Canada Border Services Agency | Agence des services frontaliers du Canada

OTTAWA, March 1, 2018

STATEMENT OF REASONS

Concerning the termination of the subsidy investigation in respect of

CERTAIN PET RESIN EXPORTED FROM OMAN BY OCTAL SAOC FZC, AND EXPORTED FROM PAKISTAN BY NOVATEX LIMITED AND ORIGINATING IN OR EXPORTED FROM PAKISTAN BY ALL OTHER EXPORTERS

and the final determination with respect to the dumping of

PET RESIN ORIGINATING IN OR EXPORTED FROM CHINA, INDIA, OMAN AND PAKISTAN

and the final determination with respect to subsidizing of

PET RESIN ORIGINATING IN OR EXPORTED FROM CHINA AND INDIA

DECISIONS

On February 14, 2018, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act* (SIMA), the Canada Border Services Agency (CBSA) terminated the subsidy investigation in respect of PET resin exported to Canada from Oman by OCTAL SAOC FZC, and exported to Canada from Pakistan by Novatex Limited and originating in or exported from Pakistan by all other exporters.

On the same date, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made a final determination of dumping respecting the dumping of PET resin originating in or exported from China, India, Oman and Pakistan, and a final determination of subsidizing respecting such goods from China and India.

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

Canada

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SUMMARY OF EVENTS

[1] On June 29, 2017, the Canada Border Services Agency (CBSA) received a written complaint from Compagnie Selenis Canada (Selenis Canada), of Montreal, Québec, (hereinafter, "the Complainant"), alleging that imports of certain polyethylene terephthalate resin (PET resin) originating in or exported from the People's Republic of China (China), the Republic of India (India), the Sultanate of Oman (Oman), the Islamic Republic of Pakistan (Pakistan) and the Republic of Turkey (Turkey) are being dumped, and that certain PET resin from China, India, Oman and Pakistan are being subsidized. The Complainant alleged that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[2] On July 20, 2017, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. The CBSA also notified the governments of China, India, Oman, Pakistan and Turkey that a properly documented complaint had been received. The governments of China, India, Oman and Pakistan were also provided with the non-confidential version of the subsidy complaint and were invited for consultations pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures* (ASCM), prior to the initiation of the subsidy investigation.

[3] On August 14, 2017, consultations were held between the Government of Canada and the Government of Oman via conference call. During the consultations, the Government of Oman (GOO) made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. On August 17, 2017, the GOO provided written representations where it addressed the alleged subsidy programs. The CBSA considered the representations made by the GOO in its analysis.

[4] On August 15, 2017, consultations were held in Ottawa between the Government of Canada and the Government of Pakistan (GOP). During the consultations, the GOP made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. On August 16, 2017, the GOP provided written representations where it addressed each of the alleged programs. The CBSA considered the representations made by the GOP in its analysis. No other government consultations took place prior to the initiation of the subsidy investigation.

[5] The Complainant provided evidence to support the allegations that PET resin from China, India, Oman and Pakistan have been dumped and subsidized. With the exception of PET resin from Turkey, the evidence also disclosed a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods. With respect to PET resin from Turkey, the CBSA was of the opinion that the evidence did not disclose a reasonable indication that the dumping of the goods has caused or is threatening to cause injury to the Canadian industry. For this reason, the CBSA did not initiate a dumping investigation in respect of PET resin from Turkey.

[6] On August 18, 2017, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of PET resin from China, India, Oman and Pakistan (hereinafter "the named countries").

[7] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (CITT) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the like goods.

[8] On October 17, 2017, pursuant to subsection 37.1(1) of SIMA, the CITT made a preliminary determination that there is evidence that discloses a reasonable indication that the alleged dumping and subsidizing of PET resin from the named countries have caused injury to the domestic industry.

[9] On November 7, 2017, pursuant to Article 13.2 of the ASCM, additional consultations were held in Ottawa between the Government of Canada and the GOP. On November 14, 2017, the GOP provided written representations. The CBSA considered the representations made by the GOP in its analysis.

[10] On November 16, 2017, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing of certain PET resin originating in or exported from the named countries. On the same date, the CBSA began imposing provisional duties on imports of subject goods pursuant to subsection 8(1) of SIMA. Where an exporter's estimated margin of dumping and/or estimated amount of subsidy was insignificant, provisional anti-dumping and/or countervailing duties were not applied.

[11] On November 17, 2017, the CITT initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry.

[12] The CBSA continued its investigations. Based on the available evidence, the CBSA is satisfied that PET resin exported to Canada from Oman by OCTAL SAOC FZC (Octal), and exported to Canada from Pakistan by Novatex Limited (Novatex) and originating in or exported from Pakistan by all other exporters were subsidized by insignificant amounts of subsidy. As a result, on February 14, 2018, the CBSA terminated the subsidy investigation in respect of PET resin exported to Canada from Oman by Octal, and exported to Canada from Pakistan by Novatex and originating in or exported from Pakistan by all other exporters, pursuant to paragraph 41(1)(a) of SIMA.

[13] Further, based on the available evidence, the CBSA is satisfied that certain PET resin from China, India, Oman and Pakistan have been dumped. Therefore, on February 14, 2018, the CBSA made a final determination of dumping pursuant to paragraph 41(1)(b) of SIMA in respect of those goods.

[14] Based on the available evidence, the CBSA is satisfied that certain PET resin originating in or exported from China and India, have been subsidized. Therefore, on February 14, 2018, the CBSA made a final determination of subsidizing pursuant to paragraph 41(1)(b) of SIMA in respect of those goods.

[15] The CITT's inquiry into the question of injury to the Canadian industry is continuing, and it will issue its decision by March 16, 2018. Provisional duties will continue to be imposed on the subject goods from the named countries until the CITT renders its decision. However, provisional countervailing duties will not be imposed on imports of goods for which the subsidy investigation was terminated. Any provisional duty paid or security posted will be returned.

PERIOD OF INVESTIGATION

[16] The Period of Investigation (POI) for these investigations is April 1, 2016, to March 31, 2017.

PROFITABILITY ANALYSIS PERIOD

[17] The Profitability Analysis Period (PAP) for the dumping investigation is April 1, 2016, to March 31, 2017.

INTERESTED PARTIES

Complainant

[18] The Complainant accounts for all of the production of like goods in Canada.

[19] The contact information for the Complainant is as follows:

Compagnie Selenis Canada
3498 Broadway
Montréal East, Québec H1B 5B4

[20] The Complainant's PET resin production facility in Montréal, Québec was first built in 2004 by a joint venture of Shell International, B.V. and Societe generate de financement (now Investissement Quebec) as a poly trimethylene terephthalate (PTT) plant.[1] At the time, the company was named PTT Poly Canada. The facility was converted to PET resin production in 2010 by Control PET, S.A. (Control PET), a subsidiary of IMO Group, after this company purchased the company in 2009 and changed the name to Selenis Canada Inc. The facility began producing PET resin in May, 2011, becoming the only virgin PET production facility in Canada. On August 1, 2016, DAK Americas LLC (DAK) completed a transaction with Control PET to acquire a controlling interest in Selenis Canada's operations. DAK is a wholly owned subsidiary of Alfa S.A.B. of Mexico. With DAK's acquisition of a controlling interest, the company officially changed its name to Compagnie Selenis Canada.[2]

Importers

[21] The CBSA identified 33 potential importers of the subject goods based on both information provided by the Complainant and CBSA import entry documentation. The CBSA sent an Importer Request for Information (RFI) to all potential importers of the goods. The CBSA received 12 responses to the Importer RFI.

Exporters

[22] The CBSA identified 19 potential exporters/producers of the subject goods from information provided by the Complainant and CBSA import entry documentation. An Exporter Dumping RFI and an Exporter Subsidy RFI were sent to each of the potential exporters/producers.

[23] Three exporters provided complete responses to the Dumping RFI, one in each of India, Oman and Pakistan. In addition, one exporter in China provided a response which was considered substantially complete for the purposes of the preliminary determination, but was subsequently considered to be incomplete and unreliable in the final phase of the investigation. See "Dumping Investigation" for detailed information on each of these companies.

[24] Three exporters provided complete responses to the Subsidy RFI, including one in each of India, Oman and Pakistan. See "Subsidy Investigation" for detailed information on each of these companies.

[25] Two exporters, one in each of China and India, and one vendor located in the United States of America (USA), provided incomplete responses to the Dumping RFI, which were not used for the purposes of the final determination.

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[1] Exhibit 2 (NC) - Complaint with respect to the Subsidization of Polyethylene Terephthalate Resin Originating in or Exported from China, India, Oman and Pakistan (PET Resin Complaint), Appendix 1, paragraph 4.
[2] Ibid.

[26] Further, one producer of PET resin in India provided responses to the Dumping and Subsidy RFIs but given the company was not a producer or exporter of subject goods, its responses were not used for the purposes of the final determination.

[27] Two exporters, one in each of China and India, provided incomplete responses to the Subsidy RFI, which were not used for the purposes of the final determination. Deficiencies were communicated to these companies, however, complete information was not subsequently provided in time for purposes of the final determination.

Governments

[28] For the purposes of these investigations, "Government of China (GOC)", "Government of India (GOI)", "Government of Oman (GOO)", and "Government of Pakistan (GOP)" refer to all levels of government, i.e., federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

[29] The CBSA sent a Government Subsidy RFI to each of the countries involved in the subsidy investigation. Complete responses were received from the GOO and the GOP. The GOI provided a response, which was considered incomplete. A response was not received from the GOC.

PRODUCT INFORMATION

Definition

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

> *Polyethylene terephthalate ("PET") resin having an intrinsic viscosity of at least 0.70 deciliters per gram but not more than 0.88 deciliters per gram, including PET resin that contains various additives introduced in the manufacturing process, as well as blends of virgin PET resin and recycled PET containing 50 percent or more virgin PET resin content by weight, originating in or exported from the People's Republic of China, the Republic of India, the Sultanate of Oman and the Islamic Republic of Pakistan.*

Additional Product Information[3]

[31] Polyethylene terephthalate (PET) is a clear, strong and lightweight plastic belonging to the polyester family. PET is typically called polyester when used for fibers or fabrics, and PET or PET resin when used for bottles, jars, containers and packaging applications.

[32] One of the most important characteristics of PET is referred to as intrinsic viscosity (IV). The IV of the material is measured in deciliters per gram and it is a measure of the polymer's molecular chain length and molecular weight.

[33] PET resin may contain some recycled material, although PET resin for packaging end uses (i.e. meeting the product definition parameters of 0.70 to 0.88 IV) is generally limited to a recycled content of 20%, and in any case, would not exceed a recycled content of 50%, which is a threshold included in the product definition.

Production Process[4]

[34] The production of PET begins by mixing monoethylene glycol (MEG) and purified terephthalic acid (PTA) at ambient temperatures to form a slurry. PTA is the preferred feedstock for production but dimethyl terephthalate (DMT) can be used in some facilities that use older production technologies. It is more economical to produce most grades of PET polymer from PTA than from DMT. For that reason, DMT is generally not used for production of commodity PET resin.

[35] There are varying qualities of terephthalic acid (TPA) but the preferred one is PTA, which is the one marketed to PET resin producers. PET resin lines can use qualities of TPA other than PTA, but if non-purified forms of TPA are used in PET resin manufacturing then the producers must do additional in line chemical processing to accommodate the lower quality raw material.

[36] PTA, TPA and DMT are all produced using paraxylene, a petrochemical. MEG is produced from ethylene, which is also a petrochemical. PET resin is roughly 65% PTA or TPA, 25% MEG and 10% co-monomers, basic additives and functional additives.

[37] Typical co-monomers are Diethylene Glycol (DEG), which is a by-product of the MEG monomer during polymerization; Purified Isophthalic Acid (PIA or IPA); and CycloHexaneDiMethanol (CHDM).

[38] Basic additives include catalysts for chemical reaction (Sb, Co, Ti, Ge). Organic toners and/or Cobalt are added to improve color. Thermal stabilizers (phosphoric/phosphorous acid) minimize yellowing during polymerization and re-melting into containers.

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[3] Exhibit 2 (NC) - Certain PET Resin Complaint, paragraphs 6-16.
[4] Ibid., paragraphs17-27.

[39] Functional additives include infrared (IR) absorbers (carbon black or graphite, sequestered antimony), molecular chain extenders and slip and anti-blocking agents for friction reduction on preform and bottle surfaces.

[40] The slurry is heated through an esterification process to 290° centigrade and reacts to form a monomer. Additives and catalysts are added to the monomer to provide reheat and color characteristics for the final product. The monomer is then heated under vacuum in a polymerization process, and certain gases are exhausted. The resulting polymer is quenched in water and cut into chips, known as amorphous PET (AMPET). AMPET has a short polymer chain length and a low IV, generally 0.50 to 0.65.

[41] The AMPET chips are then subjected to a solid-state polymerization (SSP) treatment. To make PET resin, the AMPET chips are baked during the SSP treatment in large cylindrical reaction towers. In the towers, the AMPET chips flow through an oxygen-free, nitrogen-gas atmosphere at above 200°C temperatures for a period of 18-24 hours, known as the crystallization and annealing process. After the baking is completed, the PET resin pellets exit the bottom of the reaction tower and undergo air cooling in a closed circuit heat exchanger prior to storage for transport by rail or truck. The SSP treatment increases the IV of the AMPET pellet to the level as defined by the scope of this complaint. This process also removes Acetaldehyde.

[42] PET resin must be protected from moisture and contamination during transport. Both imported and exported products are typically shipped offshore in sealed, one metric ton poly bags (super sacks) within large metal shipping containers. Imported products may be removed from the containers and temporarily stored in order to have some local inventory and save on demurrage. Both imported and domestically-produced PET resin may be shipped bulk inland on truck beds or in specially lined railcars in lots of 50,000 or 200,000 pounds.

Product Use

[43] The subject goods are typically used in the production of plastic beverage bottles, in packaging for food and manufactured products, in containers for household and automotive products, and in industrial strapping. The most common use for PET resin containers is to package carbonated soft drinks and bottled water.

Classification of Imports

[44] Prior to January 1, 2017, the subject goods were normally classified under the following tariff classification numbers:

3907.60.00.10 3907.60.00.90

[45] Since January 1, 2017, the subject goods are normally imported under the following tariff classification numbers:

3907.61.00.00 3907.69.00.10 3907.69.00.90

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

LIKE GOODS AND CLASS OF GOODS

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

[48] In considering the issue of like goods, the CITT typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

[49] After considering questions of use, physical characteristics and all other relevant factors, the CBSA initiated its investigations under the premise that domestically produced PET resin are like goods to the subject goods. Further, the CBSA was of the opinion that subject goods and like goods constitute only one class of goods.

[50] In its preliminary injury inquiry for this investigation, the CITT further reviewed the matter of like goods and classes of goods. On November 1, 2017, it issued its preliminary injury inquiry determination and reasons indicating that "*The Tribunal, in view of this fact, will conduct its analysis on the basis that PET resin produced in Canada that is of the same description as the subject goods is "like goods" in relation to the subject goods and that there is one class of goods.*"[5]

THE CANADIAN INDUSTRY

[51] As previously stated, the Complainant accounts for all of the known domestic production of like goods.

