



OTTAWA, March 3, 2009

4214-22 AD/1379
4218-26 CV/124

STATEMENT OF REASONS

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

**CERTAIN ALUMINUM EXTRUSIONS
ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

On February 16, 2009, 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 aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, 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 "Renseignements".
This Statement of Reasons is also available in French. Please refer to the "Information" section.

TABLE OF CONTENTS

SUMMARY OF EVENTS	1
PERIOD OF INVESTIGATION	2
INTERESTED PARTIES	2
COMPLAINANTS	2
EXPORTERS	3
IMPORTERS	5
GOVERNMENT OF CHINA	5
SURROGATE COUNTRIES	5
PRODUCT DEFINITION	6
ADDITIONAL PRODUCT INFORMATION	6
PRODUCTION PROCESS	7
CLASSIFICATION OF IMPORTS	8
CANADIAN INDUSTRY	9
IMPORTS INTO CANADA	9
INVESTIGATION PROCESS	9
DUMPING INVESTIGATION	10
SECTION 20 INQUIRY	10
NORMAL VALUE	12
EXPORT PRICE	13
RESULTS OF DUMPING INVESTIGATION	14
DUMPING RESULTS BY EXPORTER	15
NON-COOPERATIVE EXPORTERS - MARGIN OF DUMPING	20
SUMMARY OF RESULTS – DUMPING	20
REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION	20
SUBSIDY INVESTIGATION	36
SUMMARY OF RESULTS – SUBSIDY	41
REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION	41
DECISIONS	55
FUTURE ACTION	56
RETROACTIVE DUTY ON MASSIVE IMPORTATIONS	57
PUBLICATION	57
INFORMATION	58
APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY	59
APPENDIX 2 – SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAM	60
SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS	60
SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS	72
APPENDIX 3 – SUMMARY OF FINDINGS – SECTION 20	75
APPENDIX 4 – GOC POLICIES AFFECTING THE CHINESE ALUMINUM AND ALUMINUM EXTRUSIONS INDUSTRIES	101

SUMMARY OF EVENTS

[1] On July 4, 2008, the Canada Border Services Agency (CBSA) received a complaint from Almag Aluminum Inc. of Brampton, Ontario, Apel Extrusions Limited of Calgary, Alberta, Can Art Aluminum Extrusion Inc. of Brampton, Ontario, Metra Aluminum Inc. of Laval, Quebec, Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.) of Richmond Hill, Ontario, Spectra Aluminum Products Ltd. of Bradford, Ontario and Spectra Anodizing Inc. of Woodbridge, Ontario (Complainants) alleging that imports of certain aluminum extrusions originating in or exported from the People's Republic of China (China) are being dumped and subsidized and causing injury to the Canadian industry.

[2] On July 18, 2008, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainants that the complaint was properly documented. The CBSA also notified the government of China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy complaint.

[3] The Complainants provided evidence to support the allegations that aluminum extrusions from China have been dumped and subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing has caused injury or is threatening to cause injury to the Canadian industry producing these goods.

[4] On August 13, 2008, the CBSA received written preliminary comments from the GOC concerning the evidence presented in the non-confidential version of the subsidy complaint and comments concerning the CBSA's practices in previous subsidy investigations involving China. The GOC claimed that the complaint lacks sufficient evidence to initiate a subsidy investigation on aluminum extrusions. The GOC also claimed that the complaint fails to provide supporting evidence to show that subsidies applied to the aluminum extrusions sector in China. The CBSA considered the representations made by the GOC in its analysis of whether there was sufficient evidence of subsidizing to warrant an investigation.

[5] On August 14, 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.

[6] On August 18, 2008, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain aluminum extrusions from China. On the basis of the available information, the CBSA concluded that there was sufficient evidence to initiate a section 20 inquiry concurrently with the dumping and subsidy investigations to examine the degree of GOC involvement in the aluminum extrusions sector and the related impact on pricing.

[7] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) started a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain aluminum extrusions from China have caused injury or retardation or are threatening to cause injury to the

Canadian industry producing the goods. On October 17, 2008, the Tribunal determined that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain aluminum extrusions have caused injury.

[8] On November 17, 2008, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping and subsidizing with respect to certain aluminum extrusions originating in or exported from China.

[9] The CBSA continued its investigations and, on the basis of the results, the President is satisfied that certain aluminum extrusions originating in or exported from China have been dumped and subsidized and that the margins of dumping and the amounts of subsidy are not insignificant. Consequently, on February 16, 2009, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[10] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duties will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal will issue its finding by March 17, 2009.

PERIOD OF INVESTIGATION

[11] The period of investigation, with respect to dumping (Dumping POI), covered all subject goods released into Canada from July 1, 2007 to June 30, 2008.

[12] The period of investigation, with respect to subsidizing (Subsidy POI), covered all subject goods released into Canada from January 1, 2007 to June 30, 2008.

