designed to support production equipment, conveyance systems, and piping, whereas commercial structural steel is typically designed to support the building’s floors, roof and building

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<sup>29</sup> *Concrete Reinforcing Bar*, NQ-2014-001 at para 39.

<sup>30</sup> *Unitized Wall Modules*, NQ-2013-002 at para 34.



envelope. These different “end uses” require different designs of fabricated components such as bracing and beams with stiffeners. Further, once assembled, the structures look very different. Generally, a FISC structure is designed around the equipment and processes for which it was designed, creating unique structures with unique frameworks. Structural steel components fabricated for other end-uses is generally used to construct a building and the steel skeleton is fairly consistent despite varying building designs. Namely, a non-industrial steel structure consists largely of beams and columns designed to support floors, a roof, and the building envelope. Consequently, FISC structures generally require more unique, complex and heavy components.

109. FISC also has differentiating market characteristics from structural steel and plate-work fabricated for non-like good end uses. It is important to recall that unlike commodity steel products, like plate or coil, the “product” is not individual fabricated beams and steel plate, each of which can be marketed individually. Rather, the “product” is a complete set of precise steel components to erect an industrial structural framework, which is comprised of hundreds or thousands of tonnes of fabricated structural steel components that are designed, engineered and produced by the fabricator as the precise components for a steel structure.
  110. There are numerous domestic firms who can fabricate some types of structural steel components or plate-work. However, to market FISC a producer must have the technological and production capacity to produce and deliver the FISC for the entire project. There are a limited number of firms with this capacity in Canada and therefore only a limited number of firms that are actually involved in the production of FISC.
  111. Structural steel components designed for non-like good end uses are not substitutable for FISC. The former cannot support the weight and design of the machinery, equipment, processes and conveyance systems required for industrial projects. Similarly, the components designed for FISC end uses are often too heavy and ill-suited for commercial applications.
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112. Pricing also differs between industrial and non-industrial structural steel. While pricing varies according the project, industrial FISC is generally more expensive than non-industrial structural steel on a unit basis. The reason is that industrial FISC requires more labour per metric tonne as it generally involves more connections and bracing, both of which are frequently more complicated than those in a commercial structure and result in high costs.
113. FISC for industrial applications requires a specific set of design and fabrication capabilities that exceeds the requirements for non-industrial applications. This includes both sophisticated engineering and drafting capabilities, and fabrication capacity and capabilities. Consequently, while industrial FISC producers can generally meet the requirements for non-industrial FISC projects, the reverse is not true. It follows that while there are many Canadian firms that can fabricate and erect structural steel for commercial and cultural buildings, there are only a handful that have the capabilities to fabricate structural steel for industrial projects.
114. The Like Goods and Subject Goods are products that compete with one another in the Canadian market place, and, subject to them being fabricated to meet the design specifics of a particular project, are fully interchangeable. Both the domestic and Subject Country producers can and do produce goods falling within the scope of the Subject Goods definition.
115. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially comprising separate classes of goods constitute “like goods” in relation to each other, in which case they will be regarded as comprising a single class of goods.<sup>31</sup> In other words, the Tribunal uses the same factors as those discussed above.

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<sup>31</sup> *Hot-Rolled Carbon Steel Plate And High-Strength Low-Alloy Steel Plate*, NQ-2015-001, Statement of Reasons (January 20, 2016) at para . 39.

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116. The Subject Goods and like goods cannot be subdivided into classes based on specifications, method of manufacture, means of distribution, pricing or end use. While there a difference in the types of structures used in different industrial applications, the design, engineering and fabrication of the components is very similar.

**E. The Domestic Industry**

117. The *Special Import Measures Act* (“SIMA”) defines “domestic industry” as “[...] the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods [...]”.<sup>32</sup> The domestic industry comprises those structural steel fabricators that acquire contracts to produce and do produce fabricated structural steel for the purposes and end uses identified in the product definition.
118. As discussed above, most Canadian fabricators of structural steel for commercial, institutional, cultural and infrastructure purpose cannot produce FISC for industrial sectors and are therefore not part of the domestic industry for the Subject Goods. FISC generally involves large orders with high quality standards, heavy components, complicated connections and detailed planning. This requires large facilities with heavy lifting capabilities, automated machinery, extensive production lines, and experienced engineering and drafting capabilities. Most structural steel producers that produce for residential, cultural, commercial or infrastructure projects do not have the facilities, capabilities or resources to produce industrial FISC. While these structural steel producers may be able to produce various components used in an industrial structure, they are unable to acquire industrial FISC orders.

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<sup>32</sup> *Special Import Measures Act*, R.S.C., 1985, c. S-15, s. 2(1) (SIMA). Note: On the issue of standing to bring a complaint, “domestic industry” means “the domestic producers as a whole of the like goods” (SIMA, s. 31(3)).

119. Some domestic producers may occasionally sub-contract a portion of the fabrication to a smaller firm, including firms that do “commercial” or non-industrial FISC fabrication. Sub-contractors are not part of the domestic industry. Sub-contractors are assigned a small component of the fabrication for a larger project and are not responsible for drafting and engineering or other costs associated with fabricating steel for a large industrial steel structural. Their fabrication is more akin to tolling than production.
120. The Complainants believe that the domestic industry is comprised of:
- (a) the Complainants;
  - (b) the Complaint Supporters; and
  - (c) the following “other” domestic FISC producers, namely:<sup>33</sup>
    - i) ADF Group Inc., 300, Henry-Bessemer, Terrebonne, Quebec J6Y 1T3;
    - ii) Burnco Mfg Inc., 40 Citron Ct, Vaughan, ON L4K;
    - iii) Canam Group Inc., 270 Chemin du Tremblay, Boucherville, QC J4B 5X9;
    - iv) Coastal Metals Ltd., 430 Industrial St, Beresford, NB E8K 2C2;
    - v) Beauce Atlas Steel Fabricators, 600, 1re Avenue, Parc industriel, Sainte-Marie de Beauce, Québec, G6E 1B5;
    - vi) IWL Steel Fabricators LP, 817 50 St E, Saskatoon, SK S7K 3Y5;
    - vii) Proco Constructions Inc., 516 route 172, Saint-Nazaire, QC G0W 2V0;
    - viii) Saskarc Fabrication, 2 Marconi Road – P.O. Box 990 Oxbow, Saskatchewan Canada S0C 2B0; and

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<sup>33</sup> Public Attachment 7: Letter from Ed Whalen to Canada Border Services Agency, dated July 14, 2016.

ix) Structures G B Ltée, 105 Industrielle-Et-Commerciale, Rimouski, QC  
G5M 1A8.

121. The Complainants' and Complaint Supporters' annual production capacity for the Subject Goods was 146,260 MT in 2013, 149,260 MT in 2014 and 153,760 MT in 2015.<sup>34</sup>
122. The Complainants' capacity utilization rate for FISC production from 2013 through 2015 was 38%, 40% and 41% respectively. The Complainants believe that these rates are representative of all producers of like goods in Canada.
123. The Complainants estimate that the domestic work force in FISC production totaled 1,262 in 2015, a drop from 1,293 in 2013.<sup>35</sup> A high proportion of these jobs are composed of skilled trades, draft persons and engineers. According to a March 2012 report prepared for the Canadian Institute of Steel Construction ("CISC") by Prism Economics and Analysis ("**Prism Report**") the average wages in structural steel fabrication (including industrial and non-industrial application) are approximately 8% higher than for the manufacturing sector as a whole.<sup>36</sup> It is noted that this statistic includes fabrication of structural steel in general, which would include structural steel for prefabricated buildings, commercial projects, fabrication of bridges and bridge sections and fabrication of towers and lattice masts, in addition to fabrication of industrial structures and parts of industrial structures.

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<sup>34</sup> Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statement.

<sup>35</sup> Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statement.

<sup>36</sup> Confidential Attachment 9: Report prepared for the CISC by Prism Economics and Analysis ("*Prism Report*"), March 2012.

124. Most Canadian fabricators subscribe to the CISC quality certification program. Other certification programs subscribed to by fabricators are: ISO 9001, ABSA, AISC, CSA W47.1, and ASME certifications.
125. The FISC production industry is a mature one. Most of the Complainants have been producing industrial FISC for several decades.<sup>37</sup>
126. The domestic industry has invested in advanced production technology, including (1) automatic beam lines, (2) plasma cutters, (3) robotic coping, welding and painting equipment, (4) automated stenciling equipment and (5) the integration of 3-D design applications with production equipment. Investments in these technologies have greatly increase employee productivity by reducing the number of labour hours required to produce a tonne of FISC.

**F. The Complaint is supported by the Domestic Industry**

127. This Complaint is supported by the Domestic Industry. Public Attachment 116 contains letters of support from the Complaint Supporters.

**G. Period of Investigation**

128. The Complainants submits that the appropriate period of investigation for a dumping investigation is January 1, 2014 through March 31, 2016 (the “**Dumping POI**”) and for a subsidy investigation it is January 1, 2014 through March 31, 2016 (“**Subsidy POI**”). As demonstrated in the Canadian Market Table (Table 2) and Import Table (Table 1) above,

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<sup>37</sup> Confidential Attachment 10:University of Alberta, Construction Research Chair, *Structural Steel, Plate Work, Bridge Work and Open Web Steel Joist Fabrication: A study to determine steel fabrication capacity in Canada* (January 2013) at p. 12.

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the volume of imports from China, Korea, Spain and the UK exceeds the applicable 3% negligibility threshold.<sup>38</sup>

## **II. Evidence of Dumping**

### **A. Introduction**

129. The Complainants have calculated normal values and dumping margins in accordance with section 19. However, for the reasons described in this Complaint, the Complainants submit that normal values should be determined in accordance with section 20 for China and in section 19 for all other Subject Countries.

### **B. Section 15**

130. Section 15 reads:

15. Subject to sections 19 and 20, where goods are sold to an importer in Canada, the normal value of the goods is the price of like goods when they are sold by the exporter of the first mentioned goods

(a) to purchasers

(i) with whom the exporter is not associated at the time of the sale of the like goods, and

(ii) who are at the same or substantially the same trade level as the importer,

(b) in the same or substantially the same quantities as the sale of goods to the importer,

(c) in the ordinary course of trade for use in the country of export under competitive conditions,

(d) during such period of sixty days that ends in the interval commencing with the first day of the year preceding the date of the sale of the goods to the importer and ending on the fifty-ninth day after such date as is selected by the President or, where, in the opinion of the President, the nature of the

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<sup>38</sup> Based on the Complainants' market intelligence the volume of imports from the UAE does not exceed the 3% negligibility threshold. However, some William Hare exports previously believed to have been sourced from the UK may have actually been produced in the UAE. As such, the Complaints request that the CBSA investigate whether or not Subject Good exports from the UAE meet the negligibility threshold and, if so, whether or not these goods have been injuriously dumped.

trade in those goods or the fact that they are sold to the importer for future delivery requires that sales of like goods by the exporter during a period other than a period of sixty days that ends in that interval be taken into account, during such period of sixty days or longer

(i) that precedes the date of the sale of the goods to the importer, or

(ii) where the goods are sold to the importer for future delivery, that precedes the date of the sale of the goods to the importer or within the year that precedes the date of the delivery of the goods to the importer

as the President specifies for those goods or for goods of the class to which those goods belong, and

(e) at the place from which the goods were shipped directly to Canada or, if the goods have not been shipped to Canada, at the place from which the goods would be shipped directly to Canada under normal conditions of trade, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold by the exporter.

131. The Complainants were unable to calculate estimated margins of dumping pursuant to section 15 of the Act for any Subject Country. First, home market prices for Subject Goods in the Subject Countries are not readily available. Second, price comparisons between projects is difficult as FISC may be sold as part of package that includes not only the materials but also the cost of the erection of the building, and because each project is unique and requires made to order FISC. A comparison of producer prices to domestic prices on a per tonne basis is therefore of little assistance. However, available information indicates Subject Goods are being sold in Canada at prices significantly below the Complainants' well-founded estimates of normal values in the Subject Countries. Consequently, section 19 or 20 should be used for all Subject Countries.

**C. Section 19**

132. Section 19 reads:

19. Subject to section 20, where the normal value of any goods cannot be determined under section 15 by reason that there was not, in the opinion of the President, such a number of sales of like goods that comply with all the terms and conditions referred to in that section or that are applicable by virtue of subsection 16(1) as to permit a proper comparison with the sale of



the goods to the importer, the normal value of the goods shall be determined, at the option of the President in any case or class of cases, as

(a) such price of like goods when sold by the exporter to importers in any country other than Canada during the period referred to in paragraph 15(d) as, in the opinion of the President, fairly reflects the market value of the goods at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by the exporter to importers in the country other than Canada; or

(b) the aggregate of

(i) the cost of production of the goods,

(ii) a reasonable amount for administrative, selling and all other costs, and

(iii) a reasonable amount for profits.

133. Thus, subject to the applicability of section 20, normal values shall be calculated in accordance with the provisions of section 19 where there is insufficient reliable data regarding home market sales in the country of export to permit a proper comparison with the sale of the goods to the importer.
134. In accordance with paragraph 19(b) of SIMA, normal values may be calculated as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and other costs, and a reasonable amount for profit.
135. As discussed above, market prices for Subject Goods in the Subject Countries are not readily available. As such, margins of dumping have been calculated based on a sample of representative FISC projects. In most cases, the dumping has been calculated for projects where RFQs to which both the domestic industry using domestically produced like goods and importers/contractors using dumped and subsidized Subject Goods responded. These include some of the largest projects awarded in Canada since 2013. For some projects where no complainant was asked to bid, but a complainant has specific knowledge of the project because they erected it, that complainant has constructed their approximate bid price and underlying costs. Given the lag time between project award

and substantial completion of a project, it is appropriate to include projects awarded back to 2013 where the imported product would have been shipped into Canada during 2014 or 2015.

136. Normal values for specific projects have been constructed to equal the Complainants' costs of production to supply the FISC for those projects, appropriately adjusted for recognized differences in costs in the five countries and an amount for profit.<sup>39</sup> Export prices are based on commercial intelligence gathered by the Complainants about specific projects.
137. The Complainants have made their best efforts to provide a sufficient and representative set of sample projects to demonstrate dumping and subsidization. However, as discussed below, in many cases the Complainants were not afforded the opportunity to quote or bid on projects that ultimately sourced fabricated structural steel from the Subject Countries. Consequently, the Complainants are only able to provide a handful of dumping and subsidy examples. That said, the selected projects are representative of projects using subject and like goods, they cover the type of projects which may be undertaken and represent the range of different dimensions, shapes and steel materials of FISC sold in the Canadian market.

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<sup>39</sup> CBSA has used Canadian producer costs as the basis for normal values in several investigations, such as: CBSA, Final Determination, Statement of Reasons, *Certain Metal Bar Grating Of Carbon, Alloy or Stainless Steel Originating in or Exported from The People's Republic Of China*, April 5, 2011 File 4214-29, AD/1389, 4218-28, CV/126 at paras 48, 59, 63 ("Steel Grating – Final Determination"); CBSA, Final Determination, Statement of Reasons, *Greenhouse Bell Peppers Originating in or Exported from The Netherlands*, Final Determination, October 5, 2010, AD/1387, 4214-28 at paras 45, 48 ("Bell Peppers - Final Determination"); CBSA, Final Determination, Statement of Reasons, *Faced Rigid Cellular Polyurethane-Modified Polyisocyanurate Thermal Insulation Board Originating in or Exported from The United States Of America*, Final Determination, April 21, 2010, 4214-27, AD/1386 at paras 39, 50, 56, 61, 67, 78, 84, 89 ("Thermal Insulation Board").

138. The CBSA in its investigation will be able to gather information on all imports of Subject Goods into Canada during its period of investigation and make its preliminary and final determinations on the basis of such information.
139. The methods used to estimate normal values and export prices result in estimated non-negligible margins of dumping and thus fulfill the requirements for the President to initiate an investigation into the dumping of Subject Goods into Canada.
140. Normal values based on representative Complainant costs of production of the like goods, which are identical to the Subject Goods in the sample building projects, have been calculated as follows.

**1. Materials, Labour, GS&A, and Profit**

141. To construct normal values the Complainants adjusted their costs for materials, labour, GS&A and Profit as follows.

***(a) Material Costs***

142. The Complainants purchase their like goods material inputs efficiently and at world prices. Steel plate and structural sections are the largest single material cost in the production of FISC. The CBSA will have its investigation process to determine individual exporters' specific material costs. For purposes of initiation, the Complainants submit that their own material costs are a reasonable proxy for initial normal value calculation purposes.

***(b) Labour Costs***

143. Labour costs are known to differentiate between Canadian and Subject Good manufactures of FISC. However, to properly compare labour costs it is necessary to account for employee productivity.
144. The Complainants calculated labour costs by comparing publicly available information about manufacturing wage rates or labour costs for manufacturing in Subject Countries to

Canadian manufacturing wage rates and labour costs. To ensure a fair comparison, the Complainants have used the most similar Canadian data available to that acquired with the respect to Subject Goods. Thus, where manufacturing wages were available for the Subject Country, Canadian manufacturing wages were used for the Comparison. Conversely, if labour costs were available for the Subject Country, Canadian labour costs were used. If FISC industry wages or labour costs were available, those were used.

145. As part of the comparison, these costs have been adjusted, where appropriate, for differences in productivity. This is necessary as normal values are being calculated based on the Complainants' costs and therefore their employees' productivity. If productivity is not accounted for the normal value calculations would incorrectly value the labour costs for Subject Goods where Canadian producers and Subject Good producers have significantly differing productivity and hourly labour costs.

*(c) Adjustments to reflect production method for transportation infrastructure*

146. As discussed in the Statement of Paul Zubick, FISC produced overseas is generally fabricated in such a way so that it fits into 40' sea containers for transportation, whereas domestically produced FISC can be fabricated so it can fit on flatbed transports, which accommodate longer and taller pieces.<sup>40</sup> It follows that a particular component produced to accommodate sea transportation may have a higher production cost in order to accommodate transportation corridors. For example, a structure's design plans may call for a simple component that is a long and heavy horizontal beam with plates welded to each end so that it can be connected to vertical columns with fasteners. North American producers would take a long unworked beam, cut it to length, fabricate the connection plates for the end connections (including precision drilling of holes), and weld these connection plates to the beam. Conversely, a producer shipping from overseas would

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<sup>40</sup> Confidential Attachment 2:Statement of Evidence of Paul Zubick.

follow the same fabrication steps as the domestic producer, however, it would also cut the beam in half so that it could efficiently fit in a sea container. In addition, it would engineer and fabricate splice plates so that the two pieces could be reassembled with fasteners once delivered to the construction site. In the end, the beam fabricated domestically and overseas are functionally interchangeable and both meet the necessary requirements and design specifications. However, the component produced overseas requires more fabrication which in turn, results in a higher cost. It also requires slightly more material, such as splice plates and welds or fasteners.

147. The Complainants have conducted a calculation to account for the cost difference associated with producing FISC components so they can be transported in sea containers. Relying upon a third-party study that found FISC for a standard project would have 5.5 pieces per metric tonne (which requires 11 connections) if shipped by truck but 7.3 pieces per metric tonne if shipped in sea containers, Mr. Zubick of Supreme Group calculated the extra labour costs associated with fabricating connections and the extra material costs required to assemble the additional pieces.<sup>41</sup> Using a common ratio between “main material” and “connection material” and a fabrication labour cost of 12 man-hours per tonne for “main material” and 85 man-hours per tonne for “connection material”, he estimates that fabricating FISC to fit in sea containers would increase labour costs by 9.6% and material costs by \$31.73/MT.<sup>42</sup>
148. Domestic producers are able to ship by flatbed transport, whereas Subject Countries must ship by sea. Subject Country normal values are calculated based on domestic industry fabrication methods, which includes being able to ship larger components by flatbed transport. Consequently, the Complainants have adjusted Subject Country normal values by grossing up Subject Country labour costs by 9.6% and material costs by \$31.73/MT.

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<sup>41</sup> Confidential Attachment 2:Statement of Evidence of Paul Zubick.

<sup>42</sup> Confidential Attachment 2:Statement of Evidence of Paul Zubick.

*(d) GS&A, Financial Expenses and Profit*

149. The Complainants' estimated normal values include a reasonable amount for General Sales and Administrative expenses ("GS&A"), financial expenses and profit. What expenses are accounted for and reported under GS&A varies across firms, particularly in different countries. The Complainants' review of publicly available financial information indicated that one Asian like goods producer's GS&A was 38.9% of cost of sales while another Asian producer's was 3.4%.<sup>43</sup> The Complainants submit that this discrepancy relates primarily to accounting for costs, not productivity. Given the limited availability of financial data for producers of Subject Goods and the discrepancies in GS&A reporting, the Complainants have calculated GS&A for dumping examples as [ ]% of cost of goods, which is the Complainant's average GS&A over the 2013 through the first-quarter of 2016 period.<sup>44</sup>
150. Financial expenses and profit were determined based on publicly available financial information for a representative producer from each Subject Country. The representative producers' reported earnings before income tax were divided by the cost of goods sold to determine a profit percentage. An amount equal to this percentage of the estimated cost of goods sold was included in estimating normal values.
151. Financial expenses have been added to normal value calculations for Subject Countries, despite the fact that they may not appear as a cost for the domestic producer upon whose costs the dumping calculation is based. This is appropriate. When preparing a bid or quote, domestic producers will base their price on material costs, labour costs, overhead

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<sup>43</sup> Public Attachment 11: MCS Steel Public Company Limited, 2014 Annual Report, "Statements of Comprehensive Income for the Year Ended December 31, 2014" (PDF p. 57). Note: SG&A was calculated as the sum of "Selling Expenses", "Administrative Expenses" and "Management Benefit Expenses". Public Attachment 12: Young Hwa Construction and Engineering Co Ltd., "Financial Info" (2012) available at < <http://en.yhenc.com/ir/financial.asp> >

<sup>44</sup> Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statement.

(SG&A and other overhead) and profit. The “overhead” portion of price will include financial expenses. However, on financial statements, which are used to adjust domestic producers’ costs in order to calculate normal values, SG&A and financial expenses are broken out separately. Consequently, in order to fully account for costs, it is appropriate to add “financial expenses” to the Subject Goods normal value calculation.

## 2. China

152. China’s labour costs have risen significantly over the last number of years. Citing the Boston Consulting Group, a November 2015 Wall Street Journal article reported that when adjusted for productivity China’s manufacturing labour costs per hour were US\$14.60 an hour, compared to US\$29.58 in Canada.<sup>45</sup> Therefore, the average Chinese manufacturing labour cost, adjusted for productivity, is 49.4% of the Canadian labour cost. The Complainants calculated Chinese labour costs by making this adjustment to the Complainants’ labour costs.
153. For the purpose of a section 19 estimation of normal values, the Complainants used the 2014 financial data of Hangxiao Steel Structure Co. Ltd. to calculate other costs. Hangxiao is traded on the Shanghai Stock Exchange. As a percentage of 2014 cost of revenue (cost of goods sold), its financial expenses were 3.7%, and its profit (income before taxes) was 2.8%. The amounts for financial expenses is appropriate as it reflects recent, publicly available information of the costs of a large Chinese producer of Subject Goods that is not subject to a large degree of Chinese government control of operations.<sup>46</sup>
154. Section 19 of SIMA requires a “reasonable amount for profit”. The Complainants submit that an average net profit before tax of less than 2.8% over a year is not “reasonable” and

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<sup>45</sup> Public Attachment 13: Kathy Chu and Bob Davis, “End of Cheap Labor: as China’s workforce dwindles, the world scrambles for alternatives” Wall Street Journal (November 23, 2015) available at: <http://www.wsj.com/articles/as-chinas-workforce-dwindles-the-world-scrambles-for-alternatives-1448293942>.

<sup>46</sup> Public Attachment 14: Morningstar financial statements for Hangxiao Steel Structure Co. Ltd.

further demonstrates that section 20 conditions exist in the Chinese FISC industry.<sup>47</sup> As discussed in Paul Zubick's Statement of Evidence, firms take considerable risk when quoting on a project, including that their costs will be higher than anticipated due to the number of labour hours required to complete the structural fabrication according to plans (which are often not provided at the time a quote is provided).<sup>48</sup> Even when the complete design is provided, there is a certain amount of risk that costs will run higher than anticipated as the product being produced is custom fabrication and challenges associated with a custom fabrication cannot always be foreseen. To account for this risk, it is reasonable for firms to bid with margins in the range of [ ]% to [ ]%.<sup>49</sup> Consequently, the Complainants have used a 7.1% profit margin, which is the profit margin of the representative Korean producer.

155. These amounts are being used only for the alternative section 19 estimate of Chinese normal values. The Complainants maintain that section 20 ought to be used; in which case Korea might be employed as a surrogate.

### **3. United Kingdom**

156. The Complainants calculated normal values for the UK by adjusting their costs according to information obtained from William Hare's publicly available financial documents.
157. William Hare is one of the largest UK manufactures of FISC and a known exporter to Canada. William Hare's December 31, 2014 financial statements provide that it had 528 employees in 2014: 312 in manufacturing and installation, 90 in technical services, and 126 in office and management.<sup>50</sup> William Hare's cost for wages was GBP20,679,000 or

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<sup>47</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>48</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>49</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>50</sup> Public Attachment 15: William Hare Limited, Financial Statements, December 31, 2014, prepared by Horsfield and Smith, p. 12.



GBP39,164 per employee. To make a proper comparison of manufacturing wages, the Complainants estimate that non-production and non-installation employees make 50% more in wages. Based on this generous assumption, the 2014 wages William Hare production employees were GBP32,514. On June 30, 2014, this equaled C\$59,374.<sup>51</sup>

158. Statistics Canada reports that the average Canadian wage for production employees in the “Fabricated Metal Product Manufacturing (NAICS 332)” industry was \$45,125 per year in 2012.<sup>52</sup> With a CAGR of 1.8% for years 2013-2014, the average wage rate for 2014 was C\$46,674. Thus, for comparative purposes, the UK wage rate is 27% higher than that of domestic producers. The Complainants submit that using this calculation is most appropriate as it calculates labour wages based on a Subject Goods producer’s actual costs.
159. William Hare’s December 31, 2014 financial statements provide that its net financial costs and profit before tax were respectively 0.3% and 1.6% of cost of goods sold.<sup>53</sup>
160. Subsection 19(b)(iii) of SIMA provides that a reasonable amount of profit must be used when determining normal values under section 19. For the reasons discussed above, the Complainants submit that a 1.6% profit margin is not reasonable. Consequently, the Complainants have used a profit margin of 7.1%, which is that used for Korea. The Complainants submit that while this is very low, it is at the very bottom of the range of what is a reasonable profit margin. Complainants have used this information for calculating GS&A, financial costs, and profit.

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<sup>51</sup> Bank of Canada reports the daily exchange rate on June 30, 2014 was 1.8261.

<sup>52</sup> Public Attachment 16: Statistics Canada, “Salaries and Wages: Fabricated Metal Product Manufacturing (NAICS 332)” online: < <https://www.ic.gc.ca/app/scr/sbms/sbb/cis/salaries.html?code=332&lang=eng> >

<sup>53</sup> Public Attachment 15: William Hare Limited, Financial Statements, December 31, 2014, prepared by Horsfield and Smith, p. 8.

**4. South Korea**

161. In November 2015 the Wall Street Journal cited analysis by the Boston Consulting Group that when adjusted for productivity Korea's manufacturing labour costs per hour were US\$18.45 an hour, compared to US\$29.58 in Canada.<sup>54</sup> Therefore, the average Korean manufacturing labour cost, adjusted for productivity, is 62.4% of the Canadian labour cost. The Complainants calculated Korean labour costs by making this adjustment to the Complainants' labour costs.
162. Young Hwa Construction and Engineering Co Ltd. is a South Korean FISC producer and installer. Its most recent financial information posted on its website indicates that its profit was 7.1% of cost of sales. Assuming that the difference between its reported EBITDA and Operating profit is its financial expenses, these expenses are 0.7% of cost of sales.<sup>55</sup> The Complainants have used this information to calculate Korean financial costs and profit.