[5] Canadian International Trade Tribunal; Polyethylene Terephthalate Resin Dumping and Subsidizing Determination and Reasons (November 1, 2017), PI-2017-002, paragraph 19.

IMPORTS INTO CANADA

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

[53] The following table presents the CBSA's analysis of imports of certain PET resin for purposes of the final determinations:

Imports of PET resin
(% of Volume*)

Country	POI (April 1, 2016 to March 31, 2017)
China	10.6%
India	7.3%
Oman	12.8%
Pakistan	24.9%
All Other Countries	44.4%
Total Imports	**100.0%**

INVESTIGATION PROCESS

[54] Regarding the dumping investigation, information was requested from all known and potential exporters, producers, vendors and importers, concerning shipments of PET resin released into Canada during the POI.

[55] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from all known and potential exporters in China, India, Oman and Pakistan. Information was also requested from the GOC, GOI, GOO and GOP, concerning financial contributions made to exporters or producers of PET resin released into Canada during the subsidy POI.

[56] Several parties (i.e., importer, exporter and government) requested an extension to respond to their respective RFIs. The CBSA reviewed each request and granted extensions in instances where the reasons for making the request constituted unforeseen circumstances or unusual burdens. Where an extension request was denied, the CBSA informed the parties that it could not guarantee that submissions received after the RFI response deadline would be taken into consideration for purposes of the preliminary phase of the investigation.

[57] After reviewing the RFI responses, deficiency letters and supplemental RFIs (SRFIs) were sent to several responding parties to complete missing information, to clarify information and to request additional information.

[58] On-site verifications were conducted at the premises of selected exporters in China, India and Oman and the Government of Oman.

[59] Details pertaining to the information submitted by the exporters in response to the Dumping RFI as well as the results of the CBSA's dumping investigation are provided in the "Dumping Investigation" section of this document. Details pertaining to the information submitted by the exporters and governments in response to the Subsidy RFI as well as the results of CBSA's subsidy investigation are provided in the "Subsidy Investigation" section of this document.

[60] As part of the final phase of the investigations, case briefs and reply submissions were provided by counsel representing the Complainant, exporters/ producers, importers and the governments. Details of all representations are provided in **Appendix 3**.

[61] Under Article 15 of the World Trade Organization (WTO) Anti-dumping Agreement, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As India and Pakistan are listed as a least developed country, other low income country or lower middle income country or territory on the Development Assistance Committee List of Official Development Assistance Recipients[6], the President recognizes these countries as developing countries for purposes of actions taken pursuant to SIMA.

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

[6] http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf

DUMPING INVESTIGATION

[63] The following presents the final results of the investigation into the dumping of PET resin originating in or exported from China, India, Oman and Pakistan.

[64] At the initiation of the investigation, all known and potential exporters were sent a Dumping RFI in order to solicit information required for purposes of determining normal values and export prices of subject goods in accordance with the provisions of SIMA. As such, all known exporters were given the opportunity to participate in the investigation. In the RFI, the exporters were notified that failure to submit all required information and documentation, including non-confidential versions, or failure to permit verification of any information, may result in the normal values of the subject goods exported by their company being based on the facts available. It was further stated that such a decision would be less favorable to their company than if complete and verifiable information were made available.

Normal Value

[65] Normal values are generally determined based on the domestic selling prices of like goods in the country of export, in accordance with of section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits, in accordance with paragraph 19(b) of SIMA.

[66] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, normal values are determined pursuant to a Ministerial specification in accordance with subsection 29(1) of SIMA.

Export Price

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

[68] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, export prices are determined pursuant to a Ministerial specification under subsection 29(1) of SIMA.

[69] Where there are sales between associated persons or a compensatory arrangement exists, the export price may be determined based on the importer's resale price of the imported goods in Canada to non-associated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the average industry profit in Canada, pursuant to paragraphs 25(1)(c) and 25(1)(d) of SIMA. In any cases not provided for under paragraphs 25(1)(c) and 25(1)(d) of SIMA, the export price is determined in such a manner as the Minister specifies, pursuant to paragraph 25(1)(e).

Margin of Dumping

[70] The margin of dumping by exporter is equal to the amount by which the total normal value exceeds the total export price of the goods, expressed as a percentage of the total export price. All subject goods imported into Canada during the POI are included in the margins of dumping of the goods. Where the total normal value of the goods does not exceed the total export price of the goods, the margin of dumping is zero.

[71] Details of the results of the investigation by exporter follows. A summary of each exporter's margin of dumping is provided in the table at the end of this section and in **Appendix 1**.

Results of the Dumping Investigation by Country and Exporter

[72] One exporter in China[7] provided a response to the Dumping RFI which was considered as substantially complete for the purposes of the preliminary determination, but was subsequently considered to be incomplete and unreliable in the final phase of the investigation. Its response, therefore, could not be used for the purposes of the final determination.

[73] The CBSA received a complete response to the Dumping RFI from one exporter in India[8] and one exporter in Oman.[9]

[74] During the final phase of the investigation, one exporter in Pakistan provided further information to complete its response to the Dumping RFI.[10]

[7] Exhibits 63 (PRO) and 64 (NC) - Response to Exporter RFI - Dumping from Jiangyin Xingyu New Material Co., Ltd. and Jiangsu Xingye Plastic Co., Ltd.
[8] Exhibits 83 (PRO) and 84 (NC) - Response to Exporter RFI - Dumping - Reliance Industries Limited.
[9] Exhibits 69 (PRO) and 70 (NC) - Response to Exporter RFI - Dumping - OCTAL SAOC FZC.
[10] Exhibits 99 (PRO) and 100 (NC) - Response to Exporter RFI - Dumping - Novatex Limited.

[75] Two exporters, Dragon Special Resin (Xiamen) Co., Ltd.[11] of China and IVL Dhunseri Petrochem Industries Private Limited (Dhunseri)[12] of India, and one vendor located in the USA, Vinmar Group,[13] provided incomplete responses to the Dumping RFI, which could not be used for the purposes of the final determination.

[76] Deficiencies were communicated to these companies, however, complete information was not subsequently provided for purposes of the final determinations.

[77] Further, one producer of PET resin in India, Micro Polypet Private Limited,[14] provided a response to the Dumping RFI but given the company was not a producer or exporter of subject goods, its response was not used for the purposes of the final determination.

China

Jiangsu Sanfangxiang Group Co. Ltd. (Sanfangxiang)

[78] Sanfangxiang is a large group of companies and during the POI, two of its subsidiaries produced and exported subject goods to Canada; Jiangyin Xingyu New Material Co., Ltd and Jiangsu Xingye Plastic Co., Ltd. Other subsidiaries also produced PET resin and sold to the domestic market in China. Sanfangxiang responded to the Dumping RFI on behalf of its subsidiaries producing the subject goods and/or like goods.

[79] Sanfangxiang provided a substantially complete response to the Dumping RFI for the purposes of the preliminary determination. Two Supplemental RFIs were sent to gather additional information and seek clarification regarding their original Dumping RFI response. CBSA officials performed an on-site verification at the premises of Sanfangxiang between December 11, 2017 and December 15, 2017, inclusive.[15]

[80] Although Sanfangxiang's information was used to estimate the normal values and export prices for the purposes of the preliminary determination, in the final phase of the investigation the CBSA determined that the domestic sales and cost of production information provided by the company was incomplete and unreliable for the purposes of determining normal values.

[81] Accordingly, for purposes of the final determination, the CBSA has determined the margin of dumping for Sanfangxiang pursuant to a Ministerial Specification based on the methodology as described below under *All Other Exporters – China.*

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[11] Exhibits 108 (PRO) and 109 (NC) - Response to Exporter RFI - Dragon Special Resin (Xiamen) Co., Ltd.
[12] Exhibits 95 (PRO) and 96 (NC) - Response to Exporter RFI - Dumping from IVL Dhunseri Petrochem Industries Private Limited.
[13] Exhibits 118 (PRO) and 117 (NC) - Second extension request denied - Vinmar Group.
[14] Exhibits 73 (PRO) and 74 (NC) - Response to Exporter RFI - Dumping from Micro Polypet Private Limited.
[15] Exhibits 273 (PRO) and 274 (NC) - Verification Exhibits – Sanfangxiang.

[82] For subject goods exported from Sanfangxiang to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[83] For the final determination, the margin of dumping of the subject goods exported to Canada by Sanfangxiang is 30.6%, expressed as a percentage of total export price.

All Other Exporters – China

[84] For exporters of subject goods originating in or exported from China that did not provide a response to the Dumping RFI or that provided incomplete or unreliable information, the normal values and export prices were determined pursuant to a Ministerial Specification under subsection 29(1) of SIMA, which is based on a comparative analysis of the facts available.

[85] In establishing the methodology for determining the normal values and export prices under the Ministerial Specification, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation and information submitted by exporters of PET resin from the named countries: China, India, Oman and Pakistan.

[86] The CBSA decided that the normal values determined for the exporters whose submissions were considered complete and reliable for the final determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for determining normal values since it reflects exporters' actual trading practices during the POI. As no exporters of PET resin from China provided a complete and reliable response to the Dumping RFI, the CBSA considered the verified information from the exporters of PET resin originating in or exported from the other named countries.

[87] The CBSA decided that the information from the exporter in India, Reliance Industries Limited (Reliance), provides a reasonable basis to establish normal values for the subject goods from China due to the company's structure being similar to Sanfangxiang. The exporter, Reliance, is the only other vertically integrated producer that manufactures the most prominent raw material used in the production of PET resin, PTA.

[88] The CBSA considered that the highest amount by which the normal value exceeded the export price on an individual transaction of Reliance (expressed as a percentage of the export price), was an appropriate basis for determining normal values. This methodology limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[89] As a result, based on the facts available, for exporters that did not provide a response or provided an incomplete or unreliable response to the Dumping RFI, the normal value of subject goods originating in or exported from China was determined based on the highest amount by which normal value exceeded the export price (i.e., 30.6% of the export price), on an individual transaction for India (Reliance) during the POI. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[90] The CBSA considered that the information submitted on the CBSA customs entry documentation was the best information on which to determine the export price of the goods for all other exporters as it reflects actual import data.

[91] Based on the above methodologies, the subject goods exported to Canada from China, by all other exporters were found to be dumped by a margin of dumping of 30.6%, expressed as a percentage of the export price.

India

Reliance Industries Limited (Reliance)

[92] Reliance is a producer and exporter of subject goods to Canada. Reliance's head office is located in Mumbai, India and it has two production facilities located in Dahej, India and Hazira, India. During the POI, all subject goods exported by Reliance to Canada were produced and shipped directly from these two production facilities in India and sold to unrelated importers in Canada.

[93] Reliance provided a complete response to the Dumping RFI and to SRFIs, which were sent to gather additional information and seek clarification regarding their original Dumping RFI response.[16] CBSA officials performed an on-site verification at the premises of Reliance between December 11, 2017 and December 14, 2017, inclusive.[17]

[94] Reliance had sufficient domestic sales of like goods during the PAP. Consequently, the normal values of PET resin exported to Canada from each of the two production facilities were determined pursuant to section 15 of SIMA.

[16] Exhibits 83 (PRO) and 84 (NC) - Response to Exporter RFI - Dumping - Reliance Industries Limited; Exhibits 128 and 134 (PRO) and 129 and 135 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited; Exhibits 159 (PRO) and 160 (NC) - Supplemental RFI #2 response - Reliance Industries Limited; Exhibits 237 (PRO) and 238 (NC) - Supplemental RFI #3 response - Reliance Industries Limited.

[17] Exhibits 283 (PRO) and 284 (NC) - Verification exhibits submitted by the company – Reliance Industries; Exhibits 285 (PRO) and 286 (NC) - Verification Exhibits Submitted by Officer – Reliance Industries.

[95] For subject goods exported from Reliance to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[96] For the final determination, the total normal value compared to the total export price results in a margin of dumping of 22.1% for Reliance, expressed as a percentage of the export price.

All Other Exporters – India

[97] For exporters of subject goods originating in or exported from India that did not provide a response to the Dumping RFI or that provided incomplete or unreliable information, the normal values and export prices were determined pursuant to a Ministerial Specification under subsection 29(1) of SIMA, on the basis of facts available.

[98] In establishing the methodology for determining normal values and export prices under the Ministerial Specification, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation and information submitted by exporters of PET resin from the named countries: China, India, Oman and Pakistan.

[99] The CBSA decided that the normal values and export prices determined for the exporters whose submissions were substantially complete and reliable for the final determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for normal values under the Ministerial Specification since it reflects exporters' actual trading practices during the POI. The CBSA first considered whether the information from the exporter of PET resin in India who provided a substantially complete response to the Dumping RFI, Reliance, was appropriate to use as the basis for determining the normal values for all other exporters in India.

[100] The CBSA considered that the highest amount by which the normal value exceeded the export price on an individual transaction of Reliance (expressed as a percentage of the export price), was an appropriate basis for determining normal values under the Ministerial Specification. This methodology relies on information related to goods that originated in India and limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[101] As a result, based on the facts available, for exporters that did not provide a response or provided an incomplete response to the Dumping RFI, the normal value of subject goods originating in or exported from India was determined under a Ministerial Specification based on the highest amount by which a normal value exceeded the export price (i.e. 30.6% of the export price), on an individual transaction for Reliance during the POI. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[102] The CBSA considered that the information submitted on the CBSA customs entry documentation was the best information on which to determine the export price of the goods for all other exporters as it reflects actual import data.

[103] Based on the above methodologies, the subject goods exported to Canada from India, by all other exporters were found to be dumped by a margin of dumping of 30.6%, expressed as a percentage of the export price.

Oman

OCTAL SAOC FZC (Octal)

[104] Octal is a producer and exporter of subject goods to Canada. Octal's head office is located in Muscat, Oman and its production facility located in Salalah, Oman. During the POI, all subject goods exported to Canada by Octal were produced and shipped directly from the Salalah production facility in Oman and sold to unrelated importers. Its exports represent 100% of the total volume of goods exported to Canada from Oman during the POI.

[105] Octal provided a complete response to the Dumping RFI and to a SRFI, which was sent to Octal to gather additional information and seek clarification regarding their original Dumping RFI response.[18] CBSA officials performed an on-site verification at the premises of Octal between December 7, 2017 and December 13, 2017, inclusive.[19]

[18] Exhibits 69 (PRO) and 70 (NC) - Response to Exporter RFI - Dumping - OCTAL SAOC FZC; Exhibits 157 (PRO) and 158 (NC) - Response to supplemental RFI#1 - OCTAL SAOC FZC.
[19] Exhibits 268 (PRO) and 269 (NC) - Verification Exhibits (Dumping) - OCTAL SAOC FZC.

