



OTTAWA, November 25, 2008

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STATEMENT OF REASONS

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

CERTAIN THERMOELECTRIC COOLERS AND WARMERS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

On November 10, 2008, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made final determinations of dumping and subsidizing respecting thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers, originating in or exported from the People's Republic of China.

Cet Énoncé des motifs est également disponible en français. Veuillez vous reporter à la section «Information».

This Statement of Reasons is also available in French. Please refer to the "Information" section.

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SUMMARY OF EVENTS

- [1] On March 25, 2008, the Canada Border Services Agency (CBSA) received a written complaint from Koolatron Corporation (Koolatron) concerning the alleged injurious dumping and subsidizing of certain thermoelectric coolers and warmers originating in or exported from the People's Republic of China (China). On April 15, 2008, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the Government of China (GOC), and provided the GOC a copy of the non-confidential version of the subsidy portion of the complaint.
- [2] On May 8, 2008, consultations were held with the GOC pursuant to Article 13.1 of the Agreement on Subsidies and Countervailing Measures. During these consultations, the GOC made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint.
- [3] On May 15, 2008, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of the goods pursuant to subsection 31(1) of SIMA.
- [4] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) started its preliminary injury inquiry. On July 14, 2008, the Tribunal made a preliminary determination that the evidence disclosed a reasonable indication that the dumping and subsidizing of certain thermoelectric coolers and warmers have caused injury to the Canadian industry.
- [5] On August 13, 2008, pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping and subsidizing respecting certain thermoelectric coolers and warmers originating in or exported from China. For details regarding the basis of the preliminary determination, consult the *Statement of Reasons* issued on August 28, 2008, which is available on the CBSA Web site at www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1372/ad1372-i08-pd-eng.html.
- [6] The CBSA continued its investigation and, on the basis of the results, the President is satisfied that certain thermoelectric coolers and warmers originating in or exported from China have been dumped and that the margins of dumping are not insignificant. Furthermore, the President is also satisfied that certain thermoelectric coolers and warmers originating in or exported from China have been subsidized and that the amounts of subsidy are not insignificant. Consequently, on November 10, 2008, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.
- [7] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duty will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal will issue its decision by December 10, 2008.

PERIOD OF INVESTIGATION

[8] The dumping and subsidy investigations cover all subject goods released into Canada during the period of investigation (POI), that is, from January 1, 2007 to March 31, 2008.

INTERESTED PARTIES

Complainant

[9] The complainant, Koolatron Corporation, is the largest manufacturer of like goods in Canada. The complainant's address is:

Koolatron Corporation
27 Catharine Avenue
Brantford, Ontario
N3T 1X5

Other Canadian Producer

[10] Another Canadian producer of like goods, MTL Technologies Inc. (MTL), was identified subsequent to the initiation of the investigations. The producer's address is:

MTL Technologies Inc.
7880, boul. Industriel
Chambly, Québec
J3L 4X3

Exporters

[11] At the time the investigations were initiated, the CBSA identified 18 potential exporters located in China, and an additional 20 potential exporters and trading companies of Chinese origin goods located in other jurisdictions including the United States of America (USA), Hong Kong and Singapore.

[12] The CBSA sent a Dumping Request for Information (RFI) and Subsidy RFI to each of these exporters, with instructions to forward the requests to the manufacturer in China, should the original recipient not be the manufacturer of the subject goods.

[13] Information obtained during the final phase of the investigations has resulted in the number of potential exporters being increased to 20 for China, 11 for the USA, 10 for Hong Kong and reduced to zero for Singapore.

Importers

[14] At the time the investigations were initiated, 60 potential importers of the subject goods had been identified by the CBSA from customs documentation and the complaint. Information obtained during the final phase of the investigations has resulted in the number of potential importers being reduced to 41.

Government of China

[15] The GOC was requested to provide information on the possible subsidy programs identified by the CBSA for the subsidy investigation.

PRODUCT INFORMATION

Definition

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

Thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers, originating in or exported from the People's Republic of China.

Additional Product Information

[17] Thermoelectric coolers and warmers rely on a principle called the Peltier effect to pump heat electronically, without the use of compressors, coils and gases. The Peltier effect dictates that if a direct current (DC) passes through an electrical junction formed of dissimilar metals, heat will flow towards or away from the junction, depending on the direction of the DC flow in the junction. To achieve a practical level of heat pumping capability, multiple junctions are bonded together to form thermoelectric modules.

[18] Thermoelectric coolers and warmers can, therefore, be used to either cool or warm their interior air volume, relative to the temperature gradient with the ambient air.

[19] The thermoelectric coolers and warmers operate using a DC power cord, a battery or a 120-volt alternative current (AC) power adapter.

[20] Although the interior is normally made of plastic, the exterior can either be made of plastic, metal, a combination of plastic and metal or of a soft-shell that covers the plastic interior. The coolers and warmers have a lid or door that is composed of plastic, metal, glass or a combination of these materials.

- a) Travel coolers and warmers;
- b) Home use coolers and warmers;
- c) Wine (or display) coolers; and
- d) Commercial coolers and warmers.

Exclusions:

Production Process

Classification of Imports

84.18 Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 84.15.

8418.69.90.90 -- Other:
-- Other
-- Other.

[27] Subject goods are also imported under other codes, such as the following:

- 8418.50.10.00 -- Other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, incorporating refrigerating or freezing equipment:
 - Refrigerating or refrigerating-freezing type.
- 8418.61.91.90 -- Heat pumps other than air conditioning machines of heading 84.15:
 - Batch or blast type chillers; Beverage dispensers, all types; Blood bank or laboratory refrigerators; Dry type fluid coolers, of a capacity not exceeding 1,514 litres per minute ethylene glycol; Flash freeze chillers for poultry; Giblet chillers; Heat recovery units; Ice making equipment, commercial or industrial, of a capacity exceeding 1,134 kg per day; Liquid/air chiller units and systems, reciprocating and screw compressor type, for commercial and industrial applications; Product or beverage coolers; Refrigerated vapour trap assemblies for vacuum systems; Refrigeration condensing units of a power exceeding 510 W; Truck type, of a heat capacity not exceeding 23,211 kJ.
 - Other.
- 8418.99.90.90 -- Other:
 - Other
 - For all other other refrigerating or freezing equipment.

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

CANADIAN INDUSTRY

[29] The Canadian industry for thermoelectric coolers and warmers is made up of two producers: Koolatron and MTL.

[30] Koolatron produces like goods ranging from 1 to 70 litres of internal volume capacity and they are marketed for all previously identified uses (travel, home-use, wine/display and commercial).

[31] Koolatron started in the business of thermoelectric cooling and warming in 1976. It is a privately held company. Koolatron's current manufacturing facilities for the production of the like goods are located in Brantford, Ontario.

[32] In addition to producing and selling the like goods, the complainant is also a manufacturer of various other products as well as an importer and reseller of consumer products for which it has obtained distributor licenses.

IMPORTS INTO CANADA

[33] During the final phase of the investigations, the CBSA further refined its estimates of the volume of imports. The CBSA utilized its Customs Commercial System (CCS), reviewed customs accounting documents and examined information received during the investigations from importers and exporters. This additional analysis enabled the CBSA to refine its estimates as to the proportion of non-subject goods imported under the relevant HS classification numbers.

[34] The CBSA's revised estimates of importations of subject goods, based on information gathered during the final phase of the investigations, are presented in the following table:

***Imports of Thermoelectric Coolers and Warmers
(January 1, 2007 to March 31, 2008)¹***

Imports into Canada	Volume (units)	Import Share (%)
China	254,710	95.3%
Total Imports from Non-subject Countries	12,631	4.7%
Total Imports	267,341	100%

INVESTIGATION PROCESS

[35] At the time of the initiation of the investigations, the CBSA requested information from all potential exporters and importers to determine the normal values, export prices, and amounts of subsidy for the subject goods.

[36] Information was also requested from the GOC in order to determine the amount of subsidy, if any, applicable to the subject goods.

[37] Information concerning export prices and import volumes was requested from 60 potential importers. RFIs concerning dumping and subsidizing were sent to 18 potential exporters in China and 20 potential exporters of Chinese origin goods located in other jurisdictions. All RFIs included instructions indicating that exporters that were not the manufacturer of the goods were to forward a copy of the RFI to the respective manufacturer in China.

[38] RFI responses involving the dumping investigation were received from 1 exporter and 5 importers. Responses to the CBSA's subsidy RFI were also received from 1 exporter and the GOC.

¹ HS codes: 8418.50.10.00, 8418.61.91.90, 8418.69.90.90, 8418.99.90.90

DUMPING INVESTIGATION

[39] Normal values are generally based on the domestic selling prices of the goods in the country of export or based on the total cost of the goods (cost of production, administrative, selling and all other costs) plus an amount for profit.

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

[41] For those exporters that were requested to provide a response to the RFI and did not provide a complete response, normal values were determined by advancing export prices by the highest transaction margin of dumping from the results found for the co-operative exporter based on a ministerial specification pursuant to section 29 of SIMA.