**5. Spain**

163. The Complainants were unable to locate publicly available information on labour costs in Spain's FISC industry.
164. Based on information available from the United States Department of Labor's Bureau for Labor Statistics's International Labor Comparisons, the complainants estimate that

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<sup>54</sup> Public Attachment 13: Kathy Chu and Bob Davis, "End of Cheap Labor: as China's workforce dwindles, the world scrambles for alternatives" Wall Street Journal (November 23, 2015) available at: <http://www.wsj.com/articles/as-chinas-workforce-dwindles-the-world-scrambles-for-alternatives-1448293942>.

<sup>55</sup> Public Attachment 12: Young Hwa Construction and Engineering Co Ltd., "Financial Info" (2012) available at < <http://en.yhenc.com/ir/financial.asp> >

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Spain's labour compensation rate is 29% below Canada's, when adjusted for productivity.<sup>56</sup>

165. The Complainants were unable to locate publicly available financial information about Spanish FISC producer's SG&A and profit. As such, the Complainants have used the United Kingdom's costs cited above.

**6. UAE**

166. The Complainants were unable to locate publicly available information on labour costs in UAE's FISC industry.
167. A March 2, 2016 report on the website, "Guide2Dubai" states that the average monthly UAE salary in the category of "factory and manufacturing" was Dh. 16,000.<sup>57</sup> The Bank of Canada exchange rate on March 2, 2016 puts this at C\$5,867.20 per month.
168. In 2010, the UAE Ministry of Labour and the Dubai Economic Council reported that that cost of skilled worker was Dh144,000 whereas the cost of an unskilled worker was Dh33,000.<sup>58</sup> The Complainants submit that FISC labour is skilled labour. It includes

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<sup>56</sup> Public Attachment 17: The Bureau for Statistic's most recent comparison for GDP per hour, a measure of productivity, provided that a Canadian worker produced US\$46.61 per hour while a Spanish worker produced US\$48.13 per hour (2011). In other words, Canadian workers are 0.97 times as productive as their Spanish counterparts. The Bureau's research is that in 2012, Canadian hourly compensation costs in manufacturing were US\$36.59 per hour, while Spain's hourly compensation costs in manufacturing were US\$26.83. Multiplying the Spanish wage by 0.97 to account for lower Canadian productivity, the adjusted Spanish compensation cost is US\$26.03 or 71% of the Canadian labour cost. (United States Department of Labor, Bureau for Labor Statistics, "International Labor Comparisons: Country at a Glance: Spain", "International Labor Comparisons: Country at a Glance: Canada").

<sup>57</sup> Public Attachment 18: Guide2Dubai, "Dubai Salary and Pay Scale" (March 2, 2016).

<sup>58</sup> Public Attachment 19: Deena Kamel Yousef, "UAE's per-worker cost to companies is Dh55,000 a year, study shows" Gulf News (October 12, 2010).

- employees with technical expertise, such as engineers and draftpersons, and employees with skilled trades, such as welders. On July 2, 2010, Dh144,000 equaled C\$41,745.60.<sup>59</sup>
169. Statistics Canada reports that in 2012, Canadian manufacturing wages were \$45,783 and that average annual growth in the 2004-2012 period was 1.5%.<sup>60</sup> Therefore, the Canadian manufacturing wage in 2010 was \$44,440. This puts the Dubai wage at 93.93% of the Canadian wage.
170. The Complainants submit this adjustment is reasonable and fair. First, the 2010 wage rate does not include an adjustment for productivity. Canadian productivity exceeds that in most other countries and as such any productivity adjustment would increase the UAE wage. Second, basing the adjustment on 2010 data favours the UAE as wage rates in the UAE have increased annually by approximately 5% whereas Canadian manufacturing wage rates historically increased by 1.5% through 2004-2012, and continued to do so since.<sup>61</sup> With a CAGR of 5%, 2016 Dubai skilled labour wages would be just shy of Dh193,000 per year or Dh16,081 per month, which is very close to the wage rate of Dh16,000 per month cited by “Guide2Dubai”. However, the equivalent wage of C\$5,867.20 per month or \$70,406.40 per year would exceed the Canadian manufacturing wage of \$48,592 (assuming CAGR of 1.5%) by 45%.
171. The Complainants were unable to locate publicly available financial information for a UAE producer of Subject Goods. William Hare UAE Ltd. is a subsidiary wholly owned by William Hare Group Limited (who also owns William Hare Limited, a UK FISC

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<sup>59</sup> Bank of Canada reports the daily exchange rate on July 2, 2010 was 0.2899.

<sup>60</sup> Public Attachment 20: Statistics Canada, “Salaries and Wages Manufacturing (NAICS 31-33)”, online: <<http://www.ic.gc.ca/cis-sic/cis-sic.nsf/IDE/cis-sic31-33sale.html>>

<sup>61</sup> Public Attachment 20: Statistics Canada, “Salaries and Wages Manufacturing (NAICS 31-33)”, online: <<http://www.ic.gc.ca/cis-sic/cis-sic.nsf/IDE/cis-sic31-33sale.html>>; Public Attachment 21: Issac John, “UAE to see 2.2% net salary rise in 2016” Khaleeh Times (March 14, 2016); Public Attachment 22: Tom Arnold, “Salary growth in UAE to outstrip inflation and Europe” The National (January 7, 2013).

producer). The Complainants have, therefore, used William Hare Group's publicly available financial information, which covers its subsidiaries, in order to calculate financial expenses and profit for UAE producers. William Hare Group's financial statements for the year ending December 31, 2014 indicate that its financial expenses were 0.3% of cost of sales and its profit was 2.3% of cost of sales.<sup>62</sup> As with the UK, the Complainants submit that 2.3% profit is not reasonable and therefore have used 7.1% of cost of sales to calculate profit as per information from South Korean producers.

**D. Section 20: China is a Non-Market Economy**

172. The Complainants submit that the President of the CBSA should apply section 20 of SIMA to the determination of normal values for Chinese FISC.

173. Section 20 reads:

**20 (1)** Where goods sold to an importer in Canada are shipped directly to Canada

(a) from a prescribed country 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, or

(b) from any other country where, in the opinion of the President,

(i) the government of that country has a monopoly or substantial monopoly of its export trade, and

(ii) 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,

the normal value of the goods is

(c) where like goods are sold by producers in any country other than Canada designated by the President for use in that country,

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<sup>62</sup> Public Attachment 23: William Hare Group Limited and Subsidiaries, Financial Statements, December 31, 2014, p. 9.

(i) the price of the like goods at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by producers in the country other than Canada designated by the President for use in that country, or

(ii) the aggregate of

(A) the cost of production of the like goods,

(B) a reasonable amount for administrative, selling and all other costs, and

(C) a reasonable amount for profits,

whichever of the price or aggregate the President designates for any case or class of cases; or

(d) where, in the opinion of the President, sufficient information has not been furnished or is not available to enable the normal value of the goods to be determined as provided in paragraph (c), the price of like goods

(i) produced in any country designated by the President, other than Canada or the country from which the goods were shipped directly to Canada, and

(ii) imported into Canada and sold by the importer thereof in the condition in which they were imported to a person with whom, at the time of the sale, the importer was not associated,

such price to be adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the imported like goods in relation to their sale by the importer thereof.

174. Pursuant to subsection 17.1(1) of the *Special Import Measures Regulations*, China is a prescribed country for the purposes of section 20 of SIMA.
175. There is sufficient evidence to form an opinion pursuant to section 20 of SIMA that the GOC substantially determines domestic prices in the FISC sector and that there is sufficient reason to believe the domestic prices are not substantially the same as they would be in a competitive market. Some key issues in this regard that are discussed below include:

- a) The CBSA has previously recognized a high degree of government control of domestic prices in the Chinese steel industry. The market circumstances upon which those decisions were made have not changed;
- b) The GOC's new draft Steel Adjustment Policy indicates continued government control and management of the steel sector;
- c) Major steel mills, which provides inputs to the FISC industry, are state-owned enterprises;
- d) Major Chinese construction firms, which purchase FISC, are state-owned enterprises;
- e) Under the Agreement on the Accession of China to the WTO, China agreed that its industries subject to anti-dumping investigations must clearly demonstrate that the industry is operating under market conditions, failing which alternative normal value methodologies may be employed by investigating authorities in the importing Member.

**1. Evidence and information required to initiate a section 20 inquiry**

176. The CBSA relies upon a two step test when determining whether to proceed with an inquiry under section 20 of SIMA:

When evaluating information which suggests that section 20 conditions may exist in a particular sector in new investigations and in re-investigations, the CBSA will rely on a two-part threshold test to determine whether to proceed with a section 20 inquiry. The first part of the test requires that the evidence presented in support of an allegation be relevant and reasonably reliable. The second part asks whether this evidence, if later found to be accurate, would be capable of reasonably supporting a positive determination as to the applicability of section 20.<sup>63</sup>

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<sup>63</sup> *Unitized Wall Modules (II)*, Notice of Initiation, Statement of Reasons (March 19, 2013) at para 68.

177. The evidence on the record prior to the initiation of the investigation is not required to conclusively *demonstrate* that the section 20 conditions *exist*, but rather the evidence need only *suggest* that the section 20 conditions *may* exist, subject to CBSA's two-part analysis described above. Indeed, the very purpose for the section 20 inquiry is to determine — after the fact-finding investigation — whether the section 20 conditions, in fact, exist.
178. The CBSA's *SIMA Handbook* also underscores that the threshold for an initiation does not require dispositive proof that non-market economy conditions exist. Rather, a complainant is expected to provide reasonably reliable facts to support its allegation and CBSA staff may initiate a section 20 inquiry if the facts and evidence before them are capable of reasonably supporting the initiation:

4.4.4.1 General

References to a "Section 20 inquiry"

...A section 20 inquiry is characterized by official notification to the government of the country of export, exporters and domestic producers that the President has reason to believe that the conditions of section 20 **might** exist in the sector under investigation. ...

4.4.4.3 General Policy and Procedures

Initiation of New Anti-dumping Investigations

If a written dumping complaint is received in which the complainant has based the estimation of normal values on surrogate values because it is alleged that the goods are exported to Canada from a country in which the conditions of subsection 20(1) apply, **the complainant is expected to outline the facts on which this allegation is made and provide such information that is available to support these facts.**

4.4.4.4. Sufficiency of Evidence for Purposes of Initiating a Section 20 Inquiry

When evaluating information which suggests that subsection 20(1) conditions may exist in a particular sector, staff is to rely on the following test to determine whether to initiate an inquiry:

Is the evidence presented, either by the complainant or the CBSA, in support of an allegation regarding the applicability of section 20 relevant and reasonably reliable?

If so, would this evidence, if properly verified, be capable of reasonably supporting a positive determination as to the applicability of section 20?



The first part of the test addresses the admissibility of the evidence presented. Unless the evidence can be considered relevant and reasonably reliable, it is to be disregarded when addressing the second part of the test. Evidence is considered to be relevant where it has some tendency, as a matter of logic and personal experience, to make the proposition for which it is advanced more likely than that proposition would appear to be in the absence of that evidence. In other words, evidence is considered to be relevant if it tends to prove the subject at issue. As for the reliability criteria, it serves to eliminate information that may have been obtained through fraudulent, inaccurate, biased or uninformed sources.

The second part of the test addresses the strength or weight of the evidence by simply asking whether this evidence is reasonably capable of supporting the inferences necessary for making a positive determination. This helps to avoid situations where the President may not be in possession of sufficient information to form an opinion regarding the applicability of section 20.

(Emphasis added)

179. As noted in the *SIMA Handbook*, the test at this stage is not whether the evidence unequivocally demonstrates that the section 20 conditions exists, but rather whether the evidence is reasonably capable of supporting the inferences necessary for making a positive determination.
180. There is nothing in the Act itself which defines or describes a “section 20 inquiry”. Rather, section 20 provides a methodology available to the CBSA when certain circumstances are met. In this regard, and on the issue of the evidence necessary to initiate a section 20 inquiry, it is instructive to consider the information necessary in order for the CBSA to initiate an anti-dumping investigation. Subsection 31(1) of SIMA provides that the President shall initiate an anti-dumping investigation if the President “is of the opinion that there is evidence (a) that the goods have been dumped...” and (b) that “discloses a reasonable indication” that the dumping has caused injury or is threatening to cause injury. In other words, the legal test to initiate an anti-dumping investigation is whether the President is of the opinion that there is evidence that the goods have been dumped and whether the evidence discloses a reasonable indication that the dumping has caused injury. The President need not be satisfied that there has been dumping, but only that there is evidence that the goods have been dumped. The purpose of the investigation itself is to determine whether there has, in fact, been dumping. The Complainants submit
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that a similar approach is appropriate in order to determine whether to commence a section 20 inquiry.

181. The SIMA requirement that a complainant provide facts and evidence to support a request for the application of section 20 against a prescribed country, rather than conclusive or dispositive proof, reflects the potential challenges associated with obtaining conclusive evidence, much of which may not be publicly available. This challenge is also recognized in China's *Protocol of Accession to the WTO* which is incorporated into Canadian law pursuant to section 20 of SIMA and section 17.1 of SIMR. Article 15(a)(i) of the Protocol permits the use of non-market economy dumping methodologies in cases involving China unless the Chinese exporters under investigation "...can clearly show that market economy conditions prevail in the industry producing the like product...". The Protocol therefore establishes a reverse burden whereby a methodology like that found at section 20 may be used unless Chinese industry under investigation can establish they operate as a market economy. The threshold for initiating a section 20 inquiry should be interpreted and applied within this context.

## **2. The Section 20 conditions**

182. As noted above, the conditions for the application of the section 20 methodology are that:

...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...<sup>64</sup> (Emphasis added)

183. The Federal Court of Appeal provided guidance on the scope of subsection 20(1), stating:

[9] In our view, the use of the expression "*substantially determined*" necessarily implies something less than completely determined and as such, Parliament did not intend the provision to be restricted to situations where a foreign government directly sets the prices. Indeed, the phrase captures the

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<sup>64</sup> SIMA, s. 20.

various ways in which governments can exert a determinative influence on pricing, whether directly or indirectly.<sup>65</sup>

(Emphasis added)

184. Indeed, in every investigation in which the President has found that the conditions of section 20 apply, it has been the totality of government influence which has resulted in those findings, as opposed to a direct form of price-setting.
185. The Complainants submit that the evidence which follows is relevant and reliable. This evidence is capable of supporting a positive determination as to the applicability of section 20.

**3. Relevant section 20 CBSA decisions**

186. The CBSA has previously found that various sectors of China's steel industry, in addition to other metal industries, are controlled by the GOC, and that prices of steel goods in these sectors are lower than in other markets. In particular, the CBSA found that section 20 conditions exist in the following steel and metal cases:

- Aluminium Extrusions
- Carbon Steel Welded Pipe
- Concrete Reinforcing Bar
- Copper Tube
- Hot-Rolled Sheet and Strip
- Oil Country Tubular Goods
- Piling Pipe
- Pup Joints
- Seamless Casings
- Silicon Metal
- Steel Plate

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<sup>65</sup> Public Attachment 25: *Tianjin Pipe (Group) Corporation v. Tenaris Algoma Tubes Inc.*, 2009 FCA 164, May 20, 2009.

187. These findings speak to government control of the steel industry generally. Further, custom products, such as FISC, are often produced by large, integrated producers that also manufacture other steel products, such as long products, flat products, and pipe and tubular products. For example, this is the case with the Baosteel Group, among others.<sup>66</sup>
188. In addition, GOC control of the pricing of inputs can affect downstream products. The final determination with respect to the dumping and subsidizing of *Certain Aluminum Extrusions* is particularly relevant to this matter, as it demonstrates how government can control prices of goods by maintaining artificially low input prices through export restrictions.<sup>67</sup> In the Summary of Findings on section 20, the CBSA wrote:

Based on the evidence on the record, it is clear that the GOC exerts a substantial degree of influence over the aluminum industry in China through its industrial policy measures. As noted under the government policy section, newer GOC aluminum industry documents also include policy measures specifically applicable to the aluminum extrusion industry. These policies impose minimum capacity size for new facilities, and minimum energy and production efficiency levels. The GOC has also been shown to provide preferential treatment and subsidies to aluminum producers and to aluminum extruders in China which would increase the ability of Chinese producers to supply the products to the Chinese market. The GOC also has measures in place that restrict the exports of aluminum and aluminum extrusions, also affecting the supply situation in the domestic market.

While the GOC does not directly set or control the prices of aluminum extrusions in China, the information currently available to the CBSA indicates that prices of aluminum extrusions in China are being substantially determined by GOC industrial policies and export restrictions. The cost of aluminum in China appears to be well below the world price of aluminum during the dumping POI. Since aluminum comprises a large percentage of the cost of aluminum extrusions and directly impacts the price of aluminum extrusions due to the 'aluminum cost plus' selling practices of the industry, the low cost of aluminum in China clearly impacts the prices of aluminum extrusions in China.

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<sup>66</sup> For example, Baosteel Group includes Shanghai Baosteel Construction Co. Ltd < [www.grandtower.com](http://www.grandtower.com) > and Baosteel Engineering & Technology Group Co., Ltd. < <http://www.baosteelengineering.com/> >, both of whom are involved in fabrication of structural steel.

<sup>67</sup> *Certain Aluminum Extrusions*, NQ-2008-003, CBSA Statement of Reasons (March 3, 2009).

The CBSA has assessed the cumulative effect that the GOC industrial policy measures; regulations controlling technology and production levels; GOC preferential treatment and subsidies; and the control of import and export levels through tax changes have had on both aluminum and aluminum extrusions. The CBSA is satisfied that there is sufficient evidence on the record demonstrating that the domestic prices of aluminum extrusions in China are being substantially determined by the GOC and that there is sufficient reason to believe that these prices are substantially different than if they were determined in a competitive market.

Based on the preceding considerations, the President of the CBSA has formed the opinion, for purposes of the final determination that Section 20 conditions exist in the aluminum extrusions sector in China.<sup>68</sup>

(Emphasis added)

189. The particular significance of the finding in *Certain Aluminum Extrusions* was that government may be found to substantially determine prices on the basis of its influence on the price of an important input into production of a good, even if production of that good is not directly controlled by government. Thus, in the case of FISC, section 20 conditions may be found to exist if the GOC influences the price of FISC inputs, such as steel plate, fasteners, and hot-rolled sections, but does not necessarily intervene directly in the fabricated structural steel industry.

#### **4. Factors to be considered under Section 20**

190. The CBSA has previously recognized various factors that may support a finding that the section 20 conditions exist with respect to a particular Chinese industry. In *Certain Seamless Casing*, the CBSA stated that a Chinese government may be substantially determining prices where only one of these factors is present.<sup>69</sup> Previously recognized factors include:

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<sup>68</sup> *Certain Aluminum Extrusions*, NQ-2008-003, CBSA Statement of Reasons (March 3, 2009), p. 100 [*Aluminum Extrusions* CBSA Reasons].

<sup>69</sup> *Certain Seamless Carbon or Alloy Steel Oil and Gas Well Casing Originating in or Exported from the People's Republic of China* (AD/1371, CV/122), Preliminary Determination Statement of Reasons (Nov. 23, 2007) at para. 49.

- a) Direct government involvement in price setting:
  - i) Whether the GOC sets floor/ceiling prices;
  - ii) Whether the GOC sets absolute pricing levels;
  - iii) Whether the GOC sets recommended price and expects it to be followed;
  - iv) Whether regulatory bodies set and enforce prices;
- b) Indirect government involvement in price setting:
  - i) Import/export controls (quotas, licences, etc.);
  - ii) Subsidies and low priced inputs
  - iii) Government purchases of subject goods in sufficient quantities;
  - iv) Preferential treatment of an industry;
  - v) Industry designation as a “pillar” or “strategic” industry;
- c) Government ownership and/or control of enterprises involved in the production of the goods;
  - i) Presence and influence of State-owned Enterprises (“SOEs”):
  - ii) Output controls;
- d) Government influence and/or control over production, sourcing and other operational decisions:
  - i) Government control of production output or the number of producers;
  - ii) Market volatility that is inconsistent with competitive markets;
  - iii) Existing section 20 findings with respect to inputs;
  - iv) Inputs being sold at prices above that for subject goods;
- e) Government policies or directives applicable to the industry under investigation:
  - i) Industrial policies with the following objectives, tasks or measures:
    - (1) structural adjustment of the industry;
    - (2) consolidation or reorganization of producers, including horizontal and vertical unification;
    - (3) regulation of technological upgrades;
    - (4) reduction of environmental impacts and energy consumption;
    - (5) government supervision of industry;
    - (6) stabilization of the market, both domestic and export;

- (7) improvement of exports;
- (8) output control (minimum and maximum);
- (9) capacity control;
- (10) product mix (high end);
- (11) the relocation of producers;
- (12) the stabilization of imports used as inputs;
- (13) industry associations tasked with providing support to GOC policy
- (14) proposals;
- (15) development of resources;
- (16) support, creation or promotion of SOEs;
- (17) setting specific profit levels;
- (18) improvement of the overall industry management system;
- (19) standardization in the industry;
- (20) improvement of industry information flow, capital flow and material flow;
- (21) improvement of industrial planning by regional authorities of industries;
- (22) restriction of investment in certain types of production methods;
- (23) regulation of minimum capital investment in new projects; and
- (24) access to raw materials;
- ii) statements by Chinese producers supporting the existence or influence of GOC industrial policies;
- iii) media reports supporting the existence or influence of GOC industrial policies;
- iv) evidence of industry consolidation that is consistent with GOC policies;
- v) The existence of measures to enforce GOC policy objectives and measures
- f) Use of the tax system to influence pricing:
  - i) Taxation that regulates profits;

- ii) Value Added Tax policies that manipulate exports and imports.<sup>70</sup>

191. As discussed below, many of these factors are present with respect to FISC and support the determination that section 20 conditions exist.

**5. GOC substantially determines prices of FISC sold in China**

192. The Complainants submit that the price of Subject Goods produced in China are substantially determined by the GOC and are lower than they would be in a competitive market. Therefore, the CBSA's dumping calculation for imports of FISC from China should utilize the normal value calculation methodology set out at section 20 of SIMA.

193. The significance of influence of the GOC can be seen at every stage of the process, from the inputs used to produce FISC to the customers purchasing the product. The Complainants therefore submit that there is more than sufficient evidence necessary for the initiation of a section 20 inquiry.

**(a) Government Policies and Directives: 12<sup>th</sup> and 13<sup>th</sup> Five-year plans**

194. In previous preliminary and final determinations, the CBSA determined that section 20 conditions exist, in part, because GOC industrial policies regulate the domestic industry,

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<sup>70</sup> *Aluminum Extrusions*, Preliminary Determination – Statement of Reasons (December 2, 2008) at para 69, 73, 76-81; *Carbon Steel Welded Pipe*, Initiation – Statement of Reasons (February 7, 2008) at paras 48-49; *Carbon Steel Welded Pipe*, Preliminary Determination – Statement of Reasons (May 7, 2008) at para 62, 64-67; *Carbon Steel Welded Pipe*, Final Determination – Statement of Reasons (August 5, 2008) at 36-39, 43, 45-57 and at para 54; *Seamless Casings*, Initiation – Statement of Reasons (August 28, 2007) at para 52-53; *Certain Seamless Casing* (Preliminary), at 62, 75 and at para. 52, 59-61, 71-74; *Aluminum Extrusions*, Final Determination – Statement of Reasons (March 3, 2009) at 75-100; *Piling Pipe*, Initiation – Statement of Reasons (May 18, 2012) at 9; *Certain Pup Joints*, Initiation – Statement of Reasons (September 27, 2011) at 11; *Certain Pup Joints*, Preliminary Determination – Statement of Reasons (December 28, 2011) at para 59-77, 60, 64, 78, 89-90; *Certain Pup Joints*, Final Determination – Statement of Reasons (March 28, 2012) at para 52, 67, 68, 71, 72, 76; *Oil Country Tubular Goods*, Initiation – Statement of Reasons (September 8, 2009) at paras. 69-70; *OCTG*, Preliminary Determination (December 9, 2009) at para 100-102, 108-112; *OCTG*, Final Determination – Statement of Reasons (March 9, 2010) at 54, 56-63, 66.



including domestic prices.<sup>71</sup> One manner in which these industrial policies regulate, guide and control an industry is through 5-year plans that regulate, *inter alia*, production capacity and technology requirements.<sup>72</sup> Such influence over production is likely to also result in influence and control over domestic prices and also supports the initiation of a section 20 investigation.

195. In late 2015, China's Communist Party approved the 13th Five-Year plan; however, an English translation of the plan's direction for the steel industry has not been located by the Complainants.<sup>73</sup> While the 13th Plan may include an evolution of the GOC's policies, given the challenges facing China's steel industry and the draft Steel Adjustment Policy discussed below, it is not expected that this evolution will include the GOC loosening its control over the Chinese steel industry or ceasing to direct its momentum. As such, it should be assumed that GOC control over the Chinese steel industry will be no less than what was prescribed in the 12<sup>th</sup> Five-Year plan.

196. In November 2011, the GOC released the 12th Five-Year Plan: Iron and Steel (Development Plan for the Steel Industry).<sup>74</sup> This document is intended to guide development of the Chinese steel industry over 2011-2015 period. Its directives specifically include:

- consolidate into larger, more efficient steel companies;
- GOC restrictions on steel capacity expansion;
- upgrading of steel industry technology;

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<sup>71</sup> *Certain Pup Joints*, Final Determination – Statement of Reasons (March 28, 2012) at para 82 -83; *OCTG*, Preliminary Determination (December 9, 2009) at para 100-104.

<sup>72</sup> *OCTG*, Preliminary Determination (December 9, 2009) at para 101; *Certain Pup Joints*, Final Determination – Statement of Reasons (March 28, 2012) at para 66, 68, 72

<sup>73</sup> Public Attachment 26: Mark Magnier, "China's Communist Party Approves Five-Year Plan" Wall Street Journal (October 29, 2015).

<sup>74</sup> Public Attachment 27: KPMG: China's 12th Five-Year Plan: Iron and Steel (May 2011); see also Statement of Reasons in *Galvanized Wire*, August 6, 2013, para. 90-92.

- increased emphasis on high-end steel products; and
- GOC directed relocation of iron and steel companies to coastal areas.

197. In *Rebar*, the CBSA noted “[f]urther support that the domestic prices are substantially determined by the GOC and are not substantially the same as they would be in a competitive market in the steel industry in China can be found in the GOC’s new macro-economic policy entitled, 12th Five-Year Plan: Iron and Steel”.<sup>75</sup> In analyzing the policy the CBSA noted that it includes, *inter alia*, minimum production requirements; a target share for China’s 10 largest steel producers; control over capacity expansion; direction on accelerating production of high value steel products; and directions for industry consolidation.<sup>76</sup> In particular, the CBSA found that the plan’s objectives “are likely to conflict with the commercial interests of producers” and “will likely affect production volumes, competition and ultimately prices”.<sup>77</sup>
198. The effect of the Five-Year plans over the Chinese steel industry cannot be understated. It affects all aspects of steel production, from the pricing, marketing and availability of inputs like iron ore, to industrial organization through state directed amalgamations, to production by directing the types of products to be produced. Consequently, production, production capacity, and marketing of steel is influenced by non-market factors rather than supply and demand.

***(b) Government Policies and Directives: Steel Industry Adjustment Policy (2015 Revision)***

199. On March 20, 2015, the GOC released a draft *Steel Industry Adjustment Policy (2015 Revision)* (the “**2015 Steel Adjustment Policy**”).<sup>78</sup> While it is titled “draft” it is the

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<sup>75</sup> *Rebar*, Statement of Reasons Final Determination, (December 23, 2014) at para 107.

<sup>76</sup> *Rebar*, Statement of Reasons Final Determination, (December 23, 2014) at paras 108-111.

<sup>77</sup> *Rebar*, Statement of Reasons Final Determination, (December 23, 2014) at para 111.

<sup>78</sup> Public Attachment 28: SEAI SI, “Message from Secretary General\_June 2015” (July 3, 2015) available at [http://www.seaisi.org/news/news\\_view.asp?news\\_id=4365](http://www.seaisi.org/news/news_view.asp?news_id=4365); Public Attachment 29: “Steel Industry Adjustment

Complainants understanding that the policy is authoritative in its present form. The 2015 Steel Adjustment Policy is a revision to the *Steel Industry Development Policy* issued in 2005.<sup>79</sup> The objectives of the 2005 Policy included: structural adjustment of steel industry in China; industry consolidation; regulating technological upgrades to the industry; regulating input consumption and GOC supervision and management of the industry.<sup>80</sup> The CBSA's findings in *Certain Seamless Steel Casing*, *Certain Oil Country Tubular Goods*, *Certain Carbon Steel Welded Pipe*, *Certain Pup Joints*, *Certain Piling Pipe* and *Certain Galvanized Steel Wire*, and *Rebar* that section 20 conditions applied to China's steel industry all recognized the 2005 Policy as evidence that the GOC substantially controlled prices.