[106] Octal had domestic sales of like goods during the PAP. Where there were sufficient profitable sales of like goods, normal values were determined in accordance with section 15 of SIMA, using the domestic prices of like goods in Oman. Where there were insufficient profitable domestic sales of like goods or where there were no domestic sales of like goods, normal values were determined in accordance with paragraph 19(b) of SIMA, based on the aggregate of the exporter's cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits. The amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of the *Special Import Measures Regulation* (SIMR) based on the weighted average profit of all profitable sales of goods of the same general category (i.e. all sales of PET resin) made to unrelated customers at the same level of trade as the importer in Canada.

[107] For subject goods exported from Octal to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[108] For the final determination, the total normal value compared to the total export price results in a margin of dumping of 7.2% for Octal, expressed as a percentage of the export price.

No Other Exporters – Oman

[109] Based on the information on the record, 100% of the subject goods originating in or exported to Canada from Oman during the POI, were from Octal. Therefore, no "all other exporters" margin of dumping has been determined for the final determination as Octal is the only exporter.

Pakistan

Novatex Limited (Novatex)

[110] Novatex is a producer and exporter of subject goods to Canada. Novatex has a wholly-owned subsidiary located in the USA, G-Pac Corporation (G-Pac), who acted as a non-resident importer for some transactions. During the POI, Novatex's export sales to Canada were made to both the related non-resident importer and to unrelated importers in Canada.

[111] Novatex initially provided an incomplete response to the Dumping RFI and was notified of the deficiencies. Novatex provided the missing information on October 25, 2017. SRFIs were also sent to Novatex to gather additional information, seek clarification and verify their Dumping RFI response. Novatex provided information in response to all questions asked by the CBSA and their Dumping RFI response is considered complete and reliable for the purposes of determining a margin of dumping for the final determination.

[112] G-Pac provided a response to the Importer RFI. As a result, the CBSA was able to use the Importer RFI response of G-Pac to determine the export price for the shipments where they acted as the non-resident importer.

[113] Novatex had domestic sales of like goods during the PAP. Where there were sufficient profitable sales of like goods, normal values were determined in accordance with section 15 of SIMA, using the domestic prices of like goods in Pakistan. Where there were insufficient profitable domestic sales of like goods or where there were no domestic sales of like goods, normal values were determined in accordance with paragraph 19(b) of SIMA, based on the aggregate of the exporter's cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits. The amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of the SIMR based on the weighted average profit of all profitable sales of goods of the same general category (i.e. all sales of PET resin) made to unrelated customers at the same level of trade as the importer in Canada.

[114] Due to the relationship between Novatex and G-Pac, a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the export prices determined under section 24 of SIMA, based on the lesser of the exporter's selling prices and the importer's purchase prices, with the export prices determined under section 25 of SIMA. The amount for profit used for the section 25 export prices was determined in accordance with paragraph 22(c) of the SIMR, based on the profit information relating to vendors that operated at a profit that are at the same or substantially the same trade level as the importer. The test revealed that the export prices determined in accordance with section 24 of SIMA were unreliable and, therefore, export prices for sales to G-Pac were determined in accordance with section 25 of SIMA.

[115] For all other subject goods exported by Novatex to unrelated importers in Canada during the POI, the export prices were determined pursuant to section 24 of SIMA, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[116] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 5.5% for Novatex, expressed as a percentage of export price.

<u>All Other Exporters – Pakistan</u>

[117] For the exporter of subject goods originating in or exported from Pakistan that did not provide a response to the Dumping RFI, the normal values and export prices were determined under subsection 29(1) of SIMA pursuant to a Ministerial Specification, on the basis of facts available.

[118] In establishing the methodology for the normal values and export prices, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation and information submitted by exporters of PET resin from the named countries: China, India, Oman and Pakistan.

[119] The CBSA decided that the normal values and export prices determined for the exporters whose submissions were substantially complete and reliable for the final determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for determining normal values under the Ministerial specification since it reflects exporters' actual trading practices during the POI. The CBSA first considered whether the information from the exporter of PET resin in Pakistan who provided substantially complete response to the Dumping RFI was appropriate to use as the basis for determining the margin of dumping for all other exporters in Pakistan. The only substantially complete and reliable information on the record with respect to goods originating in or exported from Pakistan was from Novatex.

[120] The CBSA considered that the highest amount by which the normal value exceeded the export price on an individual transaction of Novatex (expressed as a percentage of the export price), was an appropriate basis for determining normal values under the Ministerial Specification. This methodology relies on information related to goods that originated in Pakistan and limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[121] As a result, based on the facts available, for exporters that did not provide a response or provided an incomplete response to the Dumping RFI, the normal value of subject goods originating in or exported from Pakistan was determined under a Ministerial Specification based on the highest amount by which a normal value exceeded the export price (i.e., 28.0% of the export price), on an individual transaction for Novatex during the POI. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[122] The CBSA considered that the information submitted on the CBSA customs entry documentation was the best information on which to determine the export price of the goods for all other exporters as it reflects actual import data.

[123] Based on the above methodologies, the subject goods exported to Canada from Pakistan, by all other exporters were found to be dumped by a margin of dumping of 28.0%, expressed as a percentage of the export price.

Summary of Results - Dumping

[124] A summary of the results of the dumping investigation respecting all subject goods released into Canada during the POI are as follows:

Summary of Results - Dumping
Period of Investigation (April 1, 2016 to March 31, 2017)

Country of Origin or Export	Margin of Dumping*
China	
All Exporters - China	30.6%
India	
Reliance Industries Limited	22.1%
All Other Exporters - India	30.6%
Oman	
OCTAL SAOC FZC	7.2%
Pakistan	
Novatex Limited	5.5%
All Other Exporters - Pakistan	28.0%

*Expressed as a percentage of the export price

[125] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of the goods of an exporter if it is satisfied that the goods have not been dumped or the margin of dumping of the goods of that exporter is insignificant, meaning a margin of dumping that is less than 2% of the export price of the goods.

[126] As can be seen from the table above, the goods under investigation have been dumped and the margins of dumping determined in respect of the goods of the exporters are greater than the threshold of 2% and are therefore not considered insignificant. As a result, the legislative requirement is satisfied for making a final determination of dumping respecting PET resin originating in or exported from China, India, Oman and Pakistan.

SUBSIDY INVESTIGATION

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

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

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

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

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

[131] Notwithstanding that a subsidy is not specific in law, under subsection 2(7.3) of SIMA a subsidy may also be considered specific having regard as to whether:

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

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

[133] Financial contributions provided by SOEs may also be considered to be provided by the government for purposes of this investigation. A SOE may be considered to constitute "government" for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

Results of the Subsidy Investigation

[134] The following presents the results of the investigation into the subsidizing of PET resin originating in or exported from China, India, Oman, and Pakistan.

[135] At the initiation of the investigation, the CBSA sent Subsidy RFIs to the governments of the named countries, as well as to all known exporters and vendors of PET resin. The exporters were requested to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as state-owned enterprises (SOEs). Information was requested in order to establish whether there had been financial contributions made by any level of government, including SOEs possessing, exercising or vested with government authority and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of PET resin; and whether any resulting subsidy was specific in nature. Information was also requested from the governments of the named countries, concerning financial contributions made to exporters of PET resin released into Canada during the subsidy POI. The respective governments were also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[136] The governments and the exporters were also notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFI, failure to permit verification of any information or failure to provide documentation requested during the verification visits may result in the amount of subsidy and the assessment of countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favorable to their firm than if complete, verifiable information was made available.

[137] The GOO and GOP provided complete responses to the CBSA's Government Subsidy RFI. The GOP also provided comments during consultations[20] and the preliminary determination[21].

[138] The CBSA also received complete responses to the Subsidy RFI from three exporters. The programs used by the responding exporters are listed in **Appendix 2**.

[139] Amounts of subsidy relating to each of the exporters that provided a response to the RFI are presented in a summary table in **Appendix 1**.

Results of the Subsidy Investigation by Country and Exporter

[140] The GOO[22] and the GOP[23] provided complete responses to the CBSA's Government Subsidy RFI. The GOI[24] provided an incomplete submission while the GOC did not provide a response.

[141] The CBSA received a complete response to the Subsidy RFI from one exporter in India[25], one exporter in Oman[26] and one exporter in Pakistan[27].

[20] Exhibit 199 (NC) - Post Consultations Submission - Government of Pakistan.
[21] Exhibits 265 (NC) and 271(NC) - Response to Preliminary Determination - Government of Pakistan.
[22] Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI - Subsidy - Government Sultanate of Oman.
[23] Exhibits 88 (PRO) and 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan.
[24] Exhibits 105 (PRO) and 106 (NC) - Response to Government RFI - Subsidy – Government of India.
[25] Exhibits 85 (PRO) and 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited.
[26] Exhibits 67 (PRO) and 68 (NC) - Response to Exporter RFI - Subsidy - OCTAL SAOC FZC.
[27] Exhibits 101 (PRO) and 102 (NC) - Response to Exporter RFI - Subsidy - Novatex Limited.

[142] Two exporters, namely one each in China and India, provided incomplete and/or unreliable responses to the Subsidy RFI, which could not be used for the purposes of the final determination. These companies are Sanfangxiang[28] and Dhunseri[29], respectively. Deficiencies were communicated to these companies, however, complete information was not subsequently provided in time for purposes of the final determination.

[143] Further, one producer of PET resin in India, Micro Polypet Private Limited[30], provided a response to the Subsidy RFI but given the company was not an exporter of subject goods during the POI, its response was not used for the purposes of the final determination.

China

All Exporters - China

[144] For all exporters of subject goods originating in or exported from China that did not provide a response to the Subsidy RFI or that provided incomplete or unreliable information, the amount of subsidy was determined pursuant to a Ministerial Specification, based on an analysis of facts available.

[145] In establishing the methodology for the amount of subsidy, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation and information submitted by exporters of PET resin from the named countries: China, India, Oman and Pakistan.

[146] As substantially complete information was not received from any exporter in China, the CBSA considered whether information provided by the exporters in the other named countries would be suitable for determining the amount of subsidy for all exporters in China. However, since subsidy reflects specific government practices within a country, the CBSA concluded that this information was not suitable to establish an "all other exporters rate" for China.

[147] Given that no exporters in China provided a complete response to the Subsidy RFI and the information from exporters in the other named countries was found not to be suitable, the CBSA determined an amount of subsidy under the Ministerial Specification for all exporters in China based on the methodology used at the initiation of the investigation and using the export price information provided by Sanfangxiang.

[28]Exhibits 65 (PRO) and 66 (NC) - Response to Exporter RFI - Subsidy from Jiangyin Xingyu New Material Co., Ltd. and Jiangsu Xingye Plastic Co., Ltd.
[29]Exhibits 77 (PRO) and 78 (NC) - Response to Exporter RFI - Subsidy from IVL Dhunseri Petrochem Industries Private Limited.
[30]Exhibits 75 (PRO) and 76 (NC) - Response to Exporter RFI - Subsidy from Micro Polypet Private Limited.

[148] This methodology uses the best information available to determine an amount of subsidy as it represents the differential between the producers' estimated costs and the export price at which the goods were actually sold. Subsidies reduce the cost to produce a good, thereby allowing producers to sell their goods at a lower price.

[149] Using the above methodology, for the final determination, the amount of subsidy for all exporters in China is 8.7%, expressed as a percentage of the export price.

India

Government of India (GOI)

[150] The GOI provided an incomplete response to the Government Subsidy RFI. The CBSA sent a deficiency letter to the GOI stating that their response was incomplete. Deficiencies identified were such that the response lacked a significant amount of critical information that was requested in the Government Subsidy RFI. The GOI was informed that should it elect to submit a complete response to the RFI in sufficient time to allow full analysis and verification of the information provided, the CBSA would endeavor to use such information for the purpose of the final phase of the investigation. By the close of record, no response has been received from the GOI to address the deficiencies.

[151] As a result, the CBSA does not have the information necessary to determine if the programs that were used by the exporter in India, who provided a complete response to the Subsidy RFI, constitute actionable subsidies, or to determine the actual amount of subsidy for the exporter using the regular subsidy provisions of SIMA. Furthermore, without complete information from the GOI, the CBSA cannot determine if the programs are specific, a condition that is necessary in determining that a program constitutes an actionable subsidy under SIMA.

[152] In consideration of the level of cooperation received from one exporter in India who provided a complete response to the Subsidy RFI, the CBSA determined an individual amount of subsidy for that specific exporter based on the information available, including the information provided in their responses to the Subsidy RFI and SRFIs, pursuant to a Ministerial Specification.

Reliance Industries Limited (Reliance)

[153] Reliance is a producer and exporter of subject goods to Canada. It provided a complete response to the Subsidy RFI[31] and to two SRFIs[32].

[154] Reliance was found to have benefitted from the following four subsidy programs during the POI:

Program 23: Excessive Duty Drawback (DDB);
Program 25: Export Promotion of Capital Goods Scheme;
Program 26: Focus Product Scheme / Merchandise Export Incentive Scheme (MEIS); and
Program 40: Gujarat Electricity Duty Exemption Scheme (GEDES).

[155] The amount of subsidy determined for Reliance is 4.0%, expressed as a percentage of the export price.

All Other Exporters – India

[156] For all other exporters of subject goods originating in or exported from India that did not provide a response to the Subsidy RFI or that provided incomplete or unreliable information, the CBSA determined an amount of subsidy pursuant to a Ministerial Specification on the basis of the following methodology:

1) the amount of subsidy for each of the 4 programs, as found at the final determination, for the exporter, Reliance, located in India that provided a complete response to the Subsidy RFI, plus;

2) the simple average of the amount of subsidy for the 4 programs listed in (1), applied to each of the remaining 36 potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[157] Using the above methodology, for the final determination, the amount of subsidy for all other exporters in India is 35.2%, expressed as a percentage of the export price.

[31]Exhibits 85 (PRO) and 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited.
[32]Exhibits 163 (PRO) and 164 (NC) - Response to Subsidy SRFI #1 - Reliance Industries Limited; and Exhibits 183 (PRO) and 184 (NC) - Subsidy SRFI #1- Additional Comments - Reliance Industries Limited; and Exhibit 283 (PRO) and 284 (NC) - Verification exhibits submitted by company - Reliance Industries, Exhibit 4.

Oman

OCTAL SAOC FZC (Octal)

[158] Octal is a producer and exporter of subject goods to Canada. Octal provided complete responses to the Exporter Subsidy RFI[33] and a SRFI[34]. The GOO also provided a complete response to the Government Subsidy RFI[35] and SRFI[36].

[159] For purposes of the final decision, the CBSA determined that Octal benefitted from the following subsidy program during the POI:

Program 7: Provision of Land or Leases for Land for Less than Adequate Remuneration.

[160] For purposes of the final decision, the above subsidy program was considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by Octal and the GOO.

[161] The amount of subsidy for Octal is 0.1%, expressed as a percentage of the export price.