[42] With respect to the one cooperative exporter, company-specific information was utilized for the final determination and normal values and export prices were determined for each model shipped to Canada based on information provided in that exporter's response to the RFI.

[43] In calculating the weighted average margin of dumping for China, the overall margins of dumping found in respect of each exporter were weighted according to the volume of subject goods exported to Canada during the POI.

[44] Under Article 15 of the 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. Possibilities of 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.

[45] As China is listed under Part I of the *DAC List of Aid Recipients*² maintained by the Organization for Economic Co-operation and Development (OECD), the President recognizes China as a developing country for purposes of actions taken pursuant to SIMA. In this particular investigation, this obligation was met by providing the opportunity for exporters to submit price undertakings. The CBSA did not receive any proposals for undertakings from any of the identified exporters.

² OECD, *Development Assistance Committee List of Aid Recipients – As at 1 January 2003*, online: <http://www.oecd.org/dataoecd/35/9/2488552.pdf>

RESULTS OF THE DUMPING INVESTIGATION

[46] Only one response to the exporter RFI on dumping was received and deemed complete for purposes of the final determination. The remaining exporters did not provide a complete response to the RFI.

[47] The CBSA received a comprehensive and acceptable response to its dumping RFI from the following exporter of subject goods:

<u>Company Name</u>	<u>Designation</u>	<u>Location</u>
Mobicool International Limited	Vendor	Hong Kong, China
Mobicool Electronic (Shenzhen) Co., Ltd.	Producer	Shenzhen, China

[48] The one cooperative exporter previously referred to in this *Statement of Reasons* is legally constructed of two distinct entities. However, these two corporations are owned by the same conglomerate and operate as one business for purposes of exporting the subject goods to Canada. Furthermore, these two companies filed a single response to the dumping RFI. Both Mobicool International Limited and Mobicool Electronic (Shenzhen) Co., Ltd. are, therefore, referred to as one entity, Mobicool, for the purposes of the investigations.

[49] Normal values determined under this investigation are applicable to sales by Mobicool Electronic (Shenzhen) Co., Ltd. for which Mobicool International Limited acts as the trading arm.

[50] CBSA officers travelled to Hong Kong and Shenzhen, China, in September 2008, to verify the accuracy of the information provided by Mobicool.

a) Normal Values

[51] Mobicool provided a substantially complete response to the dumping RFI, including a database of domestic sales of like and similar products. As such, domestic sales were used, when warranted, for purposes of determining normal values using the methodology of section 15 of SIMA. In situations in which there were no domestic sales or such domestic sales could not be used as per conditions stipulated in SIMA, normal values were determined pursuant to paragraph 19(b) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[52] Mobicool provided the CBSA with a database of domestic sales transactions for the POI. An analysis of the domestic sales database revealed that comparable domestic sales existed for one model. A profitability analysis was conducted on the domestic sales database pursuant to paragraph 16(2)(b) of SIMA, and those transactions which passed the profitability analysis were used to establish the normal value in accordance with section 15 of SIMA. The normal value was adjusted in accordance with section 6 of the *Special Import Measures Regulations* (SIMR) to account for discounts and section 10 of the SIMR to account for duties and taxes contained in the domestic selling price.

[53] Normal values were determined for the remaining models pursuant to the methodology set out in paragraph 19(b) of SIMA, based on the aggregate of the full cost of production of the goods, plus a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits. The reasonable amount for administrative, selling and all other costs represents an amount equal to all administrative selling and other costs that are reasonably attributable to the domestic sales of like goods made by Mobicool in accordance with subparagraph 11(1)(c)(ii) of the SIMR. The amount for profits was based on the profit earned by Mobicool on sales of like goods sold in the domestic market in accordance with subparagraph 11(1)(b)(i) of the SIMR.

b) Export Prices

[54] Export prices were determined using information provided by Mobicool during the final phase of the investigation. The accuracy of the data relating to export price was confirmed by the CBSA during verification. As the goods were sold to unrelated importers in Canada, export prices were determined based on the exporter's selling price, as described in paragraph 24(a)(iii) of SIMA. Amounts for inland freight in China and port charges were, when appropriate, deducted from the exporter's selling price.

c) Margins of Dumping

[55] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. It was found that the goods exported by Mobicool were dumped by a weighted average margin of dumping of 16.71% expressed as a percentage of export price.

Other Exporters

[56] The normal values for exporters of subject goods that did not respond to the CBSA's RFI, or did not provide a complete response to the RFI, were determined pursuant to a ministerial specification under section 29 of SIMA. According to the ministerial specification, normal values were based on the export price of the goods plus an advance of 37%, representing in percentage terms, the highest amount by which the normal value exceeded the export price on an individual sales transaction for the cooperative exporter during the POI.

SUMMARY OF RESULTS – DUMPING

[57] The results of the dumping investigation reveal that 100% of the goods were dumped by a weighted average margin of dumping of 30.8% of the export price. The imports from China represent 95.3% of total imports of thermoelectric coolers.

[58] In making a final determination of dumping in relation to goods imported from a country in the investigation, the President must be satisfied that the subject goods have been dumped and that the margin of dumping is not insignificant. Subsection 2(1) of SIMA defines insignificant as being less than 2% of the export price of the goods. As indicated above, the margin of dumping is not insignificant.

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

[60] Details regarding the margins of dumping determined by exporter and country are provided in **Appendix 1**.

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

[61] Subsequent to the preliminary determination, the CBSA received representations from Mobicool and Euro-Asia Electric Manufacturing (Holdings) Ltd. relating to the CBSA's dumping investigation.

MOBICOOL

1. Use of domestic sales in establishing normal values and amounts for profit:

[62] Mobicool presented arguments against the use of its domestic sales in establishing normal values under section 15 of SIMA, as well as the amounts for profits for normal values calculated using paragraph 19(b) of SIMA. In support of these claims, Mobicool raised issues involving the total volume of domestic sales, volumes of sales per model, sales not made in the ordinary course of trade and volume rebates.

CBSA Response:

[63] The CBSA is of the opinion that where domestic sales of like goods made by Mobicool exist they meet the criteria set out in section 15 of SIMA. As such, the CBSA established normal values in compliance with section 15 and paragraph 19(b) of SIMA as well as with all relevant regulations contained in the SIMR.

EURO-ASIA ELECTRIC MANUFACTURING (HOLDINGS) LTD.:

1. Absence of predatory pricing policies or monopolies in China that would lead to dumping practices:

[64] Euro-Asia Electric Manufacturing (Holdings) Ltd., (Euro-Asia), an uncooperative exporter, made representations to the effect that no generalized dumping practices were implemented by Chinese manufacturers of subject goods when exporting to Canada. Euro-Asia also claimed that any dumping from China resulted from rare and temporary export practices by singular exporters and was not a country-wide trend. Euro-Asia supported these claims by claiming a negligible size of the product line for Chinese manufacturers and an inherent inability of any exporter to control the domestic or export markets. Euro-Asia further asserted that, due in part to heavy trends in China, selling prices for the subject goods had increased over the last years.

CBSA Response:

[65] The CBSA's dumping investigation has determined that dumping of Chinese goods occurred during the POI. The size of markets for subject goods is not an indicator of dumping.

2. Lower Chinese production costs and profit margins:

[66] Euro-Asia claimed that low Chinese production costs and profit margins are the reason for the perceived dumping of the subject goods in the Canadian market.

CBSA Response:

[67] The CBSA's dumping investigation took into account Chinese production costs and profit margins and the results indicate that the subject goods were dumped into Canada during the POI.

SUBSIDY INVESTIGATION

Legal Framework

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

[69] Pursuant to subsection 2(1.6) of SIMA, a financial contribution exists 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 any thing 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.

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

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

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

[72] For purposes of a countervailing duty 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 imported goods under investigation have benefited from the subsidy.

Investigation Process

[73] Prior to the initiation of the investigation, the complainant submitted allegations that the subject goods from China are eligible for government programs that may constitute actionable subsidies.

[74] In support of its allegations, the complainant provided a number of documents detailing support offered by the GOC, primarily to exporting enterprises and to those operating in Special Economic Zones, and identified various programs from previous CBSA subsidy investigations.

[75] At initiation, the CBSA identified 36 potential subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) and other Designated Areas Incentives;
2. Grants;
3. Equity Infusions/Debt-to-Equity Swaps;
4. Preferential Loans;
5. Preferential Income Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Reduction in Land Use Fees; and
8. Purchase of Goods from State-owned Enterprises.

[76] In their responses to the CBSA's RFIs, both Mobicool and the GOC identified an additional subsidy program that Mobicool had received a benefit from. In addition to this program, a further subsidy program was identified by the CBSA during verification of the Mobicool submission. This has resulted in a total of 38 programs being identified.

[77] In conducting its investigation, the CBSA sent questionnaires to all potential exporters, as well as to the GOC. These questionnaires requested information necessary to establish whether there had been financial contributions made by any level of the GOC and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, processing, purchase, distribution, transportation, sale, export or import of the subject goods; and whether any resulting subsidy was specific in nature. The GOC was also requested to forward the questionnaires to all subordinate levels of government that had jurisdiction over the identified exporters.