200. The 2015 Steel Adjustment Policy continues the GOC's management and control over the Chinese steel industry. The GOC's intent to control the steel industry is perhaps best evidenced by Article 4 of the 2015 Steel Adjustment Policy. Titled "Market Environment" it reads:

Article 4 [Market environment]

There should be continuous innovation in the means of governmental administration; ongoing and retrospective oversight and services should be continuously strengthened; and the role of the government should be more effectively realized. Relevant laws and regulations should be better implemented in the industry in order to basically build a fair and competitive market environment. A sound investment project information disclosure system and corporate credit record system should be established in order to form an open, honest community oversight system. (Emphasis Added).

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Policy (2015 Revision) available at  
[http://www.eurofer.eu/Issues%26Positions/Trade/ws.res/Steel\\_Industry\\_Adjustment\\_Policy\\_Comments\\_Appendix.fhtml/Steel\\_Industry\\_Adjustment\\_Policy\\_Appendix.pdf](http://www.eurofer.eu/Issues%26Positions/Trade/ws.res/Steel_Industry_Adjustment_Policy_Comments_Appendix.fhtml/Steel_Industry_Adjustment_Policy_Appendix.pdf)

<sup>79</sup> Public Attachment 28: SEAISI, "Message from Secretary General\_June 2015" (July 3, 2015) available at [http://www.seaisi.org/news/news\\_view.asp?news\\_id=4365](http://www.seaisi.org/news/news_view.asp?news_id=4365).

<sup>80</sup> *Rebar*, Statement of Reasons Final Determination, (December 23, 2014) at para 103.

201. In addition to strengthening GOC control and oversight over the Chinese steel sector, other objectives of the 2015 Steel Adjustment Policy include, *inter alia*:

- Upgrading product quality and mix;
- Setting a capacity utilization rate of 80% or higher by 2017;
- Achieving reasonable profit margins and returns on assets by 2017;
- Improvement of large scale production equipment;
- Steel scrap comprising 30% of China's steel raw material input by 2025;
- Meeting specific productivity targets;
- An acceleration in the pace of mergers and company restructuring;
- That the 10 top steel producers account for 60% of China's crude steel output by 2025;
- That three to five "ultra-large steel enterprise groups with remarkable competitiveness in the global market will be formed";
- That revenue from "new products" should account for more than 20% of large and medium sized steel producers' revenue;
- "Deep integration of industrialization" is to be improved alongside automation;
- Specific targets on energy consumption, water consumption and emissions;
- New steel projects are to satisfy requirements of government plans and planning;
- New steel projects are not to use specified kinds of technology;
- New steel projects are to strictly control production capacity and implement equal or reduced production replacements;
- Development of iron ore source, domestic and abroad, to "form a rational and stable guarantee system for global iron ore resources".
- Steel enterprises are to be "guided towards standard development" through market access requirements and strengthening of "ongoing and retrospective oversight of newly built (modified and expanded) steel projects";
- Outdated production capacity is to be phased out according to GOC laws and regulations;
- Directing consumption and demand for specific steel products;
- Further the number of mergers, acquisitions, and reorganizations and "[s]trengthen and improve oversight of major merger and reorganization transactions among enterprises."
- The strengthening of "the service and supervision of investment in the domestic steel industry from various market entitled".

202. In short, the 2015 Steel Adjustment Policy prescribes objectives, tasks and measures that the CBSA has previously found indicative of section 20 conditions, including: GOC

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management and supervision over the Chinese steel industry, product mix, capacity utilization rates, production methods, creation of “ultra-large” steel companies to compete globally, input utilization, technology use, profit margins, consumption and demand for steel products, mergers and acquisitions, structural adjustment, development of resources to support steel production; access to raw materials, standardization of the industry, and restriction on certain types of production methods.

203. The 2015 Adjustment Policy does speak of allowing foreign investment and the “development of mixed ownership”. However, it is clear from the Policy as a whole that the GOC intends to maintain, if not increase, its control and supervision of the Chinese steel industry.
204. The 2015 Steel Adjustment Policy objectives illustrate the GOC’s intimate involvement in, and influence and control over, the Chinese steel industry. It also explicitly shows the GOC’s intention to have China’s steel industry operate under an economic model where the GOC has control.

*(c) Chinese steel producers produce according to government direction, not market factors*

205. The China Iron and Steel Association recently acknowledged, implicitly and explicitly, that steel producers wishing to exit production are unable to do so. Zhang Guangning, the chairman of both the association and the state-owned Anshan Iron and Steel Group, recently stated, “Some enterprises want to exit, but an exit route has not been opened up.. [sic] and some local governments continue to urge steel firms to produce in the interests of local economic development and social stability”.<sup>81</sup> The statement indicates that producers wishing to exit steel production are awaiting some kind of direction, other than market factors, or permission before ceasing production, despite their wishes that they

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<sup>81</sup> Public Attachment 30: David Stanway, “China steel firms suffered \$8 bln in losses in Jan-Nov 2015 –assn”, Reuters (January 17, 2016).

could do so. It also acknowledges the influence of governments, including local governments, over production decisions. In particular, Zhang Guangning's comments are evidence that Chinese steel producers follow government directions and policies, rather than the market, in making business decisions, such as how much to produce and whether to continue or cease production.

206. Further evidence of Chinese steel producers following government policies is China's steel overcapacity. China's steel production overcapacity is well known and discussed further below. The Financial Times cites China's industrial policies and subsidies as the cause of overcapacity in China's Steel sector.<sup>82</sup> It follows that China's steel industry has grown its production capacity and produced according to the administrative measures of China's central and sub-central governments, rather than according to market conditions.

*(d) There is extensive state-ownership in the steel sector*

*i. State-ownership of FISC input producers*

207. There is extensive state-ownership throughout China's steel industry.
208. In 2015, China Daily listed the 10 largest steel producers in China.<sup>83</sup> In order from largest to smallest they are:
- (a) Hebei Iron and Steel Co Ltd
  - (b) Wuhan Iron and Steel (Group) Co
  - (c) Baoshan Iron and Steel Co Ltd. (Baosteel)
  - (d) Jiangsu Shagang Co Ltd
  - (e) Bengang Steel Plates Co Ltd
  - (f) Shandong Iron and Steel Co Ltd
  - (g) Angang Steel Co Ltd

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<sup>82</sup> Public Attachment 31: Jamil Anderlini, "Chinese industry: Ambitions in excess" Financial Times (June 16, 2013).

<sup>83</sup> Public Attachment 32: Sun Chengdong, "Top 10 steel producers in China" China Daily (March 26, 2015).

- (h) Maanshan Iron and Steel Co Ltd
- (i) Taiyuan Iron & Steel (Group) Co Ltd, and
- (j) Beijing Shougang Co Ltd

209. Of these 10 companies, nine are state-owned enterprises or state-controlled enterprises where the GOC is the largest shareholder (only Jiangsu Shagang is privately owned).<sup>84</sup> These nine companies account for over 214 million tonnes of steel making capacity meaning they alone can meet over 30% of China's 2014 total steel consumption.<sup>85</sup> Each of these nine firms also produces steel plate and many produce structural steel sections.
210. The extent of state-ownership of China's steel mills is not precisely known. One report states that in 2013, 17 of China's largest 20 steel producers were state-owned.<sup>86</sup> A study commissioned by the US-China Economic and Security Review Commission concluded that "it is reasonable to conclude that steel production, like auto production, is predominantly state owned or controlled".<sup>87</sup> The commission also noted that according to China's Statistical Yearbook, "state-owned-or-controlled entities were responsible for 64 percent of gross output in the "smelting and pressing of ferrous metals" industry during 2009".<sup>88</sup>

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<sup>84</sup> Public Attachment 33: Financial Information for: Hebei Iron and Steel Co Ltd., Wuhan Iron and Steel (Group) Co., Baoshan Iron and Steel Co Ltd. (Baosteel), Bengang Steel Plates Co Ltd., Shandong Iron and Steel Co Ltd., Angang Steel Co Ltd., Maanshan Iron and Steel Co Ltd, Taiyuan Iron & Steel (Group) Co Ltd, and Beijing Shougang Co Ltd (Source: [www.4-traders.com](http://www.4-traders.com).)

<sup>85</sup> Public Attachment 34: World Steel Association, "World Steel Figures in 2015", p 16.

<sup>86</sup> Public Attachment 35: Wang Shuo, "Analysis of the Chinese steel industry under the perspective of government intervention" Master's Thesis, Berlin School of Economics and Law (June 28, 2014) at p. 25.

<sup>87</sup> Public Attachment 36: Andrew Szamoszegi and Cole Kyle (Capital Trade, Incorporated), "An Analysis of State-owned Enterprises and State Capitalism in China" prepared for US-China Economic and Security Review Commission (October 26, 2011) at p. 39.

<sup>88</sup> Public Attachment 36: Andrew Szamoszegi and Cole Kyle (Capital Trade, Incorporated), "An Analysis of State-owned Enterprises and State Capitalism in China" prepared for US-China Economic and Security Review Commission (October 26, 2011) at p. 39.

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211. The 2015 Steel Adjustment Plan prescribes that the 10 largest China steel companies are to have 60% of China's crude steel output by 2025. This will likely require further state supervised acquisitions and mergers. Given that 9 of China's 10 largest steel companies are already state-owned, it is foreseeable that state-owned and state-controlled steel companies will have more than a 60% share of China's crude steel production within a few years.
212. The GOC's extensive ownership or majority control of the majority of large Chinese steel producers means that these companies do not necessarily perform according to market conditions or to maximize profit. Instead, they produce and market steel according to GOC objectives and policies. Consequently, they can sell FISC inputs—including plate, hollow structural sections and structural steel sections—to FISC fabricators at non-market prices according to GOC policies, objectives and directions. These unreasonably priced inputs in turn manipulate the price at which FISC is produced and sold.

*ii. State-ownership of FISC producers*

213. As with other steel products, the GOC maintains ownership or control over FISC producers. While the extent of state ownership and control in the Chinese FISC industry is not public, the following enterprises are known to be state-owned or controlled:
- (a) Guangdong Qiguang Group Co., Ltd
  - (b) Shanghai Zhenhua Heavy Industries Company Limited ("ZPMC")
  - (c) Shanghai Baosteel Engineering & Technology Company Limited"
  - (d) Baosteel Construction Co., Ltd
  - (e) China Railway Baoji Bridge Group Co., Ltd
  - (f) China Construction Steel Structure Corp. Ltd
  - (g) China State Construction Engineering Corporation (CSCEC)
  - (h) United Steel Structures Ltd.
  - (i) Shandong Huaxing Steel Structure Co., Ltd. (listed on TSX, however, was previously an SOE and it is believed that GOC maintains controlling interest).
  - (j) Nanjing China Construction Chemical Equipment Manufacturing Co., Ltd.
  - (k) Shanghai COSCO Kawasaki Heavy Industries Steel Structure Co., Ltd.
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(l) Shanghai Metal Corporation

*(e) Government influence over Inputs*

214. In *Certain Aluminum Extrusions, Piling Pipe* and *Silicon Metal*, the President of CBSA held that the GOC may substantially determine prices of a good by determining the price of that good's inputs.<sup>89</sup> The major material input in FISC are other steel products, including hollow structural sections, plate, and hot-rolled structural sections. The Complainants submit that the GOC determines the price of these inputs, and that these prices are different than they would be under normal market conditions, through the GOC's control over state-owned and state-controlled steel enterprises.

i. *Steel Products*

215. In *Piling Pipe* the CBSA held that the Chinese domestic price of piling pipe was influenced by the GOC because the GOC influenced the price of hot-rolled coil, the primary input of piling pipe.<sup>90</sup> In reaching this finding the CBSA first analyzed the price difference for Hot-Rolled Band (another term for Hot-Rolled Coil). It found there was a 9% to 38% price differential between Chinese and US and European prices for Hot-Rolled Band and concluded that the reason for the differential was GOC policies affecting the Chinese price. It went on to conclude that the GOC's influence over Hot-Rolled steel affected the price of downstream products, in that case piling pipe:

[105] As hot-rolled steel is a commodity product freely traded on the world market, this apparent differential indicates that domestic prices of hot-rolled steel in China are not being determined under competitive conditions. This would also impact the domestic prices of downstream products such as steel piling pipe, since its manufacture involves the conversion of hot-rolled steel by forming and welding the substrate into a tubular form.

[106] Given that hot-rolled steel makes up the predominant cost of welded piling pipe, the domestic price distortion in hot-rolled steel would influence

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<sup>89</sup> *Piling Pipe*, Final Determination, Statement of Reasons, para 106; *Silicon Metal*, Final Determination – Statement of Reasons at para 105; *Aluminum Extrusions*, Final Determination – Statement of Reasons at Appendix 3

<sup>90</sup> *Piling Pipe*, Final Determination, Statement of Reasons, para 106

the domestic price in welded piling pipe. Based on the analysis, the information provides sufficient reason to believe that domestic welded piling pipe prices in China are not substantially the same as they would be if they were determined in a competitive market.

216. The Complainants submit that FISC is the same. Hot-Rolled steel, particularly plate and sections, are the primary material inputs for FISC. The Complainants estimate that steel inputs, including structural sections and plate, comprise 20% to 40% of their production costs.<sup>91</sup>
217. Table 3 shows the price of hot-rolled band and plate during the first month of each quarter from October 2014 through January 2016. Hot-Rolled Band is included because no plate figures were available for plate in Europe and because plate and band are produced on the same or similarly machinery, are marketed similarly, and their price trends generally parallel each other.

Table 3: SteelBenchmarker Prices<sup>92</sup>

Month	USA		Euro		China		China as % US		China as % Euro
	HRB	Plate	HRB	Plate	HRB	Plate	HRB	Plate	
October, 2014	\$721	\$945	\$552		\$415	\$416	58%	44%	75%
January, 2015	\$670	\$819	\$487		\$392	\$381	59%	47%	80%
April, 2015	\$504	\$660	\$432		\$330	\$338	65%	51%	76%
July, 2015	\$518	\$610	\$420		\$275	\$278	53%	46%	65%
October, 2015	\$478	\$559	\$397		\$259	\$261	54%	47%	65%

<sup>91</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>92</sup> Public Attachment 37: SteelBenchmarker: Price History – Tables and Charts (January 2016).

Month	USA		Euro		China		China as % US		China as % Euro
	HRB	Plate	HRB	Plate	HRB	Plate	HRB	Plate	HRB
January, 2016	\$425	\$513	\$352		\$251	\$246	59%	48%	71%

USA \$US/MT FOB Mill

China: \$US/MT Ex-Work

Western Europe: \$US/MT Ex-works

218. Table 3 shows that the Chinese price for Hot-Rolled Band was 25% and 47% below the Western European Price and US price during the October 2014 through January 2016 period and that Chinese Plate was priced 49% to 54% below the US price over the same period.
219. Table 4 compares the price of sections and beams in various parts of Europe, China and the USA. Only information for November and December 2015 was readily available to the Complainants.

Table 4: Beam and Section Prices (US\$/MT)<sup>93</sup>

Month	China Average	Europe Average	USA Import of Medium Section CFR	China \$ % Europe Average	China \$ as % of USA Imports
November, 2015	\$338	\$507	\$562	67%	60%
December, 2015	\$317	\$508	\$562	62%	56%

China: Average of Southern China and Eastern China domestic sections, ex-warehouse

Europe: Average of Northern Europe and Southern Europe domestic beams, ex-works

USA: Import of medium sections, CFR

<sup>93</sup> Public Attachment 38: Steel First, beam and sections pricing, November 2015 through December 2015.

220. Available data did not provide identical goods for Europe and China. However, steel sections and beams are both commodity products, produced on similar machines, by a similar process, with similar inputs, and are marketed through similar channels. Further, “sections” encompasses beams. As such, comparing the domestic price of sections from China to beams from Europe on a dollar per metric tonne basis does provide a reasonable accurate assessment of price differentials. Further, while the US sections import price includes the cost and freight (“CFR”), this price is a world price and the inclusion of CFR does not account for the significant price differential.
221. The data in Table 4 provides that sections from China are 33% to 38% lower than the price of beams from Europe. Further, the domestic price of Chinese sections is 40% to 44% below the price of imported sections into the US. Even if the CFR covered made up 10% of the US imported price, the Chinese domestic price remains significantly lower than the world price at which the US would have imported the sections.
222. As with hot-rolled coil in *Piling Pipe*, the Chinese domestic price of FISC inputs—steel sections, beams, and plate—are significantly below the world price for such goods and the reason for this is China’s administrative policies and measures with respect to steel. As these steel inputs make up the primary material input cost of FISC, the domestic distortion of the prices of these inputs would distort the price FISC.<sup>94</sup> As in *Piling Pipe*, the price distortion to FISC caused by inputs provides a reasonable basis upon which the CBSA may conclude that the Chinese domestic price of FISC is influenced by the GOC and is not what it would be in a market economy.

***(f) China’s steel industry is heavily subsidized***

223. The CBSA’s Statement of Reasons for Initiation in *Seamless Casings* provides that governments can indirectly determine an industry’s domestic price by providing direct

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<sup>94</sup> *Piling Pipe*, Final Determination, Statement of Reasons, para 106.

financial subsidies to producers and the existence of such subsidies is a factor that lends support to the initiation of a section 20 investigation.<sup>95</sup> As discussed in the subsidy section below, China's steel industry is heavily subsidized. This subsidization influences the price of steel, including FISC, and this influenced price is different than what it would be under market conditions.

224. Chinese steel firms in general are heavily reliant on these subsidies. In 2014, Reuters reported that 88% of Chinese steel firms received subsidies valued at US\$5.24 billion.<sup>96</sup> The same article reported that in the first-half of 2014, these subsidies accounted for 80% of Chinese steel firms' profits. These subsidies allow Chinese steel firms to market steel products at prices determined by factors other than the market, including at prices lower than they would be without government subsidization. Through these subsidies the GOC both influences the price of steel and this price is different than it would be if determined by the marketplace.
225. The Complainants submit that subsidies affect both FISC inputs and FISC producers. As discussed below, publicly available financial statements indicate that at least two Chinese enterprises that produce FISC have received government grants in the last several years.<sup>97</sup> Further, as discussed below, there is reason to believe that FISC producers receive more than actionable and prohibited subsidies than just grants.
226. The Complainants submit that a consequence of the extensive actionable and prohibited subsidies made available to FISC producers and exporters, and discussed further below, is that the GOC's indirect determination of FISC prices.

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<sup>95</sup> *Seamless Casings*, Initiation – Statement of Reasons (August 28, 2007) at para 53.

<sup>96</sup> Public Attachment 39: Fayen Wong, "Steel industry on subsidy life-support as China economy slows" Reuters (September 18, 2014).

<sup>97</sup> Public Attachment 40: Shanghai Zhenhua Heavy Industries Co., Ltd. Annual Report 2014, p. 194; Public Attachment 41: Baosteel, 2014 Annual report, p. 114, 116.

*(g) Government influence over purchase of subject goods in sufficient quantities*

227. Government purchases of substantial quantities of subject goods is an indication that China's domestic prices for the subject goods are determined by the GOC and are not what they would be if determined by the market.<sup>98</sup>
228. FISC is used in industrial construction and infrastructure projects, including oil and gas, mining, forestry, and energy. It follows that if state-owned and state-controlled enterprises purchase a substantial quantity of FISC, the GOC can influence the price of FISC so that it is other than what it would be in marketed conditions.
229. One estimate provides that Chinese SOE construction firms have a 50% share of China's construction industry.<sup>99</sup> This share is large enough that state-owned enterprises could influence the price of steel, and FISC in particular, and this price is different than it would otherwise be in a market economy.
230. Particular examples of large state-owned construction enterprises that would purchase a significant amount of FISC include:
- a) China State Construction & Engineering Corporation—Forbes ranked it the 37<sup>th</sup> largest company in the world and 7<sup>th</sup> largest company in China in 2014 with revenues equal to US\$129.9 billion. In 2012, the Economist reported that it was the largest construction firm in the world.<sup>100</sup> A review of the corporate structure of CSCEC, a group with US\$13.9 billion of assets, indicates that the firm has

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<sup>98</sup> *Aluminum Extrusions*, Final Determination – Statement of Reasons at Appendix 3.

<sup>99</sup> Public Attachment 36: Andrew Szamosszegi and Cole Kyle (Capital Trade, Incorporated), "An Analysis of State-owned Enterprises and State Capitalism in China" prepared for US-China Economic and Security Review Commission (October 26, 2011) at p. 40.

<sup>100</sup> Public Attachment 42: "Great wall builders" The Economist (October 27, 2012).

116 subsidiaries in China alone, the majority of which are in construction and construction-related industries.<sup>101</sup>

- b) China Railway Engineering Corporation—the 11<sup>th</sup> largest company in China in 2014 according to Forbes. Its 2014 revenue was US\$99.5 billion. In 2012 the Economist ranked it the third largest construction company in the world, superseded by China State Construction & Engineering Corporation and China Railway Construction.<sup>102</sup> The is involved in more than just railways; its website states that it is “a mega corporation group integrating survey and design, construction and installation, industrial manufacturing, real estate development, resources and mineral products, financial investment and other services”.
- c) China Railway Construction Corporation—in 2012 the Economist reported it was the second largest construction company in the world.<sup>103</sup>
- d) China State Construction International Holdings Limited (CSCIHL)—majority owned by China State Construction & Engineering Corporation, CSCIHL is based in Hong Kong but is active in China’s mainland construction.<sup>104</sup>

231. There is also extensive state-ownership among owners of Chinese enterprises that would purchase FISC for industrial purposes. In the case of oil and gas, it is reported that the

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<sup>101</sup> Public Attachment 36: Szamosszegi, A. and C. Kyle, An Analysis of State-owned Enterprises and State Capitalism in China, U.S.-China Economic and Security Review Commission, (October 26, 2011), p. 20, 60, 88 [“Szamosszegi and Kyle”].

<sup>102</sup> Public Attachment 42: “Great wall builders” The Economist (October 27, 2012).

<sup>103</sup> Public Attachment 42: “Great wall builders” The Economist (October 27, 2012).

<sup>104</sup> Public Attachment 43: China State Construction Int’l Holdings: Business Summary (4-Traders) available at: <http://www.4-traders.com/CHINA-STATE-CONSTRUCTION-1847990/company/>; Public Attachment 44: China State Construction International Holding Ltd., “About US”, online: <http://www.csci.com.hk/cscec/portals/p2/a/page0104.aspx>; Public Attachment 45: Everything Explained.At, “China Construction International Holdings Explained”, online: [http://everything.explained.at/China\\_State\\_Construction\\_International\\_Holdings/](http://everything.explained.at/China_State_Construction_International_Holdings/).

five largest Chinese oil and gas firms are all state-owned enterprises: China Petroleum & Chemical Corp.; China National Petroleum Corporation; China National Offshore Oil Corporation; Sinochem Group; Yangchang Petroleum.<sup>105</sup> These enterprises are very large and carry significant purchasing power. China National Offshore Oil Corporation is estimated to be the 12<sup>th</sup> largest enterprise in all of China with 2014 revenues of US\$99.2 billion.<sup>106</sup>

232. The Chinese mining industry is also a major purchaser of Chinese industrial FISC and largely state-owned. A 2011 World Bank study reported that in 2008 Chinese state-owned enterprises accounted for 100% of China's metal mining sector.<sup>107</sup> The report goes on to state that "the Chinese mining sector is still largely under state control whether by central government or by regional or local authorities".<sup>108</sup> While there has been some "partial privatization" of Chinese metal mining firms, the GOC maintains predominant ownership and control of the industry.
233. GOC control of major Chinese construction firms, who would procure FISC, and owners of projects that would consume industrial FISC means that the GOC has sufficient purchasing power to influence the Chinese domestic price of FISC and render this price different than it would be in a competitive market.

*(h) Strategic Emerging Industries*

234. The GOC has identified seven "strategic emerging industries" ("SEI") that the GOC wishes to see as "the backbone of China's next phase of industrial modernization and

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<sup>105</sup> Public Attachment 46: J. William Carpenter, "The 5 Biggest Chinese Oil Companies (SNP)" Investopedia (September 15, 2015) available at <http://www.investopedia.com/articles/markets/091515/5-biggest-chinese-oil-companies.asp>.

<sup>106</sup> Public Attachment 36: Szamosszegi and Kyle, *supra*.

<sup>107</sup> Public Attachment 47: World Bank, Overview of State Ownership in the Global Minerals Industry (2011), p. 10, Table 3.

<sup>108</sup> Public Attachment 47: World Bank, Overview of State Ownership in the Global Minerals Industry (2011), p. 22.



technological development”.<sup>109</sup> One of the SEIs is “new materials” and one of the GOC’s objectives with this SEI is to “develop advanced structural materials, such as high-quality special steel, [...]”.<sup>110</sup> The Complainants submit that FISC, or FISC components and inputs, fall within this objective.

235. The GOC has issued a number of policy documents concerning SEIs.<sup>111</sup> These policies include indicia that the CBSA has previously identified as supporting the conclusions that the GOC influences prices of subject goods in China’s domestic market and that these prices are not what they would be under market conditions.
236. The initial policy pertaining to SEIs was the 2010 State Council Decision on Accelerating the Development of Strategic Emerging Industries.<sup>112</sup> This policy listed the seven SEI categories, including structural material made from steel. This policy also specified that SEIs are to account for 8 percent of China’s GDP by 2015 and 15% by 2020.<sup>113</sup>
237. Numerous SEI policies and directives have subsequently been issued by the GOC and sub-central governments, including:
- (a) 12th Five-Year Plan on New Materials Industry Development, Ministry of Industry and Information Technology (4 January 2012);<sup>114</sup>

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<sup>109</sup> Public Attachment 48: US-China Business Council, “China’s Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations” (March 2013), p. 1.

<sup>110</sup> Public Attachment 48: US-China Business Council, “China’s Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations” (March 2013), p. 14.

<sup>111</sup> Public Attachment 48: US-China Business Council, “China’s Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations” (March 2013), pp. 4-5.

<sup>112</sup> Public Attachment 48: US-China Business Council, “China’s Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations” (March 2013), pp. 4-5.

<sup>113</sup> Public Attachment 48: US-China Business Council, “China’s Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations” (March 2013), pp. 4-5.

<sup>114</sup> Public Attachment 49: Request From The United States To China Pursuant To Article 25.10 Of The Agreement, G/SCM/Q2/CHN/53 (October 19, 2015), p. 5.

- (b) 12th Five-Year Special Plan on High Quality Specialized Steel Technology Development, Ministry of Science and Technology (6 August 2012).<sup>115</sup>
- (c) State Council 12th Five Year Plan (FYP) on Development of Strategic Emerging Industries;<sup>116</sup> and
- (d) Sub-Central 12<sup>th</sup> Five-Year Plans for Strategic Emerging Industries Development for: Jiangsu Province, Shanghai Municipality, Guangdong Province, Sichuan Province.<sup>117</sup>

238. The Complainants have been unable to find information about the specific policy measures within these specific 12<sup>th</sup> Five-Year plans. However, it is reasonable to assume that they would include policies of a similar nature to the 12<sup>th</sup> Five-Year plan for Iron and Steel.

239. The US has identified numerous separate and specific funding measures for SEIs that may be countervailable.<sup>118</sup> As discussed above, the CBSA has previously recognized that governments can indirectly determine an industry's domestic price by providing direct financial subsidies to producers and the existence of such subsidies is a factor that lends support to the initiation of a section 20 investigation.<sup>119</sup>

*(i) Industry designation as a "pillar" or "strategic" industry*

240. In *Carbon Steel Welded Pipe* the CBSA found that the GOC had made steel "pillar industry". The President noted:

There are differences between a socialist market economy and a market economy. The main difference being the government involvement in various industrial sectors deemed to be important to the GOC. For example, the

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<sup>115</sup> Public Attachment 49: Request From The United States To China Pursuant To Article 25.10 Of The Agreement, G/SCM/Q2/CHN/53 (October 19, 2015), p. 5.