No Other Exporters – Oman

[162] Based on the information on the record, 100% of the subject goods originating in or exported to Canada from Oman during the POI, were from Octal. Therefore, no "all other exporters" amount of subsidy has been determined as Octal is the only exporter.

Pakistan

Novatex Limited (Novatex)

[163] Novatex is a producer and exporter of subject goods to Canada. It provided a complete response to the Subsidy RFI[37] and a SRFI[38]. They also provided comments on the preliminary determination.[39] The GOP also provided a complete response to the Government Subsidy RFI[40] and SRFI[41].

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[33] Exhibits 67 (PRO) and 68 (NC) - Response to Exporter RFI – Subsidy – OCTAL SAOZ FZC.
[34] Exhibits 171 (PRO) and 172 (NC) - Response to supplemental RFI#1 - OCTAL SOAZ FZC (Subsidy).
[35] Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI - Subsidy - Government Sultanate of Oman.
[36] Exhibits 169 (PRO) and 170(NC) - Response to supplemental RFI#1 - Government Sultanate of Oman.
[37] Exhibits 101 (PRO) and 102 (NC) - Response to Exporter RFI - Subsidy - Novatex Limited.
[38] Exhibits 173 (PRO) and 174 (NC) - Response to supplemental RFI#1 - Novatex Limited (Subsidy).
[39] Exhibits 263 (PRO) and 264 (NC) - Response to Preliminary Determination - Novatex and G-Pac.
[40] Exhibits 88 (PRO) and 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan.
[41] Exhibits 161 (PRO) and 162(NC) - Supplemental RFI #1 response - Government of Pakistan.

[164] For purposes of the final decision, the CBSA determined that Novatex benefitted from the following subsidy programs during the POI:

Program 2: Long Term Financing of Export Oriented Project; and
Program 5: Reduction of Duty and Taxes on Imports of Plant Machinery and Equipment.

[165] For purposes of the final decision, the above subsidy programs were considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by Novatex and the GOP.

[166] The amount of subsidy for Novatex is 0.2%, expressed as a percentage of the export price.

All Other Exporters – Pakistan

[167] Based on the information on the record, 100% of the subject goods originating in or exported from Pakistan during the POI were produced by the exporter, Novatex. Although not all exporters of subject goods that originated in Pakistan participated in the investigation, the CBSA was able to confirm using information on the record, that all the other imports of PET resin into Canada that originated in Pakistan were manufactured by Novatex. As such, Novatex's amount of subsidy is attributed to the non-participating exporter located in a third country.

[168] Using the above methodology, the amount of subsidy for all other exporters in Pakistan is 0.1%, expressed as a percentage of the export price.

Summary of Results – Subsidy

[169] A summary of the results of the subsidy investigation respecting all subject goods released into Canada during the POI follows:

Country of Origin or Export	Amount of Subsidy*
China	
All Exporters	8.7%
India	
Reliance Industries Limited	4.0%
All Other Exporters	35.2%
Oman	
OCTAL SAOC FZC	0.1%
Pakistan	
Novatex Limited	0.2%
All Other Exporters	0.1%

*Expressed as a percentage of the export price.

[170] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of the goods of an exporter if the CBSA is satisfied that the goods have not been subsidized or the amount of subsidy on the goods of that exporter is insignificant.

[171] Pursuant to subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the export price of the goods is defined as insignificant.

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

[173] Neither the ASCM nor SIMA defines or provides any guidance regarding the determination of a "developing country" for purposes of Article 27.10 of the ASCM. As an administrative alternative, the CBSA refers to the Development Assistance Committee List of Official Development Assistance Recipients[42] and regards a country as developing if it is listed as a least developed country, other low income country or lower middle income country or territory. As India and Pakistan are included in these lists, the CBSA extends developing country status to these countries for purposes of this investigation.

[174] As can be seen from the above table, the amount of subsidy determined in respect of certain PET resin exported to Canada from Oman by Octal did not exceed 1% of their value calculated on a per unit basis and was, therefore, determined to be insignificant. The amounts of subsidy determined in respect of PET resin exported to Canada from Pakistan by Novatex and PET resin originating in or exported from Pakistan by all other exporters did not exceed 2% of their value calculated on a per unit basis and were, therefore, determined to be insignificant. As a result, the CBSA terminated the subsidy investigation in respect of these goods pursuant to paragraph 41(1)(a) of SIMA.

[175] As all exporters of goods originating in or exported from Oman and Pakistan have an insignificant amount of subsidy, the termination of the subsidy investigation with respect to subject goods from these exporters will effectively end the CBSA's subsidy proceedings in respect of subject goods from Oman and Pakistan.

[176] The remaining goods under investigation have been subsidized and the amounts of subsidy determined for those goods, are not insignificant. As a result, the legislative requirement is satisfied for making a final determination of subsidizing respecting PET resin originating in or exported from China and India.

[42] http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf

DECISIONS

[177] On February 14, 2018, pursuant to paragraph 41(1)(a) of SIMA, the CBSA terminated the subsidy investigation in respect of certain PET resin exported to Canada from Oman by Octal, exported to Canada from Pakistan by Novatex and originating in or exported from Pakistan by all other exporters.

[178] On the same date, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made a final determination of dumping respecting certain PET resin originating in or exported from China, India, Oman and Pakistan, and a final determination of subsidizing respecting such goods from China and India.

FUTURE ACTION

[179] The provisional period began on November 16, 2017, and will end on the date the CITT issues its finding. The CITT is expected to issue its decision by March 16, 2018. Provisional anti-dumping duties will continue to apply until this date on imports of subject goods from China, India, Oman and Pakistan. Provisional countervailing duties will continue to apply until this date on imports of subject goods from China and India. However, provisional countervailing duties will no longer be imposed on imports of PET resin originating in or exported from Oman and Pakistan. Any provisional countervailing duties paid or security posted in respect of such goods will be returned. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available through the CBSA's website at: www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html.

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

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

[182] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the Customs Act apply with respect to the payment, collection or refund of any duty collected under SIMA.[43] As a result, failure to pay duty within the prescribed time will result in the application of interest.

[43] *Loi sur les douanes*, L.R.C. 1985.

[183] As previously noted, Octal was the only exporter of the subject goods from Oman during the POI. In the event of an injury finding by the CITT, new exporters may contact the CBSA to explore appropriate mechanisms for obtaining specific normal values and export prices before the exportation of goods. In the event that goods from an exporter, other than Octal, are released from customs after a finding of injury by the CITT, anti-dumping duty will be assessed at a rate of 26.5% of the export price of the goods. This amount represents the highest amount by which the normal value exceeded the export price on an individual transaction for Octal during the POI.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

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

[185] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

PUBLICATION

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

[187] A notice of the partial termination of the subsidy investigation will be published in the *Canada Gazette* pursuant to paragraph 41(4)(a) of SIMA.

INFORMATION

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

Mail: SIMA Registry and Disclosure Unit
Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th floor
Ottawa, Ontario K1A 0L8
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FEB 2 7 2018

Doug Band
Director General
Trade and Anti-dumping Programs Directorate

ATTACHMENTS

Appendix 1: Summary of Margins of Dumping and Amounts of Subsidy
Appendix 2: Summary of Findings for Subsidy Programs
Appendix 3: Dumping and Subsidy Representations

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

Country of Origin or Export	Margin of Dumping*	Amount of Subsidy*	Amounts of Subsidy per Metric Tonne
China			
All Exporters	30.6%	8.7%	RMB 5,378
India			
Reliance Industries Limited	22.1%	4.0%	INR 2,288
All Other Exporters	30.6%	35.2%	INR 22,877
Oman			
OCTAL SAOC FZC	7.2%	0.1%**	OMR 0.37**
Pakistan			
Novatex Limited	5.5%	0.2%**	PKR 160**
All Other Exporters	28.0%	0.1%**	PKR 160**

*As a percentage of export price.

**The amounts of subsidy on PET resin exported to Canada from Oman by OCTAL SAOC FCZ, and exported to Canada from Pakistan by Novatex Limited and originating in or exported from Pakistan by all other exporters are insignificant. As such, the subsidy investigation was terminated for those goods.

Note: The margins of dumping reported in this table were determined by the CBSA for the purposes of the final decisions. These margins may not reflect the amount of anti-dumping duty to be levied on future importations of dumped goods. In the event of an injury finding by CITT, normal values and/or amounts of subsidy for future shipments to Canada have been provided to the exporters who provided sufficient information in their response to the CBSA RFI, as appropriate. These normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods and amounts of subsidy should be obtained from the exporters. Imports from any other exporters will be subject to an anti-dumping duty rate and a countervailing duty rate, as applicable, in accordance with a ministerial specification and in an amount equal to the margin of dumping or the amount of subsidy found for "all other exporters" at the final determination. Please consult the SIMA Self-Assessment Guide for more detailed information explaining how to determine the amount of SIMA duties owing.

Normally, normal values will not be applied retroactively. However, normal values may be applied retroactively in cases where the parties have not advised the CBSA in a timely manner of substantial changes that affect values for SIMA purposes. Therefore, where substantial changes occur in prices, market conditions, costs associated with production and sales of the goods, the onus is on the concerned parties to advise the CBSA

APPENDIX 2 – SUMMARY OF FINDINGS FOR SUBSIDY PROGRAMS

This Appendix consists of descriptions of the subsidy programs which the responding companies benefited from during the course of the Period of Investigation (POI), other potentially actionable subsidy programs identified by the Canada Border Services Agency (CBSA), programs that were not used by the exporters in the POI and programs found not to exist.

The CBSA has used the best information available to describe the potentially actionable subsidy programs that were not used by the responding exporters in the investigation. This includes using information obtained from CBSA research on potential subsidy programs in the named countries and information provided by the responding governments, exporters and related suppliers and descriptions of programs in the complaint.

China

The Government of China (GOC) did not submit a response to the Subsidy Request for Information (RFI), which limited the CBSA's ability to conduct an analysis of the programs for the final determination. Furthermore, no exporter in China submitted a complete response to the subsidy RFI for the purposes of the final determination.

The following programs were included in the investigation. Questions concerning these programs were included in the Subsidy RFIs sent to the GOC and to all known producers/exporters of PET resin in China. For the purposes of the final determination of subsidizing, sufficient information was not available to make a determination in respect of these potentially actionable subsidy programs.

Potentially Actionable Subsidy Programs Identified by the CBSA

Preferential Loans and Loan Guarantees

Program 1: Debt Forgiveness
Program 2: Export Credit Subsidy Programs: Export Buyer's Credits
Program 3: Export Sellers Credit
Program 4: Policy Loans
Program 5: Preferential Export Financing
Program 6: Preferential Loans Characterized as a Lease Transaction
Program 7: Other Preferential Loans

Grants and Grants Equivalents

Program 8: Allowance to Pay Loan Interest (Interest Subsidy)
Program 9: Annual Incentive Funds Stable Foreign Trade Policy

Program 10:	Assistance for Optimizing the Structure of Import/Export of High-Tech Products
Program 11:	Assistance for Technology Innovation – R&D Project
Program 12:	Award of Taxpayers in Yanghang Industrial Park
Program 13:	Award for Excellent Enterprise
Program 14:	Award for Good Performance in Paying Taxes
Program 15:	Award for Taicang City to Support Public Listing of Enterprises
Program 16:	Award for Taicang City to Promote Development of Industrial Economy
Program 17:	Awards for the Contributions to Local Economy and Industry Development
Program 18:	Award to Enterprises Whose Products Qualify for "Well-known Trademark of China" or "Famous Brands of China" or "China World Top Brands" or Other Branding
Program 19:	Brand Development Fund by Shunyi District Local Governments
Program 20:	Business Development Overseas Support Fund (Foshan)
Program 21:	Bounty for Enterprise with Production and Sales Growth
Program 22:	Changzhou Qishuyan District Environmental Protection Fund (Jiangsu)
Program 23:	Changzhou Technology Plan (Jiangsu)
Program 24:	Circular on Issuance of Management Methods for Foreign Trade Development Support Fund
Program 25:	Development Fund for SMEs
Program 26:	Emission Reduction and Energy-Saving Award
Program 27:	Energy Saving Grant
Program 28:	Energy-Saving Technique Special Fund
Program 29:	Energy-Savings Technology Reform
Program 30:	Energy-Saving Technology Renovation Fund
Program 31:	Enterprise Financing Subsidy
Program 32:	Enterprise Innovation Award of Qishuyan District (Jiangsu)
Program 33:	Enterprise Technology Centers (e.g. Tianjin City and Jinnan District)
Program 34:	Environment Protection Award (Jiangsu)
Program 35:	Exhibition Fee Reimbursement
Program 36:	Export Assistance Grant
Program 37:	Export Award
Program 38:	Export Brand Development Fund
Program 39:	Export Expansion Recognition Grant
Program 40:	Financial Subsidy for Exhibitions
Program 41:	Financial Subsidy for Meeting Import and Export Qualifications
Program 42:	Financial Subsidy for Participating in Foreign Fairs
Program 43:	Financial Subsidy for Product Certification
Program 44:	Financial Subsidy from the Jiangsu Province
Program 45:	Fund for Interest Discount of Loans for the "Five Points and One Line" Coastal Economic Belt Park
Program 46:	Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises

Program 47:	Fund for the Development of Outward-Oriented Enterprises
Program 48:	Governmental Subsidy for Participation in Trade Exhibition by Enterprises
Program 49:	Grants for International Certification
Program 50:	Grants to Privately-Owned Export Enterprises of Tianjin– Name Modified
Program 51:	Guaranteed Growth Fund
Program 52:	Hangzhou City Government Grants under the Hangzhou Excellent New Product / Technology Award
Program 53:	Huzhou City Quality Award
Program 54:	Huzhou Industry Enterprise & Upgrade Development Fund
Program 55:	Import/Export Credit Insurance
Program 56:	Incentive for Enterprise Innovation and R&D
Program 57:	Incentive for Establishment of Headquarters and Listing of Enterprises
Program 58:	Incentive Fund for Key Enterprise
Program 59:	Innovative Experimental Enterprise Grant
Program 60:	Innovative Small and Medium-Sized Enterprise Grants
Program 61:	Interim Measures of Fund Management of Allowance for Zhongshan Enterprise to Attend Domestic and Overseas Fair (Zhongshan)
Program 62:	International Market Fund for Export Companies
Program 63:	International Market Fund for Small-and Medium-sized Export Companies (Matching Funds for International Market Development for SMEs)
Program 64:	Investment Grants from Fuyang City Government for Key Industries
Program 65:	Jiangdu City Industrial Economy Performance Award (Jiangsu)
Program 66:	Jiangsu Province Export Premium Subsidy
Program 67:	Large Taxpayer Award
Program 68:	Liaoning High-tech Products & Equipment Exports Interest Assistance
Program 69:	Modern Service Grant
Program 70:	Municipal Government – Exhibition Grant
Program 71:	Municipal Government – Export Grant
Program 72:	Municipal Government – Insurance Fee Grant
Program 73:	National Environmental Protection and Resources Saving Program: Grants for the Optimization of Energy Systems
Program 74:	National Innovation Fund for Technology Based Firms
Program 75:	Open Economic Development Grant
Program 76:	Overseas Investment Discount (Jiangsu Province)
Program 77:	Patent Application Assistance
Program 78:	Product Quality Grant
Program 79:	Project Subsidy from Haicang Bureau of Science and Technology
Program 80:	Provincial Government – Equipment Grant
Program 81:	Provincial Scientific Development Plan Fund
Program 82:	Reimbursement of Foreign Affairs Services Expenses (Foshan)
Program 83:	Research & Development (R&D) Assistance Grant
Program 84:	Research & Development Fund for Industrial Technologies