INTERESTED PARTIES

Complainants

[13] The Complainants are major producers of aluminum extrusions in Canada, accounting for a major proportion of the domestic industry for like goods.

The name and address of the Complainants are:

Almag Aluminum Inc.
22 Finley Road
Brampton, ON
L6T 1A9

Apel Extrusions Limited
7929-30 Street S.E.
Calgary, AB
T4C 1H7

Can Art Aluminum Extrusion Inc.
85 Parkshore Drive
Brampton, ON
L6T 5M1

Metra Aluminum Inc.
2000 Fortin Boulevard
Laval, QC
H7S 1P3

Signature Aluminum Canada Inc.
500 Edward Avenue
Richmond Hill, ON
L4C 4Y9

Spectra Aluminum Products Ltd.
95 Reagens Industrial Parkway
Bradford, ON
L3Z 2A4

Spectra Anodizing Inc.
201 Hanlan Rd
Woodbridge, ON
L4L 3R7

[14] Three other producers of the like goods, Extrudex Aluminum, Daymond Aluminum and Kaiser Aluminum Canada Ltd. provided letters supporting the complaint.

Exporters

[15] At the initiation of the investigations, the CBSA had identified 261 potential exporters of subject goods from customs import documentation and from the complaint.

[16] The CBSA sent a Dumping Request for Information (RFI) and Subsidy RFI to each of the identified potential exporters of the goods.

[17] As part of the CBSA's section 20 inquiry, the CBSA also sent section 20 RFIs to each of the identified potential exporters and producers of the goods located in China.

[18] While many of the export sales from China appear to involve international vendors and trading companies, in most instances the goods are shipped directly to Canada from China and the Chinese manufacturer is considered to be the exporter of the goods. However, some goods originating from China may be shipped to an intermediary country, such as the United States of America (USA) and subsequently exported to Canada. In these situations, the exporter of the goods is generally located in the intermediary country.

[19] Complete and timely responses to the CBSA's dumping RFI were received from seven exporters, including six exporters located in China as well as one exporter located in the USA which is exporting goods originating from China to Canada. The six exporters located in China also provided complete and timely responses to the section 20 inquiry RFI and the subsidy RFI.

[20] After the dumping and subsidy preliminary determinations on November 17, 2008, the CBSA conducted on-site verifications at the end of November and early December 2008 with these six exporters, as follows:

- Kam Kiu Aluminum Extrusion Co., Ltd.
- Press Metal International Ltd. (China)
- Panasia Aluminum (China) Limited
- Pingguo Asia Aluminum Co., Ltd.
- Guangdong Weiye Aluminum Factory Co Ltd.
- Guangdong Jianmei Aluminum Profile Factory Co., Ltd.

[21] During the course of the on-site verification with one of the Chinese exporters, Pingguo Asia Aluminum Co., Ltd. (Pingguo), there were issues with respect to the accuracy and reliability of their information. As a result, this exporter was considered non-cooperative for purposes of the final determinations.

[22] Another Chinese exporter, Press Metal International Ltd. (China) (PMI), cooperated in the dumping verification but failed to provide requested information and documentation relating to the subsidy verification. For purposes of the subsidy final determination, this exporter was considered non-cooperative.

[23] The other four Chinese exporters fully cooperated during the on-site dumping and subsidy verifications.

[24] In addition, during the course of the investigation, desk audits were performed by the CBSA on a number of exporter RFI submissions, including late exporter submissions received after the deadline date. Three Chinese exporters provided complete dumping and subsidy RFI responses and fully cooperated during these desk audits for purposes of the final determinations. A desk audit was also performed by the CBSA on one exporter located in the USA, which was exporting goods originating from China to Canada through two subsidiaries. This exporter also provided complete dumping RFI responses and fully cooperated for purposes of the investigation. These additional cooperating exporters are:

- China Square Industrial Limited (China)
- Guangya Group - Foshan Guangcheng Aluminum Co. Ltd. (China)
- Guangya Group - Guang Ya Aluminum Industries Co. Ltd. (China)
- Hunter Douglas Designer Shades (USA)
- Hunter Douglas Window Fashions (USA)

[25] Several other exporters and trading companies provided incomplete responses to the CBSA's dumping, subsidy, or section 20 RFIs, and their information will not be taken into consideration for purposes of the investigations.

Importers

[26] At the initiation of the investigations, the CBSA identified 535 potential importers of subject goods based on a review of customs import documentation and information provided in the complaint.

[27] The CBSA sent an RFI to all potential importers of the goods. Responses to the CBSA's importer RFI were received from 43 importers.

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

Government of China

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

[30] At the initiation of the investigations, the CBSA sent a subsidy and a section 20 RFI to the GOC. While the GOC provided a substantially complete response to the section 20 RFI, the GOC's subsidy response was found to be incomplete and was not used for the preliminary determination.