<sup>116</sup> Public Attachment 48: US-China Business Council, "China's Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations" (March 2013), p. 5.

<sup>117</sup> Public Attachment 49: Request From The United States To China Pursuant To Article 25.10 Of The Agreement, G/SCM/Q2/CHN/53 (October 19, 2015), p. 5-6.

<sup>118</sup> Public Attachment 49: Request From The United States To China Pursuant To Article 25.10 Of The Agreement, G/SCM/Q2/CHN/53 (October 19, 2015), p. 2-3.

<sup>119</sup> *Seamless Casings*, Initiation – Statement of Reasons (August 28, 2007) at para 53.

GOC has identified two industry groups where the GOC must maintain a degree of control. The two groups are "strategic industries" and "pillar industries". [...] For "pillar industries", the GOC should maintain relatively strong control over the principal companies, which is a minimum of 50% GOC equity in the principal enterprises in the industry group. Based on this information, it is the view of the CBSA that the GOC considers the iron and steel industry to be a "pillar industry" and subject to these conditions.<sup>120</sup> (Citations omitted)

241. There is no evidence that steel has lost its status as a "pillar" industry.

*(j) Taxes that manipulate exports and imports*

242. The GOC maintains a 25% export tax on steel slab.<sup>121</sup> Steel slab is the major input for plate, which in turn is a major input for FISC. By placing a high tax on exported slab, the GOC ensures greater availability of this input in the Chinese market at prices below those that would arise in the absence of an export tax. In turn, this lowers influences the price of FISC inputs, such as plate. The circumstances are essentially the same as those discussed in respect of the export tax on aluminum in *Certain Aluminum Extrusions*.<sup>122</sup>

*(k) Existing section 20 findings with respect to inputs*

243. Plate is a major input into FISC and hot-rolled coil is a major component of hollow structural sections, which is sometimes used as a FISC input. Canada has anti-dumping findings against hot-rolled steel plate and hot-rolled coil from China. In the most recent Expiry Review of the Plate finding the CBSA held, "In respect of each of these two products [hot-rolled sheet and plate], the President has consistently maintained the opinion under section 20 that domestic prices are substantially determined by the Government of China (GOC) and that there is sufficient reason to believe that they are

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<sup>120</sup> *Carbon Steel Welded Pipe (China)*, Statement of Reasons (August 5, 2008) at pp 36-37.

<sup>121</sup> Public Attachment 50: Keith Tan and Lucy Tang, "China keeps export duty on semis, long steel products unchanged for 2015" *Platts* (December 16, 2014).

<sup>122</sup> *Certain Aluminum Extrusions*, Statement of Reasons, Appendix 3 – Summary of Findings – Section 20 (March 3, 2009).

not substantially the same as they would be if they were determined in a competitive market.”<sup>123</sup>

244. Another major input into FISC is unworked steel beams. The Republic of Korea launched an anti-dumping investigation into Chinese beams but it was halted in May 2015 following an undertaking by Chinese producers.<sup>124</sup>

#### **6. Proposed Surrogate Country and Methodology**

245. The President has a significant body of evidence that the GOC and local government substantially determine Chinese domestic prices in the FISC market and that there is sufficient reason to believe that Chinese domestic prices are not substantially the same as they would be in a competitive market. Consequently, the President should determine Chinese normal values pursuant to section 20 of SIMA.
246. With respect to the application of section 20 of SIMA, it is important to note that in China’s WTO Accession Protocol, the GoC agreed that normal values could be calculated using:

[M]ethodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.<sup>125</sup>

247. The Complainants believe that information on costs of production of like FISC in Korea is an appropriate surrogate to use for actual costs in China. Producers in Korea export substantial volumes of FISC and pay wages substantially lower than Canada. However,

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<sup>123</sup> CBSA, *Certain Hot Rolled Steel Plate*, RR-2012-001, Statement of Reasons (September 7, 2012) at para 124.

<sup>124</sup> Public Attachment 51: “Watchdog accepts Chinese mills’ offer to hike steel beam prices” Korea Herald (May 15, 2015).

<sup>125</sup> Public Attachment 52: World Trade Organization, Accession Protocol of the People’s Republic of China, WT/L/432, (November 23, 2001), art. 15(a)(ii), (d) [“WTO Accession Protocol of China”].

the costs of steel materials used by the FISC producers in Korea are based on international market-based pricing.

248. In connection with the request that CBSA apply section 20 of SIMA, the Complainants have also calculated normal values for Chinese Subject Goods using their own costs of production for the specific FISC required for the same project, appropriately adjusted to reflect differences in labor costs between Korea and Canada. These normal values, when compared to the export prices, discussed above, also show significant margins of dumping.
249. As per their SIMA section 19 calculations for South Korea, the Complainants have used their material costs, 62.4% of their labour costs, 19.1% of cost of goods to calculate SG&A, 7.1% of cost of sales for to calculate profit, and 0.7% of cost of sales to calculate financial expenses.

#### **7. Conclusion**

250. The Complainants submit there is ample evidence on the record to justify the initiation of a section 20 inquiry. The evidence demonstrates that the GoC imposes comprehensive measures, through direct and indirect government action, that have significantly influenced the Chinese FISC industry. The information before the President establishes that the prices in China for FISC are not substantially the same as they would be in a competitive market.
251. The CBSA should, at the initiation of an anti-dumping investigation, initiate a Section 20 inquiry and send section 20 questionnaires to all known exporters and producers of subject goods FISC in China as well as the GoC, requesting detailed information related to the Chinese industry producing FISC.

#### **E. Export Price**

252. The Complainants calculated the FOB export price based on actual sale prices in Canada of FISC based on commercial intelligence gathered by the Complainants. In general, the

FOB price will be higher, and therefore more advantageous to exports when calculating dumping margins, than ex-works pricing.

253. Where appropriate the Complainants deducted amounts for freight, handling, duties and importer margin.

*(a) China and Korea*

254. The Complainants assume that shipping costs are approximately the same for FISC shipped from South Korea and China.

255. FISC is generally shipped in 40 foot containers, with approximately 15 to 20 MT per container. Supreme received a quote to ship FISC from [ ] to Edmonton, Alberta at a price of \$5,298 per 40 foot container.<sup>126</sup> Assuming each container holds an average of 17.5 MT, this is equal to approximately \$303/MT.

256. Where appropriate, the Complainants have deducted \$303/MT from estimated Chinese and Korean bid priced in order to calculate an ex-works export price. This deduction does not include deductions for costs such as insurance or inland freight within the export country and as such is conservative.

*(b) Spain and the UK*

257. The Complainants assume that shipping costs are approximately the same for FISC shipped from the UK and Spain.

258. Supreme received a quote to ship FISC from [ ], Spain to Anceson, Alberta, just outside Edmonton, at a price of \$10,595 per 40 foot container.<sup>127</sup> This is equal to approximately \$605/MT, assuming there is an average of 17.5 MT of FISC per container.

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<sup>126</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>127</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

259. Where appropriate, the Complainants have deducted \$605/MT from estimated Spanish and UK bid prices in order to calculate the ex-works export price. This deduction does not include costs for insurance or inland freight within the export country and as such is conservative.

**F. Dumping Margins**

260. The Complainants were only able to do to a limited number of dumping calculations. In the case of many projects awarded to Subject Goods, the Complainants were not invited to bid. Consequently, the Complainants do not have their costs upon which to calculate normal values. Further, competitors' bid prices are not readily available in the FISC industry. Information about Subject Good costs and pricing is particularly difficult to obtain by the Complainants with respect to a particular project when no member of the domestic industry was invited to bid or quote on the project. Consequently, for many projects the Complainants were unable to complete dumping calculations.
261. Confidential Attachment 53 provides dumping and subsidy calculations for a number of projects. Commercial intelligence underlying export prices is found in the respective Statements of Jim Kanerva, Jean-Francois Blouin and Paul Zubick.<sup>128</sup> Based upon the section 19 and 20 analysis discussed above, all goods from the Subject Countries were found to have been dumped at the following margins:

**1. China**

**(a) Fort Hills – Utilities and Offsite**

262. Waiward completed a dumping calculation with respect to Chinese Subject Goods used for the Utilities and Offsite portion of the Fort Hills Project in Alberta.<sup>129</sup> The EPC

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<sup>128</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick; Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>129</sup> Confidential Attachment 53: Dumping and Subsidy Calculations; Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

responsible for the procurement of this steel was Fluor Canada Ltd.<sup>130</sup> The export price was calculated at \$[ ], based on commercial intelligence available to the Complainant.<sup>131</sup> It was the Complainant's understanding that this price was FOB or ex-works. Pursuant to section 19 the Chinese normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.<sup>132</sup>

263. Pursuant to section 20 the Chinese normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.<sup>133</sup>

264. It is estimated that the FISC for this project will have been delivered between the second quarter of 2015 and the third-quarter of 2016. It is believed that the supplier is Baosteel.

*(b) CNRL Train 4&5 – HWS4*

265. Supermetal completed a dumping calculation with respect to Chinese Subject Goods used for CNRL's Train 4&5 – HWS4 project.<sup>134</sup> The EPC on the project was Krupp. The export price was calculated at \$[ ], based on commercial intelligence available to the Supermetal about the bid price and shipping costs.<sup>135</sup> It was Supermetal's understanding that this price was FOB or ex-works. Pursuant to section 19 the Chinese normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.<sup>136</sup>

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<sup>130</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>131</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>132</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>133</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>134</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>135</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>136</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.



266. Pursuant to section 20 the Chinese normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.<sup>137</sup>

267. It is estimated that the FISC for this project would have been delivered in the first-half of 2015. The supplier's name is not known.<sup>138</sup>

*(c) Fort Hills OPP*

268. Waiward completed a dumping calculation with respect to Chinese Subject Goods used for Fort Hills – Ore Preparation Plant Project.<sup>139</sup> The EPC on the project was FAM Canada. Waiward did not bid the project; however, it did construct the project and it had supplied FISC on a very similar OPP. On this basis, it estimated the domestic costs and price to supply FISC for this project.<sup>140</sup> Pursuant to section 20 of SIMA, the estimated Chinese normal value was calculated at \$[ ].<sup>141</sup> The export price, ex-works, was calculated at \$[ ], based on commercial intelligence available to the Waiward about offshore pricing and shipping costs.<sup>142</sup> This results in a section 20 estimated dumping margin of [ ]%.<sup>143</sup>

269. It is estimated that the FISC for this project would have been delivered between late 2014 and late 2015. It is believed that the supplier was one of, or a combination of Shanghai

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<sup>137</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>138</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>139</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations

<sup>140</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>141</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations

<sup>142</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>143</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

Baoye Group Corp. Ltd., Sunhel Heavy Industry Group Co. Ltd. (AKA Seward Group Co. Ltd.) or Jiangyin huaerli Euipment Co., Ltd.<sup>144</sup>

***(d) Mosaic – K2 and K3***

270. Waiward completed a dumping calculation with respect to Chinese Subject Goods to be imported for the K2 and K3 projects at Mosaic's potash mine in Saskatchewan.<sup>145</sup> The EPC responsible for the procurement of this steel is ThyssenKrupp Industrial Solutions (Canada) Inc. The export price, ex-works, was calculated at \$[ ], based on commercial intelligence available to Waiward for the bid price and by removing shipping costs.<sup>146</sup> Pursuant to section 19 the Chinese normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.<sup>147</sup> Pursuant to section 20 the Chinese normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.<sup>148</sup>

271. It is estimate that the FISC for the project will be delivered between August 2016 and March 2017.

**2. South Korea**

***(a) Fort Hills – Secondary Extraction Facility***

272. Waiward completed a dumping calculation with respect to South Korean Subject Goods used for the Extraction Facility portion of the Fort Hills Project in Alberta.<sup>149</sup> The EPC

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<sup>144</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>145</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>146</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>147</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>148</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>149</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations.

responsible for the procurement of this steel was SK Engineering. The export price, ex-works, was calculated at \$[ ], based on commercial intelligence available to Waiward for the bid price and by removing shipping costs.<sup>150</sup> Pursuant to section 19 the Korean normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.<sup>151</sup>

273. It is estimated that the FISC for this project will be delivered between the first quarter of 2015 and the third quarter of 2016. It is believed that the Korean supplied was Hanmaek Heavy Industries.<sup>152</sup>

*(b) NRWP – Sturgeon Refinery - Units 50-60*

274. Supreme completed a dumping calculation with respect to South Korean Subject Goods used for the Units 50-60 of the North Redwater Project's Sturgeon Refinery.<sup>153</sup> The EPC responsible for the procurement of this steel was TR Canada. The export price, ex-works, was calculated at \$[ ], based on commercial intelligence available to Supreme.<sup>154</sup> Pursuant to section 19 the Korean normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.
275. It is estimated that the FISC for this project would have been delivered between the second half of 2014 and 2015. It is believed that the Korean supplied was Hanmaek Heavy Industries.<sup>155</sup>

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<sup>150</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>151</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>152</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>153</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>154</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>155</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

*(c) Kearl Expansion Crusher*

276. Waiward completed a dumping calculation with respect to South Korean Subject Goods used for Imperial Oil's Kearl Expansion Crusher.<sup>156</sup> The EPC on the project was Krupp Canada. The FISC is believed to have been supplied by Seah Steel from South Korea. Waiward did not bid the project; however, it did construct the project and it had supplied FISC on a very similar crusher. On this basis, it estimated the domestic costs and price to supply FISC for this project.<sup>157</sup> Pursuant to section 19 of SIMA, the estimated Korean normal value was calculated at \$[ ].<sup>158</sup> The export price, ex-works, was calculated at \$[ ], based on commercial intelligence available to the Waiward about offshore pricing and shipping costs.<sup>159</sup> This results in a section 19 estimated dumping margin of [ ]%.<sup>160</sup>
277. It is estimated that FISC for this project would have arrived between the last quarter of 2013 and the first half of 2014.

**3. Spain**

278. Supreme completed a dumping calculation with respect to Spanish Subject Goods used for CNRL's U31, U31 and U32 facilities at the Horizon development in Alberta.<sup>161</sup> The EPC responsible for the procurement of this steel was TR Canada Inc. The export price was calculated at \$[ ], based on commercial intelligence available to the

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<sup>156</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>157</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>158</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations

<sup>159</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>160</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>161</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick; Confidential Attachment 53: Dumping and Subsidy Calculations.

Complainant.<sup>162</sup> Pursuant to section 19 the Spanish normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.

279. It is estimated that the FISC for this project would have been imported between the second-quarter of 2013 and the third-quarter of 2014. It is believed that Califer SA supplied the FISC.<sup>163</sup>

#### **4. UK**

280. Supermetal completed a dumping calculation with respect to UK Subject Goods used for Vale's Long Harbour Project in Newfoundland. The EPC for the project was Fluor Canada. The export price was estimated at \$[ ], based on commercial intelligence available to Supermetal.<sup>164</sup> Pursuant to section 19 of SIMA, the UK normal value for this project was estimated at \$[ ], resulting in dumping margin of [ ]%. It is believed that the FISC for this project would have arrived between 2011 and 2014 and that it was supplied by William Hare.<sup>165</sup>

#### **5. United Arab Emirates**

281. Waiward completed a dumping calculation with respect to UAE Subject Goods used for CNRL's Unit 45 Combined Hydrotreating Unit in Alberta.<sup>166</sup> The EPC responsible for the procurement of this steel was [ ]. The export price was calculated at \$[ ], based on commercial intelligence available to the Complainant.<sup>167</sup> Pursuant

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<sup>162</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>163</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>164</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>165</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>166</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>167</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 53: Dumping and Subsidy Calculations.

to section 19 of SIMA the UAE normal value was calculated at \$[ ], which results in a dumping margin of [ ]%.

282. It is believed that the FISC for this project was supplied by William Hare UAE and that it will arrive between the last quarter of 2015 and the third quarter of 2016.

### III. Evidence of Subsidization by China

#### A. Introduction

283. The Complainants submit that FISC producers located in China benefit from substantial subsidies conferred by federal and sub-federal levels of government. The information reasonably available to the Complainants makes clear that most of these subsidies are specifically provided to producers of Subject Goods and have provided countervailable benefits to FISC production.
284. As detailed below, the subsidies conferred on Chinese producers of Subject Goods are not negligible or insignificant and exceed the applicable thresholds set forth in the SIMA and Article 27 of the *WTO Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”).
285. The following sources, among others, are relied upon: past CBSA countervailing duty findings; U.S. Department of Commerce investigations and past countervailing duty findings; industry reports; government documents; WTO Trade Policy Review, and general news articles and publications.
286. In situations where information is reasonably available to the Complainants regarding the amount of subsidy, that information is provided below. In other circumstances, the Complainants have general information about subsidy programs that should be further investigated to ascertain the level of subsidization conferred on export of Subject Goods from China.

287. The Complainants submit, however, that the subsidy programs described in this section do not cover all actionable benefits conferred by the Chinese Government and requests that CBSA seek further information from the Government of China, including state and local governments, and from exporters to determine with greater precision the full extent of specific subsidies conferred on Chinese producers of Subject Goods.

**B. Relevant provisions of SIMA**

288. SIMA subsection 2(1) defines a subsidy as:

(a) a financial contribution by a government of a country other than Canada in any of the circumstances outlined in subsection (1.6) that confers a benefit to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods, but does not include the amount of any duty or internal tax imposed by the government of the country of origin or country of export on

(i) goods that, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of remission, refund or drawback,

(ii) energy, fuel, oil and catalysts that are used or consumed in the production of exported goods and that have been exempted or have been or will be relieved by means of remission, refund or drawback, or

(iii) goods incorporated into exported goods and that have been exempted or have been or will be relieved by means of remission, refund or drawback, or

(b) 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;

289. SIMA subsection 2(1.6) prescribes what is a “financial contribution”:

For the purposes of paragraph (a) of the definition “subsidy” in subsection (1), 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.

SIMA subsection 2(7.2) provides that a subsidy is specific where it is:

(a) limited, pursuant to an instrument or document referred to in paragraph (7.1)(b), to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or

(b) a prohibited subsidy.

290. SIMA subsection 2(7.3) provides that despite a subsidy not being limited in a manner set out in subsection 2(7.2) of SIMA, the President of the CBSA may, having regard to the following factors, determine that the subsidy is specific:

(a) there is exclusive use of the subsidy by a limited number of enterprises;

(b) there is predominant use of the subsidy by a particular enterprise;

(c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and

(d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

291. In *Canada — Measures Relating to the Feed-in Tariff Program*, a WTO Panel re-affirmed that a financial contribution confers a benefit within the meaning of Article 1.1(b) of the SCM Agreement if it provides an advantage to its recipient.<sup>168</sup> The panel also affirmed that the existence of an advantage is to be determined by comparison of the recipient with and without the financial contribution. Further, it noted that “the marketplace provides an appropriate basis for [making this] comparison”.<sup>169</sup>

292. The Complainants submit that in calculating the level of subsidization, a period of 8 years is suitable for determining the average useful life for production assets in the FISC

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<sup>168</sup> Public Attachment 54: *Canada — Measures Relating to the Feed-in Tariff Program*, WT/DS412/R, WT/DS426/R (December 19, 2012) at para 7.271.

<sup>169</sup> Public Attachment 54: *Canada — Measures Relating to the Feed-in Tariff Program*, WT/DS412/R, WT/DS426/R (December 19, 2012) at para 7.271.



industry. The Complainants requests that CBSA investigate any allocable, non-recurring subsidies or countervailable benefits granted during the subsidy POI, and any outstanding loans, recurring subsidies provided during the POI.

293. This Complaint list programs identified as potentially conferring actionable or prohibited subsidies on Chinese producers and exporters of FISC. These programs are discussed below under the following headings, where applicable:

1. Special Economic Zones (SEZ);
2. Special Export Designations;
3. Grants;
4. Preferential Loan Programs;
5. Preferential Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Goods/Services Provided by the Government at Less than Fair Market Value;
8. Reduction in Land Use Fees;
9. Sale of Goods to State-Owned Enterprises;
10. Support for Strategic Emerging Industries.

294. The Complainants request that the CBSA investigate whether these programs, as well as others which may be found to exist, confer countervailable subsidies or prohibited subsidies upon Chinese solar modules producers.

295. Public Attachment 55 lists Chinese programs identified by the United States as countervailable, but which are not included in China's only subsidy notification pursuant to Article XVI:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 25.2 of the SCM Agreement.<sup>170</sup> The Complainants requests that the CBSA investigate these programs to the extent they are applicable to FISC.

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<sup>170</sup> Public Attachment 55: "Request from the United States to China Pursuant to Article 25.10 of the Agreement", WTO Doc. G/SCM/Q2/CHN/42 (October 11, 2011).

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296. Below is a discussion of particular laws, regulations, policies and programs that the Complaints submit are countervailable.

**C. Special Economic Zones (SEZ)**

297. Various Chinese manufacturers of FISC operate in special economic zones (“SEZ”) and therefore may benefit from countervailable subsidies made available to producers and exporters located in these zones.

**1. Anhui**

298. The Anhui province is home to at least two producers of FISC.<sup>171</sup> The province has numerous preferential policies that confer actionable and prohibited subsidies. A GOC website lists nine “Preferential Policies for Foreign Investment in Anhui Province”. This includes the following:

- a) *Reduced enterprise income tax rate.* Foreign-invested enterprises operating in Anhui are entitled to a reduced or exempted income tax rate depending on their sector. This exemption is a financial contribution in the form of foregone revenue to the government and thereby confers a benefit on the recipient. These benefits are actionable as they are specific to certain industries and only available to foreign-invested enterprises operating in the zone.
- b) *Import Duty Exemption*—Foreign-invested enterprises operating in the zone are entitled to duty free import of “production equipments [*sic*] and technology” and “Equipment and related technology, spare parts and accessories imported for technical innovation”. This exemption is a financial contribution in the form of foregone revenue to the government and thereby confers a benefit on the

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<sup>171</sup> Public Attachment 3: List of Potential Exporters: 1) Hang Xiao Steel Co., Ltd. (aka HangXiao Steel Structure Co. Ltd) has a subsidiary (Anhui Hang Xiao Steel Co., Ltd.) in the area; 2) Changjiang & Jinggong Steel Building Group Co Ltd.

recipient. This benefit is actionable as it is only available to those enterprises operating in the zone.

- c) *VAT Tax Exemption*—Equipment purchased by foreign invested enterprises in encouraged industries are entitled to a full refund of the value-added tax. This exemption is a financial contribution in the form of foregone revenue to the government and thereby confers a benefit on the recipient in the form of lower tax payments. This benefit is actionable as it is only available to those enterprises operating in the zone. It is not known if FISC is an encouraged industry, however, the Complainants request that the CBSA investigate.

## 2. Xiamen Province

299. At least one FISC producer operates in Xiamen Province. Preferential policies in Xiamen confer actionable subsidies on enterprises operating in the zone.<sup>172</sup>

- a) *Corporate Income Tax Reductions and exemptions.* “Foreign funded enterprises” that are small or who are “low-profit” are entitled to a reduced income tax rate. “Hi-tech enterprises that demand key supports from the state” are entitled to further reduced corporate income tax rates. In addition, hi-tech enterprises are entitled to a two-year tax corporate exemption and three-year half-exemption on corporate income taxes. These reductions and exemptions are a financial contribution in the form of foregone revenue to the government and confer a benefit on the recipient as they retain revenue that would otherwise be paid to government. These benefits are actionable as they are only available to those enterprises operating in a particular area.

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<sup>172</sup> Public Attachment 56: Guide to Investment in Xiamen, “Preferential Policies (1)”.

- b) *Investment Credits*—enterprises may also benefit from special tax deductions—equal to a portion of investment—for venture capital investments in any industry where such investments are “preferential supported and encouraged by the state”. Steel is a preferential industry in China. These deductions are a financial contribution in the form of foregone revenue to the government and thereby confer a benefit on the recipient. These benefits are actionable as they are specifically available only to those enterprises operating in a particular area and that are “preferentially supported” by the state. The program makes a financial contribution by way of the GOC foregoing revenue otherwise due and confers a benefit on the recipient as they retain revenue that would otherwise be paid to government.

### 3. Guangdong Province

300. A number of FISC producers are known to operate in Guangdong Province, and several operate in either the Guangzhou or Shenzhen Special Economic Zones.<sup>173</sup>
301. Preferential policies in the Shenzhen Special Economic Zone confer actionable or prohibited subsidies on enterprises operating within the zone.<sup>174</sup>
- a) *Corporate Income Tax Reductions and Exemption* – foreign-invested enterprises are entitled to a decreased income tax rate (15% rather than 30%) and a flat local tax rate of 3%. Foreign-invested firms are also entitled to a two-year exemption on corporate income tax. Further, “certified enterprises-for-export” are entitled to a reduced corporate tax rate of 10% if they export 70% or more of their production. These reductions and exemptions are a financial contribution in the

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<sup>173</sup> Public Attachment 3: List of Potential Exporters: Guangzhou Delsun Steel Structure Co. LTD; United Steel Structures Ltd.; China Construction Steel Structure Corp. Ltd.

<sup>174</sup> Public Attachment 57: “Industry Policies of the Shenzhen Special Economic Zone”.

form of foregone revenue to the government and thereby confer a benefit on the recipient. These benefits are actionable as they are only available to those enterprises operating in a particular area. The reduced tax rate conditional on export is an export subsidy and thereby prohibited.

- b) *Reduced land use fees* – certified enterprises-for-export may be entitled to a reduction of 50% of their land use fee. The program makes a financial contribution by way of the GOC foregoing revenue otherwise due and confers a benefit on the recipient as they retain revenue that would otherwise be paid to government. The program is specific as it is only available to certified enterprises for export.

302. Preferential policies in the Guangzhou Special Economic Zone confer actionable or prohibited subsidies on enterprises operating within the zone.<sup>175</sup>

- a) *Real Estate Tax* – companies operating the Guangzhou Development District are entitled to exemption from real estate taxes for 3 to 5 years. These exemptions are a financial contribution in the form of foregone revenue to the government and this financial contribution confers a benefit on the recipient. These benefits are actionable as they are only available to those enterprises operating in a particular area.
- b) *Free Licences* – companies operating in certain sectors of the Guangzhou Development District are entitled to free licences depending on their location or if they are an encouraged industry. These exemption of licence fees are a financial contribution in the form of foregone revenue to the government and

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<sup>175</sup> Public Attachment 58: Guangzhou Development District “Guidebook: Preferential Policies”.

thereby confer a benefit on the recipient. These benefits are actionable as they are only available to those enterprises operating in a particular area.

- c) *VAT Rebates*—companies operating in certain sectors of the Guangzhou Development District are entitled to VAT exemptions. These rebates are a financial contribution in the form of foregone revenue to the government and thereby confer a benefit on the recipient. These benefits are actionable as they are only available to those enterprises operating in a particular area.

#### **4. Other special economic zones**

303. Additional special economic zones also exist within China.<sup>176</sup> The Complainant requests that the CBSA also investigate whether other FISC producers or exporters exist within these zones and whether those producers or exporters benefit from actionable or prohibited subsidies.

#### **D. Grants**

304. The CBSA has previously recognized many programs that potentially confer countervailable benefits in the form of grants upon Chinese enterprises. Although grant information is not public and the details only known to the GOC and recipients, information provided below demonstrates that the manufacturers and exporters of FISC have most likely benefited from one or more such grants, reductions, write-offs and other specific financial contributions by government, which are countervailable subsidies.

##### **1. Grant programs previously found actionable**

305. In *Aluminum Extrusions*, the CBSA determined that one or more Chinese producers of aluminum extrusions benefited from countervailable grant programs, including: Research & Development Assistance Grants; Superstar Enterprise Grants; Matching funds for

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<sup>176</sup> Public Attachment 59: Wikipedia.org, “Special Economic Zones of the People’s Republic of China”.

international market development for small and medium enterprises (“SME”); One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”; Export Brand Development Fund; Patent Award of Guangdong Province; Training Program for Rural Surplus Labor Force Transfer Employment; and the Provincial Scientific Development Plan Fund.<sup>177</sup> The Complainants request that the CBSA investigate whether these programs confer actionable benefits on FISC producers.