Program 85: Science and Technology Fund – Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area
Program 86: Small and Medium-sized Enterprise Support Funds
Program 87: Special Fund for the Development of Foreign Trade and Economic Cooperation
Program 88: Special Fund for Fostering Stable Growth of Foreign Trade
Program 89: Special Funds for Development of Science and Technology
Program 90: Special Supporting Fund for Commercialization of Technological Innovation and Research Findings
Program 91: Star/Superstar Enterprise Grant
Program 92: State Service Industry Development Fund
Program 93: State Special Fund for Promoting Key Industries and Innovation Technologies
Program 94: Support Fund for the Development of Foreign Trade
Program 95: Support Fund for High and New Technology Projects
Program 96: Supporting Fund for Becoming Publically Listed Company
Program 97: Supporting Fund for Enterprises
Program 98: Supporting Fund for Non-refundable Export Tax Loss on Mechanical & Electrical Product and High-Tech Product (Jiangmen City)
Program 99: Supportive Fund Provided by the Government of Xuyi County, Jiangsu
Program 100: Supporting Fund Provided by Shenyang Municipal Government to the Enterprise to Maintain the Employment Level
Program 101: Technical Renovation Loan Interest Discount Fund
Program 102: Technology Innovation Award
Program 103: Technology Reform Interest Subsidy
Program 104: Trade Policy Award
Program 105: Transition Gold Support
Program 106: "Two New" Product Special Funds of Guangdong Province
Program 107: Water Fund Refund / Exemption
Program 108: Water Saving Enterprise

Preferential Tax Programs

Program 109: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin
Program 110: City Maintenance and Construction Taxes and Education Surcharges for Foreign Invested Enterprises
Program 111: Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Area
Program 112: Corporate Income Tax Reduction for New High Tech Enterprises ("NHTE")
Program 113: Deed Tax Exemptions for Land Transferred Through Merger or Restructuring
Program 114: Dividend Exemption between Qualified Resident Enterprises
Program 115: Five Points, One Line Strategy in Liaoning Province
Program 116: Income Tax Credit for the Purchase of Domestically Manufactured Production Equipment

Program 117: Municipal Government – Preferential Tax Program
Program 118: Preferential Tax Policies for Foreign-Invested Enterprises (FIEs)
Program 119: Preferential Tax Policies for Enterprises with Foreign Investments (FIEs) Established in Special Economic Zones (excluding the Shanghai Pudong Area)
Program 120: Preferential Tax Policies for Enterprises with Foreign Investment Recognized as High or New Technology Enterprises Established in the State High or New Technology Industrial Development Zones
Program 121: Preferential Tax Policies for FIEs Established in the Coastal Economic Area and in Economic and Technological Development Zones
Program 122: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
Program 123: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose
Program 124: Preferential Tax Policies for the Research and Investment
Program 125: Preferential Tax Policies in the Western Regions
Program 126: Preferential Tax Policies for Enterprises Making Little Profits
Program 127: Tax Concessions for Central and Western Regions
Program 128: Tax Policies for the Deduction of Research and Development Expenses
Program 129: Two Free, Three Half Tax Exemption for the Productive FIEs
Program 130: Various Local Discounts (Shandong Province, Chongqing City, Guangxi Region Zhuang, Tax privileges to Develop Central and Western Regions).

Relief from Duties and Taxes on Inputs, Material and Machinery

Program 131: Exemption or Refund of Tariff and Import Value-Added Tax (VAT) for the Imported Technologies and Equipment
Program 132: Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries
Program 133: Preferential Consumption Tax on Refined Oil
Program 134: Preferential Tax Treatment for Import of Equipment
Program 135: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs
Program 136: Tariff and VAT Exemptions on Imported Materials and Equipment
Program 137: VAT Refunds to Foreign Invested Enterprises (FIEs) Purchasing Domestically-Produced Equipment

Reduction in Land Use Fees

Program 138: Exemption, Reduction or Refund of Land Transfer Fee
Program 139: Reduction in Land Use Fees, Land Rental Rates and Land Purchase/Transfer Price
Program 140: Refund or Exemption of Land Use Tax

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

Program 141: Acquisition of Government Assets at Less Than Fair Market Value
Program 142: Provision of MEG and/or PTA for Less Than Fair Market Value
Program 143: Provision of Utilities Provided by Government for Less Than Fair Market Value

India

As noted in the body of this document, the Government of India (GOI) did not submit a complete response to the Subsidy RFI, which has limited the CBSA's ability to conduct a proper analysis of the programs for the final determination. However, in recognition of the amount of cooperation and the volume of information provided by one exporter that provided a complete response to the RFI (cooperative exporter), the CBSA has determined the amounts of subsidy, based on the information provided in their responses to the Subsidy RFI and SRFIs.[44]

This appendix consists of descriptions of the subsidy programs which the cooperative exporter benefitted from during the course of the POI in the investigation, followed by a listing of other potentially actionable subsidy programs identified by the CBSA.

Subsidy Programs Used by the Cooperative Exporter

The CBSA has used the best information available to describe the subsidy programs used by the cooperative exporter in the investigation. This includes using information obtained from CBSA research on potential subsidy programs in India, information provided by the cooperative exporter and descriptions of programs that the CBSA has previously published in recent *Statement of Reasons* (SOR) relating to subsidy investigations involving India.

Relief from Duties and Taxes on Inputs, Materials and Machinery

On the basis of the information available,[45] the following programs under *Relief from Duties and Taxes on Inputs, Materials and Machinery* constitute a financial contribution pursuant to either paragraph 2(1.6)(a) of SIMA, i.e. practices of the government involve the direct transfer of funds or the contingent transfer of funds, or paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced or exempted. As a result, these programs confer a benefit to the recipient equal to the amount of funds transferred or the amount of financial liabilities reduced or exempted.

[44] Exhibits 85 (PRO) and 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited; Exhibits 163 (PRO) and 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited; Exhibits 183 (PRO) and 184 (NC) - Subsidy RFI#1 - Additional comments - Reliance Industries Limited; Exhibits 283 (PRO) and 284 (NC) - Verification exhibits submitted by company - Reliance Industries.
[45] Ibid.

Due to the lack of a complete response by the GOI, there is not sufficient information on the record to determine whether these programs are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information[46], these programs do not appear to be generally available to all enterprises in India and therefore appear to be specific.

Program 23: Excessive Duty Drawback (DDB)

During the POI, the cooperative exporter received a benefit under this program in the form of excessive duty drawback. While the legislative basis of this program is not clear, the CBSA noted that paragraph 26 of Chapter 3 and Chapter 22 of the Customs Manual of Instructions provide some information regarding its administration.[47]

Under this program, the cooperative exporter was given a series of cash payments from the GOI during the POI.[48] The amount of such payment was calculated by applying a prescribed rate of duty drawback to the Freight on Board (FOB) value of each export shipment.[49] However, the GOI did not appear to take into consideration the actual amount of duties paid, since the prescribed rate was determined for the entire PET resin industry, rather than for each individual company.[50] As the CBSA has information on the record which suggests that the entire amount of those duty drawback payments was made in excess of any actual duties paid by the cooperative exporter,[51] on the basis of the available information, the program was found to constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, as provided by section 35 of the *Special Import Measures Regulations* (SIMR).

Based on the available information,[52] this program does not appear to be generally available to all enterprises in India and therefore appears to be specific.

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[46] Exhibits 85 (PRO) and 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited; Exhibits 163 (PRO) and 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited; Exhibits 183 (PRO) and 184 (NC) - Subsidy RFI#1 - Additional comments - Reliance Industries Limited; Exhibits 283 (PRO) and 284 (NC) - Verification exhibits submitted by company - Reliance Industries.

[47] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, page 60.

[48] Ibid., pages 55-61.

[49] Ibid., pages 55-61.

[50] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 55-61; Exhibit 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited, pages 12-13; Exhibit 84 (NC) - Response to Exporter RFI - Dumping - Reliance Industries Limited, pages 43-45.

[51] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 17-18 and 55-61; Exhibit 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited, page 5; Exhibit 84 (NC) - Response to Exporter RFI - Dumping - Reliance Industries Limited, pages 43-45.

[52] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 55-61.

Program 25: Exporter Promotion of Capital Goods Scheme

During the POI, the cooperative exporter received a benefit under this program in the form of reduced customs duty rates on importation of certain capital goods. The program is administered in accordance with Foreign Trade Policy 2015 – 2020[53] and it allows eligible enterprises to import capital goods for pre-production, production and post-production at reduced customs duty rates[54]. Since the reduced duty rates represent a reduction or exemption in the amounts that would otherwise be owing and due to the government, on the basis of the available information, the program was found to constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA.

Based on the available information,[55] this program does not appear to be generally available to all enterprises in India and therefore appears to be specific.

Program 26: Focus Product Scheme; Merchandise Export Incentive Scheme (MEIS)

During the POI, the cooperative exporter received a benefit under this program in the form of reduced ***future*** customs duty. During the course of the investigation, it was found that MEIS is a continuation of the Focus Product Scheme.[56] While the legislative basis of this program is not clear, the CBSA noted that some information pertaining to the application policy and the eligibility criteria can be found in Chapter III of the Foreign Trade Policy and Handbook of procedures, as published by the Directorate General of Foreign Trade.[57]

The stated objective of MEIS is to offset infrastructural inefficiencies and associated costs involved in the export of goods and products that are produced and manufactured in India.[58] The program focuses on certain categories of products, including PET resin, because these goods are believed to enhance India's export competitiveness and have a high export intensity and employment potential.[59]

Under this program, the cooperative exporter received a series of rewards in the form of a freely transferable financial instrument, known as scrip[60]. The amount of such reward was determined by applying a prescribed rate to the FOB value of each export shipment, and the scrips can be used for the payment of any ***future*** customs duty.[61] As the CBSA has information on the record

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[53] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 33-34.
[54] Ibid., pages 31-32.
[55] Ibid., pages 31-37.
[56] Ibid., page 28.
[57] Ibid., page 30.
[58] Ibid., page 29.
[59] Ibid., Attachment MEIS SQ3 and page 29.
[60] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, page 29; Exhibit 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited, pages 7-8.
[61] Ibid.

which indicates that the scrips were not used for the payment of any actual duties or taxes levied on the production, purchase, distribution, transportation, sale, export or import of the goods exported to Canada during the POI,[62] on the basis of the available information, the program was found to constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA.

Based on the available information,[63] this program does not appear to be generally available to all enterprises in India and therefore appears to be specific.

Subsidy Programs provided by the State Government of Gujarat (SGOG)

On the basis of the available information,[64] the following program under *Subsidy Programs provided by the SGOG* constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced or exempted, and confers a benefit to the recipient equal to the amount of financial liabilities reduced or exempted.

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

Program 40: Gujarat Electricity Duty Exemption Scheme (GEDES)

In the course of the investigation, the CBSA discovered that the cooperative exporter received a benefit under this program during the POI, in the form of exempted electricity duty. The program is administered under the authority of the *Gujarat Electricity Duty Act, 1958*[65] and it exempts certain eligible enterprises that establish a new production facility in the State of Gujarat from having to pay electricity duty for a set period of time[66]. As a result, the program was found to constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA.

Based on the available information,[67] this program does not appear to be generally available to all enterprises in Gujarat, India and therefore appears to be specific.

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[62] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 17-18 and 28-31; Exhibit 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited, pages 5 and 7-8.
[63] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 28-31.
[64] Exhibits 85 (PRO) and 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited; Exhibits 163 (PRO) and 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited; Exhibits 183 (PRO) and 184 (NC) - Subsidy RFI#1 - Additional comments - Reliance Industries Limited; Exhibits 283 (PRO) and 284 (NC) - Verification exhibits submitted by company - Reliance Industries.
[65] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, page 61.
[66] Ibid., pages 61-69.
[67] Ibid., pages 61-69.

Other Potentially Actionable Subsidy Programs

The following programs were also included in the investigation. Questions concerning these programs were included in the Subsidy RFIs sent to the GOI and to all known exporters of the subject goods in India. Without a complete response to the Subsidy RFI from the GOI, the CBSA does not have detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not constitute actionable subsidy programs. In other words, the CBSA does not have sufficient information to determine that any of the following programs should be removed from the investigation for purposes of the final determination.

Special Economic Zones (SEZ) Programs

Program 1:	SEZ: Duty Free Importation of Capital Goods and Raw Materials
Program 2:	SEZ: Exemption from Electricity Duty and Cess
Program 3:	SEZ: Exemption from Minimum Alternate tax under 115JB of the Income Tax Act
Program 4:	SEZ: Exemption of Payment on Central Tax on Purchase of Capital Goods and Raw Materials
Program 5:	SEZ: Exemption from Service Tax Including Educational Cesses
Program 6:	SEZ: Exemption from State Sales Tax and other Levies as Extended by State Governments
Program 7:	SEZ: ITA Exemptions s. 10A and ITA Exemption Scheme 2.80-Ia
Program 8:	SEZ: Reimbursement or Exemption of Central Sales Tax (CST) on Goods Manufactured in India

Export Oriented Unit (EOU) Programs

Program 9:	EOU: Credit for Service Tax Paid
Program 10:	EOU: Duty Drawback on Furnace Oil Procured Domestically
Program 11:	EOU: Duty Free Importation of Capital Goods and Raw Materials
Program 12:	EOU: Exemption from Income Tax as per Section 10A and 10B of the ITA
Program 13:	EOU: Reimbursement or Exemption of Central Sales Tax (CST) on Goods Manufactured in India

Grants and Grant Equivalents

Program 14:	Assistance to States Developing Export Infrastructure and Allied Activities (ASIDE) Scheme
Program 15:	Incentive under the West Bengal State Support for Industries Scheme
Program 16:	Market Access Initiative Scheme
Program 17:	Market Development Assistance Program

Preferential Loans and Loan Guarantees

Program 18: GOI Loan Guarantee
Program 19: Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit
Program 20: Pre and Post Shipment Export Financing

Preferential Tax Programs

Program 21: State and Union Territory Sales Tax Incentive
Program 39: Income Tax Deductions for Research and Development Expenses

Relief from Duties and Taxes on Inputs, Material and Machinery

Program 22: Advanced Authorization Scheme
Program 24: Duty Free Import Authorization Scheme
Program 27: Status Holder Incentive Scrip

Subsidy Programs provided by the State Government of Gujarat (SGOG)

Program 28: Other Incentive Schemes of the SGOG
Program 29: SGOG: New Scheme for Incentive to Industries
Program 30: SGOG: Provision of Land for Less than Adequate Remuneration
Program 31: SGOG: Scheme for Financial Assistance to Industrial Parks

Subsidy Programs provided by the State Government of Maharashtra (SGOM)

Program 32: SGOM Electricity Duty Exemption
Program 33: SGOM Industrial Promotion Subsidy (IPS)
Program 34: SGOM Incentives for Strengthening and MSMEs and LSI's
Program 35: SGOM Incentives to Strengthen Micro, Small and Medium Sized Manufacturing Enterprises
Program 36: SGOM Interest Subsidy
Program 37: SGOM Power Tariff Subsidy
Program 38: SGOM Waiver of Duty Stamp

Oman

At the preliminary determination, the CBSA determined that these three programs initially investigated were not used by the exporter in Oman:

Program 1: Development Loans for Industrial Projects by the Oman Development Bank
Program 3: Export Credit Discounting Subsidy ("Post-Shipment Financing Loans")
Program 4: Pre-shipment Export Credit Guarantees

Details on these aforementioned programs can be found in the CBSA's preliminary determination *SOR*.[68]

A summary of the investigation results respecting the remaining subsidy programs in relation to Oman is provided below.