[78] For purposes of the subsidy investigation, "Government of China" refers to all levels of government, including federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial levels. Benefits provided by state-owned enterprises operating under the direct or indirect control or influence of the GOC may also be considered to be provided by the GOC for purposes of this investigation.

[79] The CBSA received one substantially complete response to the subsidy RFI from Mobicool. However, a complete response to the CBSA's subsidy RFI was not received from the GOC. Accordingly, the CBSA issued a supplementary RFI to the GOC, in an effort to obtain complete information and to clarify the information received. Specifically, the CBSA requested that the GOC respond to the RFI in respect of all of the exporters identified by the CBSA at the initiation and to provide all documents requested in the RFI. A complete response to the supplementary RFI to the GOC was not received.

[80] Subsequent to the preliminary determination, verification meetings were held with the cooperative exporter, as well as Chinese government officials.

RESULTS OF THE SUBSIDY INVESTIGATION

[81] The CBSA determined specific subsidy amounts for Mobicool. For the purposes of the final determination, the CBSA determined the subsidies for Mobicool on the basis of the programs it had used in the POI. The amount of subsidy for this exporter was found to be 0.8% of the export price or 2.17 Renminbi per unit.

[82] The information received from the Mobicool indicates it received actionable subsidies under the following 3 programs:

- Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones;
- Preferential Tax Policies for Foreign Invested Enterprises and Foreign Enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipment;
- Government Interest Subsidy of Shenzhen Foreign Trade Development Fund.

[83] Full details regarding the determination of subsidy and specificity respecting each of the above programs may be found in **Appendix 2**.

[84] Given that the GOC failed to provide complete information regarding the use of the identified programs by exporters of subject goods that did not respond to the CBSA's RFI, the CBSA is unable to determine any specific subsidy amounts regarding the potential benefits conferred to the non-cooperative exporters.

[85] Therefore, the CBSA has determined the amount of subsidy for non-cooperative exporters according to ministerial specification pursuant to subsection 30.4(2) of SIMA. This is the sum of the amount of subsidy found for each of the 3 actionable subsidy programs for the cooperative exporter located in China, as determined at the final determination, plus the highest amount of subsidy of the 3 actionable subsidy programs, applied to each of the 35 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

SUMMARY OF RESULTS – SUBSIDY

[86] The results indicate that 100% of the subject goods imported into Canada during the POI were subsidized. The estimated overall weighted average amount of subsidy is equal to 9.9% of the export price or 33.72 Renminbi per unit. The imports from China represent 95.3% of total imports of thermoelectric coolers.

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

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

[89] The CBSA normally makes reference to Part I of the DAC List of Aid Recipients, maintained by the Organization for Economic Co-operation and Development, to determine eligibility for the differential amounts for developing countries in subsidy investigations. As China is a developing country according to this list, the 2% threshold for insignificance would apply. As indicated above, the amount of subsidy found during this investigation is not insignificant. Details regarding the amounts of subsidy determined by exporter are provided in **Appendix 1**.

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

REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION

[91] Following the preliminary determination of subsidizing, the CBSA received representations from Mobicool concerning subsidy issues.

MOBICOOL:

1. Negligible subsidy amounts:

[92] Mobicool argued that benefits received by Mobicool were limited and that no countervailing duty should be collected.

CBSA response:

[93] Pursuant to subsection 41(1) of SIMA, a final decision of subsidizing shall not be made if the amount of subsidy on goods from a subject country is insignificant. There is no such determination of insignificance for individual exporters. The amount of subsidy on subject goods originating or exported from China was determined to be 9.9%. The investigation has found that the amount of subsidy is not insignificant.

2. Offsetting of dumping duties by amount found for export oriented subsidies (prohibited subsidies):

[94] Mobicool submitted that should the CBSA make a final determination of subsidy, amounts relating to export oriented subsidies should offset dumping duties as per section 10 of SIMA.

CBSA response:

[95] Where, in the opinion of the President, a portion of the margin of dumping is attributable to an export subsidy, the amount will be offset pursuant to paragraph 10(b) of SIMA. As such, for future duty assessment purposes, the CBSA will deduct the amount of any export subsidy from the margin of dumping involving exports of subject goods by Mobicool.

DECISION

[96] Based on the results of the investigation, the President is satisfied that certain thermoelectric coolers, originating in or exported from China, have been dumped and that the margin of dumping is not insignificant. Consequently, on November 10, 2008, the President made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.

[97] Similarly, the President is satisfied that certain thermoelectric coolers, originating in or exported from China, have been subsidized and that the amount of subsidy is not insignificant. As a result, on November 10, 2008, the President made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA.

FUTURE ACTION

[98] The Tribunal's inquiry concerning the question of injury to the domestic industry is continuing and the Tribunal will issue its decision by December 10, 2008. Until the Tribunal issues its finding, subject goods originating in or exported from China will continue to be assessed provisional duty in the amounts announced at the time of the preliminary determination of dumping and subsidizing. For further details on the application of provisional duty, refer to the *Statement of Reasons* issued for the preliminary determination of dumping, which is available on the CBSA Web site at <http://www.cbsa-asfc.gc.ca/sima/menu-e.html>.

[99] If the Tribunal finds that the dumped and/or subsidized goods have not caused injury and do not threaten to cause injury, all proceedings relating to this investigation will be terminated and all

provisional duty paid or security posted by importers will be returned.

[100] If the Tribunal finds that the dumped and/or subsidized goods have caused injury, the anti-dumping and/or countervailing duty payable on subject goods released from customs during the provisional period will be finalized, pursuant to section 55 of SIMA. Imports released from customs after the date of the Tribunal's finding will be subject to anti-dumping duty equal to the margin of dumping, and/or countervailing duty equal to the amount of subsidy on the subject goods. The importer in Canada shall pay all such duty. 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* (AMP) could be imposed. The provisions of the *Customs Act* apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[101] Specific normal values and amounts of subsidy for the subject goods have been provided to the cooperative exporter. Should the Tribunal make an injury finding, these normal values and amounts of subsidy will come into effect the day after the date of the injury finding. Exporters that did not respond to the CBSA's RFI, or provided an incomplete response, will have normal values established by advancing the export price by 37% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods.

[102] For exporters that did not respond to the CBSA's subsidy RFI, a countervailing duty amount of 53.27 Chinese Renminbi per unit will be payable on imports of subject goods originating in or exported from China, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[103] Under certain circumstances, anti-dumping duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped 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 duty.

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

PUBLICATION

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

INFORMATION

[106] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's web site at the address below. For further information, please contact one of the officers noted below.

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M.R. Jordan
Director General
Trade Programs Directorate

APPENDIX 1 - MARGIN OF DUMPING / AMOUNT OF SUBSIDY BY EXPORTER/COUNTRY

CERTAIN THERMOELECTRIC COOLERS

Country of Origin	Weighted Average Margin of Dumping¹	Weighted Average Amount of Subsidy¹	Amount of Subsidy (Renminbi per Unit)
China			
Mobicool Electronic (Shenzhen) Co., Ltd.	16.7%	0.8%	2.17
Incomplete Submission / Non-Cooperative	37.0%	14.1%	53.27
China Total/Average	30.8%	9.9%	33.72

¹ As a percentage of export price

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A. ACTIONABLE SUBSIDY PROGRAMS THAT HAVE BEEN USED BY THE COOPERATIVE EXPORTER

Program 1: Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai New Pudong area);

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which came into effect on July 1, 1991. Its purpose is to absorb foreign investment, expand the open-up policy and enhance development in SEZs.

The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities. Under this program, non-wholly foreign owned FIEs established in SEZs and foreign enterprises (wholly foreign owned FIEs) established in SEZs engaging in production or business operations shall pay income tax at a reduced rate of 15%.

In addition, export-oriented enterprises invested in and operated by a foreign business for which in any year the output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Tax Law, reduced by one half after the period of enterprise income tax exemption or reduction has expired. However, export-oriented enterprises in the SEZs and economic and technological development zones and other such enterprises subject to enterprise income tax at the reduced tax rate of 15% that qualify under the above mentioned conditions shall pay enterprise income tax at the tax rate of 10%.

Legal Basis:

The income tax reduction for FIEs under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program are found in Article 69 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. Article 69 defines SEZs as the SEZs of Shenzhen, Zhuhai, Shantou and Xiamen and the Hainan SEZ established by law or established upon approval of the State Council.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA (i.e. amounts that would otherwise be owing and due to the

government are exempted or deducted) and confers a benefit to the recipient equal to the amount of the exemption/deduction.

Determination of Specificity:

The 15% preferential tax rate provided to FIEs located in the SEZs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which was comprised of FIEs that met the above mentioned eligibility criteria.

The preferential tax rate reduction from 15% to 10% for export-oriented enterprises located in SEZs with exports at 70% or greater as percentage of output value, is a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

Calculation of Amount of Subsidy:

The CBSA has determined that the cooperative exporter has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 2: Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or places in China and are engaged in production or business operations purchasing domestically produced equipment;

General Information:

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

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

The program was in operation during the POI.