306. In *Steel Grating*, the CBSA determined that producers received actionable benefits from an Export Assistance Grant Program. The program, established in the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises*, Cai Qi No. 467, 2000, encourages SME participation in international markets. The purpose of the program is to provide funds to SMEs for: (i) holding or participating in overseas exhibitions, (ii) accreditation fees for quality management system, environment management system or for the product, (iii) promotion in the international market, (iv) exploring a new market, (v) holding training seminars and symposiums, and (vi) overseas bidding.<sup>178</sup> The Complainants request that the CBSA investigate these grants with respect to FISC producers.

307. In *Copper Tube*, the CBSA determined that Chinese producers received actionable benefits under numerous grant programs, including: Emission Reduction and Energy-Saving Award (Special Funds for Reduction of Pollutant Emission); Emission Reduction and Energy-Saving Award (Advanced Units within Top 30 Electricity Consumption Enterprises in the Competition of Energy-Saving contest); Cleaning-production Qualified Enterprise Reward (Subsidy of Audit Fees for Key Enterprises Cleaning Production); Resources Conservation and Environment Protection Grant (Funds for

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<sup>177</sup> *Aluminum Extrusions* (FD), p. 61-64, 67, 68.

<sup>178</sup> *Steel Grating* (FD), p. 20-21.

- Pollution Sources Monitoring Facilities in 2011); Advanced Science/Technology Enterprise Grant (Advanced Units for Safety Production in Fengxian District); Award for Excellent Enterprise (First Prize within Top 100 Enterprises in Situan Town for Year 2012); Subsidy for Certification of Clean and Green Production in Zhejiang (Funds for Cleaning Production Demonstration Enterprises); 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); Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township (Incentives of Circular Economy in 2011); Award for Science and Technology in Shaoxing City; Funds for Patent Award; Funds for Key Innovation Team; Subsidies to Full-time Environmental Monitoring Officer; Special Funds for Use in the Open Economy (Award for Open Economy); Special Funds for Use in the Open Economy (Reduction/Exemption of Water Conservancy Fund). The Complainants request that the CBSA investigate these grants with respect to FISC producers.
308. In *Galvanized Wire*, the CBSA determined that producers may receive actionable benefits from numerous grant programs, including: Provincial Government - Equipment Grant; Municipal Government - Export Grant; Municipal Government - Exhibition Grant; Municipal Government – Insurance Fee Grant; Small and Medium-sized Enterprise Support Funds; Modern Service Grant. The Complainants request that the CBSA investigate these grants with respect to FISC producers.
309. In *Unitized Wall Modules*, the CBSA found numerous grant programs may have conveyed an actionable subsidy, including: Awards to Enterprises whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"; Technical Renovation Loan Interest Discount Fund; National Innovation Fund for Technology Based Firms; Innovative Small and Medium-Sized Enterprise Grants; Grant - Patent Application Assistance; Provincial Foreign Economy and Trade Development Special Fund; Special Supporting Fund for Commercialization of Technological



Innovation and Research Findings; International Market Fund for Small and Medium Sized Export Companies; Special Fund for Fostering Stable Growth of Foreign Trade; Subsidy for the Technology Development; Awards for the Contributions to Local Economy and Industry Development; Award for Excellent Enterprise; Medium Size and Small Size Enterprises Development Special Fund; Special Development Fund for Beijing Cultural Innovation Industry; Supporting Fund for Becoming Publicly Listed Company; Brand Development Fund by Shunyi District Local Governments; Supporting Fund for the Development from Guangzhou Local Governments; Export Assistance Grant; Research & Development (R&D) Assistance Grant; Supporting fund provided to Service Outsourcing Enterprises for the Establishment of their Brands and the Acquisition of their International Qualification Accreditations; Supporting Fund provided by Shenyang Municipal Government to the Enterprises to Maintain the Employment Level. The Complainants also request that the CBSA investigate these grants with respect to FISC producers.

310. In *Rebar* the CBSA determined that producers may have received actionable benefits from four grant programs: Assistance for Technology Innovation - R&D Project; Subsidy for the Technology Development; Fund for Urban Public Utilities; Grants under the Information Technology programme of Feicheng; and Tax policies for the deduction of research and development expenses. The Complainants also request that the CBSA investigate these grants with respect to FISC producers.
311. In *Photovoltaic Modules*, the CBSA determined that producers may have received actionable benefits under numerous grant programs, including: Advanced Science/Technology Enterprise Grant; Assistance for Optimizing the Structure of Import/Export of High-Tech Products; Assistance for Technology Innovation - R&D Project; Awards for the Contributions to Local Economy and Industry Development; Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”; Emission Reduction and Energy-saving Award; Energy-saving Technology Renovation Fund; Export Assistance Grant; Export Brand
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Development Fund; Export Credit Subsidy Programs: Export Buyer's Credits; Foreign Trade Development Fund Program; Government Export Subsidy and Product Innovation Subsidy; Grant - Large Taxpayer Award; Patent Application Assistance; Provincial Foreign Economy and Trade Development Special Fund; Resources Conservation and Environment Protection Grant; State Service Industry Development Fund; Grants for International Certification; Guaranteed Growth Fund; and Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees. The Complainants also request that the CBSA investigate these grants with respect to FISC producers.

## 2. New Grant Programs

312. In January 2016, it was reported that the GOC would “set up a special fund to subsidize the efforts of local governments and companies to defuse overcapacity”, including overcapacity in the steel sector.<sup>179</sup> The Complainants request that the CBSA investigate whether FISC producers receive an actionable benefit under this program.

313. Baosteel reported receiving the following grants in the 2013 and 2014 fiscal periods.<sup>180</sup>

Item	2013 (RMB)	2014 (RMB)
Subsidies for high-tech achievement transformation	59,921,691.08	65,611,868.86
Compensation for relocation	59,876,337.21	30,465,912.25
Special fund for foreign trade and economic cooperation		256,660,000.00
Professional training		31,503,257.00
Transfer of prior year government grants related to technology improvement	44,059,169.32	47,015,363.76

<sup>179</sup> Public Attachment 60: Xinhua, “China to cut overcapacity, help companies out” (January 8, 2016) available at <[http://news.xinhuanet.com/english/2016-01/08/c\\_134988165.htm](http://news.xinhuanet.com/english/2016-01/08/c_134988165.htm)>.

<sup>180</sup> Public Attachment 41: Baosteel, 2014 Annual report, p. 114.

Item	2013 (RMB)	2014 (RMB)
Special fiscal funds of land infrastructure construction	30,756,648.88	
Grants for waste gas treatment	11,000,000.00	
Others	186,290,150.89	205,934,870.58
Total	391,903,997.38	637,191,272.45

314. The Complainants request that the CBSA investigate whether Baosteel’s FISC division and other FISC producers benefited from these government grants.

### 3. Subject Good producer’s reliance on grants

315. FISC producers are known to receive grants. Shanghai Zhenhua Heavy Industries Co., Ltd., previously known as Shanghai Zhenhua Port Machinery Co., Ltd., reported receiving RMB RMB20.32 million and RMB47.46 million in government subsidies in 2014 and 2013 respectively. It also reported RMB4.87 million and RMB0.42 million in “Subsidies provided by organizations rather than a government” in 2014 and 2013 respectively.<sup>181</sup> As discussed above, Baosteel reported receiving government grants equal to RMB 391,903,997.38 in the 2013 period and RMB1,549,173,971 and RMB 637,191,272.45 in 2014.<sup>182</sup>

## E. Preferential Loan Programs

316. Like grants, information about producers’ receipt of preferential loans is not generally public and the details are usually only known to the GOC and recipients. That said, the CBSA has previously found that the GOC does grant preferential loans. In *Silicon Metal*, the CBSA determined that exporters benefitted from two actionable preferential loan

<sup>181</sup> Public Attachment 40: Shanghai Zhenhua Heavy Industries Co., Ltd. Annual Report 2014, p. 194.

<sup>182</sup> Public Attachment 41: Baosteel, 2014 Annual report, p. 114.

programs: Compensation of Interest Expenses on Export Credit Insurance Financing and Compensation of Interest Expenses on Export Financing.<sup>183</sup> In *Unitized Wall Modules*, the CBSA determined that at least one exporter benefitted from preferential loans from the Export-Import Bank of China through an “export seller’s credit for high- and new-technology products” program.<sup>184</sup> In *Copper Tube*, the CBSA determined that Chinese producers benefit from an actionable subsidy program that provided preferential loans from state-owned banks.<sup>185</sup>

317. The Complainants request that the CBSA review whether Chinese FISC producers receive actionable or prohibited subsidies in the forms of preferential loans.

**F. Preferential Tax Programs**

318. Numerous preferential tax programs are available to FISC producers and exporters.

**1. Export Tax Rebates**

319. Ordinary steel products are not eligible for tax rebates upon export.<sup>186</sup> However, steel products with very minimum amounts of alloying agents, such as boron or chromium, were or are entitled to rebates in the range of 9 to 13 per cent.<sup>187</sup> Consequently, steel producers add minimum and inconsequential amounts of alloying agents so as to acquire the benefit. The distortive effect is significant. In 2015, China exported 24 million tonnes of “alloy sheet” but only 90,000 tonnes of non-alloy hot-rolled coil.<sup>188</sup> Reuters reports

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<sup>183</sup> *Silicon Metal*, Final Determination – Statement of Reasons – Appendix 2.

<sup>184</sup> *Unitized Wall Modules*, Final Determination – Statement of Reasons – Appendix 2

<sup>185</sup> *Copper Tube*, Final Determination – Statement of Reasons – Appendix 2.

<sup>186</sup> Public Attachment 61: “China’s exports of alloy products spur price declines”, Nikkei Asian Review (February 25, 2016).

<sup>187</sup> *Ibid.* Public Attachment 62: Manolo Serapio Jr And Maytaal Angel, “Gaming the system: China steel exporters look for tax advantage” Reuters, December 9, 2015.

<sup>188</sup> Public Attachment 61: “China’s exports of alloy products spur price declines”, Nikkei Asian Review (February 25, 2016).

that in the first 8 months of 2015 over US\$2.4 billion in tax rebates were claimed by Chinese steel exporters.<sup>189</sup>

320. The Complainants request that the CBSA investigate whether FISC producers follow other steel producers by fitting their product within a category of goods entitled to tax rebates upon export. These rebates provide a financial contribution by way of the government foregoing revenue otherwise due. Recipients are benefited as they retain a portion of their revenue that would otherwise have to pass on to the government.

**2. Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise**

321. Productive Chinese-foreign-equity joint ventures enterprises scheduled to operate for a period not less than 10 years in China are eligible for an exemption from local income tax in the first two years they make a profit.<sup>190</sup> Further tax reductions are available for export-oriented enterprises and “advanced technology” enterprises.<sup>191</sup>
322. The CBSA has found this, or similar, reduced tax rate to be a countervailable subsidy in previous investigations.<sup>192</sup> Moreover, China has specified this program as a subsidy in its Notification to the WTO.<sup>193</sup>

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<sup>189</sup> Public Attachment 62: Manolo Serapio Jr And Maytaal Angel, “Gaming the system: China steel exporters look for tax advantage” Reuters, December 9, 2015.

<sup>190</sup> Public Attachment 63: Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise, Article 75(6).

<sup>191</sup> Public Attachment 63: Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise, Article 75(7), (8).

<sup>192</sup> *Certain Laminate Flooring* (AD/1332, CVD/104), Final Determination – Statement of Reasons (June 1, 2005) at para 91 [“Laminate Flooring (FD)”].

<sup>193</sup> Public Attachment 64: China's New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement, WTO Doc. G/SCM/N/123/CHN (Apr. 13, 2006), p. 2.

**3. Dalian**

323. At least two Chinese FISC producers are located within Dalian, either in an “industrial zone” or “export processing zone.”<sup>194</sup> Firms operating within the Dalian Free Trade Zone are entitled to reduced corporate income tax rate depending on the nature of their industry or their location.<sup>195</sup> The preferential tax policy confers a financial contribution in the form of the government foregoing revenue otherwise due, and this in turn benefits the firms that are eligible under the policy. The program is specific as it is only available to foreign-invested firms located within a specific region and, in some cases, benefits are only available to firms located in specific industries.

**4. Jiangsu**

324. A number of Chinese FISC producers are located within Jiangsu Province. One potential exporter of FISC, Jiangsu Zhongtai Bridge Steel Structure Co., Ltd. operates within Jiangyin. Foreign-funded enterprises within Jiangyin are entitled to preferential tax treatment, including:
- (a) reduced corporate rates if they invest a minimum amount or if they are “technology intensive”;
  - (b) income tax exemptions and reductions for enterprises “with their business running more than 10 years”;
  - (c) tax reductions if they export a minimum amount of production; and
  - (d) tax reductions if profits are re-invested in the enterprise.<sup>196</sup>
325. These measures confer a financial contribution on the recipient by the government foregoing tax revenue it is otherwise owed, thereby benefiting the recipient. The financial

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<sup>194</sup> Public Attachment 3: Exporter List: Dalian Antai Huaxin Group / Jiacheng Construction Engineering Co., Ltd. and POSCO-China Dalian Steel Fabricating Center.

<sup>195</sup> Public Attachment 65: Dalian Free Trade Zone, “Principal taxes that foreign-invested enterprises must pay (local tax excluded)”.

<sup>196</sup> Public Attachment 66: Jiangyin, Jiangsu Province Economic Development Zone “Preferential policies for the foreign-funded enterprises”.

contribution is actionable as it is specific to foreign-enterprises operating within a particular geographical zone or it is prohibited as it is based on exports.

**5. Corporate Income Tax Reduction for New High-Technology Enterprises**

326. In *OCTG*, the CBSA determined that at least one exporter benefited from an actionable subsidy through a program designed to promote technology upgrades through tax reductions.<sup>197</sup> Pursuant to the *Income Tax Law of the People's Republic of China for Enterprises* (effective January 1, 2008), new high-technology enterprises could apply to receive a reduced income tax rate of 15%. The Complainant submits that FISC and exporters may benefit from this or a similar program. The program is actionable as it confers a financial contribution on only high-technology enterprises by way of foregoing income taxes otherwise due. In turn, this provides a benefit to recipients as they retain revenue that would otherwise be paid to the government.

**6. Tax Preference Available to Companies that Operate at a Small Profit**

327. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had previously received preferential income tax treatment under the *Law of the People's Republic of China on Enterprise Income Tax (2007)* and that this treatment conferred an actionable subsidy upon the recipient.<sup>198</sup> The Complainants request that the CBSA determine whether or not Chinese exporters of FISC receive similar preferential tax treatment under this program or a similar program. The program is actionable as it is only available to select enterprises and it confers a financial contribution by way of the government foregoing tax revenue. The program confers a benefit upon its recipients as they retain revenue they would otherwise pay in taxes.

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<sup>197</sup> *OCTG* (FD) at 40.

<sup>198</sup> *Stainless Steel Sinks* FD at 27.

**7. Preferential Tax Policies for FIEs and Foreign Enterprises which have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment and Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose**

328. In *OCTG*, the CBSA determined that at least one exporter received an actionable subsidy through a program created by the State Administration of Taxation to support technology innovation and attract foreign investment.<sup>199</sup> The CBSA also determined that at least one exporter received benefits under a program created by the State Administration of Taxation to support domestic investment and encourage enterprises to upgrade their technology.<sup>200</sup> The Complainants requests that the CBSA determine whether or not Chinese producers and/or exporters of FISC received similar preferential tax treatment under these two programs or similar programs.

**8. Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones**

329. The “Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones” program encourages Economic and Technical Development Zones by providing FIEs in specific zones with a reduced income tax rate of 24%.<sup>201</sup> In *Aluminum Extrusions*, the CBSA determined that program provided an actionable subsidy to several aluminum extrusion exporters.<sup>202</sup> The Complainants request that the CBSA investigate whether FISC producers receive actionable benefits under this program.

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<sup>199</sup> *OCTG (FD)* at 37.

<sup>200</sup> *OCTG (FD)* at 38.

<sup>201</sup> *Aluminum Extrusions (FD)*, p. 65.

<sup>202</sup> *Aluminum Extrusions (FD)*, p. 65.



**9. Preferential Tax Policies for Foreign Invested Export Enterprises**

330. The “Preferential Tax Policies for Foreign Invested Export Enterprises” program was also identified as countervailable by the CBSA in *Aluminum Extrusions*.<sup>203</sup> Under this program export oriented producers, with foreign business investors and operators, may receive a 15 percent reduction in their income taxes if “their annual output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year.”<sup>204</sup> The Complainants request that the CBSA investigate whether FISC producers receive actionable benefits under this program.

**10. Local Income Tax Exemption and/or Reduction**

331. The “Local Income Tax Exemption and/or Reduction” program provides foreign-investment enterprises involved in industries or projects encouraged by the government with local income tax reductions or exemptions. It is not known whether FISC producers are “encouraged” industries, however, the Complainants request that the CBSA investigate.

**G. Relief from Duties and Taxes on Materials and Machinery**

332. In *Solar Modules*, the CBSA determined that up to five programs may provide an actionable subsidy to Chinese producers by way of relief from duties or taxes on materials or machinery.<sup>205</sup> Three of these programs may apply to FISC producers: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment; Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs; and VAT rebates on domestically produced equipment. The CBSA reasons in *Solar Modules* do not provide particulars of the programs, but do state that at least one producer received

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<sup>203</sup> *Aluminum Extrusions* (FD), p. 65.

<sup>204</sup> *Aluminum Extrusions* (FD), p. 65.

<sup>205</sup> *Solar Modules* FD at 81-82.

a benefit under each of the programs. The Complainants request that the CBSA investigate whether any Chinese FISC producers receive actionable benefits under any of these programs.

**H. Goods/Services Provided by the Government at Less than Fair Market Value**

333. One potential exporter of FISC, Jiangsu Zhongtai Bridge Steel Structure Co., Ltd., operates within Jiangyin. The Jiangyin, Jiangsu Province Economic Development Zone's website includes "Preferential policies for the foreign-funded enterprise". These policies state that the Economic Development Zone provide various goods and services to foreign-invested enterprises at what appears to be less than fair market value.<sup>206</sup> Water, power, steam and telecommunications are "preferentially supplied". Charges for water and power capacity expansion are "exempt" for qualifying firms. Similarly, the "guarantee fee" for electricity is exempt for qualifying firms. The provision of these goods and services provides a financial contribution to recipients as they pay less than would otherwise would to receive these goods and services, and this results in a benefit. The financial contribution is specific as it is only available to foreign-funded enterprises located within a particular industrial zone.

334. The Complainants request that the CBSA investigate whether FISC producers within this Economic Development Zone, and other FISC producers in other municipalities or economic zones, receive actionable benefits in the form of goods and services provided at less than fair market value.

**I. Reduction in Land Use Fees**

335. In Aluminum Extrusions the CBSA determined that the Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic

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<sup>206</sup> Public Attachment 66: Jiangyin, Jiangsu Province Economic Development Zone "Preferential policies for the foreign-funded enterprises".

Cooperation and Other Ministries Transmitted by the General Office of the State Council provided at least one extruder with an exemption from land use fees and that this exemption conferred a countervailable benefit.<sup>207</sup> The Complainants submit that this program may still confer actionable benefits and that FISC producers may be entitled to access this benefit.

336. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had received actionable benefits through the preferential supply of land.<sup>208</sup> The Complainants submit that this program may still confer actionable benefits and that FISC producers may be entitled to access this benefit.

337. In *OCTG* the CBSA determined that an exporter had received actionable benefits through the refund of land transfer fees.<sup>209</sup> The Complainants submit that this program may still confer actionable benefits and those solar modules producers may be entitled to access this benefit or similar benefits.

338. The Complainants request that the CBSA investigate whether FISC producers receive an actionable subsidy by way of reduced land fees similar to those described above.

**J. Sale of Goods to State-Owned Enterprises**

339. In *Aluminum Extrusions (US)*, the DOC preliminarily determined that the sale of subject goods to the GoC for more than adequate remunerations constituted a financial contribution. To determine whether the sale of subject goods to state-owned firms conferred a benefit upon producers, the DOC compared the prices the producers' charged to state-owned firms to the prices they charged to privately-owned firms for the same

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<sup>207</sup> *Aluminum Extrusions* (FD), at 68-69.

<sup>208</sup> *Stainless Steel Sinks* (FD) at 28.

<sup>209</sup> *OCTG* (FD) at 47.

products (where such data was available).<sup>210</sup> The DOC preliminarily determined that the sale of goods to state-owned enterprises at for more than adequate remuneration would confer a benefit on producers.<sup>211</sup>

340. In *Solar Modules* the CBSA affirmed that that financial contributions by a state-owned enterprise may also be considered a financial contribution by government for the purposes of subsection 2(1.6) of SIMA if it “possesses, exercises, or is vested with governmental authority”.<sup>212</sup> The CBSA went on to state “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.”<sup>213</sup>
341. Large construction and engineering firms that would construct industrial projects in resource sectors are major purchasers of FISC for industrial purposes. As discussed above, it is estimated that Chinese SOE construction firms have a 50% share of China’s construction industry, and that many of the largest construction firms in China are state-owned, including: China State Construction & Engineering Corporation; China Railway Engineering Corporation; China Railway Construction Corporation; and CSCIHL.<sup>214</sup> Further, the owners of many major industrial projects that would consume FISC—such as China Petroleum & Chemical Corp.; China National Petroleum Corporation; China

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<sup>210</sup> For companies that sold goods to government authorities but did not provide information on the sales, the DOC applied “Adverse Facts Available”.

<sup>211</sup> *Aluminum Extrusions* (US Preliminary), p. 54319-54320.

<sup>212</sup> Photovoltaic modules and laminates, Final Determination - Statement of Reasons, (June 18, 2015) at para 192.

<sup>213</sup> Photovoltaic modules and laminates, Final Determination - Statement of Reasons, (June 18, 2015) at para 192.

<sup>214</sup> Public Attachment 36: Andrew Szamosszegi and Cole Kyle (Capital Trade, Incorporated), “An Analysis of State-owned Enterprises and State Capitalism in China” prepared for US-China Economic and Security Review Commission (October 26, 2011) at 40.

National Offshore Oil Corporation; Sinochem Group; Yangchang Petroleum, and most metal mining enterprises—are also SOEs.<sup>215</sup> Given their significant presence in the Chinese domestic market as purchasers and users of FISC, construction and industrial development owner SOEs will have significant influence over the FISC market. Further, many of the construction projects and developments completed by these firms are of particular importance to the GOC and fulfill particular government objectives and functions. It follows that the GOC may confer actionable subsidies upon FISC producers through SOEs' purchase of FISC at non-market prices. As such, the Complainants request that the CBSA investigate whether an actionable subsidy is conferred upon FISC producers by SOE construction firms and industrial project owners paying more than adequate remuneration for FISC.

**K. Strategic Emerging Industries**

342. The GOC has identified seven “strategic emerging industries” (“SEI”) that the state wishes to see as “the backbone of China’s next phase of industrial modernization and technological development”.<sup>216</sup> One of the SEIs is “new materials” and the GOC’s objective is to “Develop advanced structural materials, such as high-quality special steel, new-mode alloy material, and engineering plastics”.<sup>217</sup> The Complainants submit that FISC likely falls within this objective.

343. In October 19, 2015, the US filed a Request to China pursuant to Article 25.10 of the Agreement on Subsidies and Countervailing Measures (“US SEI Request”).<sup>218</sup> The US

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<sup>215</sup> Public Attachment 36: Szamosszegi and Kyle, *supra*; Public Attachment 47: World Bank, *Overview of State Ownership in the Global Minerals Industry* (2011) 10 (Table 3), 22.

<sup>216</sup> Public Attachment 48: US-China Business Council, “China’s Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations” (March 2013), p. 1.

<sup>217</sup> Public Attachment 48: US-China Business Council, “China’s Strategic Emerging Industries: Policy, Implementation, Challenges & Recommendations” (March 2013), p. 14.

<sup>218</sup> Public Attachment 68: Request From The United States To China Pursuant To Article 25.10 Of The Agreement, G/SCM/Q2/CHN/53 (October 19, 2015).

SEI Request identifies 64 programs related to China's SEI support that the US alleges are subsidies that must be reported under the Agreement on Subsidies and Countervailing Measures.

344. Any of the 64 programs that confer a financial benefit on a FISC producer is specific as the program is specific to the structural steel industry.
345. The Complainants request that the CBSA investigate whether the Chinese FISC industry receives actionable benefits under the programs set out in the US SEI Request.

**L. Recent CBSA steel countervail determinations**

346. In *Line Pipe*, the most recent CBSA final determination applicable to the subsidization of Chinese steel goods, CBSA determined that 100% of subject Chinese goods were subsidized.<sup>219</sup> The weighted average amount of subsidy for "all other" exporters was 17.32% of export price.<sup>220</sup> On the basis of information, the CBSA found that 72 programs were countervailable and it could not rule out that the remaining 89 programs were potentially countervailable.<sup>221</sup>
347. In *Rebar*, the second most recent CBSA final determination applicable to the subsidization of Chinese steel goods, CBSA determined that 100% of subject Chinese goods were subsidized.<sup>222</sup> The weighted average amount of subsidy for "all other" exporters was 14.9% of export price.<sup>223</sup> The CBSA found that 5 programs were

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<sup>219</sup> *Line Pipe*, Final Determination – Statement of Reasons (March 10, 2016) para 227.

<sup>220</sup> *Line Pipe*, Final Determination – Statement of Reasons (March 10, 2016) Appendix I.

<sup>221</sup> *Line Pipe*, Final Determination – Statement of Reasons (March 10, 2016) para 223.

<sup>222</sup> *Rebar*, Final Determination – Statement of Reasons (December 23, 2014), para 165.

<sup>223</sup> *Rebar*, Final Determination – Statement of Reasons (December 23, 2014), para 164.

countervailable and it could not rule out that the remaining 176 programs were potentially countervailable.<sup>224</sup>

348. In *Galvanized Steel Wire*, the third most recent CBSA final determination applicable to the subsidization of Chinese steel goods, the CBSA determined that 91.5% of subject Chinese goods were subsidized.<sup>225</sup> The weighted average amount of subsidy was 14.9% of export price. On the basis of information available, the CBSA investigated 128 programs as potentially countervailable. The CBSA found 10 subsidy programs to constitute financial contributions pursuant to subsection 2(1.6) of *SIMA*.<sup>226</sup> The CBSA held that the additional 118 programs could not be ruled out as countervailable subsidies.
349. Accordingly, it is submitted that recent investigations conducted by the CBSA indicate that subsidies received by steel producers in China are well in excess of the WTO standard of insignificance.
350. While the Complainants do not know and are not able to determine the actual amounts of subsidy, an amount can be estimated by calculating the difference between the selling price of the Subject Goods and their cost of production. Any goods sold below their costs of production must be subsidized to a profitable or break-even level otherwise their sale would be economically unfeasible.

**M. Reliance on subsidies**

351. In 2014 and 2015, the Chinese steel industry was reliant on state subsidies to keep the industry afloat. In 2014, Reuters reported that 88% of Chinese steel firms received

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<sup>224</sup> *Rebar*, Final Determination – Statement of Reasons (December 23, 2014), para 154, 161, 163.

<sup>225</sup> *Galvanized Steel Wire*, CBSA Statement of Reasons (August 6, 2013), para 169.

<sup>226</sup> *Galvanized Steel Wire*, CBSA Statement of Reasons (August 6, 2013), pp. 33-39.

subsidies valued at US\$5.24 billion.<sup>227</sup> The same article reported that in the first-half of 2014, these subsidies accounted for 80% of Chinese steel firms' profits.

**N. Margins of Subsidization**

352. The Complainants have calculated the margin of subsidy as the difference between the estimated Chinese total cost of production (materials, labour (fabrication, drafting and engineering), SG&A, and financial expenses) for a particular project and the export price for a particular project.

353. The Complainants' subsidy calculation with respect to the Fort Hills – Utilities and Offsite project is that the Subject Goods were subject to a subsidization rate of [ ]%.<sup>228</sup>

354. The Complainants' subsidy calculation with respect to the CNRL – Train 4/5 –HWS4 project is that the Subject Goods were subject to a subsidization rate of [ ]%.<sup>229</sup>

355. The Complainants' subsidy calculation with respect to the Mosaic – K2 and K3 project is that the Subject Goods were subject to a subsidization rate of [ ]%.<sup>230</sup>

**IV. Evidence of Injury and Threat of Injury**

356. Dumped and subsidized Subject Goods have caused the Complainants to suffer material injury in the form of lost sales, price undercutting, price depression and reduced market share. As a result, the Complainants' FISC business has been negatively impacted, as

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<sup>227</sup> Public Attachment 39: Fayen Wong, "Steel industry on subsidy life-support as China economy slows" Reuters (September 18, 2014).