Subsidy Program Used by the Responding Exporter

Program 7: Provision of Land or Leases for Land for Less than Adequate Remuneration

In the establishment of the Salalah Free Zone (SFZ), the Salalah Free Zone Company SOAC (SFZCO) was named the operational body of the SFZ, under Royal Decree No. 62/2006.[69] Under Ministerial Decisions No. 15/2011, the SFZCO negotiates and signs the lease contracts for land with companies that choose to locate in the SFZ and collects the proceeds of the leases.[70]

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

For the purposes of the final decision, this program is considered to be a specific subsidy under subsection 2(7.3)(c) of SIMA as the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

[68] http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/petr2017/petr2017-pd-eng.html

[69] Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-2.

[70] Exhibit 67 (PRO) and 68 (NC) - Response to Exporter RFI –Subsidy – OCTAL SAOZ FZC, Attachment P2-SQ3-1; Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-3.

Other Subsidy Programs Investigated

Program 2: Exemption from Corporate Income Tax for Companies Located in the Salalah Free Zone

The SFZ was established under the Royal Decree No. 62/2006[71] and is regulated through Ministerial Decisions No. 15/2011[72] and No. 45/2011[73].

One of the benefits provided by the Government of Oman (GOO) to companies located in the SFZ is the exemption of income tax for the period of the lease contract/investment agreement, or for thirty years.[74]

CBSA Determination

It was determined that no financial contribution was received by the exporter with respect to the terms outlined in subsection 2(1.6) of SIMA during the POI. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

Program 5: Provision of Electricity for Less than Adequate Remuneration

Electricity is regulated, owned and controlled by the GOO. Under the Royal Decree No. 78/2004, the GOO subsidizes the difference between the economic cost of electricity and the rate at which electricity is sold by suppliers.[75] The GOO sets the rate at which electricity is sold[76] and owns some suppliers[77].

[71] Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-2.
[72] Exhibit 67 (PRO) and 68 (NC) - Response to Exporter RFI –Subsidy – OCTAL SAOZ FZC, Attachment P2-SQ3-1; Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-3.
[73] Exhibit 67 (PRO) and 68 (NC) - Response to Exporter RFI –Subsidy – OCTAL SAOZ FZC, Attachment P2-SQ3-2; Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-4.
[74] Exhibit 67 (PRO) and 68 (NC) - Response to Exporter RFI –Subsidy – OCTAL SAOZ FZC, Attachment P2-SQ3-1; Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-3.
[75] Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-2.
[76] Ibid.
[77] Exhibit 276 (NC) - Additional Information – Dhofar Power Company.

CBSA Determination

For the purposes of the final decision, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, i.e., the government provides goods or services, other than general governmental infrastructure, or purchases goods.

The evidence on the administrative record indicates that the criteria and conditions for receiving assistance under the program is objective, it is set out in a legislative, regulatory or administrative instrument or other public document, and applied in a manner that does not favor or is not limited to a particular enterprise. Therefore, this program was not considered specific pursuant to subsection 2(7.3) of SIMA.

Program 6: Provision of Government of the Sultanate of Oman-Funded Non-General Infrastructure

In the establishment of the SFZ, the SFZCO was named the operational body of the SFZ, under Royal Decree No. 62/2006.[78] Through Ministerial Decisions No. 15/2011, the SFZCO coordinates the provision of all services and facilities within the SFZ.[79]

CBSA Determination

It was determined that no financial contribution was received by the exporter with respect to the terms outlined in subsection 2(1.6) of SIMA during the POI. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

Program 8: Tariff Exemptions on Imported Equipment, Machinery, Materials and Packaging Materials

The SFZ was established under the Royal Decree No. 62/2006[80] and is regulated through Ministerial Decisions No. 15/2011[81] and No. 45/2011[82].

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[78] Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-2.

[79] Exhibit 67 (PRO) and 68 (NC) - Response to Exporter RFI –Subsidy – OCTAL SAOZ FZC, Attachment P2-SQ3-1; Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-3.

[80] Ibid., Attachment D15-2.

[81] Exhibit 67 (PRO) and 68 (NC) - Response to Exporter RFI –Subsidy – OCTAL SAOZ FZC, Attachment P2-SQ3-1; Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-3.

[82] Exhibit 67 (PRO) and 68 (NC) - Response to Exporter RFI –Subsidy – OCTAL SAOZ FZC, Attachment P2-SQ3-2; Exhibits 71 (PRO) and 72 (NC) - Response to Government RFI- Subsidy – Government Sultanate of Oman, Attachment D15-4.

One of the benefits provided by the GOO to companies located in the SFZ is the exemption of custom taxes on goods imported into or exported from the SFZ.

CBSA Determination

For the purposes of the preliminary determination, this program was found to be a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, and was considered to be specific, due to the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available, pursuant to paragraph 2(7.3)(d) of SIMA.

After further analysis of the information on record, the program's exemption of custom taxes on goods imported into the SFZ was found not to be an amount that would otherwise be owing. As such, it was determined that no financial contribution was received by the exporter with respect to the terms outlined in subsection 2(1.6) of SIMA during the POI. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

Pakistan

Subsidy Programs Used by the Responding Exporter

Program 2: Long Term Financing of Export Oriented Project (LTF-EOP)

At the preliminary determination, Program 2 was referred to as the Export Long Term Fixed Rate Financing Scheme. The Long Term Financing of Export Oriented Project was administered under the State Bank of Pakistan SBP Act, 1956, Section 22 in conjunction with Section 17(2) (d) Annexure to the MFD Circular No. 14, dated May 18, 2004 of the State Bank of Pakistan.[83] Under this program long term financing was provided to export oriented projects to purchase imported and locally manufactured plant and machinery.

CBSA Determination

This preferential financing constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

This program is considered to be a specific subsidy under subsection 2(7.2)(b) of SIMA as the financing was provided for an export oriented project.

[83] Exhibit 289 (NC) - Case Arguments - Novatex Limited, G-Pac Corporation.

Program 5: Reduction of Duty and Taxes on Import of Plant Machinery and Equipment

At the preliminary determination this program was referred to as Imports of Plant Machinery and Equipment in Manufacturing Bond. However, based on information submitted the Imports of Plant Machinery and Equipment in Manufacturing Bond was one of several Statutory Regulatory Orders (SRO) that were used by Novatex to import plant and machinery at reduced duty and/or tax rates. The SROs are issued by the Ministry of Finance, Revenue and Economic Affairs, Revenue Division. The following SROs were used by Novatex to import plant and machinery at reduced duty and/or tax rates.

(a) SRO No. 554 (I)/1998, dated June 12, 1998;
(b) SRO No. 575 (I)/2005, dated June 6, 2005;
(c) SRO No. 575 (I)/2006, dated June 5, 2006;
(d) SRO No. 1178(I)/2015, dated November 30, 2015;
(e) SRO No. 530(I)/2005, dated June 6, 2005;
(f) SRO No. 549(I)/2008, dated June 11, 2008;
(g) SRO No. 727(I)/2011, dated August 1, 2011;
(h) SRO No. 316(I)/2007, dated April 12, 2007;
(i) SRO No. 659 (I)/2007, dated June 30, 2007; and
(j) SRO No. 1261(I)/2007, dated December 31, 2007.

CBSA Determination

These programs constitute financial contributions pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

For (i) SRO No. 659 (I)/2007, dated June 30, 2007 and (j) SRO No. 1261(I)/2007, dated December 31, 2007, these two programs are generally available, as there is a usage across many industries and is thus not relegated to usage of only a few industries. Consequently, they are not considered to be specific under paragraph 2(7.1) of SIMA and no amount of subsidy was calculated for these two SROs at the final decision.

For the remaining SROs these programs were considered to be specific under paragraph 2(7.2)(a) of SIMA, as they were limited, pursuant to a legislative, regulatory or administrative instrument or other public document.

Other Subsidy Programs Investigated

The CBSA has determined that these programs were not used by the exporter in Pakistan.

Program 1: Compliance Certificate Scheme

This program is administered by the Trade and Development Authority of Pakistan. The purpose of the program was to encourage exporters/manufacturers to obtain various quality, environmental and social certifications.[84]

The exporter, Novatex, did not avail itself of this program.

Program 3: Export Processing Zones Incentives and Benefits

This program is administered by Export Processing Zones Authority (EPZA). This program allows for the duty free importation of plant machinery, equipment and raw materials.[85]

The exporter, Novatex, did not avail itself of this program.

Program 4: Final Tax Regime

This program is administered by the Federal Board of Revenue, Income Tax Ordinance 2001 (Ordinance) and the Income Tax Rules 2002.[86] Under the Final Tax Regime (FTR) a withholding tax of 1% is deducted on the total value of the export transaction of foreign exchange proceeds, regardless of any profit of the company. However, the Ordinance provides the company with an option to pay tax under the Normal Tax Regime (NTR), which is exercised at the time of filing of the income tax return. As the option can be exercised when filing the income tax return, tax is deducted on exports under the FTR until the income tax return is submitted. When the income tax return is filed and the opt-out option is exercised, the tax deducted at source on exports proceeds under the FTR are adjusted against the tax payable under the NTR.

The exporter, Novatex, did not avail itself of this program.[87]

[84] Exhibit 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan, page 34.
[85] Exhibit 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan, page 43.
[86] Ibid., page 48.
[87] Exhibit 102 (NC) - Response to Exporter RFI - Subsidy - Novatex Limited, Question D25.

Program 6: Land at Concessionary Rates in Industrial Estates and Export Processing Zones

This program is administered by The National Industrial Parks Development and Management Company and the EPZA. This program may provide land leases at the concessionary rates for producers located in Export Processing Zones.[88]

The exporter, Novatex, did not avail itself of this program.

Program 7: Manufacturing Bond Scheme

This program is administered by the Federal Board of Revenue SRO No. 450(I)/2001, dated June 18, 2001 in conjunction with the Customs Act 1969, Section 219 of Chapter XX.[89] This program provides for the exemption of customs duty on imports of raw materials and inputs.

The CBSA is satisfied that the Government of Pakistan has in place sufficient procedures in place to actually determine which inputs were consumed in the production of the exported products and in what amounts.

The exporter, Novatex, did not avail itself of this program.

Program 8: Warehouse Scheme

This program is administered by the Trade and Development Authority of Pakistan. The purpose of the program is to provide financial assistance to exporters to establish a warehouse in any country where a potential market for Pakistani exports may exist.[90]

The exporter, Novatex, did not avail itself of this program.

[88] Exhibit 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan, page 59.
[89] Exhibit 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan, page 65.
[90] Exhibit 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan, page 71.

APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS

Case arguments were received on behalf of Selenis Canada (the Complainant),[91] and on behalf of Reliance Industries Limited (Reliance),[92] Novatex Limited (Novatex) and G-Pac Corporation (G-Pac),[93] OCTAL SAOC FZC (Octal),[94] as well as the Government of Oman (GOO)[95].

The Canada Border Services Agency (CBSA) received reply submissions on behalf of the Complainant,[96] and on behalf of Novatex and G-Pac[97], Reliance[98] and the GOO[99].

Certain details provided in case arguments and reply submissions were qualified as confidential information by the submitting counsel. This has restricted the ability of the CBSA to discuss all issues raised in these submissions.

The material issues raised by parties through case briefs are summarized as follows:

DUMPING REPRENSENTATIONS

India

Duty Drawback and Export Price

Case Briefs

In their case brief, Reliance submitted that the export price should be adjusted by adding thereto the amount of duty drawback received from the GOI.[100] The company argued that this adjustment is necessary because the amount to be received was known at the time of the sale and had been taken into consideration when the selling price was set. Reliance also submitted that should this adjustment not be made to the export price, the CBSA must not find the duty drawback program to be an actionable subsidy, in order to avoid any double counting of duties.

[91] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada.
[92] Exhibit 280 (NC) - Close of Record Case Brief - Reliance Industries.
[93] Exhibit 289 (NC) - Case Arguments - Novatex Limited, G-Pac Corporation.
[94] Exhibit 293 (NC) - Case Arguments - OCTAL SOAZ FZC.
[95] Exhibit 295 (NC) - Case Arguments - Government of Oman.
[96] Exhibit 301 (NC) - Reply submission from Compagnie Selenis Canada.
[97] Exhibit 300 (NC) - Reply Submissions - Novatex Limited, G-Pac Corporation.
[98] Exhibit 303 (NC) - Reply submission from Reliance Industries Ltd.
[99] Exhibit 304 (NC) - Reply Submission from the Government of the Sultanate of Oman.
[100] Exhibit 280 (NC) - Close of Record Case Brief - Reliance Industries Limited, pages 16-17.

Counsel for the Complainant argued that the CBSA should reject Reliance's request for an upward adjustment to its export price by the amount of duty drawback payments by the GOI.[101] The Complainant submitted that section 24 of SIMA does not allow for such an upward adjustment.

Reply Submissions

In their reply submission, Reliance clarified that they had not requested an upward adjustment to the export price in the case brief. Instead, it was submitted that the company had requested the selling price to be adjusted by the amount of duty drawback received.[102] Reliance also submitted that should the selling price of the exported goods not be adjusted as requested, the normal value determined under section 15 of SIMA must be adjusted under section 10 of the SIMR.

CBSA's Response

The CBSA notes that there is no legislative basis on which to adjust the export price by the amount of duty drawback received. As for the company's request to adjust the selling price of the exported goods, the CBSA notes that section 24 of SIMA states that the export price is an amount equal to the lesser of the exporter's sale price or the price at which the importer has agreed to purchase the goods, adjusted by deducting therefrom all costs charges, expenses, duties and taxes described in subparagraphs (a)(i) to (a)(iii).