Legal Basis:

The income tax refund for certain FIEs and foreign enterprises is provided for in Article 1 of the *Circular of the Ministry of Finance and State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises* (Cai Shui Zi [2000] No. 49). Other circulars related to this program include, *Administration of Tax Rebate on the Purchase of Domestically Manufactured Equipment by Foreign Invested Projects Trial Procedures* (SAT Circular Guo Shui Fa (2006) No. 111. and *Measures Concerning Business Income Tax Credit on the Investment of Enterprises with Foreign Investment and Foreign Enterprises by Way of Purchasing Domestically Made Equipment* (SAT Circular Guo Shui Fa No. 90) of 2000.

Eligibility Criteria:

This program is limited to FIEs and foreign enterprises that fall under the Encouraged Category and Restricted B Category listed in the Directive Category of the Industries of Enterprises with Foreign Investment stipulated in the *Circular of the State Council concerning the Adjustment of Taxation Policies for Import Equipment* (Guo Fa [1997] No. 37).

Determination of Subsidy:

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

Determination of Specificity:

The income tax refund for purchasing domestically made equipment is a prohibited subsidy pursuant to paragraph 2(7.2)(b) of SIMA, as it is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

Calculation of Amount of Subsidy:

The CBSA has determined that the cooperative exporter has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 3: Government interest subsidy of Shenzhen foreign trade development fund;

General Information:

This program was identified by the GOC and the cooperative exporter in response to the Subsidy RFI. The objective of the program is to assist enterprises in Shenzhen expand their exports. This program was established in 2004 according to the *Circular of the People's Government of Shenzhen Municipality on Printing and Distributing the Several Measures for Encouraging the Development of Foreign Trade of Shenzhen Municipality (Shenfu (2005) No. 146)*.

Eligible established export enterprises can apply for loans from the Foreign Trade Development Fund. Applications approved by the Shenzhen Bureau of Trade and Industry are forwarded to the Shenzhen Finance Bureau which entrusts certain banks to make the loan to the applicant. The interest rate will be the benchmark rate at the level stipulated by the People's Bank of China. If the principal and interest is paid on time, 20% of the paid interest of the loan shall be returned to the applicant according to the benchmark rate.

This program was in operation during the POI and continues to be in operation.

Legal Basis:

This program is administered in accordance with the *Circular of the People's Government of Shenzhen Municipality on Printing and Distributing the Several Measures for Encouraging the Development of Foreign Trade of Shenzhen Municipality (Shenfu (2005) No. 146)* and the *Circular on Issuance of Temporary Rules for Shenzhen Foreign Trade Development Fund Management (Shenwaijingmaoji (2002) No. 13)*.

Eligibility Criteria:

The eligibility criteria are contained in articles 8 to 14 of the Fund Management Rules. The program is limited to enterprises located within Shenzhen with an established export business exceeding US \$500,000 annually.

Determination of Subsidy:

On the basis of available information, the interest subsidy provided under this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA (i.e. a practice of government that involves a direct transfer of funds), and confers a benefit to the recipient equal to the difference between the interest payable on a commercial loan and the interest payable on the preferential loan provided by the government.

Determination of Specificity:

The government interest subsidy is a prohibited subsidy pursuant to paragraph 2(7.2)(b) of SIMA, as such subsidies are contingent, in whole or in part, on export performance.

The provision of preferential interest under this program is specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to a limited number of enterprises located in the Shenzhen SEZ.

Calculation of Amount of Subsidy:

The CBSA has determined that the cooperative exporter has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

B. ACTIONABLE SUBSIDY PROGRAMS THAT HAVE NOT BEEN USED BY THE COOPERATIVE EXPORTER

1. SPECIAL ECONOMIC ZONE (SEZ) INCENTIVES AND OTHER DESIGNATED AREAS

Program 4: Preferential tax policies for enterprises with foreign investment in border cities;

General Information:

This program was established for Foreign Invested Enterprises (FIEs) in the *Circular of the Ministry of Finance, State Administration of Taxation on Determining Tax Policies for Foreign-Funded Enterprises in Heihe and another eleven cities* and came into effect October 5, 1992. Its purpose is to encourage foreign investment into border cities, expand the open-up policy and enhance development in border areas. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

The enterprise income tax of the foreign-invested enterprises of a production nature established in 12 border cities, counties or towns may be levied at a reduced rate of twenty-four per cent.

This program was in operation during the POI.

Legal Basis:

The program is provided for in *SAT Circular Guo Shui Han Fa No. 1412* of 1992.

Eligibility Criteria:

The eligibility criteria can be found in the *SAT Circular Guo Shui FA No. 1412*. The criteria state that all applicants which meet the requirements as a foreign funded productive enterprise established in the 12 specific border cities pay corporate income taxes at a reduced rate of 24%. The 12 border cities, counties or towns refer to Heihe, Suigenhe in Heilongjiang Province, Hunchun in Jilin Province, Manzhouli in Inner Mongolia Autonomous Region, Yining, Bole, Tacheng in Xinjiang Uygur Autonomous Region, Pingxiang, Dongxing in Guangxi Zhuang Autonomous Region, Wanting, Ruili and Hekou in Yunnan Province.

Determination of Subsidy:

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

Determination of Specificity:

Preferential income tax rates provided to FIEs located in the border cities were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Circular of the Ministry of Finance, State Administration of Taxes, on Determining Tax Policies for Foreign-Funded Enterprises in Heihe and another eleven cities*. In addition, this subsidy was further limited to a group of enterprises, which was comprised of FIEs that met the above mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 5: Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones;

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which came into effect on July 1, 1991. Its purpose is to encourage foreign investment in Economic and Technical Development Zones (ETDZs) in open coastal cities and encourage some districts to take the lead in development. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, FIEs of a productive nature established in coastal economic open zones or in the old urban districts of cities where the SEZs or the ETDZs are located shall pay income tax at a reduced rate of 24%. FIEs of a productive nature established in the economic and technological development zones may be levied at the reduced rate of 15%.

FIEs established in coastal economic open zones or in the old urban districts of cities where the SEZs or the ETDZs are located or in any other regions defined by the State Council, who are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, (b) projects with foreign investments of over US \$30 million and having long periods of return on investment, and (c) energy resource, transportation and port construction projects, may be levied at the reduced rate of 15%.

This program was in operation during the POI.

Legal Basis:

The income tax reduction for FIEs under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program are found in the articles of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

FIEs established in ETDZs that are eligible for preferential tax treatment under this program are located in the following ETDZ areas: Changchun, Wuhan, Haerbin, Nanchang, Changsha, Zhengzhou, Taiyuan, Hefei, Wuhu, Xi'an, Chongqing, Chengdu, Hohhot, Kunming, Nanning, Yinchuan, Guiyang, Shihezi, Urumchi, Lanzhou, Xining, Tianjin, Kunshan, Suzhou Industrial Park, Guangzhou, Jinqiao, Beijing, Nanjing, Dalian, Caohejing, Qingdao, Hangzhou, Ningbo, Yantai, Shenyang, Haichang Xiamen, Rongqiao Fuqing, Minhang, Fuzhou, Nansha, Xiaoshan, Nantong, Qinghuangdao, Yingkou, Wenzhou, Lianyungang, Weihai, Daxie Ningbo, Zhanjiang, Dayawai Huizhou, Yangpu Hainan, Dongshan and Hongqiao.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax rates provided to FIEs located in the SEZs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which was comprised of FIEs that met the above mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 6: Preferential tax policies for enterprises with foreign investment established in Pudong new area of Shanghai;

General Information:

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

Under this program, FIEs, FEs, joint-venture DIES and single-investor DIES established in the SEZs of the Pudong New Area of Shanghai shall pay income tax at a reduced rate of 15%.

This program was in operation during the POI.

Legal Basis:

The income tax rate reduction for FIEs and FEs under this program is specifically provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. The income tax rate reduction for joint-venture DIES and single-investor DIES under this program can be found in the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*. These legal documents also indicate that the reduced income tax rate of 15% is to apply to all enterprises, including FIEs, located in the aforementioned SEZs.

Eligibility Criteria:

The eligibility criteria relating to FIEs for this program are found in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which specifically identifies productive-oriented FIEs established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15%.

The eligibility criteria for this program relating to DIES located in the Pudong New Area of Shanghai can be found in the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*, which specifically identifies Chinese joint venture and single-investor DIES established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15%.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax rates provided to FIEs located in the SEZs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in the Pudong New Area of Shanghai*. In addition, the subsidy is further limited to a group of enterprises, which was comprised of FIEs that met the above mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 7: Preferential tax policies for enterprises with foreign investment established in the Three Gorges of Yangtze;

General Information:

This program was established for FIEs in the *Circular of the Ministry of Finance, State Administration of Taxation on The Taxation Policies for the Migrant and Development of Reservoir Area in the Three Gorges of Yangtze River* and came into effect August 13, 1995. Its purpose is to encourage foreign investment, expand the open-up policy and enhance development in the Three Gorges of the Yangtze area. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

The enterprise income tax of the foreign-invested enterprises of a production nature established in the Three Gorges of Yangtze Economic Zone are levied at a reduced rate of 24%.