<sup>228</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>229</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.

<sup>230</sup> Confidential Attachment 53: Dumping and Subsidy Calculations.



- reflected in diminished net sales revenues, gross margins and net profits, as well as capacity under-utilization and reduced shifts.
357. The Subject Countries have made substantial inroads into the Canadian market by leveraging low-prices to gain market share. The market in Canada is primarily project based, with bidders competing head to head for large projects. The loss of a single project, or the need to substantially lower bid prices can have, and has had, a very significant impact on the domestic industry. The inroads made by the Subject Countries have resulted in the domestic industry losing over \$600 million in sales to Subject Goods between 2013 and the first quarter of 2016. This is a huge volume of business.
358. The domestic industry has been forced to respond to the dumped and subsidized pricing by lowering bid prices, and therefore, even on the projects that were not lost to Subject Goods, the domestic industry has also suffered injury in the form of substantial revenue losses that have had a profound impact on financial performance.
359. The increasing import volumes from the Subject Countries over 2013 through 2015 coincided with low-capacity utilization and a drop in sales revenues and unit sales values by the domestic industry and decreased profitability.
360. Capacity utilization remained low and was 38% in 2013, 40% in 2014 and 41% in 2015. In the first quarter of 2016, capacity utilization has fallen to only 25%.
361. In 2014 domestic sales volumes increased by 7%, however revenues fell by over 12% as domestic pricing was driven down by low priced Subject Goods. This trend continued into 2015, where sales volumes were flat, however, revenues fell by a further 4%.
362. In terms of overall performance, the consolidated industry net income fell by 3.4% in 2014, by a further 3% in 2015. While oil prices fell sharply in the second half of 2014 and have impacted some projects, because of the significant lag in time between order and delivery, falling oil prices did not significantly impact the domestic industries
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financial performance in 2014 or 2015. Revenues in these years were booked based on orders that were obtained prior to the fall in oil prices.

363. In addition, the Subject Countries also pose a clearly imminent and foreseeable threat of material injury to the domestic industry. Subject Goods have gained acceptance in the Canadian market over the past several years. The volume of Subject Goods increased year over year from 2013 through 2015. However, following the rapid decline in oil prices in 2014, a number of projects have been cancelled or delayed, which resulted in a decrease in the absolute volume of imports from the Subject Countries in 2016. However, the relative market share of the Subject Countries has remained high.
364. Numerous large scale projects are expected to go to tender in Canada over the next 12 to 24 months. As oil prices slowly recover and new projects are tendered, it is critical that the domestic industry be given an opportunity to compete for the work without facing dumped and subsidized price competition. If the Subject Countries continue bidding at dumped and subsidized prices, the only reasonable inference that can be drawn is that they will either win these upcoming projects based on unfair pricing, or will force the domestic industry to discount prices and incur substantial revenue losses as a result of dumped and subsidized price competition.
365. At the present time, the domestic industry is suffering from record low order books, with several producers faced with the prospect of having no order backlog. The domestic industry has traditionally had orders booked out 12 months or more. However, at present all of the major domestic producers are in the position for the first time of having no orders to sustain production beyond 2016, and the prospect of shutdown and lay-offs looming in the near term.<sup>231</sup>

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<sup>231</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

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366. SIMA defines “domestic industry” to mean “[...] the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a *major* proportion of the total domestic production [...]”(emphasis added).<sup>232</sup> Tribunal and Federal Court of Appeal jurisprudence has long held that “major” means “significant” and does not prescribe a precise mathematical threshold of 50% plus one.<sup>233</sup> The Complainants are estimated to represent 80% of Like Goods production in Canada.<sup>234</sup> Therefore, the Complainants constitute a “major proportion” of Canada’s domestic Like Goods production and may be considered as the “domestic industry” for the purposes of both a preliminary injury inquiry and final injury inquiry.
367. For those reasons, the Complainants submit that the injury caused to them by dumped and subsidized Subject Goods imports is indicative of the injury suffered to the domestic industry as a whole.
368. The applicable legal test at the preliminary injury stage is to assess whether the evidence discloses a “reasonable indication” of injury. At the preliminary injury stage, the available evidence is necessarily comprised of that which is reasonably available to the Complainants, which should be contrasted with the level of evidence available in a final injury inquiry in which the Tribunal is able to obtain a full evidentiary record through the issuance of questionnaires. The Complainants have no means of compelling information from purchasers or importers at the preliminary injury stage. Despite this, the Complainants have exercised all due diligence and have obtained a substantial body of evidence that clearly demonstrates that there is a reasonable indication of both past injury, as well as a threat of injury that is imminent and foreseeable.

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<sup>232</sup> SIMA, s. 2(1). Note that a separate definition of domestic industry applies with respect to section 31 of the Act.

<sup>233</sup> *Galvanized Steel Wire*, PI-2012-005, Determination and Reasons (April 8, 2013) at para 37 and *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)* (1986), 32 D.L.R. (4th) 222 (FCA).

<sup>234</sup> Public Attachment 7: Letter from Ed Whalen to Canada Border Services Agency, dated July 14, 2016.

**A. Indicators of Injury**

**1. Volume of Dumped and Subsidized Goods**

369. As noted above, the volume of imports from the Subject Countries exceeds the applicable negligibility thresholds.

**2. Lost Sales and Lost Market Share**

370. The Complainants have lost many orders delivered over the 2013 to present time period to dumped and subsidized Subject Goods. In many cases, purchasers expected that the Subject Goods would be priced so far below domestic producer pricing that the Complainants were not even given the chance to quote or bid on these projects. This is significant, as the domestic industry previously (i.e. prior to 2013) supplied the majority of such projects, and in almost every case a domestic producer would be asked to quote or bid on a project.

371. Confidential Attachment 6 Consolidated Import Table lists the sales that the Complainants believe have been supplied by imports, including from the Subject Countries. As discussed above, the volume, values and delivery dates reported in the table is based on the Complainants' bids (where applicable), commercial intelligence and estimates based on their specific project knowledge and general industry knowledge.<sup>235</sup>

372. The Complainants estimate that the volume of lost sales to Subject Countries delivered between 2013 and the first quarter of 2016 totalled 128,854 MT.<sup>236</sup> The Complainants estimate that the volume of lost sales to Subject Countries that have been or are to be delivered between 2013 and 2016 total 144,873 MT.<sup>237</sup>

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<sup>235</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>236</sup> Confidential Attachment 6: Consolidated Import Table.

<sup>237</sup> Confidential Attachment 6: Consolidated Import Table.

373. The Complainants were able to come up with reasonable estimates for the value of 116,075 MT of the 128,854 MT, or 90%, of lost FISC sales to Subject Countries that were delivered in the 2013 through first-quarter 2016 period.<sup>238</sup> Table 5 provides the aggregate of these estimated values.

**Table 5**  
**Fabricated Industrial Steel Components (C\$)<sup>239</sup>**

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016 Q1</u>	<u>Total</u>
<i>China</i>	[				
<i>Korea</i>					
<i>Spain</i>					
<i>UK</i>					
<i>UAE</i>					
<i>Unspecified Subject Country</i>					]
<b>Total Subject Good Imports</b>	<b>92,371,882</b>	<b>112,452,463</b>	<b>305,424,639</b>	<b>39,701,678</b>	<b>549,950,661</b>

374. The value of the 116,075 MT of lost sales to the domestic industry is estimated to total \$549,950,661, which is equal to a unit value of \$4,738/MT.<sup>240</sup> Applying this unit value to the estimated volume of total lost sales to the Subject Countries over the 2013 through first-quarter of 2016 period (128,854 MT), the Complainants estimate that the value of

<sup>238</sup> Confidential Attachment 6: Consolidated Import Table.

<sup>239</sup> Confidential Attachment 6: Consolidated Import Table

<sup>240</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick

lost sales to dumped and subsidized Subject Goods delivered between 2013 and the first-quarter of 2016 totalled \$610,498,045.<sup>241</sup>

375. Below are the documented FISC orders lost to dumped and subsidized imports from the Subject Countries. Given the large size of individual projects, and the fact that bids are generally solicited by purchasers which require the domestic producers to prepare proposals that require a large amount of time and money, the domestic producers are keenly aware of lost projects.<sup>242</sup> The loss of one or two significant projects has a profound impact on domestic producers.
376. The following examples demonstrate that the domestic industry lost numerous projects to low-priced imports from the Subject Countries. The Subject Countries initially entered the Canadian market in 2011 and 2012, and captured substantial and growing market share in Canada in 2013 through present at the expense of the Canadian industry. In this regard, it is worth noting that much of the FISC supplied in Canada prior to 2011 was supplied by the domestic industry. The list of project described below provide a detailed, project by project narrative that demonstrates the deep inroads that Subject Goods have made into the Canadian market since 2011. By 2013, it became common for customers of the domestic industry not to even invite the Canadian industry to bid, as it became so well known in the market that suppliers from the Subject Countries would offer pricing that was well below the pricing that the domestic industry could offer.<sup>243</sup>

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<sup>241</sup> Table 2 Domestic Market: Fabricated Industrial Steel Components Confidential Attachment 6: Consolidated Import Table.

<sup>242</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>243</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

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*(a) Vale Long Harbour Nickel Processing Plant*

377. Vale is a mining firm with headquarters in Brazil. Its Long Harbour Processing plant processes mined nickel concentrate into finished nickel, copper and cobalt. It was reported that the project was to cost \$4.25 billion dollars.<sup>244</sup>
378. The contract to supply the FISC for this project was awarded in 2011. However, given the size of the project the FISC for the project would have been fabricated and delivered between 2011 and 2014. The Complainants estimate that the project would have required approximately 33,700 MT of FISC.<sup>245</sup>
379. Supermetal bid on the supply of the FISC for this project; however, it was awarded to William Hare from the United Kingdom. Mr. Blouin believes that the only reason that it was awarded to William Hare is that their price was significantly below Canadian market pricing.
380. Supermetal bid on [ ] MT while the remainder, representing approximately 20,000 MT, was negotiated solely with William Hare. Supermetal's bid price was approximately \$[ ]. William Hare was awarded the entire project. Supermetal estimates that the value of the project to the domestic industry was approximately \$[ ]. Fluor Canada, the EPC on the project, indicated that William Hare's price was approximately [ ]% below Supermetal's price.

*(b) Rio Tinto Alcan – Kitimat Smelter Expansion*

381. Rio Tinto Canada operates an aluminum smelter in Kitimat, British Columbia. After almost 60 years of operation the smelter is undergoing a modernization upgrade.

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<sup>244</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin, Attachment 1, CBC News, "Long Harbour production should start in 2013" (March 30, 2013).

<sup>245</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

382. A Canadian producer, Supreme, was asked to bid on the erection of the FISC, but not the supply of FISC, for this project. Waiward, another Canadian producer, was provided an opportunity to quote on supply, but the RFQ was clearly written in a manner that favoured the designs typically proposed by Chinese suppliers, indicating that the decision to source from China has already been made. Waiward therefore did not incur the substantial expense of bidding on the project. The EPC on the project, Bechtel, indicated to Supreme that the FISC was being sourced from an unspecified Chinese supplier.<sup>246</sup>
383. Supreme estimates that this project would have required approximately 17,700 MT of FISC for the Reduction Area and Main Substation and a further 9,365 MT for the Carbon and Casthouse, a total of 27,065 MT. Mr. Zubick estimates that the FISC for this project would have been delivered from early 2012 through the third quarter of 2013.
384. This project was the first in western Canada where several domestic producers were not invited to bid.

*(c) Canadian Natural Resource Limited (CNRL) – Horizon Oil Sands  
– Delayed Coking Unit (Fire Rebuild)*

385. On January 6, 2011, a fire at CNRL's Horizon Delayed Coking Unit in its Horizon Oil Sands project is located at Fort McKay, Alberta caused significant damage. As a result, the coker needed to be rebuilt. The EPC on the project was Technip Italy.
386. The domestic industry was not asked to bid on the estimated 3,573 MT of FISC required to repair and rebuild this project. Waiward estimates that a domestic price would have

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<sup>246</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.



been approximately \$[ ] for supply only or \$[ ]/MT.<sup>247</sup> In early 2014, the FISC supply was awarded to William Hare from the United Kingdom.

387. It is estimated that the FISC for this project was delivered between the first quarter of 2012 and the first half of 2013.<sup>248</sup> This project is distinct from a separate CNRL coker unit expansion that occurred at approximately the same time and is discussed below.

*(d) Canadian Natural Resource Limited (CNRL)–Horizon Oil Sands–  
Delayed Coking Unit*

388. CNRL's Horizon Oil Sands project is located at Fort McKay, Alberta. In late 2011, Waiward submitted a bid to construct and install approximately 2,000 MT of FISC for an expanded delayed coking unit (DCU).<sup>249</sup> Waiward was awarded the contract to construct and install the FISC for the project; however, it was not given the opportunity to bid on the supply of the FISC. Waiward was informed that the FISC was to be supplied by William Hare, a company located in the United Kingdom. Based on Waiward's knowledge of the project, it estimates that the domestic price for FISC supply only would have been approximately \$8,500,000 or \$4,250/MT. Given that Waiward was not even given the opportunity to bid on the supply of the FISC, it believes that the price obtained from William Hare was significantly below the price at which Waiward would have quoted or bid the project.

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<sup>247</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>248</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>249</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

*(e) Mount Milligan Copper-Gold Mine*

389. The Mount Milligan Copper-Gold Mine is located north of Prince George, BC. It is owned and operated by Terrane Metals Corp. The EPC was a joint venture between Fluor Canada and Amec Foster Wheeler.<sup>250</sup>
390. Supermetal bid to supply the [ ] MT of FISC for the project at a price of \$[ ].
391. In 2011, Fluor and Amec selected William Hare from the UK as the supplier of FISC. Supermetal estimates that between the first quarter of 2012 and the second half of 2013, William Hare would have delivered approximately [ ] MT of FISC to this project. The value of this FISC to the Canadian industry was equal to approximately \$[ ] in revenue.<sup>251</sup>

*(f) Husky – Sunrise SAGD*

392. The Husky Sunrise Energy Project is located near Fort McMurray, Alberta. The project utilizes steam assisted gravity drainage technology to extract bitumen from below the surface without open pit mining.<sup>252</sup>
393. The EPC on the contract was Saipem. Saipem did not ask any of the Complainants, the Complainant Supporters or any other domestic producers to bid on this project. Instead, the EPC sought FISC supplied from overseas, ultimately procuring FISC from a supplier in China.
394. The Complainants estimate that the project would have required approximately [ ] MT of FISC, conservatively representing an FISC value of \$[ ]. This material

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<sup>250</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>251</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>252</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

likely would have been delivered between the second quarter of 2012 and the first half of 2014.<sup>253</sup>

*(g) Syncrude – Mildred Lake Mine Replacement – Surge Bins and  
Slurry Buildings*

395. In late 2012, it was announced that “mine trains” at the Mildred Lake oil sands mine would be replaced. A mine train is a series of processes that crush oil sands and mix it with water to extract bitumen.
396. Krupp was selected as the EPC, and in 2012, Krupp awarded the contract for the surge bins to a Korean supplier and the slurry processing facility to William Hare, a UK producer.<sup>254</sup>
397. The surge bins would have required approximately 8,000 MT of FISC.<sup>255</sup> Given the high volume of plate-work required, the domestic unit price would have been approximately \$6,750/MT, resulting in lost revenue to the domestic industry of approximately \$54,000,000.<sup>256</sup>
398. The slurry processing facility would have required approximately 4,000 MT of FISC and that the domestic price to fabricate would have been approximately \$17,400,000.<sup>257</sup> It is estimated that the FISC for the surge bins and slurry processing would have also been delivered between the third quarter of 2012 and the end of 2014.<sup>258</sup>

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<sup>253</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>254</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>255</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>256</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>257</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>258</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

*(h) Imperial Oil – Kearl Phase 1*

399. Imperial Oil's Kearl project is an oil sands extraction development outside Edmonton, Alberta. In 2012 Amec Foster Wheeler, the British EPC for the first phase of the project, awarded the contract for supply of FISC. The Complainants estimate that the volume of FISC was approximately [ ]MT of FISC.<sup>259</sup> The supply of FISC was awarded directly to a Korean FISC producer. The domestic industry was not given the opportunity to bid on this contract. Had they been given the opportunity, the domestic industry would have submitted a bid.<sup>260</sup>
400. The Complainants were unable to obtain information about the price at which the Korean produced FISC was supplied. The Complainants believe that FISC for this project would have been delivered between the last quarter of 2012 through to the last quarter of 2013.<sup>261</sup>

*(i) Imperial Oil – Kearl Expansion Crusher*

401. Kearl is an oil sands extraction project owned by Imperial Oil. Located outside Fort McMurray, Alberta, it is estimated that the deposit has 4.6 billion barrels of recoverable bitumen.
402. Krupp was hired by Imperial Oil as the EPC for the construction of a crusher as part of the expansion of the Kearl project. A crusher is used to remove water and clay particles from extracted bitumen.
403. The domestic industry was not asked to bid on the Kearl expansion crusher. Instead, the project was awarded directly to a Korean FISC producer in 2013.

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<sup>259</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>260</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>261</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

404. The Complainants estimate that the project required 1,500 MT of FISC valued at \$[ ].<sup>262</sup> They also estimate that the FISC for this project arrived between the last quarter of 2013 and the first half of 2014.

*(j) CNRL – Horizon Upgrader (U31A, U31, and U32)*

405. Canada Natural Resource Limited (CNRL) is a crude oil and gas producer.

406. CNRL hired Tecnicas Reunidas Canada (“**TR Canada**”) as the EPC on an update to the Upgrader for the Horizon Oil Sands mine. TR Canada is a subsidiary of Tecnicas Reunidas Group, a Spanish firm.

407. The project is described on TR Canada’s website as:

Upgrader update including a new Diluent Recovery Unit, a new Vacuum Distillation Unit and a new H2S stripping unit. The project will support the objective of CNRL of producing 250 KBPSD of SCO (Synthetic Crude Oil) from the mine of Horizon, where the bitumen is extracted.

408. These three units were referred to as U31A, U31 and U32.

409. In 2012, TR Canada issued an RFQ for the three components, which were referred to as U31A, U31 and U32. The contract was awarded to a Spanish supplier in 2013. The project required [ ] MT of FISC.<sup>263</sup> The FISC for this project would have been imported between the second-quarter of 2013 and the third-quarter of 2014.

410. At the time this project was awarded [ ]<sup>264</sup> At that time [ ]

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<sup>262</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>263</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>264</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

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411. The loss of this project cost the domestic industry approximately \$[ ] in lost sales revenue.

***(k) LaFarge Baghouse***

412. LaFarge is a producer of construction materials, including cement.
413. As part of LaFarge's expansion and upgrade of its plant in Exshaw, Alberta, the firm commissioned the construction of a "baghouse" to collect particulates from its new kiln.
414. The project required [ ] MT of FISC. In 2014, Supreme Group submitted a bid for [ ].<sup>266</sup> Supreme Group was not awarded the project. Instead, it was awarded to a Chinese FISC producer.<sup>267</sup> It is estimated that the FISC for this project would have arrived between 2014 and early 2016.<sup>268</sup>

***(l) Brion Energy – SAGD Modules***

415. Brion Energy is a wholly owned subsidiary of PetroChina Company Ltd., a Chinese state-owned enterprise.
416. In 2013, Worley Parsons was selected as the EPC firm for a Brion project in Fort McKay. The project was for the construction of a Steam Assisted Gravity Drainage ("SAGD")

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<sup>265</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>266</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>267</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>268</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

system. SAGD is a technology that pipes steam into underground oil sands reserves in order to extract bitumen.

417. The Complainants were interested in this project; however, to their knowledge, neither they nor any other Canadian FISC producer were given the opportunity to bid on the project. The Complainants have been advised that the owner of the project—PetroChina—insisted on sourcing the FISC from China.<sup>269</sup>
418. The volume of FISC for the project was approximately 3,000 MT.<sup>270</sup> If a domestic producer were to have fabricated FISC for the project, its price would have been in the range of \$11,000,000.<sup>271</sup> The FISC for the project was to arrive in the second half of 2014 through 2015.

*(m) Fort Hills Primary Extraction*

419. Fort Hills Project is an open-pit oil sands mine development owned by several companies, with Suncor holding the largest share of ownership. It is estimated that the lifespan of the project will be 50 years and that it will produce 180,000 barrels of bitumen per day at full production.
420. The project includes several silos that require FISC. One is the primary ore mine extraction facility. The primary extraction facility receives feedstock from the ore preparation plant (OPP) in the form of crushed and graded oil sands material. The material is mixed with water in a slurry plant and directed to separation cells where the bitumen is separated from the sand.<sup>272</sup>

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<sup>269</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>270</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>271</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>272</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

421. The EPC on the mine extraction component of the project is Worley Parsons. The procurement of FISC for the project was awarded in 2013. FISC was to be supplied from Q4 2014 through 2015.<sup>273</sup>
422. Canadian FISC producers were once again overlooked and were not invited to bid on the project. Instead, Worley awarded the project to Shanghai Ground Tower, which is part of Baosteel, a state-owned Chinese FISC producer and primary steel producer. If given the opportunity, numerous Canadian producers would have bid on this project.<sup>274</sup>
423. This project would have required approximately 5,000 MT of FISC and that a domestic price to supply the FISC for such a project would be \$17,500,000. It is believed that the FISC for this project began to arrive in the first quarter of 2014 and continued to arrive throughout 2015.<sup>275</sup>

*(n) Suncor – Fort Hills – Ore Preparation Plant*

424. Another aspect of the Fort Hills project is the construction of an ore preparation plant, which crushes oil sands from an open pit mine, moves the product along conveyors to a surge bin and then along a hydrotransport line where the product is run through a rotary wet screen. From here, the product is processed to remove the bitumen at the extraction facility.
425. In 2014, FAM Canada Inc., the EPC for the Ore Preparation Plant, awarded the supply of approximately [ ] MT of FISC required for this portion of the project to a Chinese FISC producer. The Complainants, and other Canadian FISC producers, were again not

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<sup>273</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>274</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>275</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.



even given the opportunity to bid on the project.<sup>276</sup> Had they been given the opportunity, members of the domestic industry generally, and the Complainants specifically would have submitted bids to produce and supply FISC for this project.<sup>277</sup> It is estimated that the domestic price to supply such a project would be approximately \$[ ].<sup>278</sup>

426. The Complainants estimate that imported FISC would have been delivered between late 2014 and late 2015.<sup>279</sup>

*(o) Suncor—Fort Hills – Secondary Extraction Facility*

427. Part of Suncor's Fort Hills oil sands project is the construction of the Secondary extraction facility, which separates the bitumen from the oil sands. Suncor awarded the EPC contract for this portion of the Fort Hills development to SK Engineering and Construction. It is reported that the EPC contract is worth \$2.55 billion.
428. SK Engineering required approximately [ ] MT of FISC. The Complainants were not invited to bid on the supply of this FISC.<sup>280</sup> Instead, it was awarded to Hanmaek Heavy IND., a South Korean FISC producer. Based on the Complainant's knowledge of the project this steel is to arrive between early 2015 and the third-quarter of 2016.<sup>281</sup>
429. In the third-quarter of 2015 Waiward was approached by SK Engineering to quote on the supply of [ ] MT of FISC for this portion of the project. Waiward was told the reason for the quote was that the supply of FISC for the project was running behind

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<sup>276</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>277</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>278</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>279</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>280</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>281</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

schedule. Waiward provided a price of \$[ ] or \$[ ]/MT.<sup>282</sup> This price is low, however, because the drafting and engineering portion of the project had already been completed by the South Korean producer. All that Waiward was being asked to do was fabricate according to the supplied drawings. Had Waiward been required to do drafting and engineering, its quoted price would have been \$[ ]/MT or \$[ ].<sup>283</sup>

430. SK Engineering advised Waiward that it could source product from Korea for 20% to 25% less than Waiward's quote and asked Waiward to drop its price by approximately \$[ ]/MT or [ ]%. [ ]

]. SK

Engineering did not purchase the FISC from Waiward, instead it relied on Hanmaek Heavy IND.

431. This was a very significant project. Had Waiward and other Complainants been given the opportunity to quote on the entire project they would have submitted a bid.
432. The portion of the project that Waiward quoted on was representative of the entire project. Consequently, it is fair to state that had Waiward bid the entire project it would have done so at the same unit rate in its quote (\$[ ]/MT), which results in a total bid price of \$[ ].
433. It is estimated that that the FISC for this project will be delivered between the first quarter of 2015 and the third quarter of 2016.

***(p) Suncor – Fort Hills Cogeneration Plant***

434. Another component of the Fort Hills project is the cogeneration facility. Oil and gas projects require significant volumes of electricity and steam. A cogeneration facility is an

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<sup>282</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>283</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

on-site power plant facility that generates electricity using natural gas. In some cases, excess electricity will even be sold to public utilities.

435. TR Canada was awarded the EPC contract for the Fort Hills cogeneration facility.<sup>284</sup> TR Canada is the Canadian subsidiary of Spanish engineering firm Tecnicas Reunidas. The Complainants believe that the FISC for this project was produced in South Korea.<sup>285</sup> The turnkey contract includes engineering, procurement and construction of two 85 MW gas turbines, two heat recovery steam generators (HRSGs) and all related interconnecting systems.<sup>286</sup> The Complainants report that no domestic FISC producer was asked to quote or bid on the supply of FISC for this project.
436. With respect to FISC, a project of this size would require approximately [ ] MT of FISC and that the domestic price of FISC for a project like this would be approximately \$[ ].<sup>287</sup>

*(g) Fort Hills utilities and offsite*

437. A second portion of the Fort Hills project is the utilities and offsite component ("U&O"). This portion of the project provides the power, energy and steam to the remainder of the project. As oil sands mining and bitumen extraction is very energy intensive, this portion of the project is significant. Fluor Engineering is the EPC for the U&O project.
438. [ ] all submitted bids to Fluor for this portion of the project.<sup>288</sup> The RFQ for this project was issued in March 2014. It is estimated that the U&O portion of the project required approximately [ ] MT of FISC.<sup>289</sup>

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<sup>284</sup> Public Attachment 7: to Statement of Evidence of Jean-François Blouin: TR Canada (website), Projects in Canada: Fort Hills Cogen Project.

<sup>285</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>286</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>287</sup> Confidential Attachment 5: Statement of Evidence of Jean-François Blouin.

439. Supreme was particularly interested in this project. Prior to the RFQ being issued [

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440. Waiward's bid on FISC supply only was \$[ ] or \$[ ]/MT.<sup>291</sup> In the third-quarter of 2014 Fluor awarded the contract for the supply of FISC to Baosteel, a state-owned Chinese FISC producer. [

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441. At one point, Baosteel was running behind schedule and the EPC contracted with Supermetal for approximately [ ] MT of the FISC for the project.<sup>293</sup> The value of the order was approximately \$[ ]. A few weeks after the order was placed with Supermetal, Fluor cancelled the order and returned it to Baosteel. Supermetal was advised that the reason for the cancellation was that Baosteel was now able to do this portion of the U&O project as well. Supermetal was paid a small cancellation fee of \$[ ].<sup>294</sup>

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<sup>288</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick; Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>289</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>290</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>291</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>292</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>293</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>294</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

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442. The loss of this project cost the domestic industry at least \$[ ] in revenue.<sup>295</sup> It is estimated that the FISC for this project began to arrive in the second-quarter of 2015 and will continue to arrive through to the third-quarter of 2016.