With respect to the application of section 10 of the SIMR, the CBSA notes that no normal value adjustment can be made under section 10 of the SIMR in relation to the amount of duty drawback received, based on the information available on the record.[103]

With respect to the double counting of duties, the CBSA notes that this issue is addressed by section 10 of SIMA for enforcement purposes. In addition, the CBSA notes that section 10 would be applicable only if the program was found to be an export subsidy. In this investigation, the CBSA was not in a position to make any such determination due to the lack of a complete response by the GOI.

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[101] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraphs 58 and 84-87.
[102] Exhibit 303 (NC) - Reply submission from Reliance Industries, pages 12-13.
[103] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 17-18 and 55-61; Exhibit 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited, page 5; Exhibit 84 (NC) - Response to Exporter RFI - Dumping - Reliance Industries Limited, pages 43-45.

Pakistan

CBSA's Failure to Disclose the Essential Facts Under Consideration

Case Briefs

Counsel for Novatex and G-Pac argued that the CBSA has not disclosed the issues or the essential facts in dispute to permit Novatex to defend its interests, contrary to its obligations under Article 6.9 the WTO ADA and Article 12.8 the WTO Agreement on Subsidies and Countervailing Measures (ASCM).[104]

According to Novatex's Case Briefs, the argument relates to the company's December 20, 2017, request for disclosure of the essential facts and issues under consideration for the final determination, to which the CBSA directed Novatex and G-Pac's counsel to the administrative record in the proceedings. Novatex noted that in *Guatemala – Cement II*, the Panel found that merely referring to the administrative record did not satisfy the investigating authority's obligation to disclose the essential facts under consideration to the interested parties.[105]

Counsel argued that the alleged failure of the CBSA to disclose the essential facts under consideration is especially acute in this case because the CBSA disregarded Novatex and G-Pac's information for the purposes of the preliminary determination, and because the CBSA decided not to verify Novatex and G-Pac on-site, depriving them of the opportunity to discuss the evidence in face-to-face meetings with the CBSA.[106] In addition, counsel for Novatex and G-Pac also argued that the CBSA is required to accept and apply the information submitted by Novatex and G-Pac for the final determination, including Novatex's production costs, because the CBSA has not informed the company that any of the information will be disregarded for the final determination.[107]

Reply Submissions

In a Reply Case Brief, counsel for the Complainant argued that Novatex's arguments ignored key steps taken by the CBSA, including four SRFIs in addition to a Deficiency Letter, which were sent to Novatex in the course of the investigation. The Complainant submits that these communications all highlighted the essential facts under consideration.[108] Further, the Complainant argued that "As noted in *Argentina – Ceramic Tiles*, a panel report cited by Novatex, the ADA does not prescribe the manner in which Article 6.9 must be complied with.

[104] Exhibit 289 (NC) - Case Arguments - Novatex Limited, G-Pac Corporation, paragraphs 2-7.
[105] Ibid., paragraphs 5.
[106] Ibid., paragraph 7.
[107] Ibid., paragraph 8.
[108] Exhibit 301 (NC) - Reply submission from Compagnie Selenis Canada; paragraphs 3-12.

Further, Article 6.9 may be complied with through forms of correspondence exchanged between the investigating authorities and individual exporters.

CBSA's Response

The CBSA has directly disclosed essential facts to Novatex through ongoing correspondence with the company, which included a deficiency letter with respect to its dumping response, and four dumping SRFIs and one subsidy SRFI that were sent to seek additional information, clarification and verification of responses. Furthermore, the CBSA also disclosed essential facts to Novatex in its Preliminary Determination Ruling Letter and the Preliminary Determination SOR. As explained in the body of this SOR, the CBSA has used Novatex's information (including G-Pac's information where relevant) in the determination of the margin of dumping and of the amount of subsidy for Novatex in the course of these investigations.

Further, the CBSA maintains an administrative record of the documents filed in the course of the investigation. Counsel with an accepted disclosure undertaking may request copies of any documents on the administrative record. Counsel for Novatex had an approved disclosure undertaking for this investigation and therefore had access to any documents under consideration by the CBSA.

Deductions under Section 10 of the SIMR

Case Briefs

Counsel for Novatex argued that the CBSA must adjust Novatex's domestic production costs under section 10 of the *SIMR* by deducting duties imposed on materials consumed or used to make domestic sales that are deferred on materials consumed or used for export sales.[109]

CBSA's Response

The amount of customs duty on importations of raw materials is not a negative cost of production. However, an adjustment to the selling price of like goods is warranted pursuant to section 10 of the SIMR, for any duties or taxes borne by the like goods that are not borne by the subject goods. Therefore the amount of duty per kilogram that Novatex demonstrated is borne by the like goods but remains unassessed for exported goods was used as a downward adjustment for the determination of normal values.

[109] Exhibit 289 (NC) - Case Arguments - Novatex Limited, G-Pac Corporation, paragraphs 10-13.

Further, the CBSA did not make an adjustment to normal value for the amount of duty drawback Novatex claimed it receives on the bags used in packaging PET resin for export. Novatex did not sufficiently explain or substantiate the amount of duty allegedly borne by the like goods (or components thereof) that is not borne by the exported goods to warrant an adjustment to normal value under section 10 of the SIMR.

The CBSA Should not Make Deductions for the Export Development Surcharge (EDS)

Case Briefs

Counsel for Novatex argued that EDS it paid on export revenues should not be deducted from the export price because it is not a "charge, cost or expense" that is deducted from an export price under sections 24 or 25 of SIMA and does not relate to the physical movement of the goods.[110] Counsel argued that because the EDS is imposed only on the realization of sales proceeds, it is associated with the revenue derived from the sale transaction and not with the physical exportation of the goods; therefore it should not be deducted from the export price.[111]

CBSA's Response

The act of banks in Pakistan collecting the applicable amount of EDS from the transfer of payment by the foreign purchaser is simply the specified method of collection of the surcharge by the Government of Pakistan (GOP). Counsel for Novatex is misconstruing the specified method of collection of the EDS with the underlying cause of its application. The EDS is a surcharge that is only applicable because the goods are exported. Subparagraph 24(a)(iii) of SIMA specifies the deduction of "all other costs, charges and expenses resulting from the exportation of the goods…". The CBSA therefore deducted the EDS under subparagraph 24(a)(iii) of SIMA from the export price.

Matching Imports to Resale

Case Briefs

Counsel for the Complainant argued that the CBSA cannot determine export prices for G-Pac under section 25 of SIMA due to unreliable resale information provided by the importer and because Novatex described some of these sales as being imported for inventory consignment.[112]

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[110] Ibid., paragraphs 14-17.
[111] Exhibit 300 (NC) - Reply Submissions - Novatex Limited, G-Pac Corporation, page 6.
[112] Exhibit 291(NC) - Case Arguments - Compagnie Selenis Canada, pages 8-11.

Counsel for the Complainant argued that G-Pac's proposed approach to link particular importations to particular sales to customers in Canada using a "first-in, first-out" (FIFO) inventory management methodology is incapable of the level of accuracy and certainty required by the CBSA in determining export price under SIMA.[113]

Reply Submissions

In its Reply Brief, counsel for Novatex argued that the Complainant's argument should be disregarded by the CBSA.[114] Novatex argued that the Complainant failed to communicate why FIFO is an inappropriate basis for Novatex to match its importations to resales and noted that FIFO is an inventory management methodology accepted under Canadian Generally Accepted Accounting Principles and under international standards. Counsel for Novatex also contended that the CBSA has used such a methodology in at least one other investigation, referencing to *Certain Silicon Metal Originating in or Exported from the People's Republic of China.*

CBSA's Response

The CBSA reviewed G-Pac's methodology and data presenting its resales of subject goods in Canada and found it to be reasonable and reliable. Further, where Novatex sold the goods to G-Pac, title to the goods transferred to G-Pac, who was the importer for customs and SIMA purposes. Therefore, these were not "consignment" sales subject to section 29(2) of SIMA.

Amount of Profit for Export Prices Determined under Section 25 of SIMA

Case Briefs

Counsel for the Complainant argued that the Industry Profit Survey conducted by the CBSA did not generate sufficient sample to determine the profit which vendors generally make, as a whole.[115] As a result, the Complainant suggests that if the CBSA chooses to use an amount for profit under paragraph 25(c)(ii) of SIMA in determining Novatex export price, it should do so under paragraph 22(c) of the SIMR, using the average financial performance of the "Chemical (except Agricultural) and Allied Product Merchant Wholesalers" industry, as published by Statistics Canada. The Complainant submits that the revenue and profitability data is available on the record for 2015 and shows a net profit ratio for profitable businesses of 9.6%.[116]

[113] Ibid., paragraphs 32-34.
[114] Exhibit 300 (NC) - Reply Submissions - Novatex Limited, G-Pac Corporation, paragraphs 8-9.
[115] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraphs 37-42.
[116] Ibid., paragraph. 42.

Reply Submissions

Regarding the amount the CBSA deducted for an amount for profit on the resale of the subject goods in Canada pursuant to subparagraph 25(1)(c)(ii) of SIMA, counsel for Novatex argued that the CBSA must determine an amount based on both the profitable and non-profitable businesses in the industry report:

> *The use of total revenues and profits conforms to the requirement of section 22 of the SIMR for the profit amount to be represent profits generally results from sales by vendors at the same or substantially the same trade level to unrelated purchasers. As drafted, section 22 does not permit the CBSA to selectively disregard between profitable and non-profitable sales when determining the amount for profit. The only requirement is that the group of sales that collectively conform to the requirements of section 22 collectively produce an amount for profit.*[117]

CBSA's Response

As section 22 of the *SIMR* refers to profit that generally results from sales by vendors, and profit can be defined as a financial gain where revenue exceeds expenses, the CBSA selected profitable vendors for determining the amount for profit. This is consistent with CBSA past practice and the SIMA Handbook.

Specifically, the CBSA determined the amount for profit under paragraph 22(c) of the SIMR, using the average financial performance for profitable businesses of the "Chemical (except Agricultural) and Allied Product Merchant Wholesalers" industry, as published by Statistics Canada.[118] This amount for profit was determined using the revenue and profitability data available on the record for 2015 and shows a net profit ratio of 9.63% of total sales revenue.

SUBSIDY REPRESENTATIONS

<u>Questions to Suppliers of Raw Materials</u>

Case Briefs

Counsel for the Complainant argued that firms subject to the subsidy investigation were required to forward supplemental questions included in the Subsidy RFI to their suppliers.
The Complainant argued that the CBSA should determine that the Subsidy RFI response is incomplete for any firm that has not complied with this requirement.[119]

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[117] Exhibit 300 (NC) - Reply Submissions - Novatex Limited, G-Pac Corporation, pages 4-5.
[118] Exhibit 256 (NC) - North American Industry Classification System (NAICS).
[119] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 143.

CBSA's Response

The CBSA notes that in some instances, the requirement to forward supplemental questions included in the Subsidy RFI to their suppliers was not considered to be relevant because either the PET producer is vertically integrated or because the producer supplies its main raw material for PET production outside of their domestic market.

The CBSA has considered this requirement when assessing the completeness of the exporters' responses, to the extent it was relevant to the exporter. As mentioned in the body of this SOR, the CBSA has considered that Reliance, of India, Octal, of Oman and Novatex, of Pakistan, provided complete responses to the subsidy questionnaire.

India

Excessive Duty Drawback Scheme

Case Briefs

In their case brief, Reliance submitted that the company did not benefit from any excess duty drawback.[120] The company also argued that the CBSA should not aggregate the exemption of duties and taxes on input materials to determine the amount of subsidy, in light of the WTO panel decision on DS486.

Counsel for the Complainant argued that Reliance is mischaracterizing the WTO panel decision on DS 486, in which the panel found that the European Commission erred in countervailing all remissions as opposed to just excessive remissions.[121] The Complainant argued that the CBSA made it clear in its preliminary findings that only the excessive amount of drawback constitutes a countervailable benefit.

The Complainant also argued that Reliance failed to provide the legislative basis for which duty drawbacks are awarded, and yet submits that the program does not meet the specificity requirement of SIMA. The Complainant submitted that the program is specific because it is contingent on export and as such, it is a prohibited subsidy as per SIMA.

[120] Exhibit 280 (NC) - Close of Record Case Brief - Reliance Industries Limited, pages 22-34.
[121] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 171.

CBSA's Response

The CBSA notes that in administering the program, the GOI did not appear to take into consideration the actual amount of duties paid, since the prescribed rate of duty drawback was determined for the entire PET resin industry, rather than for each individual company.[122] As a result, given that the CBSA has information on the record which suggests that the entire amount of those duty drawback payments was made in excess of any actual duties paid by Reliance,[123] the program was found to constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, on the basis of the available information, as provided by section 35 of the *SIMR*. The CBSA notes that this decision is not inconsistent with the WTO panel decision on DS 486.[124]

Specificity

Case Briefs

In their case brief, Reliance submitted that the Excessive Duty Drawback Scheme, the Exporter Promotion of Capital Goods Scheme, the Focus Product Scheme / Merchandise Export Incentive Scheme and the Gujarat Electricity Duty Exemption Scheme are not specific programs, because the programs are generally available to all enterprises in India and are not limited to Reliance or the industry to which Reliance belongs.[125]

CBSA's Response

Due to the lack of a complete response by the GOI, there is not sufficient information on the record to determine whether these programs are specific pursuant to SIMA. On the basis of the available information, the programs do not appear to be generally available to all enterprises in India and therefore appear to be specific.

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[122] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 55-61; Exhibit 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited, pages 12-13; Exhibit 84 (NC) - Response to Exporter RFI - Dumping - Reliance Industries Limited, pages 43-45.

[123] Exhibit 86 (NC) - Response to Exporter RFI - Subsidy - Reliance Industries Limited, pages 17-18 and 55-61; Exhibit 164 (NC) - Response to supplemental RFI#1 - Reliance Industries Limited, page 5; Exhibit 84 (NC) - Response to Exporter RFI - Dumping - Reliance Industries Limited, pages 43-45.

[124] WT/DS486/R European Union - Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan – Report of the Panel, paragraph 7.59, (https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds486/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#).

[125] Exhibit 280 (NC) - Close of Record Case Brief - Reliance Industries Limited, pages 34-35.

Elimination of the Double Impact of Anti-Dumping and Countervailing Duties

Case Briefs

In their case brief, Reliance submitted that the export price should be increased to avoid any double counting of duties that are attributable to export subsidies.[126] The company further submitted that the Merchandise Exports from India Scheme program and the Export Promotion Capital Goods Scheme program are export subsidies for purposes of this investigation.

CBSA's Response

The CBSA notes that there is no legislative basis on which to adjust the export price by the amount of export subsidies received. With respect to the double counting of duties, the issue is addressed by section 10 of SIMA for enforcement purposes. In addition, the CBSA notes that section 10 would be applicable only if the concerned programs were found to be export subsidies. In this investigation, the CBSA was not in a position to make any such determination due to the lack of a complete response by the GOI.