This program was in operation during the POI.

Legal Basis:

The program is provided for in *MOF Circular Cai Shui Zi No. 034* of 1995.

Eligibility Criteria:

The eligibility criteria can be found in the *MOF Circular Cai Shui Zi No. 034* of 1995. The criteria state that all applicants which meet the requirements as a foreign invested productive enterprises established in the opened economic zones at the Three Gorges of Yangtze River pay corporate income taxes at a reduced rate of 24%. The opened economic zones include various counties and provinces outlined in the Circular.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax rates provided to FIEs located in the Three Gorges of Yangtze River zone were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Circular of the Ministry of Finance, State Administration of Taxes, on the Taxation Policies for the Migrant and Development of Reservoir Area in Three Gorges of Yangtze River*. In addition, the subsidy is further limited to a group of enterprises, which was comprised of FIEs that met the above mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 8: Preferential tax policies in the western regions;

General Information:

This program was established for DIES and FIEs in the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*, which came into effect as of January 1, 2002. Its purpose is to encourage investment in the western region of China. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, DIES in industries classified in the encouraged category in the *Guiding Catalogue for Industrial Structure Regulation (2005 Version)* and FIEs classified in the encouraged category in the *Guideline Catalogue for Foreign Investment Industries* and the *Guideline Catalogue of the Advantageous Industries in Central and Western Regions for Foreign Investment*, and which are located in the western region and other specified locations are eligible for a preferential income tax rate of 15%.

The program was in operation during the POI and is scheduled to expire in 2010.

Legal Basis:

The income tax rate reduction is specifically provided for in Article 1 of the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

Eligibility Criteria:

The eligibility criteria relating to this program are found in Article 1 of the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

The eligibility criteria states that enterprises located in the western region and in industries classified as “encouraged” in the *Guiding Catalogue for Industrial Structure Regulation (2005 Version)* or in the *Guideline Catalogue for Foreign Investment Industries* and the *Guideline Catalogue of the Advantageous Industries in Central and Western Regions for Foreign Investment*, are eligible for the preferential income tax rate of 15% provided they are major businesses and their income from major businesses accounts for more than 70% of total income.

The western region for the purposes of this program is defined as: Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region and Guangxi Zhuang Autonomous Region.

Determination of Subsidy:

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

Determination of Specificity:

Preferential income tax rates provided to enterprises located in the western region and other specified locations were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the Ministry of Finance, State Administration of Taxation on the Preferential Tax Policy of Development of the Western Region*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 9: Corporate income tax exemption/reduction;

General Information:

This program was established under the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which came into effect on July 1, 1991. The program was established to absorb investment in special economic zones (SEZs) and designated areas to take the lead in their economic development. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, all eligible enterprises may receive a reduced corporate income tax rate of 15%.

Legal Basis:

The income tax reduction for foreign-invested enterprises (FIEs) under this program is provided for in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program are found in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. This program is available to FIEs recognized as new and high-tech enterprises and established in the State new and high-tech industrial development zones designated by the State Council.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 10: Local income tax exemption/reduction;

General Information:

This program was established in the *Provision of Reduction and Exemption of Local Income Tax of Foreign Invested Enterprise in Jiangsu*, (1992) No. 49, which came into force on June 17, 1992. This program was established to provide preferential tax treatment to FIEs to accelerate the development of local economy. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, FIEs that are eligible for a 15% reduction of their corporate income tax, may receive an exemption in local income taxes.

Legal Basis:

The program is provided for in Article 6 of the *Provision of Reduction and Exemption of Local Income Tax of Foreign Invested Enterprise in Jiangsu, (1992) No. 49*.

Eligibility Criteria:

The eligibility criteria can be found in Article 6 of the *Provision of Reduction and Exemption of Local Income Tax of Foreign Invested Enterprise in Jiangsu, (1992) No. 49*.

The program is available to FIEs that are located in the economic and technological development zones, the coastal economic open areas, the state new and high-tech industrial development zones of Jiangsu province, as well as foreign-invested projects encouraged by the state.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 11: Exemption/reduction of special land tax and land use fee;

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information available, producers of thermoelectric coolers and warmers may receive an exemption/reduction of special land tax and land use fees. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. The GOC did not provide the requested information regarding this program and simply confirmed that the cooperative exporter had not received benefits under this subsidy program.

Determination of Subsidy:

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

Determination of Specificity:

The exemption/reduction of special land tax and land use fee provided to thermoelectric cooler and warmer producers was found to be limited to a particular enterprise, pursuant to paragraph 2(7.3)(a) of SIMA.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 12: Tariff and Value-added Tax (VAT) exemptions on imported materials and equipment in SEZ and other designated areas;

General Information:

This program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. The program was established to

absorb investment in SEZs and encourage districts to take the lead in development. The granting authority responsible for this program is the General Administration of Customs and the program is administered by the local customs authorities.

Under this program, machinery and equipment, spare parts, raw and semi-processed materials, means of transportation and other capital goods necessary for production that are imported by enterprises in special zones shall be exempted from import duties.

Legal Basis:

The import duty exemption is detailed in Article 13 of the *Regulations on Special Economic Zones in Guangdong Province*.

Eligibility Criteria:

The eligibility criteria are stated in Article 13 of the *Regulations on Special Economic Zones in Guangdong Province*. Any enterprise located in the special zones may receive the import duty exemption.

Determination of Subsidy:

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

Determination of Specificity:

Import duty exemptions provided to enterprises in the SEZs of Guangdong province were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Regulations on Special Economic Zones in Guangdong Province*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 13: Income tax refund where profits re-invested in Guangdong Province;

General Information:

This program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. This program was established to encourage investors to reinvest profits into businesses in the SEZs of Guangdong province. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, businesses that reinvest profits derived in the SEZs of Guangdong province for a period of five years or longer may apply for a reduction of or an exemption from income tax on the reinvested portion.

Legal Basis:

The income tax reduction for investors in the SEZs of Guangdong province is provided for in Article 16 of the *Regulations on Special Economic Zones in Guangdong Province*.

Eligibility Criteria:

This program is available to businesses that reinvest profits in the SEZs for a period of five years or longer, according to Article 16 of the *Regulations on Special Economic Zones in Guangdong Province*.

Determination of Subsidy:

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

Determination of Specificity:

Income tax refund provided to enterprises located in the SEZs of Guangdong province were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Regulations on Special Economic Zones in Guangdong Province*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 14: Preferential costs of services and/or goods provided by government bodies or state-owned enterprises;

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. There is information that the GOC may be providing goods and/or services other than general infrastructure to producers of thermoelectric coolers and warmers located in SEZs and other designated areas. These goods and/or services other than general infrastructure may be provided directly by the GOC or indirectly by state-owned enterprises.

Based on the information provided by the complainant, the GOC may be providing favourable rates such as utility and energy to thermoelectric cooler and warmer producers located in SEZs and other designated areas. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. The GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporter had not received benefits under this subsidy program.

Determination of Subsidy:

Based on the available information, 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, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in China and the price at which the goods or services were provided by the government.

Determination of Specificity:

Goods and services provided by government to thermoelectric cooler and warmer producers located in SEZs and other designated areas are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises located in SEZs.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

2. GRANTS

Program 15: Funds for international market development by SMEs;

General Information:

This program was established to support the development of SMEs, to encourage SMEs to join in the competition of international markets, to reduce the business risks of the enterprises, and to promote the development of the national economy. The Ministry of Finance is the granting authority and is also responsible for the administration of the program. The market developing funds are divided into two parts, one for central use and the other for local use.

Legal Basis:

The international market development fund available to qualified SMEs is provided for in the *Circular of the Ministry of Finance, the Ministry of Foreign Trade and Economic Cooperation Concerning Printing and Distributing the measures for the Administration of International Market Developing Funds of SMEs (for Trial Implementation) Cai Qi No. 467 of 2000* and the *Rules for Implementation of the Measures for Administration of International Market Developing Funds of SMEs (trial implementation)*.

Eligibility Criteria:

The eligibility criteria can be found in Article 5 of the *Circular of the Ministry of Finance, the Ministry of Foreign Trade and Economic Cooperation Concerning Printing and Distributing the measures for the Administration of International Market Developing Funds of SMEs (for Trial Implementation) Cai Qi No. 467 of 2000*.

Determination of Subsidy:

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

Determination of Specificity:

Funds for international market development of SMEs, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set

forth in the *Circular of the Ministry of Finance, the Ministry of Foreign Trade and Economic Cooperation Concerning Printing and Distributing the measures for the Administration of International Market Developing Funds of SMEs (for Trial Implementation) Cai Qi No. 467 of 2000.*

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 16: State key technology renovation projects;

General Information:

This program was established in the Administrative Measures on the State Key Technological Renovation Projects and the Administrative Measures on Special Fund Generated by Treasure Bonds for the State Key Technological Renovation Projects, Guo Jing Mao Tou Zi (1999) No. 886, which came into effect as of September 10, 1999. Relevant provisions of the 1999 No. 886 Circular were further amended and published in the *Circular Guo Jing Mao Tou Zi (2000) No. 822*. The purposes for this program include technological renovation in key industries, enterprises and products, facilitation of technology upgrades, improvement of product structure, improvement of quality, promotion of domestic production, increase of supply, expansion of domestic demand, and promotion of continuous and healthy development of the state economy.