*(r) CNRL – Train 4 & 5 - OPP*

443. In late 2013, CNRL awarded the EPC contract for portions of an Ore Preparation Plant (surge bins and conveyors) to FAM Canada Inc. In 2014, FAM Canada Inc. awarded the contract for the approximately 6,445 MT of FISC required to HuaYu Steel Structure Engineering Company, Ltd., a Chinese FISC producer.<sup>296</sup> It is estimated that the price to produce the FISC for this project domestically would have been approximately \$55,439,890.<sup>297</sup> The Complainants were not given an opportunity to bid on the supply of FISC for this project.<sup>298</sup> Had they been given the opportunity to bid on this project the would have submitted a competitive bid.<sup>299</sup>

444. Delivery of the FISC for the project is estimated to have occurred from late 2014 through all of 2015.<sup>300</sup>

*(s) Laricina – Saleski Project*

445. Laricina Energy Ltd. is an energy company operating in Alberta's oil sands. Its Saleski project is a bitumen extraction development in the Athabasca region of Alberta.
446. TR Canada was selected as the EPC on the Saleski development. In January 2014, a representative of TR Canada issued an RFQ package. At that time, information about the

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<sup>295</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>296</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>297</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>298</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>299</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>300</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

project was incomplete. That same month, Supreme provided TR Canada with budgetary pricing on the project. Excluding grating, the pricing was \$[ ] for [ ] metric tonnes of FISC.<sup>301</sup> In February 2014, TR Canada sought some clarifications and then was silent until late 2014.

447. In December 2014, TR Canada contacted Supreme with a reduced scope on the project and more information. Supreme submitted revised pricing that same month, totaling \$[ ] for [ ] metric tons, which is exclusive of grating.
448. Supreme never heard from TR Canada again about this project. Supreme believes that this project was awarded to an overseas supplier. As TR Canada has previously sourced FISC from Spain it is possible that this project was also sourced from Spain. It is believed that this order would have been delivered in the first half of 2015.<sup>302</sup>

*(i) Sturgeon Refinery - Hydrotreaters*

449. The North West Redwater Partnership is the owner of the Sturgeon Refinery project in Alberta. The refinery will process oil sands bitumen into diesel, diluent and other products, such as ethane, propane and butane. Construction of Phase 1 of the project is expected to run from mid-2013 through to the end of 2016.<sup>303</sup>
450. One part of the project is the construction of hydrotreaters, which are industrial plants that carry out a processing procedure where bitumen and hydrogen are mixed at high pressure and temperatures. The process stabilizes crude oil that is synthesized from

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<sup>301</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>302</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>303</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

bitumen. The EPC for this portion of the project is the German firm Lurgi. Lurgi sourced part of the FISC for this project from China.<sup>304</sup>

451. The Complainants estimate that volume of steel sourced from China is approximately 2,500 MT.<sup>305</sup> The Complainants estimate that the value of this FISC is \$10,940,000.

***(u) Sturgeon Refinery – Units 50-60***

452. Another component of the Sturgeon refinery project are “units 50-60”. Unit 50 is the “Light Ends Recovery” facility. Unit 60 is the “Sulphur Recovery” facility. The EPC on these two units is TR Canada.<sup>306</sup>
453. TR Canada did ask at least one domestic producer to bid on the FISC for this portion of the Sturgeon Refinery; however, the scope of the project changed and that domestic producer was not asked to bid on the revised scope.<sup>307</sup> Instead, the FISC is being fabricated by Hanmaek Heavy Industries of South Korea. The Complainants estimate that the volume of FISC for this portion of the project is approximately 8000 MT and that if produced domestically it would have resulted in approximately \$[ ].<sup>308</sup> It is estimated that FISC for this project will have arrived in 2014 through 2015.<sup>309</sup>

***(v) CNRL – Unit 45 Combined Hydrotreating Unit***

454. Saipem is the EPC on a hydrotreating unit at CNRL’s Horizon oil sands project. As noted above, hydrotreating is a processing procedure where bitumen and hydrogen are mixed at

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<sup>304</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>305</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>306</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>307</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>308</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>309</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

high pressure and temperatures. The process stabilizes crude oil that is synthesized from bitumen.

455. It appears that Saipem did not seek a bid or quote from domestic producers for the FISC for this project. Waiward was, however, selected to erect the project. Saipam is sourcing the FISC from William Hare UAE LLC in the United Arab Emirates.<sup>310</sup>

456. The Complainants estimate that the project will require 2,500 MT of FISC. The price would have been in the range of \$9,250,000.<sup>311</sup>

*(w) CNRL – Train 4/5 – HWS4*

457. CNRL retained Krupp as the EPC for the HWS4 portion of its Horizon Project expansion. Krupp requested that Supermetal provide a quote for approximately [ ] MT of FISC. Supermetal's price was approximately \$[ ].<sup>312</sup> Krupp awarded the project to a Chinese supplier.<sup>313</sup>

*(x) Mosaic*

458. Mosaic is a potash mine and production company. Several years ago it began a multi-year expansion of its potash mining and production facilities in Saskatchewan. The remaining portion of the expansion are the K2 and K3 projects.<sup>314</sup>

459. The EPC on the project is Krupp. In the spring of 2016, Waiward submitted a bid to supply FISC for conveyors for the K3 portion of the project and FISC for conveyors and

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<sup>310</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>311</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>312</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>313</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>314</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.



two Transfer Houses for the K2 portion of the project. Waiward's bid included [ ] MT of FISC and was valued at \$[ ].

460. The Project was awarded to Baosteel from China. Based on commercial intelligence the Complainants believe that Baosteel's price, including shipping, was 15% to 20% below Waiward's price.
461. The Complainants estimate that the FISC for the project would have been delivered between August 2016 and March 2017.<sup>315</sup>

*(y) Conclusion on Examples of Lost Sales*

462. These examples provide cogent evidence that Subject Goods have managed to capture numerous projects from customers that have traditionally sourced from the domestic industry. As is discussed below, these lost sales have had a substantial negative impact on the financial performance of the domestic industry. The Complainants submit that this information clearly supports a reasonable inference that the Subject Goods have caused injury to the domestic industry.

**3. Price Undercutting**

463. The Subject Goods are entering the Canadian market by leveraging low pricing which is undercutting the Complainants' pricing.
464. As described above, the price of Subject Goods has consistently been considerably below domestic pricing. The lost sales information provided above provides repeated examples of customers choosing to purchase lower priced Subject Goods, in many cases without even giving the domestic industry an opportunity to bid because it had become common knowledge that Subject Goods pricing would be substantially below the domestic industry's pricing.

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<sup>315</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

465. For example, in the case of the Fort Hills U&O, Chinese pricing was approximately \$[ ] to \$[ ]/MT whereas Waiward's price was \$[ ]/MT. Similarly, Waiward was advised by SK Engineering that it could source FISC from South Korea for 20% to 25% less than Waiward's quote.

466. Supreme was advised by [ ], that Spanish pricing was as much as [ ]% below Canadian pricing on the CNRL-U31, U31A and U32 project. Supreme has also been advised by [ ] that the EPC can source product from overseas for at least [ ]% below Canadian prices.

467. [ ]

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468. Allan Metzger of Supermetal was advised by [ ] that they could acquire FISC from Korea or China for half of the cost of domestic producers, including overseas shipping.<sup>317</sup> Metzger was also advised by representatives from [ ] that the price for FISC from China is at least 30% below the price of domestically produced FISC.

469. Price undercutting by the Subject Countries has not only resulted in substantial volumes of lost sales, it has also caused the domestic industry to have to discount pricing in order

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<sup>316</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>317</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

to obtain orders, which has resulted in price depression and substantial lost revenue to the domestic industry.

#### **4. Price Depression**

470. The Complainants have experienced price depression.
471. Complainants have had to reduce prices when bidding in an effort to remain competitive against imports. The domestic producers previously bid projects with a [ ]% to [ ]% margin, which is necessary given the risks associated with FISC bids.<sup>318</sup> There are substantial costs associated with preparing a bid on FISC projects. FISC projects are complex and a large amount of time and engineering support is required to prepare and submit a bid. FISC projects also tend to be delivered over a long period of time, which also increases risk of cost fluctuations and other unanticipated variables that can increase the cost of delivering a project.
472. As a result of low priced competition from the Subject Goods, the domestic producers have had to substantially reduce pricing and are currently bidding with a profit margin in the range of only [ ]% to [ ]%. Even with these margins, the domestic industry is still in many cases unable to compete with Subject Country pricing. Waiward is also bidding projects with labour rates that are [ ]% lower than its normal labour rate.<sup>319</sup>

#### **5. Production, Market Share and Capacity Utilization**

473. The Complainants and Complainant Supporters domestic sales from production was 54,616 MT in 2013, 58,365MT in 2014, and 58,714 MT in 2015.<sup>320</sup> Their collective domestic production in the first quarter of 2016 was 9,303MT.

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<sup>318</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>319</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>320</sup> Table 2: Domestic Market: Fabricated Industrial Steel Components.

474. The Subject Countries' estimated deliveries of FISC to the Canadian market was 37,549 MT in 2013, 25,313 MT in 2014, 57,571 MT in 2015, and 8,421 MT in the first-quarter of 2016.<sup>321</sup> In terms of market share, the Subject Countries moved from 30% in 2013 to 21% in 2014, and then grew significantly to approximately 40% in 2015 and the first-quarter of 2016. What is particularly noteworthy is the change in market share held by China and Korea. China's share of the Canadian FISC market based on deliveries was 11% in 2013, 6% in 2014 and 22% in 2015. Similarly, South Korea's share of the domestic FISC market was 4% in 2013, 3% in 2014 and 16% in 2015.
475. While domestic market share remained relatively stable, it is low, and below market share that was traditionally held by the domestic industry prior to 2013.<sup>322</sup> The rising presence of Subject Goods has been problematic for several reasons. First, the Complainants' and Complaint Supporters' FISC production capacity utilization rates have languished at low levels and were 38% in 2013, 40% in 2014, 41% in 2015, and 28% in the first quarter of 2016.<sup>323</sup> Overall production capacity utilization for FISC and non-FISC goods produced on the same equipment were also low at 61%, 62%, 62% and 54% over the same period.<sup>324</sup>
476. In addition, the rise of Subject Goods in the market has resulted in substantially lower pricing in the market, and the domestic industry is receiving less revenue per MT as a result. The average selling price per MT obtained by the Complainants has fallen by over 21% between 2013 and 2015. While the price per MT recovered somewhat in the first

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<sup>321</sup> Table 2: Domestic Market: Fabricated Industrial Steel Components.

<sup>322</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick; Confidential Attachment 1: Statement of Evidence of Jim Kanerva.

<sup>323</sup> Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statement.

<sup>324</sup> Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statement.

quarter of 2016, it remains more than 10% below 2013 levels and sales volumes were down to very low levels in the first quarter of 2016.<sup>325</sup>

#### **6. Poor Financial Results**

477. There is a lag-time between when an order for FISC is place and when it is produced and delivered. In some cases, delivery may occur within 6 to 8 weeks. In other cases, particularly on larger projects, delivery can occur over a 12-month period, if not longer. Further, there may be delay between when an order is placed or a contract is awarded and when production and delivery begin. Consequently, lost sales in one fiscal year may not manifest on a financial statement until one or even two fiscal years later.
478. FISC producers require a net income in the range of [ ] to [ ]% in order to offset the risks associated with FISC production.<sup>326</sup> In 2013, the Complainants' and Complaint Supporters' consolidated net profit on FISC production for domestic sales was 13.8%. In 2014 this fell 10.4% and it fell further to 7.4% in 2015.<sup>327</sup> Net income from FISC production improved in the first quarter of 2016, however, 2016 is expected to be no better than 2015 overall. While the industry has remained profitable, its margins are unsustainably low in light of the realities of the FISC industry. Further, given the low levels of orders for late 2016 and early 2017, the financial performance of the domestic industry is likely to deteriorate further, and the prospect of lay-offs and facility shut downs is very real.<sup>328</sup>

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<sup>325</sup> Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statement

<sup>326</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>327</sup> Confidential Attachment 8: Complainant and Complaint Supporter Consolidated and Individual Financial Statement.

<sup>328</sup> <sup>328</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

## **7. Employment**

479. The Complainants' collective employment has dropped over the 2013-2016 Q1 period. Individuals directly employed in FISC production dropped by 12% from 1,072 in 2013 to 945 in the first quarter of 2016. This is related to the low capacity utilization of the domestic industry, which would have been substantially higher but for the large volume of Subject Goods that have been sold in the Canadian market over this period.
480. The Complainants submit that the foregoing evidence clearly supports an inference that there is a reasonable indication that the domestic industry has been injured by Subject Goods, which have:
- a) Captured over \$600 million in sales in the Canadian market since 2013;
  - b) Grown in market share to 40% of the Canadian market;
  - c) Undercut Canadian industry pricing continuously by a large percentage;
  - d) Cost the Canadian industry a large number of lost sales, including the 24 examples listed above, including 16 projects since 2013;
  - e) Driven the average price per MT obtained by the Complainants down by 21% between 2013 and 2015; and,
  - f) Caused low capacity utilization levels and consequential employment losses.

## **B. Evidence of Threat of Injury**

### **1. Introduction**

481. Subsection 37.1(2) of the SIMR lists the factors the Tribunal may consider in addressing the question of whether dumped or subsidized goods are threatening to cause injury. The CBSA's practice is to consider these factors when assessing whether or not a complaint provides a reasonable indication that the alleged dumping and subsidizing of particular goods threaten to injure the domestic industry.
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482. The Complainants submit that the evidence in this Complaint supports a reasonable inference that the domestic industry has suffered past injury, and therefore, it is not necessary to also establish that there is a threat of injury. Nevertheless, the evidence with respect to threat is equally, if not even more compelling than the evidence of past injury.
483. The domestic industry is also threatened with further material injury by reason of dumped and/or subsidized imports from Subject Countries. Imports are increasing and are almost certain to continue to do so, given the unused and growing production capacity in the Subject Countries, their export focus on the Canadian market, as well as the other factors described below.
484. Increasing imports at prices that substantially undercut domestic producers' pricing will continue to depress and/or suppress domestic prices and to take market share from Canadian producers. The adverse volume and price effects of increasing dumped and/or subsidized imports will cause domestic producers to suffer further declines in production, capacity utilization, employment, market share, prices, operating income, return on investment, and other indicators of material injury.
485. This is occurring at a time when the domestic industry is extremely vulnerable to injury from dumped and subsidized imports. Oil prices fell sharply in the second half of 2014 and have not recovered. Because of the lag in time between the time orders are placed and FISC is actually delivered, the impact of the drop in oil prices will be felt by the domestic industry primarily in 2016 and 2017. The domestic industry will be required to compete in what is expected to be a smaller total apparent Canadian market in the second half of 2016 and 2017, which increases the importance of each project, and also increases the vulnerability of the domestic industry to dumped and subsidized price competition.<sup>329</sup>

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<sup>329</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

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486. In making its assessment of threat of injury, the Tribunal generally considers a timeframe of 12 to 24 months.<sup>330</sup> The evidence included with this Complaint clearly demonstrates a reasonable inference that there is a reasonable indication that the domestic industry will suffer injury in the next 12 to 24 months if the trends exhibited by Subject Goods continue in 2016 and 2017 the domestic industry will suffer material injury.

487. The data from 2013 through 2016 demonstrates that the Subject Countries have all gained market acceptance in Canada and sold substantial and growing volumes of Subject Goods in Canada from 2013 through 2015. The Subject Countries have done this by leveraging low pricing, and now have established channels of distribution in the Canadian market. It is reasonable to infer that these trends described above in the section dealing with past injury will continue, and likely increase if duties are not put in place against Subject Goods.

**2. Few existing orders**

488. The deteriorating performance of the domestic industry in the 2013 through 2015 is expected to worsen through 2016. Generally, as a result of production schedules, the domestic industry will have orders in its books 12 months or more ahead. However, order books are thin.

489. Supreme, one of the three largest Canadian FISC producers [ ]<sup>331</sup>

490. Waiward, another large FISC producers, [ ]<sup>332</sup>

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<sup>330</sup> *Greenhouse Bell Peppers*, NQ-2010-001, Finding and Reasons (October 19, 2010) at para 175 and see also *Carbon Steel Welded Pipe*, NQ-2012-003, Finding and Reasons (December 27, 2012) at para 156.

<sup>331</sup> Confidential Attachment 2: Statement of Evidence of Paul Zubick.

<sup>332</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva.



491. Supermetal, the third large FISC producer in the domestic industry, [

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492. In the first quarter of 2015, Ocean Steel [

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493. MacDougall Steel Erectors is expecting [

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494. While this is only a sample of the complainants and supporters, a consistent story exists across all firms. As a consequence, it is expected that the injury that the domestic industry has, and is, experiencing will worsen through 2016 and 2017.

### **3. Subject Goods imports dominate the Canadian market**

495. Subject Goods imports dominate the market. In 2015, they held an estimated 39% of the Canadian market, up from 25% in 2014.<sup>336</sup> While 2014 imports were below 2013, it must be remembered that imports for two projects – Vale Long Harbour and Rio Tinto Alcan’s Kitimat Smelter Expansion—dominated 2013 imports.<sup>337</sup> In the case of China, its share of the market jumped from 12% in 2013 to 21% in 2015. Similarly, Korea’s share jumped from 4% to 15% over the same time period.<sup>338</sup>

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<sup>333</sup> Confidential Attachment 5: Statement of Evidence of Jean-Francois Blouin.

<sup>334</sup> Confidential Attachment 69: Letter from Ocean Steel & Construction Ltd. To CBSA, dated July 19, 2016.

<sup>335</sup> Confidential Attachment 70: Letter from MacDougall Steel Erectors To CBSA, dated July 19, 2016.

<sup>336</sup> Table 2: Domestic Market: Fabricated Industrial Steel Components.

<sup>337</sup> Table 2: Domestic Market: Fabricated Industrial Steel Components.

<sup>338</sup> Table 2: Domestic Market: Fabricated Industrial Steel Components.

**4. China's domestic market situation threatens to injure the domestic industry**

496. Market conditions and other factors affecting the Chinese FISC industry threaten to injure the Complainants in two ways. First, it threatens to injure the Complainants directly as Chinese subject goods are likely to continue to acquire an increasing share of Canada's FISC industry in the next 18 to 24 months. Second, it threatens to injure the Complainants indirectly as Chinese FISC producers will take a greater share of non-Chinese FISC markets, forcing non-Chinese FISC producers in those markets to find new markets, including Canada. The relevant market conditions and factors are discussed below.

**(i) Excess Production Capacity in China**

497. China's excess production capacity affects both Chinese FISC producers and non-Chinese FISC exporters to Canada, and poses a real threat to the Complainants.
498. In *Rebar*, the Tribunal recognized the threat of injury that China's excess steel capacity imposes on the domestic producers:

The chronic global overcapacity situation and the estimated consolidated excess capacity in the subject countries, which is approximately 100 times the size of the Canadian market, are also significant issues to consider. The evidence on the record indicates that there are over 112 million metric tonnes of excess rebar capacity in China alone, which, in itself, is 95 times larger than the Canadian market as a whole. Excess capacity is estimated to be close to 4 million metric tonnes in Korea and approximately 5 million metric tonnes in Turkey, which amounts to levels 3 to 5 times greater than the total Canadian apparent market.

Other than in Turkey where, as Mr. Veysel Yayan indicated at the hearing, excess capacity is expected to decrease in the coming years (a period that goes beyond the time frame examined by the Tribunal), there is no evidence that the freely disposable capacity of the exporters from the subject countries will decrease in the near term. While the Tribunal recognizes that not all this excess capacity will logically be used to increase exports of the subject goods to Canada, if even a fraction of this excess capacity is used to increase

the presence of dumped and subsidized goods, this can have a significant impact in a relatively small market such as Canada.<sup>339</sup>

[Citations Omitted].

499. In November 2015, Fitch Ratings forecasted that Chinese production capacity would increase to 1.17 billion tonnes in 2015 (over 1.15 billion tonnes in 2014), but that production capacity would peak in 2016.<sup>340</sup> China's crude steel production from January through November 2015 was 738,380 million tonnes.<sup>341</sup> Annualized, China will have produced 805,505 million tonnes of crude steel in 2015. This leaves 364,496 million tonnes of excess production capacity and a capacity utilization rate of 69%.
500. China's excess production capacity is not expected to decrease significantly in the near future. For a variety of reasons including excess capacity and slowing growth, in 2013 the GOC set targets for eliminating 80 million MT of steel production capacity by 2017.<sup>342</sup> China is not expected to meet its goal as production capacity is expected to increase in 2016.<sup>343</sup>
501. Further, the GOC's goal of reducing capacity by 80 million tonnes, if met, would not adequately address China's over capacity problem. According to an HSBC report cited by the Financial Times, China would need to close 120 to 160 million tonnes of production capacity in 2016 to have a "relatively healthy" capacity utilization rate of 80

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<sup>339</sup> *Concrete Reinforcing Bar*, NQ-2014-001, Finding and Reasons (January 26, 2015) at paras 223-224.

<sup>340</sup> Public Attachment 71: "Fitch InterView: China Steel Production Capacity to Peak in 2016" (November 19, 2015).

<sup>341</sup> Public Attachment 72: World Steel Association, "Monthly Crude Steel Production 2014-2015".

<sup>342</sup> Public Attachment 73: Eric Ng, "Doubt cast on drive to cut steel capacity", South China Morning Post (November 18, 2013).

<sup>343</sup> Public Attachment 71: "Fitch InterView: China Steel Production Capacity to Peak in 2016" (November 19, 2015).

percent.<sup>344</sup> In other words, despite the GOC goal of decreasing production capacity by 80 million tonnes by 2017, China's steel production capacity will continue to increase until at least 2016 and the decrease in production capacity required to reach a relatively healthy capacity utilization rate would require the GOC to double their already failed reduction goal.

502. Even more concerning for other markets, and of direct relevance to this inquiry, the Chinese State Council is reportedly encouraging Chinese steel companies to go abroad to find other markets to address their capacity.<sup>345</sup>
503. There are no publicly available production capacity figures for FISC in China. However, China's excess steel production capacity does threaten FISC producers. There is an imperative for Chinese primary steel producers to produce steel and move it to market, including export markets. This imperative is exacerbated when a state-owned company that is influenced by political and not economic considerations produces both steel and FISC. Several of the exporters of FISC in China are owned by integrated steel mills. For example, Shanghai Ground Tower is owned by Baosteel, one of the largest steel makers in China.

**(ii) China: Excess Production, Under Utilized Capacity and Weakening Domestic Demand**

504. The Complainants are threatened by China's excess production and weakening demand.
505. A deteriorating Chinese steel market and pressure from the GOC to reduce production capacity have not resulted in significant decreases in production and the global steel marketplace is suffering as a result.

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<sup>344</sup> Public Attachment 74: Gabriel Wildau, "Losses mount in China's overcrowded steel sector" Financial Times (December 4, 2015).

<sup>345</sup> Public Attachment 75: Steel Times International, "Chinese profit margin improves to 0.34% Jan-Aug" (October 3, 2013).

506. It is forecasted that Chinese steel demand will have decreased by 3.5 percent in 2015 and will decrease by another 2 percent in 2016.<sup>346</sup> However, Chinese steel production dropped by only 2.2 percent in the first 11 months of 2015.<sup>347</sup> As a consequence, Chinese steel producers have significantly increased their exports. Over the same 11-month period Chinese steel exports climbed by 22 percent to 102 million tonnes.<sup>348</sup> To put this in context, China's annualized steel exports for 2015 of 111.3 million tonnes will exceed Japan's total crude steel production in 2014 of 110.6 million tonnes and the US's total 2014 crude steel production of 88.2 million tonnes.<sup>349</sup> Further, it is not expected that Chinese production will decrease to a sustainable rate. It is reported that Chinese mills are resisting steel production reductions for reasons that include maintaining market share and pressure by local governments to sustain production and employment.<sup>350</sup>
507. China's over-production and increased exports are likely to continue. The *Economist* cites a UBS forecast that China will produce 441 million tonnes more steel than it will consume in 2015.<sup>351</sup> If the 2015 annualized volume of 111 million tonnes of exports is removed, this leaves 330 million tonnes of excess steel produced by China in 2015. Japan, the US and India combined produced only 285 million tonnes of crude steel in 2014.<sup>352</sup> With a forecasted decrease in Chinese steel demand for 2016, Chinese producers

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<sup>346</sup> Public Attachment 76: Katy Barnato, "Steel demand 'evaporating at unprecedented speed'" CNBC (October 28, 2015).

<sup>347</sup> Public Attachment 77: Jasmine Ng, "China's steel output drops again with more cuts on the way" Bloomberg Business (December 13, 2015).

<sup>348</sup> Public Attachment 77: Jasmine Ng, "China's steel output drops again with more cuts on the way" Bloomberg Business (December 13, 2015).

<sup>349</sup> Public Attachment 34: World Steel Association, "World Steel Figures in 2015", p 9.

<sup>350</sup> Public Attachment 78: Tracy Alloway, "Why China's Steel Mills Won't Cut Back Production", Bloomberg Business (November 24, 2015).

<sup>351</sup> Public Attachment 79: The Economist, "China's soaring steel exports may presage a trade war" (December 9, 2015).

<sup>352</sup> Public Attachment 34: World Steel Association, "World Steel Figures in 2015", p 9.

will be looking desperately to foreign markets to take not only its 330 million tonnes of 2015 excess steel production but a significant volume of its 2016 and 2017 production too. Chinese FISC producers can take advantage of this situation by procuring unreasonable priced steel inputs and exporting their production to Canada.

508. Increased exports have not been able to sustain Chinese producers' bottom lines. The *Economist* reports that China's 101 largest steel firms lost US\$11 billion in the first 10 months of 2015, despite the increase in exports.<sup>353</sup> Losses and excess production seriously threaten to injure China's export markets, including Canada. Chinese firms are desperate to shore up losses and move excess production, and therefore, will have an incentive to dump steel in export markets at a price that exceeds their marginal cost of production.<sup>354</sup> Reuters has cited Chinese producers and traders who openly admit to selling steel exports at a loss.<sup>355</sup>

509. In light of this excess production, Chinese FISC producers will have incentives to export. Integrated steel mills that produce primary steel and FISC, such as Baosteel, will export FISC to Canada and other countries in an effort to move steel to export markets. Non-integrated steel mills will also take advantage of excess steel inputs by offering FISC at low prices in export markets.

**(iii) Global Ramifications of Chinese overcapacity, over production and excessive exports**

510. As noted above, the Tribunal has previously recognized that dumped Chinese steel exports in other markets has a domino effect whereby producers in those markets face

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<sup>353</sup> Public Attachment 79: The Economist, "China's soaring steel exports may presage a trade war" (December 9, 2015).

<sup>354</sup> *Concrete Reinforcing Bar*, NQ-2014-001, Finding and Reasons (January 26, 2015) at paras 225.

<sup>355</sup> Public Attachment 80: Ruby Lian and Manolo Serapio Jr, "China steel exports said to be sold at a loss as backlash grows" Reuters (June 18, 2015).

challenges to compete locally and therefore may look to Canada and other countries to sell their products.<sup>356</sup>

*(a) China: Market Conditions and Subject Producers' Dependence on Export Sales*

511. China's economy is growing at a slowing pace. Its GDP grew by 7.7% in 2013 and 7.3% in 2014.<sup>357</sup> The International Monetary Fund (the "IMF") is forecasting lower growth of 6.8% in 2015 and 6.3% in 2016.<sup>358</sup>
512. This slower growth is negatively affecting China's steel and FISC sectors. The World Steel Association recently reported that Chinese steel consumption for finished steel grew by 6.1% in 2013 and contracted by 3.3% in 2014.<sup>359</sup> China's finished steel consumption contracted annually by a further 5.4% in 2015 and is forecasted to contract another 4% in 2016 and 3% in 2017.<sup>360</sup>
513. Contracting domestic steel demand in a market with massive excess capacity creates a strong incentive for steel mills to export steel. Given the significant trade restrictions applicable to Chinese steel mill products in major markets around the world, there is a strong incentive to maintain utilization rates by exporting upstream products that are not subject to restrictions, such as FISC. For example, steel plate, which is a primary input in

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<sup>356</sup> *Hot-Rolled Carbon Steel Plate*, NQ-2013-005, Statement of Reasons (June 4, 2014) at para 189.

<sup>357</sup> Public Attachment 81: IMF, "World Economic Outlook: Adjusting to lower commodity prices" (October 2015), p. 172.

<sup>358</sup> Public Attachment 81: IMF, "World Economic Outlook: Adjusting to lower commodity prices" (October 2015), p. 172.

<sup>359</sup> Public Attachment 82: World Steel Association, "Short Range Outlook 2014-2015" (October 6, 2014); Public Attachment 83: World Steel Association, "Short Range Outlook 2015-2016" (April 20, 2015).