Oman

Provision of Electricity for Less than Adequate Remuneration

Case Briefs

Counsel for the GOO argued that as of January 1, 2017, the below-cost electricity rates were eliminated for large industrial, commercial and government customers who now pay a cost-reflective tariff.[127] The GOO further argued that even if the CBSA were to find that the below-cost electricity rates amount to a financial contribution, the rates would be non-actionable because they are not specific. For instance, the rates are automatically granted to all applicants who meet the objective criteria and conditions, they do not favour and are not limited to a particular enterprise.[128]

Counsel for the Complainant argued that this program is specific as certain preferential rates are limited to applicants with an industrial license, a letter of recommendation from the Ministry of Commerce and meet a stipulated power factor.[129] The Complainant also argued that this program was found to be countervailable by the US Department of Commerce PET resin investigation.[130]

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[126] Ibid., pages 44-46.
[127] Exhibit 295 (NC) - Case Arguments - Government of Oman, paragraph 27.
[128] Ibid., paragraph 30-36.
[129] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 185b.
[130] Ibid., paragraph 185b.

Reply Submissions

The GOO argued that the Complainant's argument that the electricity regime is specific because certain preferential rates are limited to applicants with an industrial license is erroneous because it focuses on a single tariff category within the electricity regime. The GOO argues that when properly examined, the below-cost electricity rates were, prior to January 1, 2017, available to all users in Oman.

CBSA's Response

The CBSA reviewed the electricity rates applied before January 1, 2017 and the cost-reflective tariff applied after January 1, 2017, and found that both provided a financial contribution to Octal, pursuant to paragraph 2(1.6)(c) of SIMA.

As the subsidy was applied to all tariff categories of consumers, the criteria and conditions for this program were objective and did not favour and/or were not limited to a particular enterprise. As the criteria and conditions were also set out in a legislative, regulatory or administrative instrument or other public document, the CBSA determined this program was not specific, pursuant to subsection 2(7.3) of SIMA. Therefore, this program does not constitute an actionable subsidy for the purposes of the final decision.

Provision of GOO-Funded Non-General Infrastructure

Case Briefs

Counsel for Octal argued that all infrastructure that relates to Octal that is not available to all entities within the SFZ was paid for by Octal.[131] Octal submitted that it was the first investor in the SFZ and it incurred the costs associated with establishing its facilities, including performing its own site development, excavating and levelling the virgin and undeveloped land, road improvements and connection to the pre-existing road network that served the local community and the Port of Salalah, electrical connections, water and sewer connections, and the creation of its own water treatment plant.[132] The GOO also made similar arguments.[133]

Referencing the Salalah Free Zone Executive Report issued in 2013, counsel for the Complainant argued that the infrastructure provided in this zone is government support and non-general, as it relates to targeted industries.[134]

[131] Exhibit 293 (NC) - Case Arguments - - OCTAL SOAZ FZC, paragraphs 12-13.
[132] Ibid.
[133] Exhibit 295 (NC) - Case Arguments - Government of Oman, paragraphs 38-39.
[134] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 185c.

CBSA's Response

The information on the record indicated that the infrastructure provided by the SFZCO was general in nature and therefore did not constitute a financial contribution with respect to the terms outlined in subsection 2(1.6) of SIMA during the POI. Therefore, this program does not constitute a subsidy for the purposes of the final decision.

Provision of Land or Leases for Land for Less than Adequate Remuneration

Case Briefs

Counsel for the Complainant argued that information on the record clearly indicates that preferential rates are available to the lessee based on the company type and the size of investment in the free zone.[135] The Complainant alleged that Octal specifically pays a discounted rate, below market rent.

Counsel for Octal argued that the usufruct rates for developed light industrial lands outside the SFZ are included as part of the CBSA's record, having been submitted during verification. Octal argues that these rates are very high and therefore present a conservative benchmark against which to compare the rates paid by Octal for its undeveloped heavy industry land to determine whether the company's rates are preferential.[136] The GOO also made arguments that the sub-usufruct rent plus the site development expenses paid by Octal collectively reflect commercially competitive rates for the land.[137]

CBSA's Response

The information on the record indicates that the SFZCO is the authority that negotiates and signs the lease contracts for land with companies located in the SFZ. As the SFZCO's jurisdictional territory is limited to the SFZ, comparisons with land rates outside the free zone would not be an appropriate fair market value comparison as per section 36 of SIMR. As such the CBSA examined the information on the record regarding land size and rates of other companies located within the SFZ and found that Octal received a financial contribution, pursuant to paragraph 2(1.6)(b) of SIMA.

[135] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 185d.
[136] Exhibit 293 (NC) - Case Arguments - OCTAL SOAZ FZC, paragraphs 15-17.
[137] Exhibit 295 (NC) - Case Arguments - Government of Oman, paragraphs 45-49.

Tariff Exemption on Imported Equipment, Machinery, Materials and Packaging Materials

Case Briefs

The GOO argued that a customs duty "exemption" is available in the SFZ because the SFZ is not within Oman's customs zone and customs duties are inapplicable. For the zone, the rules governing customs duties are set at the Gulf Cooperation Council (i.e. a Common Customs Union between Saudi Arabia, Kuwait, Bahrain, Qatar, UAE and Oman) level through the Unified Customs Regulation for the Arab States of the Gulf.[138] The GOO argued that if the SFZ duty exemption did not exist, Octal and all other industrial license holders inside and outside the SFZ would still be exempt from customs duties under their industrial license.[139] The GOO argued that there is simply no "amounts that would otherwise be owing and due to the government [that] are exempted or deducted or amounts that are owing and due to the government [that] are forgiven or not collected".

Counsel for the Complainant argued that the Salalah Free Zone Executive Report touts such exemption of customs duties as a benefit available to investors in the zone.[140]

CBSA's Response

For the purposes of the preliminary determination, this program was found to be a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., and was considered to be specific, due to the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available, pursuant to paragraph 2(7.3)(d) of SIMA.

Further analysis of the information on record indicated that the SFZ is not within Oman's customs zone and customs duties are inapplicable. As such, the program's exemption of custom taxes on goods imported into the SFZ was not an amount that would otherwise be owing. As there is no financial contribution received by the exporter with respect to the terms outlined in subsection 2(1.6) of SIMA, this program does not constitute a subsidy for the purposes of the final decision.

[138] Ibid., paragraphs 50-55.
[139] Ibid., paragraphs 54.
[140] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 185e.

Pakistan

LTF-EOP / LTFF Program

Case Briefs

The Complainant argued that the GOP failed to demonstrate that Program 2, Export Long Term Fixes Rate Financing Scheme (LTFF) is not a subsidy. The Complainant argued that the threshold for a program to be deemed countervailable is not the cost to the government, but rather the benefit to the exporter.[141]

The Complainants also argued that Novatex received benefits under programs not analyzed in the preliminary phase of the investigation, namely the Long Term Fixed Rate Financing Scheme (LTFF) and the Long-Term Financing – Export Oriented Program (LTF-EOP).[142] The Complainant submitted that the benefits obtained under these distinct programs should be separately investigated and assessed.

Counsel for Novatex noted that that the CBSA should terminate the subsidy investigation as the amount of subsidy for Novatex is insignificant. They also argued that Novatex only participated in the LTFF program in connection to non-subject goods.[143] Counsel also argued that the CBSA confused the LTF-EOP with the LTFF in the preliminary determination, and that the CBSA neither requested nor obtained evidence with respect to whether the LTF-EOP constitutes a preferential loan.

Novatex further argued that the benchmark loan rate used by the CBSA for the preliminary determination (i.e. use of the "All Banks" weighted average rates on outstanding loans from Chapter 4.21 of the "Handbook of Statistics on Pakistan Economy") consists of an inappropriate benchmark because it does not represent the interest rate on a loan made on the same terms and conditions as the LTF-EOP loan or otherwise represent an interest rate on an equivalent loan that Novatex could have obtained.[144] Further, Novatex argued that the Panel in *European Union-Countervailing Duties on Certain Polyethylene Terephthalate from Pakistan WT/DS486/R* (EU-PET) found the use of average interest rates inconsistent with the European Union's WTO obligations because the average rate does not reflect comparable loans Novatex could have obtained in terms of structure, maturity, size and identities of the borrowers.[145]

[141] Ibid., paragraph 190.
[142] Ibid., paragraphs 195-199.
[143] Exhibit 289 (NC) - Case Arguments - Novatex Limited, G-Pac Corporation, paragraph 25.
[144] Ibid., paragraphs 26-29.
[145] Ibid., paragraph 29.

CBSA's Response

All exporters of goods originating in or exported from Pakistan have an insignificant amount of subsidy and the CBSA has terminated the subsidy investigation in respect of PET resin exported to Canada from Pakistan by Novatex Limited and originating in or exported from Pakistan by all other exporters. This termination will effectively end the CBSA's subsidy proceedings in respect of subject goods from Pakistan. Regarding the Long Term Fixed Rate Financing Program (LTFF), at the CBSA's preliminary determination of subsidy, Program 2 was incorrectly identified as LTFF instead of the Long-Term Financing – Export Oriented Program (LTF- EOP). The LTF-EOP was discontinued in January 2008 and replaced with the LTFF Program.[146] Information on the record with respect to the LTF-EOP, was provided by the complainant,[147] the GOP[148,149] and Novatex[150]. Regarding the benchmark interest rate used at the preliminary determination by the CBSA, both Novatex and the GOP[151] stated that it was inappropriate. However, neither of the parties provided any information regarding what the appropriate benchmark rate should be or directed the CBSA to another source for an appropriate benchmark rate.

Consequently, in the absence of any additional information the CBSA has used the information on the administrative record contained in the Handbook of Statistics on Pakistan Economy.[152] The benchmark interest rate was determined in accordance with section 29 of SIMR. In order for a meaningful comparison, the CBSA took into account the date the loan was made and compared it to a weighted average rate reported for private sector banks at that time.

Reduction of Duty and Taxes on Import of Plant Machinery and Equipment

Case Briefs

The Complainant argued that the GOP's allegation that Program 5, Imports of Plant Machinery and Equipment in Manufacturing Bond (PEMB) has been discontinued since January 1, 2008 was inconsistent with the European Commission's finding, in which it determined, according to the Complainant, that the program was in operation during the POI of July 1, 2008 to June 30, 2009, for that investigation and that Novatex received benefits under that program.[153]

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[146] Exhibit 162 (NC) - Response to Supplemental RFI - Government of Pakistan.
[147] Exhibit 2 (NC) - Certain PET Resin Complaint, Appendix 2.
[148] Exhibit 89 (NC) - Response to Foreign Government RFI - Subsidy - Government of Pakistan.
[149] Exhibit 199 (NC) - Post consultations submissions from the Government of Pakistan.
[150] Exhibit 174 (NC) - Response to Supplemental RFI - Novatex Limited.
[151] Exhibit 265 (NC) - Response to Preliminary Determination - Government of Pakistan.
[152] Exhibit 270 (NC) - Handbook of Statistics Pakistan Chapter 4, 4.21, Weighted Average Lending & Deposit Rates.
[153] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 191.

Counsel for Novatex and G-Pac argued that it only used this program to import one portion of its plant in 2002 and 2003 and that the program expired in 2005. Novatex claimed that the CBSA incorrectly used information on equipment and machinery imported after the PEMB expired and that its calculation is based on data that is unrelated to the PEMB. Novatex also alleged that the CBSA incorrectly assumed, without factual basis, that Novatex paid reduced duties and taxes on its importation. Novatex claimed that the CBSA failed to consider the Statutory Regulatory Orders (SROs), which it claims are not subsidies because they are not specific. Novatex argued that the SROs are legislative acts reducing duties and taxes on importations for all importers, and are not limited to a particular enterprise or industry.[154]

CBSA's Response

At the preliminary determination, this program was referred to as Imports of Plant Machinery and Equipment in Manufacturing Bond. However, based on information submitted, the Imports of Plant Machinery and Equipment in Manufacturing Bond was one of several Statutory Regulatory Orders (SRO) that were used by Novatex to import plant and machinery at reduced duty and/or tax rates. The SROs are issued by the Ministry of Finance, Revenue and Economic Affairs, Revenue Division. The information on the record indicates that these SROs constitute a financial contribution and confer a benefit to the recipient equal to the amount of the reduction/exemption of the duties and taxes.

Based on the information on the record of the ten SROs identified, two were found to be non-specific while eight were found to be specific, as they were limited pursuant to an instrument or document to a specific number of enterprises.

Final Tax Regime (FTR) and Manufacturing Bond Scheme (MBS)

Case Briefs

The Complainant argued that the Final Tax Regime (FTR) is not an income tax regime. The Complainant alleged that the program provides an export incentive, a conclusion it claims was supported by the European Trade Commission's decision regarding PET Resin.[155] The Complainant also claimed that Novatex's submission that it has not availed itself of financial benefits under the FTR are unverifiable, absent the provision of its 2017 tax statement or audited financial statements, which have not been provided to the CBSA.[156]

[154] Exhibit 289 (NC) - Case Arguments - Novatex Limited, G-Pac Corporation, paragraphs 30-32.
[155] Exhibit 291 (NC) - Case Arguments - Compagnie Selenis Canada, paragraph 192.
[156] Ibid., paragraph 200.

With respect to the Manufacturing Bond Scheme (MBS), the Complainant alleged that the GOP mischaracterized the findings of the WTO Panel Report in DS486.[157] The Complainant also argued that the GOP has failed to demonstrate that its verification records and processes in regards to the MBS ensure adequate duty remission are received by the parties availing themselves of the program. More specifically, according to the Complainant, there appears to be no measures in place by the GOP to confirm which inputs are consumed in the production of PET resin and in what quantities, and no adequate measures to protect against excess drawbacks.[158]

Counsel for Novatex and G-Pac argued that Novatex provided evidence showing that it does not participate in the FTR and instead files taxes under the normal tax regime. Novatex also claimed that there is no evidence that Novatex received excessive duty drawback.

CBSA's Response

The Income Tax Ordinance provides the company with an option to opt-out of the FTR and pay taxes under the Normal Tax Regime, at the time of filing of the tax return. The information on the record indicates that Novatex exercised the opt-out option at the time of filing and that Novatex did not receive a benefit under the FTR.

Regarding the MBS, information on the administrative record indicates that Novatex has a valid license for the importation of the input materials used in the production of PET resin. There are procedures in place for tracking inputs, such as the bond register, which Novatex must maintain as required under the terms of the program. The bond register records deliveries of imported input materials into the warehouse and shipments of exported finished goods that incorporated the input materials. Copies of audit reports from Pakistan Customs concerning the bond register were provided which contain a reconciliation of the input materials imported and a reconciliation of the finished goods stock exported.

Based on the information on the administrative record, the deferral and/or relief of duties and taxes on imports of input materials consumed was limited to the production of the finished goods, that were subsequently exported. As the deferral and/or relief of duties and taxes and does not exceed the amount of duties and taxes that originally levied on the imported inputs, Novatex did not receive a benefit under the MBS.

[157] Ibid., paragraph 193.
[158] Ibid., paragraph 194.