[31] During the final stage of the investigation, after being advised by the CBSA that its original subsidy RFI response was incomplete, the GOC provided additional subsidy information. However, this additional information was filed very late in the investigation, which left the CBSA insufficient time to analyze and verify the information before the legislated final determination date. The GOC was advised that the information was not submitted in a timely fashion and that its subsidy information would not be used for purposes of the investigation. Additional details on this matter are provided subsequently in this report under "Subsidy Investigation".

Surrogate Countries

[32] As part of the CBSA's section 20 inquiry, an RFI was also sent to producers in India, Malaysia, Mexico and Chinese Taipei, which are not subject to the present dumping investigation. No responses to these RFIs were received.

PRODUCT DEFINITION

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

"Aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China."

Additional Product Information¹

[34] Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the subject goods do not include goods made by the process of impact extrusion or cold extrusion. Impact (or cold) extrusion is commonly used to make collapsible tubes such as toothpaste tubes or cans usually using soft materials such as aluminum, lead and tin. Usually a small shot of solid material is placed in the die and is impacted by a ram, which causes cold flow in the material. Impact (or cold) extrusion is not performed by the same machinery or using the same inputs as the extrusion operations of the Complainants.

[35] Alloys are metals composed of more than one metallic element. Alloys used in aluminum extrusions contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc which enable characteristics such as corrosion resistance, increased strength or improved formability to be imparted to the major metallic element, aluminum. Aluminum alloys are produced to specifications in "International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys" published by *The Aluminum Association*. These specifications have equivalent designations issued by other certifying bodies such as the International Standards Organization (ISO).

[36] All aluminum extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customized shapes.

[37] In addition to 'as extruded' or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminum. Also, they can be finished with liquid or powder paint coatings utilizing an electrostatic application process.

¹ This section is based on the complaint. CBSA Dumping Exhibit# 2, non-confidential version of the complaint, pages 6-8.

[38] The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment. The Complainants cannot produce extrusions having a wall thickness less than 0.5 mm or a weight greater than 22 kg per meter or a cross-section larger than would be enclosed within a 254 mm diameter circle.

[39] Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. These can include precision cutting, machining, punching and drilling.

[40] Aluminum extrusions are widely used in many end-use applications that span numerous market sectors. The main end-use sectors for aluminum extrusions are building and construction, transportation, and engineered products. Uses for aluminum extrusions in the building and construction industry cover a wide range of products, including windows, doors, railings, bridges, light poles, high-rise curtainwalls, framing members, and other various structures. Uses for aluminum extrusions in the transportation industry include parts for automobiles, buses, trucks, trailers, rail cars, mass transit vehicles, recreational vehicles, aircraft, and aerospace. Aluminum extrusions are also used in many consumer and commercial products, including, air conditioners, appliances, furniture, lighting, sports equipment, electrical power units, heat sinks, machinery and equipment, food displays, refrigeration, medical equipment, and laboratory equipment.²

Production Process³

[41] While details may vary from producer to producer, the process by which extrusions are produced is essentially the same for all.

[42] The intended use of the product in which the aluminum extrusion will be applied determines the specifications for the extrusion. Machinability, finish and environment of use will determine the alloy to be extruded. The function of the profile will determine its design and that of the die that shapes it.

[43] The extrusion process begins with an aluminum billet. The billet must be softened by heat prior to extrusion. The heated billet is placed into the extrusion press, a powerful hydraulic device wherein a ram pushes a dummy block that forces the softened metal through a precision opening known as a die, to produce the desired shape. This simplified description of the process is known as direct extrusion, which is the most common method in use today. Indirect extrusion is a similar process. In the direct extrusion process, the die is stationary and the ram forces the alloy through the opening in the die. In the indirect process, the die is contained within the hollow ram, which moves into the stationary billet from one end, forcing the metal to flow into the ram, acquiring the shape of the die as it does so.

[44] The aluminum billet may be a solid or hollow form, commonly cylindrical, and is the length charged into the extrusion press container. It is usually a cast product but may be a

² Aluminum Extruders Council (www.aec.org).

³ This section is based on the complaint. CBSA Dumping Exhibit# 2, non-confidential version of the complaint, pages 9-11.

wrought product or powder compact. Often it is cut from a longer length of alloyed aluminum known as a log.

[45] The billet and extrusion tools are preheated (softened) in a heating furnace. The melting point of aluminum varies with the purity of the metal but is approximately 1,220° Fahrenheit (660° Centigrade). Extrusion operations typically take place with billet heated to temperatures in excess of 700° F (375° C), and depending upon the alloy being extruded, as high as 930° F (500° C).