The granting authority responsible for this program was the State Economic & Trade Commission (SETC). The GOC stated that the SETC was discontinued during the institutional reform of state agencies in 2003. As a result, no administrative office overseeing the program exists and, as a practical matter, the program ceased to function in 2003.

Legal Basis:

The funds (grants) provided under the State Key Technology Renovation Projects are provided for in Article 4 of the *Administrative Measures on the State Key Technological Renovation Projects*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article 4 of the *Administrative Measures on the State Key Technological Renovation Projects*, which stipulates that enterprises were selected based on their performance. Emphasis was placed on selecting from 512 key enterprises, 120 experimental enterprise groups and leading enterprises in their respective industries, including

those larger state-owned or state enterprises and enterprises with controlling state shares that have strong management teams, sound management and high credit rating.

Determination of Subsidy:

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

Determination of Specificity:

The grant provided to the 512 key enterprises, the 120 experimental enterprise groups and the leading enterprises in their respective industries were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Administrative Measures on the State Key Technological Renovation Projects*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 17: Support fund (grant) provided by the Government of Xuyi County, Jiangsu Province;

General Information:

This program was established in the *Notification of Eight Solemn Promises on Attracting Foreign Investment in the Industrial Zone of Xuyi County, Xu Fa (2001) No. 28*, which came into effect as of September 26, 2001. Its purpose is to attract foreign investment in the Industrial Zone of Xuyi County. The granting authority responsible for administering this program is the Government of Xuyi County.

Under this program, enterprises are eligible to receive supportive funds (grants) provided by the Local Xuyi Government. The amount of grants provided under this program is calculated on the basis of 40% of enterprise income tax paid in the previous year, 25% of VAT paid in the previous year, and 100% of other types of taxes (i.e., stamp tax, real estate tax, urban construction tax and land usage tax) paid in the previous year.

Legal Basis:

The grant under this program is provided for in the *Notification of Eight Solemn Promises on Attracting Foreign Investment in the Industrial Zone of Xuyi County, Xu Fa (2001) No. 28*.

Eligibility Criteria:

Under this program, enterprises are eligible to receive a grant based on the following criteria:

- the company must be located in the Industrial Zone of Xuyi County;
- the company has over RMB 3 million investment on fixed assets; and,
- the project should be non-polluting and non-combustible.

Determination of Subsidy:

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

Determination of Specificity:

Grants provided to enterprises located in the Industrial Zone of Xuyi County, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Notification of Eight Solemn Promises on Attracting Foreign Investment in the Industrial Zone of Xuyi County, Xu Fa (2001)*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 18: Government export subsidy and product innovation subsidy;

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, thermoelectric cooler and warmer producers may receive grants based on export performance. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporter had not received benefits under this subsidy program.

Determination of Subsidy:

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

Determination of Specificity:

The grant provided is specific pursuant to paragraph 2(7.3)(a) of SIMA, because the subsidy was found to be limited to a number of enterprises.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 19: Reimbursement of anti-dumping and/or countervailing legal expenses by the local governments;

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, thermoelectric cooler and warmer producers may receive reimbursement of anti-dumping and/or countervailing legal fees by local governments. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I

of the subsidy RFI concerning the legislation, administration and availability of this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the legal expenses reimbursed.

Determination of Specificity:

Reimbursements of legal expenses incurred by enterprises in responding to anti-dumping and/or countervailing proceedings is specific pursuant to paragraph 2(7.3)(a) of SIMA, because the subsidy is provided to a limited number of enterprises, i.e. enterprises that have legal expenses related to anti-dumping and/or countervailing investigations.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 20: Patent subsidy appropriation;

General Information:

This program was identified at verification of the cooperative exporter response to the CBSA Subsidy RFI. There is information that the GOC may be reimbursing the cost of securing patents related to the production of thermoelectric cooler and warmers.

Based on the information provided by the cooperative exporter, the CBSA requested the GOC to provide information concerning the legislation, administration and availability of this program. The GOC did not provide any of the requested information regarding this program, and as such, information relating to the legal basis of this program is not available.

Determination of Subsidy:

On the basis of available information obtained at the cooperative exporter's premises, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the patent expenses reimbursed.

Determination of Specificity:

Reimbursements of patent expenses incurred by enterprises in securing patents is specific pursuant to paragraph 2(7.3)(a) of SIMA, because the subsidy is provided to a limited number of enterprises, i.e. enterprises that have patent expenses related to the production of thermoelectric coolers and warmers.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI. Benefits were, however, received prior to the Subsidy POI, and there is no evidence that this program has been terminated.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

3. EQUITY INFUSIONS/DEBT-TO-EQUITY SWAPS

Program 21: Equity infusions/debt-to equity swaps;

General Information:

The debt-to-equity swap is one of the most significant measures used in the financial restructuring of China's state-owned enterprises (SOEs) and state-owned banks. Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on November 20, 2000), the State Council of the People's Republic of China (State Council) established four asset management companies (AMCs) that were directed to purchase certain non-performing loans from state-owned banks including the Bank of China (BOC), the Industrial and Commercial Bank of China (ICBC), the China Construction Bank (CCB) and the Agricultural Bank of China (ABC). According to the *Regulations of Asset Management Companies*, the AMCs are supervised and managed by the People's Bank of China, China's Ministry of Finance, and the China Securities Regulatory Commission. The four AMCs are China Orient AMC (paired with the BOC), China Huarong AMC (paired with the ICBC), China Xinda AMC (paired with the CCB) and China Great Wall AMC (paired with the ABC).

One of the authorized business activities available for the management of non-performing loans purchased by the AMCs is the debt-to-equity swap. A debt-to-equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company. The *Regulations of Asset Management Companies* (2000) set forth that the State Economic and Trade Commission (SETC) would recommend companies to the AMCs for debt-to-equity swap consideration and that, ultimately, any plans or agreements related to a specific debt-to-equity swap required final approval from the State Council. Based on the information available, approximately 580 SOEs were officially approved for debt-to-equity swaps with AMCs.

Determination of Subsidy:

An equity infusion by a government AMC in the form of a debt-to-equity swap constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA in that it involves the direct transfer of funds or liabilities and pursuant to paragraph 2(1.6)(b) in that amounts owing and due to the government are forgiven or not collected. A benefit to the recipient is conferred to the extent that the equity infusion is inconsistent with the usual investment practice of private investors in the territory of the country that is subject to the subsidy investigation.

To this end, the CBSA will first determine whether there was a fair market value for the shares immediately before the government's decision to acquire the shares became public. The price paid by private investors for the same class of shares acquired by the government would represent fair market value if the acquisition of the shares by private investors occurred before the debt-to-equity swap became public.

Where there is no fair market value for the shares acquired by the government, the CBSA will determine whether the government acted in a manner that is consistent with the usual investment practice of private investors in respect of the decision to provide an equity infusion. The usual investment practices of private investors would include, amongst others, a financial risk assessment before the investment decision is made in addition to considerations related to the future financial prospects of the company under consideration for the equity infusion.

Determination of Specificity:

On the basis of available information, equity infusions by government AMCs in the form of debt-to-equity swaps have been provided predominantly, if not exclusively, to a limited number of SOEs.

In addition, the *Accession of the People's Republic of China to the WTO* specifically sets forth that "subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies".

As a result, debt-to-equity swaps are specific pursuant to subsection 2(7.3) of SIMA.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

4. PREFERENTIAL LOANS

Program 22: Loans and interest subsidies provided under the northeast revitalization program;

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, enterprises located in the northeast region of China may receive preferential loans in the form of interest subsidy under the Northeast Revitalization program. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporter had not received benefits under this subsidy program.

Determination of Subsidy:

On the basis of available information, a preferential loan provided under this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the difference between the interest payable on a commercial loan and the interest payable on the preferential loan provided by the government.

Determination of Specificity:

The provision of preferential loans under this program is specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to a limited number of enterprises located in the northeast region.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

5. PREFERENTIAL INCOME TAX PROGRAMS

Program 23: Preferential tax policies for foreign-invested enterprises;

General Information:

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

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

If the FIE business license prescribes a scope that encompasses both business of a “productive” nature and of a “non-productive” nature, the FIE may only apply for and receive benefits under this program in the years where the income from productive business exceeds 50% of its total income. Should the scope of the FIE not include business of a “productive” nature in the scope prescribed by its business license, it may not receive benefits under this program under any circumstance, regardless if it has productive business income that exceeds 50% of total income.