<sup>360</sup> Public Attachment 84: World Steel Association, "Short Range Outlook 2016-2017" (April 13, 2016).

FISC, is subject to trade remedy measures in Canada, the United States and the European Union.<sup>361</sup>

514. There will also be a significant slowdown in China's construction sector, for FISC, both industrial and non-industrial. It is reported that construction output from 2014 through 2020 is expected to grow at an annual rate of only 3.9%.<sup>362</sup> Growth in China's construction industry was 13.5%, 9.7%, 9.3% and 9.5% respectively for years 2010 through 2013.<sup>363</sup> With sustained steel production and slowing construction, Chinese FISC exporters will have to focus on export markets.
515. One of the major consumers of industrial FISC are mining projects. China's mining industry is plagued by overcapacity and the GOC is taking steps to reduce China's mining capacity. Over the last three years, China has removed over 200 million tonnes of coal mining capacity and the GOC says it will no longer approve new coal mines.<sup>364</sup> Further, China plans to remove an additional 500 million tonnes of coal production.<sup>365</sup> Other mining sectors are also in distress. It was recently reported that 90% of rare earth mines are operating at a loss, partly due to overcapacity.<sup>366</sup> With capacity reductions and falling profits, it is likely that China's consumption of FISC will decline over the next

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<sup>361</sup> *Hot-Rolled Carbon Steel Plate*, Expiry Review No. RR-2012-001, Order and reasons issued January 8, 2013. See also Public Attachment 67: US and EU Trade Remedy Findings concerning Carbon Steel Plate.

<sup>362</sup> Public Attachment 85: Jessie Lau, "China's construction sector forecast to slump to historic lows: no recovery expected until 2030" South China Morning Post (November 10, 2015).

<sup>363</sup> Public Attachment 86: Press Release, "Research and Markets: Construction in China to 2019 - Fixed Asset Investment Increased by 11.4% during 2015" Reuters (August 21, 2015).

<sup>364</sup> Public Attachment 60: Xinhua, "China to cut overcapacity, help companies out" (January 8, 2016) available at <[http://news.xinhuanet.com/english/2016-01/08/c\\_134988165.htm](http://news.xinhuanet.com/english/2016-01/08/c_134988165.htm)>.

<sup>365</sup> Public Attachment 87: David Stanway, "China overcapacity problems worsen over 2008-2015 -EU chamber" Reuters (February 22, 2016).

<sup>366</sup> Public Attachment 88: Cecilia Jamasmie, "Most Chinese rare earth miners running at a loss — report" Mining.com (August 12, 2015) available at <<http://www.mining.com/most-chinese-rare-earth-miners-running-at-a-loss-report/>>.



two years. This will force Chinese FISC producers that typically service Chinese based industrial projects to find new customers in foreign markets.

516. The drop in oil prices is affecting investment in new oil and gas projects. Last year, Reuters reported that the global oil and gas industry may cancel or delay US\$1 trillion in planned projects over the next few years.<sup>367</sup> In January 2016, Wood McKenzie reported that US\$380 billion in oil and gas projects had been cancelled since 2014.<sup>368</sup> China's major oil and construction firms are large players in the global oil and gas industry. With the cancellation of these projects, Chinese FISC producers will see a drop in demand. In turn, they will be seeking out whatever projects remain, including Canadian oil sands projects and the Canadian mining sector.
517. Chinese steel producers are suffering challenging times. Reuters notes that subsidies represented four-fifths of the profits reported by Chinese steel companies during H1 2014 and this portion is increasing.<sup>369</sup> In particular, subsidies represented 22% of total profits posted by China's listed steel mills in H1 2013, increasing to 47% for full year 2013. In H1 2014, the figure jumped to 80% and, even then, the sector's profit margin halved to just 0.3%.<sup>370</sup>
518. The fact that many steel producers are state-owned helps explain why production continues despite unprofitability. Reflecting on China's slowing demand, Standard and Poor's stated that while some large steel companies may slow down, they may also

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<sup>367</sup> Public Attachment 89: Reuters, "Oil, gas industry may cancel \$1 trln projects on price fall -Aramco exec" (March 9, 2015).

<sup>368</sup> Public Attachment 90: Nick Cunningham, "27 Billion Barrels Worth of Oil Projects Now Cancelled" Russia Insider (January 15, 2016).

<sup>369</sup> Public Attachment 91: Reuters, "Steel Industry on subsidy life-support as China economy slows" (September 18, 2014).

<sup>370</sup> Public Attachment 91: Reuters, "Steel Industry on subsidy life-support as China economy slows" (September 18, 2014).

“continue to operate given their social responsibility (tax revenue and employment) and cheap funding.”<sup>371</sup> The same observation and prediction was made by AMZ Bank. AMZ Bank has noted that the Chinese steel industry is dominated by state-owned mills and that these mills are “very much motivated by political and social drivers, including employment and provincial tax revenues”.<sup>372</sup> Nomura Group, a Japanese Financial Services Firm, points to the fact that Chinese mills are structurally encouraged to over-produce as one reason for the high levels of production in the face of dwindling demand.<sup>373</sup> A report by Ernst & Young notes that China’s overproduction in relation to its domestic steel demand “is likely to persist as the country’s steel mills are required to maintain employment and GDP targets.”<sup>374</sup> Similarly, Bloomberg reports that local governments resist attempts to close unprofitable mills to sustain employment levels and tax revenues, prolonging the glut.<sup>375</sup>

519. These factors exacerbate existing pressures and are likely to cause Chinese fabricators of structural steel to continue to over-produce and rely on export markets to absorb the excess production.
520. Weak demand, combined with increased production and low domestic prices in the Chinese marketplace, increase the likelihood that Chinese exporters will look to foreign markets to absorb excess production. Given the significant difference between the price of FISC in the Chinese and Canadian markets, it is very likely that Chinese fabricators

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<sup>371</sup> Public Attachment 92: Standard and Poor’s, “Poor Profits and Overcapacity Dampen the Outlook for Steel in China” (June 6, 2012), p. 7.

<sup>372</sup> Public Attachment 93: Platts, “China steel glut may take nine months to clear, pressuring iron ore: ANZ” (August 28, 2012).

<sup>373</sup> Public Attachment 94: Chris Oliver, “China Steel Faces Steel-production paradox”, Market Watch (Wall Street Journal) (August 21, 2012).

<sup>374</sup> Public Attachment 95: Ernst & Young, Global Steel 2013: A New World a New Strategy, p. 7.

<sup>375</sup> Public Attachment 96: Bloomberg, “China steel mills hawk rebar on Alibaba to export surplus” (September 25, 2014).

will continue to export significant volumes of low-priced FISC to Canada and that exports could increase.

**5. Korea: Market Conditions and Subject Producers' Dependence on Export Sales**

521. Korea's economy saw growth of 2.9% in 2013 and 3.3% in 2014. Its GDP growth will remain flat at 2.7% in 2015 and 3.2% in 2016.<sup>376</sup>
522. The World Steel Association forecasts a significant drop in Korea's consumption for finished steel products. Finished steel consumption grew by 7.0% in 2014 but only grew by 0.9% in 2015 and is forecasted to grow by only 0.6% in 2016 and 0.2% in 2017.<sup>377</sup> Consequently, Korean steel consumption has yet to return to 2008 levels. In 2008, Korea consumed 58.6 million tonnes of finished steel.<sup>378</sup> It is forecasted that in 2015 and 2016 Korea's consumption of finished steel products will only reach 54.8 million tonnes and 55.2 million tonnes respectively.
523. At the same time, Chinese steel imports are a significant problem in Korea. In May 2015, the Korea Iron and Steel Association reported that Korea's steel imports jumped 17.3% in 2014 to 22.7 million tons, with low-priced steel imports from China a major factor.<sup>379</sup> It is reported that in 2014 and January through October 2015, South Korea was the largest global recipient of Chinese steel exports, with a total of 11.1 million tonnes in the January-October 2015 period.<sup>380</sup> Annualized at 13.32 million tonnes, Chinese exports to

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<sup>376</sup> Public Attachment 81: IMF, "World Economic Outlook: Adjusting to lower commodity prices" (October 2015), p. 169.

<sup>377</sup> Public Attachment 84: World Steel Association, "Short Range Outlook 2016-2017" (April 13, 2016); Public Attachment 83: World Steel Association, "Short Range Outlook 2015-2016" (April 20, 2015).

<sup>378</sup> Public Attachment 34: World Steel Association, "World Steel Figures in 2015", p 16.

<sup>379</sup> Public Attachment 98: Presentation by the Korea Iron & Steel Association, "Korean Steel Industry in 2015" (May 2015), OECD Steel Committee, slide 9.

<sup>380</sup> Public Attachment 99: U.S. International Trade Administration, "Steel Industry Executive Summary: December 2015", p. 6; Public Attachment 96: Bloomberg, "China steel mills hawk rebar on Alibaba to export surplus" (September 25, 2014).

Korea are forecasted to account for 24.3% of Korean steel consumption in 2015.<sup>381</sup> Presumably, these statistics include structural steel.

524. The high volume and low price of Chinese steel imports has had a significant impact on the Korean steel market. In May 2015, the Korea Iron and Steel Association stated “the sustainability of Korean steel industry has been seriously jeopardized by the high level of low-priced imports especially from China.”<sup>382</sup> The Association also states that exports are a key to maintaining or achieving stability for Korean steel producers; however, in the first quarter of 2015 Korean exports of steel sections were down 9.8% year-on-year.<sup>383</sup> In light of the pressure on Korea from Chinese imports and Korea’s shrinking exports of steel sections, there is a real threat that Korean FISC producers will dump FISC on the export market in order to maintain market share, remain competitive, and cover production costs.
525. Korea’s domestic market is unlikely to be able to absorb the excess resulting from decreased exports of Korean produced structural steel. A market research report by BMI Research reports that Korea’s construction sector experienced a slowdown in 2015, with growth at 0.4%, and it forecasts 2016 construction growth at only 1.35%.<sup>384</sup> It currently forecasts growth in Korea’s construction sector at 0.4% and 1.35% in 2015 and 2016 respectively.<sup>385</sup> This slow down combined with increasing Chinese imports means that

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<sup>381</sup> *Ibid.*

<sup>382</sup> Public Attachment 98: Presentation by the Korea Iron & Steel Association, “Korean Steel Industry in 2015” (May 2015), OECD Steel Committee, slide 9.

<sup>383</sup> Public Attachment 98: Presentation by the Korea Iron & Steel Association, “Korean Steel Industry in 2015” (May 2015), OECD Steel Committee, slide 8.

<sup>384</sup> Public Attachment 100: BMI Research, “South Korea Infrastructure Report Q1 2016 (November 4, 2015).

<sup>385</sup> Public Attachment 101: Press Release, “Market Report, ‘South Korea Infrastructure Report Q1 2016’” (November 11, 2015).

Korean FISC producers are likely to face challenges in their home market. In turn, this means they will look to foreign markets to absorb their excess production capacity.

526. In January 2014, the Tribunal in *Structural Tube* considered the effect of the “China factor” in the context of Korea’s pipe and tube sector. The “China factor” was described as a cooling of China’s economy which has resulted in declining demand for Korean steel.<sup>386</sup> The Complainants submit that the China factor is also relevant in this case.

527. Korea’s forecasted soft growth and FISC demand combined with its excess capacity, increasing import pressure from China and the production imperative will force Korean fabricators of structural steel to look to export markets. These conditions along with the increasing volume of low-priced Korean FISC exports to Canada threaten the domestic industry with material injury.

528. As is the case with China, Korean plate is subject to restrictions in numerous export markets, including Canada and the US. This creates an incentive for Korean exporters to export upstream products containing plate, which is the primary input in FISC.<sup>387</sup>

#### **6. Spain: Market Conditions and Subject Producers’ Dependence on Export Sales**

529. As a member of the European Union, the market for Spain’s steel production is influenced by economic factors within Spain itself and the EU as a whole.

530. The EU grew by 0.9% in 2014 and was forecasted to grow by 1.5% and 1.6% in 2015 and 2016 ahead of the recent UK referendum vote on leaving the EU.<sup>388</sup> After the vote,

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<sup>386</sup> *Structural Tubing*, RR-2013-001, Orders and Reasons (December 20, 2013) at para 83.

<sup>387</sup> *Hot-Rolled Carbon Steel Plate*, Inquiry No. NQ-2013-005, Finding issued Tuesday, May 20, 2014. Public Attachment 67: US and EU Trade Remedy Findings concerning Carbon Steel Plate.

<sup>388</sup> Public Attachment 81: IMF, “World Economic Outlook: Adjusting to lower commodity prices” (October 2015), p. 169.

the IMF has projected that Eurozone GDP growth to decelerate from 1.6% in 2016 to 1.4% in 2017.<sup>389</sup>

531. European steel consumption has been soft and is forecasted to remain low. After growing by 4.5% in 2014, EU steel consumption grew at 2.8% in 2015 and is forecasted to grow at 1.4% and 1.7% in 2016 and 2017.<sup>390</sup> Despite this growth in demand, EU steel mills remain under significant pressure from low-priced imports. Over the January through September 2015 period, EU imports of finished steel products increased by 18% year-over-year.<sup>391</sup> However, Chinese imports of finished steel products grew by 40% over the same period.<sup>392</sup> Axel Eggert, the Director General of EUROFER (the European Steel Association), summarized the bleak outlook for European steel producers as follows:

Steel market conditions are foreseen to remain muted in 2015, although a moderate strengthening of demand is to be expected in line with the mild further rise in activity of the steel using sectors in the EU. However, imports are to remain on a high level, thereby exerting severe margin pressure on EU steel mills. Difficult business conditions for the EU steel sector will continue as long as demand growth remains dull and imports remain on an elevated level.<sup>393</sup>

532. The EU construction sector, a FISC consumer, is forecasted to improve in 2016, but primarily in the residential sector. The European Steel Association reports:

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<sup>389</sup> Public Attachment 102: IMF Executive Board Concludes 2016 Article IV Consultation on Euro Area Policies, Press Release No. 16/326 (July 8, 2016).

<sup>390</sup> Public Attachment 84: World Steel Association, "Short Range Outlook 2016-2017" (April 13, 2016); Public Attachment 83: World Steel Association, "Short Range Outlook 2015-2016" (April 20, 2015).

<sup>391</sup> Public Attachment 103: Eurofer, "Economic and Steel Market Outlook 2015-2016: Q4-2015 Report" (October 29, 2015), p. 16.

<sup>392</sup> Public Attachment 103: Eurofer, "Economic and Steel Market Outlook 2015-2016: Q4-2015 Report" (October 29, 2015), p. 16.

<sup>393</sup> Public Attachment 104: Eurofer, "Modest strengthening steel demand in 2015 despite weakened sentiment", online: <http://eurofer.org/News%26Media/Press%20releases/Modest%20strengthening%20steel%20demand%202015.fhtml>

533. With regards to the performance of the construction subsectors, output growth in the EU remained primarily driven by the residential market segment. Meanwhile, non-residential activity is still rather sluggish, whereas large infrastructure projects remain scarce.<sup>394</sup>
534. With sluggish growth, an influx of Chinese imports and few infrastructure and non-commercial construction projects, EU member states are unlikely to increase imports of Spanish FISC in 2016. As such, Spanish FISC producers will look to their domestic markets and non-EU export markets to sell their products.
535. Spain's economy contracted by 1.2% in 2013 and saw growth of only 1.4% in 2014.<sup>395</sup> The IMF forecasts Spain's GDP growth to peak in 2015 at 3.1% and to slow to 2.5% in 2016.<sup>396</sup>
536. Spain's construction industry is forecasted to grow at a CAGR of 2.72% between 2015 and 2020.<sup>397</sup> This growth, however, must be viewed within context. The Spanish construction industry contracted by 7.1% from 2010-2014.<sup>398</sup> Thus, while the Spanish construction industry is expected to improve slightly in 2016 and 2017, it is not expected to return to 2010 levels.

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<sup>394</sup> Public Attachment 103: Eurofer, "Economic and Steel Market Outlook 2015-2016: Q4-2015 Report" (October 29, 2015), p. 9.

<sup>395</sup> Public Attachment 81: IMF, "World Economic Outlook: Adjusting to lower commodity prices" (October 2015), p. 169.

<sup>396</sup> Public Attachment 81: IMF, "World Economic Outlook: Adjusting to lower commodity prices" (October 2015), p. 169.

<sup>397</sup> Public Attachment 105: Timetric, "After years of contraction, Spain construction industry is finally adding value" (June 11, 2015)

<sup>398</sup> Public Attachment 105: Timetric, "After years of contraction, Spain construction industry is finally adding value" (June 11, 2015)

537. Spain's consumption of finished steel has not rebounded from the 2008 economic crises. In 2008, Spain consumed 18 million tonnes of finished steel products.<sup>399</sup> In 2013, consumption dropped by over 42% to 10.4 million tonnes.<sup>400</sup> Steel consumption forecasts for Spain could not be located; however, the EU's consumption of finished steel is expected to grow by 1.4% and 1.7% in 2016 and 2017 respectively.<sup>401</sup> If these figures are applied to Spain it expected that 2016 consumption will reach only 10.8 million tonnes of finished steel.
538. While the Spanish economy is improving, Spain remains a threat to the Complainants. Spain's economy is only starting to improve after numerous weak years. Spanish steel consumption in 2016 is forecasted to remain far below 2008 levels and Spanish construction is not expected to return to 2010 levels soon. At the same time, the EU is being besieged with low-priced Chinese imports. In light of continued low steel consumption, stagnant growth in EU and a significant increase in low-priced Chinese and other steel imports, Spanish producers are likely to look to export markets to offload production. As evidence by past Canadian projects that utilized Spanish FISC, Canada has become a market for Spanish FISC since 2012.

**7. United Kingdom: Market Conditions and Subject Producers' Dependence on Export Sales**

539. Despite forecasted moderate growth in UK construction and FISC demand, the UK Steel industry is in dire straits.

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<sup>399</sup> Public Attachment 34: World Steel Association, "World Steel Figures in 2015", p 16.

<sup>400</sup> Public Attachment 34: World Steel Association, "World Steel Figures in 2015", p 16.

<sup>401</sup> Public Attachment 84: World Steel Association, "Short Range Outlook 2016-2017" (April 13, 2016).



540. As with Spain, the UK steel industry is dependent on demand within the UK and within the European Union. 52% of UK steel exports go to the EU.<sup>402</sup> As with Spain, UK FISC producers looking to export to the EU are facing sluggish EU growth, sluggish EU construction, and competition from a glut of cheap Chinese steel imports.
541. The UK is forecasted to have moderate economic growth. The UK saw growth of 1.7% in 2013 and 3.0% in 2014 and the IMF forecasts the UK's GDP to grow by 2.5% in 2015 before slowing to 2.2% in 2016 and 2.1 in 2017.<sup>403</sup>
542. The UK construction industry is forecasted to grow 3.5% in 2015, 3.6% in 2016 and 4.3% in 2017.<sup>404</sup> Infrastructure growth will be even better at 14% in 2017.
543. With growth in construction and infrastructure, demand for structural steel is also forecasted to increase. The British Constructional Steelwork Association forecasts that the volume of UK structural demand will grow by 5% in 2015 and 2% in 2016.<sup>405</sup> It also claims that 98% of UK structural steelwork demand is met by UK structural steelwork producers.<sup>406</sup>
544. However, these forecasts must be treated with significant caution, as they were arrived at before Britain's referendum vote to leave the EU ("**Brexit**"). The IMF has not released official forecasts for how this will affect British GDP. However, prior to the vote it noted

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<sup>402</sup> Public Attachment 106: Chris Rhodes, "UK steel industry: statistics and policy", House of Commons Library (UK), Briefing Paper No. 07317 (December 31, 2015), p. 10.

<sup>403</sup> Public Attachment 81: IMF, "World Economic Outlook: Adjusting to lower commodity prices" (October 2015), p. 169.

<sup>404</sup> Public Attachment 107: Yoosof Farah, "Construction output to grow by 3.6% in 2016" Building Product Search (October 15, 2015) available at: <http://www.building.co.uk/construction-output-to-grow-by-36-in-2016/5078183.article>

<sup>405</sup> Public Attachment 108: Sarah McCann-Bartlett, Director General, The British Constructional Steelwork Association, Letter to Financial Times, "Forecasts unchanged for structural steelwork sector" (October 28, 2015 ).

<sup>406</sup> Public Attachment 108: Sarah McCann-Bartlett, Director General, The British Constructional Steelwork Association, Letter to Financial Times, "Forecasts unchanged for structural steelwork sector" (October 28, 2015 ).

that a vote to leave would have at least a 1.4% and as much as a 5.6% negative effect on British GDP by 2019. The severity of the IMF's forecast depends on extent to which Britain remains integrated through post-referendum negotiations.<sup>407</sup>

545. The Brexit vote will similarly weigh down British producers' exports to the EU. The IMF has recently noted that the effect of the Brexit vote alone will cause Eurozone GDP growth to decelerate from 1.6% in 2016 to 1.4% in 2017.<sup>408</sup>
546. The UK steel industry is also in dire straits at home and likely could not benefit from increased demand, even if it were to materialize. Chinese steel exports to the UK have ballooned in recent times. In September 2015 it was reported that Chinese steel imports into the UK had increased by 53% in the last year and the share of Chinese steel satisfying UK steel demand has quadrupled in relative terms from 2% of the market in 2011 to 8% in 2015.<sup>409</sup> In the case of rebar, Chinese imports went from no presence in the UK market in early 2013 to a 37% market share by the fourth quarter of 2014.<sup>410</sup>
547. The UK steel industry is in crisis and it is blaming the situation on China and cheap Chinese imports.<sup>411</sup> In September 2015, Sahaviriya Steel Industries (SSI) announced they were "mothballing" their steel plant in Redcar on Teesside, which directly employs 1,700

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<sup>407</sup> Public Attachment 109: International Monetary Fund, "Economic Health Check: Uncertainty Clouds the United Kingdom's Economic Prospects" (June 17, 2016).

<sup>408</sup> Public Attachment 102: IMF Executive Board Concludes 2016 Article IV Consultation on Euro Area Policies, Press Release No. 16/326 (July 8, 2016).

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<sup>411</sup> Public Attachment 110: Karl West, "British steel industry buckles under the weight of cheap Chinese product" The Guardian (September 28, 2015); Public Attachment 111: Tom Bowler, "Britain's steel industry: What's going wrong?" BBC News (October 20, 2015).

and houses the second largest blast furnace in Europe.<sup>412</sup> On October 22, 2015, SSI UK went into liquidation, with the result that all employees Teesside were deemed redundant and the closing of the blast furnace.<sup>413</sup> In July 2015, Tata Steel announced 720 job losses at two of its UK steel plants.<sup>414</sup> In October 2015, Tata announced there would be significant reductions at its Scunthorpe plant and it is reported that job losses at the Scunthorpe and other UK Tata steel plants could total up to 1,200.<sup>415</sup> Tata also saw 400 jobs lost in 2014.<sup>416</sup> In October 2015, Caparo Steel Products Ltd. went into “administration” putting a further 1,700 jobs at risk. In December 2015, the BBC reported at 4,000 job losses in the UK steel industry in the few preceding months.

**8. UAE: Market Conditions and Subject Producers’ Dependence on Export Sales**

548. Circumstances affecting the UAE’s economy threaten to injure the domestic industry.
549. A large market for UAE FISC is the oil and gas industry. The UAE oil and gas industry, like similar industries in other regions, has been affected by the downturn in oil prices. Employment in UAE’s oil sector has decreased by 10% over 2015.<sup>417</sup> Several large projects within the country are also on hold. In January Royal Dutch Shell announced it

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<sup>412</sup> Public Attachment 106: Chris Rhodes, “UK steel industry: statistics and policy”, House of Commons Library (UK), Briefing Paper No. 07317 (December 31, 2015), p. 12.

<sup>413</sup> Public Attachment 106: Chris Rhodes, “UK steel industry: statistics and policy”, House of Commons Library (UK), Briefing Paper No. 07317 (December 31, 2015), p. 12.

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was pulling out of a planned US\$11 billion dollar sour gas complex.<sup>418</sup> Similarly, it appears as though a refinery US\$3.5 billion near Fujariah has been put on hold.<sup>419</sup>

550. UAE FISC producers are also likely to be affected by decreased consumption in their traditional export markets. It is reported that Saudi Arabia is expected to cut spending by 13% in 2016, and the value of Saudi Arabia's new construction contracts are forecasted to drop by almost 20% year-on-year.<sup>420</sup> The value of Kuwait's new construction contracts in 2016 are forecasted to fall by 24% year-on-year.<sup>421</sup> Construction contracts are also expected to drop in the UAE, but not by as much.<sup>422</sup>
551. With projects on hold or cancelled, UAE Subject Good producers will be looking for orders in order to fill their capacity. UAE Subject Goods producers with experience in the oil and gas sector will likely look to other oil and gas markets, such as Canada's oil sands sector.

**9. Foreign Trade Remedy Actions Threaten to Divert Exports to the  
Canadian Market**

552. In January 2016, China Iron and Steel Association's chairman, Zhang Guangning, reported that, in 2015, 36 new anti-dumping investigations were launched with respect Chinese steel, double the number launched in 2014.<sup>423</sup>

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<sup>418</sup> Public Attachment 112: Anthony McAuley, "Oil crash puts strain on UAE energy sector jobs" (January 19, 2016).

<sup>419</sup> Public Attachment 113: Adam Bouyamourn, "IMF cuts UAE's growth forecast for 2016 as oil prices crash" The National (January 23, 2016).

<sup>420</sup> Public Attachment 114: Michael Fahy, "GCC contract awards to drop by 15% in 2016" The National (January 17, 2016); Public Attachment 113: Adam Bouyamourn, "IMF cuts UAE's growth forecast for 2016 as oil prices crash" The National (January 23, 2016)

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<sup>422</sup> Public Attachment 114: Michael Fahy, "GCC contract awards to drop by 15% in 2016" The National (January 17, 2016).

<sup>423</sup> Public Attachment 87: David Stanway, "China steel firms suffered \$8 bln in losses in Jan-Nov 2015 –assn", Reuters (January 17, 2016).

553. As an increasing number of Chinese steel products face increased duties from trade remedies (whether preliminary or final) it is expected that exports of those products that are not subject to trade remedies will increase. Consequently, it is likely that exports of FISC and other processed steel products will increase.
554. The American Institute of Steel Construction has requested that the US Trade Representative investigate the dumping and subsidization of fabricated structural steel from a variety of countries, including China.<sup>424</sup> If a trade remedy case is brought against FISC like-goods in the United States the Complainants expect there to be a diversion of goods to Canada.

**10. The Domestic Industry is Vulnerable to Unfairly Traded Imports**

555. The Domestic industry is vulnerable to unfairly priced FISC imports. In light of the price of oil and commodities, it is expected that there will be fewer projects requiring FISC in the near future and over the next few years.<sup>425</sup> Consequently, the domestic industry is expecting a challenging time despite the presence of dumped and subsidized goods. With the presence of dumped and subsidized imports, domestic FISC producers and Subject Good producers will be fighting over a smaller pie of Canadian projects.
556. Further, the domestic industry is in a vulnerable position. As discussed above, orders are weak and profits are low. Consequently, further unfair competition, coupled with lower FISC demand, will cause increasing material injury to the domestic industry. If a trade remedy case is brought against imports of FISC in the United States, the Complainants expect there to be a diversion of Subject Goods to Canada.

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<sup>424</sup> Public Attachment 115: American Institute of Steel Construction, "Steel Construction Associations Urge Enforcement of Trade Laws Against Chinese Steel" (April 14, 2016).

<sup>425</sup> Confidential Attachment 1: Statement of Evidence of Jim Kanerva; Confidential Attachment 2: Statement of Evidence of Paul Zubick.

**V. Conclusion**

557. Based on the information presented in this Complaint, the Complainants submit that Subject Goods imported from China are being dumped and subsidized, and that Subject Goods from Korea, Spain, the UAE and the UK are being dumped, and that such dumping and subsidization is causing or threatening to cause injury to the domestic industry producing Like Goods.
558. The Complainants therefore request that the President initiate investigations into the injurious impact of the dumping and subsidization of Subject Goods.

All of which is respectfully submitted,

July 22, 2016



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