This program was in operation during the POI. This program is now governed by the transitional policy (article 57) of the New Income Tax Law and relevant regulations which came into effect on January 1, 2008. Enterprises that previously enjoyed “2-year exemption and 3-year half payment”, “5-year exemption and 5-year half payment” continue to enjoy the preferential rates until the expiration of the said time period. If such an enterprise has not yet enjoyed the preferential rates because of its failure to earn profits, its preferential period shall begin in 2008.

Legal Basis:

The income tax reduction and/or exemption for FIEs under this program are provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. The program is administered in accordance with the Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises and the *Circular of the State Council on Income Tax Reduction on Foreign Enterprise Income Guo Fa No. 37 of 2000*.

Eligibility Criteria:

As noted above, FIEs of a “productive nature” are eligible for this program as long as they are scheduled to operate for a period not less than ten years. FIEs of a “productive nature” are defined in Article 72 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises as FIEs*.

Determination of Subsidy:

On the basis of available information, Preferential tax policies for FIEs 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 exempted or deducted) and confers a benefit to the recipient equal to the amount of the exemption/deduction.

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the abovementioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 24: Preferential tax policies for foreign-invested export enterprises;

General Information:

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

Under this program, export oriented enterprises invested in and operated by foreign businesses may pay a reduced income tax rate of 15% if their annual output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year. Export oriented enterprises in the SEZs and ETDZs and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the above-mentioned conditions, shall pay enterprise income tax at the tax rate of 10%.

The program was in operation during the POI.

Legal Basis:

The income tax reduction for foreign invested export enterprises under this program is provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Article 75.7 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

To obtain this preferential tax treatment, 70% of the sales of the foreign business must be for export.

Determination of Subsidy:

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

Determination of Specificity:

The subsidy is a prohibited subsidy pursuant to paragraph 2(7.2)(b) of SIMA, as it is contingent, in whole or in part, on export performance.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 25: Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive;

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which came into effect on July 1, 1991. This program was established to further utilize foreign capital, introduce foreign advanced technology and equipment and accelerate industry structural adjustment. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, production oriented enterprises with foreign investment established in the coastal economic open zones, SEZs, and in the old urban districts of municipalities where ETDZs are located and which are engaged in technology intensive and knowledge intensive projects, may receive a reduced income tax rate of 15%.

The program was in operation during the POI.

Legal Basis:

The income tax reduction for production oriented enterprises with foreign investment under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Article 73(1)(a) of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

This program is limited to production oriented enterprises with foreign investment established in the coastal economic open zones, SEZs, and in the old urban districts of municipalities where ETDZs are located and which are engaged in technology intensive and knowledge intensive projects.

According to the *Circular of the State Administration of Taxation Concerning the Tax Preferential Policy Applicable to Enterprises with Foreign Investment with Regard to Technology Intensive and Knowledge Intensive Projects Guo Shui Fa [2003] No. 135*, technology intensive and knowledge intensive projects are those involving leading products listed in the *China Catalogue of High and New Technological Products (promulgated in 2000)*, promulgated by the Ministry of Science and Technology (formerly known as Commission of Science and Technology). The income from the sales of the leading products for the year must be more than 50% of the total income from sales of all products of the enterprise for the same year.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax rates provided to production oriented enterprises with foreign investment were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 26: 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, and for advanced technology enterprises invested in and operated by foreign businesses;

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which came into effect on July 1, 1991. This program was established to encourage high and new technology industrial development and enhance the technology progress. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, enterprises with foreign investment that meet the eligibility criteria described below and that are scheduled to operate for more than 10 years will be exempt from enterprise income tax in the first and second year, beginning with the first profit making year. Advanced technology enterprises with foreign investment may pay a reduced income tax rate of 15% for three years, following the first two years of exemption.

The program was in operation during the POI.

Legal Basis:

The income tax exemption for FIEs under this program is provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Article 75(6) of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

This program is limited to Chinese foreign equity joint ventures recognized as high or new technology enterprises and established in the State high or new technology industrial development zones designated by the State Council.

Determination of Subsidy:

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

Determination of Specificity:

The 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, and for advanced technology enterprises invested in and operated by foreign businesses was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that met the abovementioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 27: Preferential tax policies for enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones;

General Information:

This program was established in the *Notice on Some Preferential Policies for Enterprise Income Tax (Cai Shui Zi (94) No. 001)*, which came into effect on April 1, 1994. This program was established to encourage high and new technology industrial development and enhance the technology progress. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities. Under this program, certain enterprises may receive a reduced tax rate of 15% or an exemption of income taxes for two years.

This program was in operation during the POI.

Legal Basis:

The income tax reduction for enterprises under this program is provided for in Article I.1 of the *Notice on Some Preferential Policies for Enterprise Income Tax (Cai Shui Zi (94) No. 001)*.

Eligibility Criteria:

This program is limited to high tech enterprises in the high tech industrial development zones approved by the State Council and newly established high tech enterprises.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax policies for enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 28: Preferential tax policies for enterprises which provide employment for unemployed people;

General Information:

This program was established in the *Notice on Some Preferential Policies for Enterprise Income Tax Cai Shui Zi [94] No. 1 of 1994*. This program was established to increase and encourage employment by encouraging newly established labour employment service enterprises in cities or towns that hire unemployed people. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

This program was in operation during the POI.

Legal Basis:

The income tax exemption and reduction for newly established labour employment service enterprises that hire unemployed people is provided for in Article I (vii) of the *Notice on Some Preferential Policies for Enterprise Income Tax Cai Shui Zi [94] No. 1 of 1994*.

Eligibility Criteria:

The eligibility criteria can be found in the *Notice on Some Preferential Policies for Enterprise Income Tax Cai Shui Zi [94] No. 1 of 1994*.

Determination of Subsidy:

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

Determination of Specificity:

Preferential tax policies for enterprises which provide employment for unemployed people were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Notice on Some Preferential Policies for Enterprise Income Tax Cai Shui Zi [94] No. 1 of 1994*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 29: Preferential tax policies for the research and development of foreign-invested enterprises;

General Information:

This program was established in the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*, which came into effect on January 1, 2000. This

program was established to encourage the research and development of enterprises. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, certain foreign investment enterprises may offset their taxable income by 50% of their research and development (R&D) expenses for the same year, not to exceed the taxable income for the year.

The program was in operation during the POI.

Legal Basis:

The taxable income reduction for certain FIEs is provided for in Article 1 of the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*.

Eligibility Criteria:

This program is limited to FIEs that have increased their R&D expenses by 10% or greater from the previous year.

Determination of Subsidy:

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

Determination of Specificity:

The reduction of taxable income provided to FIEs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for

the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 30: Preferential tax policies for domestically invested enterprises (DIEs) purchasing domestically produced equipment for technology upgrading purposes;

General Information:

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

Under this program, all enterprises with investment on the technological transformation projects conforming to the State Industrial Policy, may offset 40% of domestic equipment investment from the newly added business income tax in the current year of purchasing the technological transformation project equipment.

The program was in operation during the POI.

Legal Basis:

The income tax refund for domestic enterprises is provided for in Article 2 of the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*.

Eligibility Criteria:

The eligibility criteria can be found in Articles 2 and 11 of the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*.

This program is available to all enterprises with investment on the technological transformation projects conforming to the State industrial policy in the nation.

Determination of Subsidy:

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

Determination of Specificity:

The income tax refund for purchasing domestically made equipment is a prohibited subsidy pursuant to paragraph 2(7.2)(b) of SIMA, as it is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 31: Accelerated depreciation on fixed assets in Binhai New Area of Tianjin;

General Information:

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

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

Legal Basis:

The tax benefit as a result of this program is provided for in Article II of the *Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin*, Cai Shui (2006) No. 130.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article V of the *Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin, Cai Shui (2006) No. 130*, which specifies that the preferential tax policies shall only be applicable to three ecological urban areas of Tanggu, Hangu and Dagang and seven functional areas within the Binhai New Area of Tianjin.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution given that an exporter participating in the program pays reduced income taxes in present value terms. This subsidy has been determined to be 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 exempted or deducted), and confers a benefit to the recipient equal to the amount of the tax exemption/deduction.

Determination of Specificity:

The tax benefit provided to enterprises located in the Binhai New Area of Tianjin, was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin, Cai Shui (2006) No. 130*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 32: Reduced tax rate for productive FIEs scheduled to operate for a period of not less than 10 years;

General Information:

The GOC did not provide complete information with respect to this program and stated that this program is part of Program 20, Preferential Tax Policies for Foreign-Invested Enterprises.

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

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

If the FIE business license prescribes a scope that encompasses both business of a “productive” nature and of a “non-productive” nature, the FIE may only apply for and receive benefits under this program in the years where the income from productive business exceeds 50% of its total income. Should the scope of the FIE not include business of a “productive” nature in the scope prescribed by its business license, it may not receive benefits under this program under any circumstance, regardless if it has productive business income that exceeds 50% of total income.

This program was in operation during the POI. This program is now governed by the transitional policy (article 57) of the New Income Tax Law and relevant regulations which came into effect on January 1, 2008. Enterprises that previously enjoyed “2-year exemption and 3-year half payment”, “5-year exemption and 5-year half payment” continue to enjoy the preferential rates until the expiration of the said time period. If such an enterprise has not yet enjoyed the preferential rates because of its failure to earn profits, its preferential period shall begin in 2008.

Legal Basis:

The income tax reduction and/or exemption for FIEs under this program are provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. The program is administered in accordance with the Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises and the *Circular of the State Council on Income Tax Reduction on Foreign Enterprise Income Guo Fa No. 37 of 2000*.

Eligibility Criteria:

As noted above, FIEs of a “productive nature” are eligible for this program as long as they are scheduled to operate for a period not less than ten years. FIEs of a “productive nature” are defined in Article 72 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises as FIEs*.

Determination of Subsidy:

Preferential tax policies for FIEs 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 exempted or deducted) and confers a benefit to the recipient equal to the amount of the exemption/deduction.

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the abovementioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 33: Income tax refund for re-investment of FIE profits by foreign investors;

General Information:

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

Under this program, foreign investors who reinvest profits into that FIE by increasing its registered capital, or use FIE derived profit to establish another FIE which is planned to operate for a period not less than five years, are eligible to receive a refund of the income tax already paid on the profit that was reinvested.

Article 10 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* clearly identifies that any foreign investors who directly reinvest after tax profit into the organization from which they received the profit from, or use the profits to establish a new foreign enterprise, will be refunded 40% of the tax paid on the profit

amount directly reinvested. Further, if the direct reinvestment is in a new foreign enterprise and the investor withdraws the investment before five years have passed, the tax refunded must be repaid. It also states that should State Council pass regulations relating to the provision of this preferential treatment, the provisions of those regulations will be applied.

Article 80 of the Rules for the Implementation of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* refers to “direct reinvestment” as using the profits referred to above, prior to their receipt, to increase registered capital in the FIE that provided the profits, or, following receipt of those profits, establishing another FIE.

Article 81 of the Rules for the Implementation of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* addresses the preferential provisions passed by State Council, as referred to above. It states that where a foreign investor directly reinvests profits to establish or expand export oriented enterprises or advanced technology enterprises, 100% of the income tax paid on the reinvested profit will be refunded.

This program was in operation during the POI.

Legal Basis:

The income tax refund for FIEs under this program is provided for in Article 10 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Articles 80, 81 and 82 of the Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.

Eligibility Criteria:

In order for a foreign investor to obtain this preferential tax treatment, 100% of the shares of the foreign investor enterprise must be foreign-owned and located outside China. Therefore, foreign funded enterprises inside China that act as investors in other enterprises will not be considered foreign investors for the purposes of preferential treatment under this program.

Determination of Subsidy:

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

Determination of Specificity:

The income tax refund provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 34: Repaying foreign currency loan by returned VAT;

General Information:

This program was established in the *Notice of the Ministry of Finance and the State Administration of Taxation on Continuing the Policy of Repaying Foreign Currency Loans (Incurred prior to December 31, 1994) by Returned VAT During the "Tenth Five-Year" Period*, Cai Qi (2002), No. 368, which was published on September 10, 2002. The "Tenth Five-Year" period covers the five years from 2001 to 2005. The granting authority responsible for administering this program is the Ministry of Finance and the State Administration of Taxation.

Under this program, industrial enterprises are eligible to receive a VAT refund if the enterprise had outstanding foreign currency loans as of December 31, 1994, and the refund can be used to repay the outstanding foreign currency loans. The amount of the VAT refund shall not exceed 12% of the total amount of the principal and interest payment for the foreign currency loan in any given year.

Legal Basis:

The VAT refund under this program is provided for in the *Notice of the Ministry of Finance and the State Administration of Taxation on Continuing the Policy of Repaying Foreign Currency Loans (Incurred prior to December 31, 1994) by Returned VAT During the "Tenth Five-Year" Period*, Cai Qi (2002), No. 368.

Eligibility Criteria:

Under this program, enterprises are eligible to receive a VAT refund if the enterprise had outstanding foreign currency loans as of December 31, 1994. In 2004 and 2005, those enterprises, which were listed in the *Notice of the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2004 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2005), No. 218* and the *Notice of on the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2005 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2006), No. 491*, were eligible for receiving such benefit.

Determination of Subsidy:

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

Determination of Specificity:

VAT refunds provided to selected enterprises, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, as set forth in the *Notice of on the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2004 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2005), No. 218* and the *Notice of on the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2005 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2006), No. 491*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

Program 35: VAT and income tax exemption/reduction for enterprises adopting debt-to-equity swaps;

General Information:

This program was established in the *Notice on the Tax Policies for Debt-to-Equity Swap Enterprises, Cai Shui (2005) No. 29*, which came into effect as of January 1, 2004. Its purpose is to exert further efforts for the debt-to-equity work and support the reform of enterprises. The granting authority responsible for administering this program is the Ministry of Finance and the State Administration of Taxation.

Under this program, enterprises adopting debt-to-equity swaps, pursuant to the debt-to-equity swap agreement signed between the enterprise and a financial asset management company, are exempted from paying value-added tax and/or consumption tax.

This program was in operation during the POI and is scheduled to expire on December 31, 2008.

Legal Basis:

The tax exemption under this program is provided for in Article I of the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article I of the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*.

Determination of Subsidy:

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

Determination of Specificity:

The tax exemptions provided to enterprises adopting debt-to-equity swaps were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

6. RELIEF FROM DUTIES AND TAXES ON MATERIALS AND MACHINERY

Program 36: Exemption of tariff and import VAT for imported technology and equipment;

General Information:

Exemption from tariffs and import-linked VAT is provided for and administered in accordance with the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment*, which came into effect on January 1, 1998. This program was initiated to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement.

The granting authorities responsible for this program are the Ministry of Finance, National Development and Reform Commission and the General Administration of Customs in cooperation with local provincial and municipal customs branches.

Under this program, enterprises may apply for exemption from tariffs and VAT on imported equipment and its related technologies, components and parts.

The program was in operation during the POI.

Legal Basis:

This program is administered in accordance with the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment (GUOFA 1997 No. 37)*.

Eligibility Criteria:

In order for DIES to be eligible for tariff and VAT exemptions on imported equipment, the domestic investment project relating to that the equipment must be listed in the *Current Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State (2000)*. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the domestic project. Finally, any type of equipment that is imported and listed in the *Directory of Imported Commodities of Non-Tax*

Exemption to be Used in Domestic Invested Projects is not eligible for the exemptions under this program.

In order for a FIE to be eligible for tariff and VAT exemptions on imported equipment, the foreign investment project involving that equipment must relate to those listed in the *Guideline Catalogue for Foreign Investment Industries* under the encouragement category or the restricted B category. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the foreign project. Finally, any type of equipment that is imported and listed in the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Foreign Invested Projects* is not eligible for the exemptions under this program.

Determination of Subsidy:

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

Determination of Specificity:

Exemption of tariff and import VAT for imported technology and equipment were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it was limited, pursuant to a legislative, regulatory, or administrative instrument, in this case, as set forth in the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment*. In addition, this program is further limited to a group of enterprises, which would be comprised of solely FIEs or DIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

7. REDUCTION IN LAND USE FEES

Program 37: Reduction in land use fees;

General Information:

This program is administered in accordance with the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*, which was established on August 20, 1999. This program was established to attract foreign investors by providing a land use fee exemption to those enterprises with foreign investment that have acquired their lands from the GOC and have paid the transferring fee. The granting authority responsible for this program is the Administrative Office of the State Council.

At present, every Chinese enterprise is required to pay a land transfer fee when land use rights are acquired through the bidding system. Effective January 1, 2007, all FIEs were required to pay land use tax which is administered by the State Administration of Taxation and local tax authorities.

The program was in operation during the POI.

Legal Basis:

The land use fee exemption provided under this program is administered in accordance with Article 4.5 of the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*.

Eligibility Criteria:

This program is limited to FIEs that have purchased land use rights from the GOC and have paid the relevant transfer fee.

Determination of Subsidy:

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

Determination of Specificity:

The land use fee exemption provided to FIEs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in

Article 4.5 of the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.

8. PURCHASE OF GOODS FROM STATE-OWNED ENTERPRISES

Program 38: Purchase of goods from state-owned enterprises;

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. There is information that state-owned enterprises (SOEs) may be providing goods and/or services to thermoelectric cooler and warmer producers. The CBSA has concluded that SOEs can be considered as acting on behalf of government in cases in which the majority of the shares of the company are owned by the government or the company is controlled either directly or indirectly through government directors. The CBSA notes that the WTO has previously affirmed the CBSA position in the WTO Panel concerning *Korea – Measures Affecting Trade in Commercial Vessels (WT/DS273)*.

Based on the information provided by the complainant, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. The GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporter had not received benefits under this subsidy program.

Determination of Subsidy:

Based on the available information, 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, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in China and the price at which the goods or services were provided by the government.

Determination of Specificity:

Goods and services provided by government to thermoelectric cooler and warmer producers are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises purchasing from SOEs.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the cooperative exporter and the GOC, indicating that it had not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification, pursuant to subsection 30.4(2) of SIMA.