[46] The actual extrusion process begins when the ram starts applying pressure to the billet within the container. Various hydraulic press designs are capable of exerting anywhere from 100 tons to 15,000 tons of pressure. This pressure capacity of a press determines how large an extrusion it can produce. The extrusion size is measured by its largest cross-sectional dimension, sometimes referred to as its fit within a circumscribing circle diameter.

[47] As pressure is first applied, the billet is crushed against the die, becoming shorter and wider until its expansion is restricted by full contact with the container walls. Then, as the pressure increases, the soft (but still solid) metal has no place else to go and begins to squeeze through the shaped orifice of the die to emerge on the other side as a fully formed extrusion or profile.

[48] About 10 percent of the billet, including its outer skin, is left behind in the container. The completed extrusion is cut off at the die and the remainder of the metal is removed to be recycled. After it leaves the die, the still-hot extrusion may be quenched, mechanically treated and aged.

Classification of Imports

[49] The aluminum extrusions subject to this complaint are normally imported into Canada under the following 34 Harmonized System (HS) classification numbers:

7604.10.11.10	7604.10.20.29	7604.29.12.29
7604.10.11.90	7604.10.20.30	7604.29.20.11
7604.10.12.11	7604.21.00.10	7604.29.20.19
7604.10.12.19	7604.21.00.20	7604.29.20.21
7604.10.12.21	7604.29.11.10	7604.29.20.29
7604.10.12.22	7604.29.11.90	7604.29.20.30
7604.10.12.23	7604.29.12.11	7608.10.00.10
7604.10.12.24	7604.29.12.19	7608.10.00.90
7604.10.12.29	7604.29.12.21	7608.20.00.10
7604.10.20.11	7604.29.12.22	7608.20.00.90
7604.10.20.19	7604.29.12.23	
7604.10.20.21	7604.29.12.24	

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

CANADIAN INDUSTRY

[51] The Canadian industry for aluminum extrusions is comprised of the following companies:

Almag Aluminum Inc. of Brampton, Ontario,
Apel Extrusions Limited of Calgary, Alberta,
Can Art Aluminum Extrusion Inc. of Brampton, Ontario,
Daymond Aluminum of Chatham, Ontario,
Extrudex Aluminum of Woodbridge, Ontario,
Indalex Aluminum Solutions Group of Mississauga, Ontario,
Kaiser Aluminum Canada Ltd. of London, Ontario,
Kawneer Company Canada Ltd. of Scarborough, Ontario,
Kromet International Inc. of Cambridge, Ontario,
Metra Aluminum Inc. of Laval, Quebec,
Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.) of Richmond Hill, Ontario,
Spectra Aluminum Products Ltd. of Bradford, Ontario,
Spectra Anodizing Inc. of Woodbridge, Ontario.

IMPORTS INTO CANADA

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

[53] The following table presents the CBSA's estimates of imports of certain aluminum extrusions for purposes of the final determinations:

Imports of Certain Aluminum Extrusions (July 1, 2007 - June 30, 2008)

Imports into Canada	% of Total Imports
China	43%
U.S.A.	49%
All Other Countries	8%
Total Imports	100%

INVESTIGATION PROCESS

[54] Regarding the dumping investigation, information was requested from known and possible exporters, vendors and importers, concerning shipments of certain aluminum extrusions released into Canada during the Dumping POI of July 1, 2007 to June 30, 2008. Information related to potential actionable subsidies was requested from known and possible exporters and the GOC concerning financial contributions made to producers or exporters of aluminum extrusions of Chinese origin released into Canada during the Subsidy POI of January 1, 2007 to June 30, 2008.

[55] In addition, known and possible exporters and producers of the goods along with the GOC were requested to respond to the section 20 RFI for the purposes of the section 20 inquiry. Aside from the aforementioned exporters which provided complete information and fully cooperated for purposes of the final determinations, several exporters and trading companies provided incomplete or deficient RFI replies. Information from these companies has not been taken into consideration for purposes of the final determinations.

[56] The GOC provided a substantially complete response to the section 20 RFI by the extended due date. As explained previously, after being advised by the CBSA that its original subsidy response was incomplete and would not be used for purposes of the preliminary determination, the GOC provided additional supplementary subsidy information. However, this additional information was filed very late in the investigation, which left the CBSA insufficient time to analyze and verify the information before the legislated final determination date.

[57] The GOC was advised that the information was not submitted in a timely fashion and that its subsidy information would not be used for purposes of the investigation. Notwithstanding that the GOC's subsidy information was not used, the CBSA has established individual amounts of subsidy for the cooperative Chinese exporters under a ministerial specification.

[58] In summary, 56 potential subsidy programs were investigated and the CBSA determined that 15 of the potential subsidy programs were conferring benefits to the seven cooperative Chinese exporters during the Subsidy POI.

[59] As part of the final stage of the investigations, case briefs and reply submissions were provided by the legal representatives of the GOC, the Complainants, three Chinese exporters and one U.S. exporter of Chinese origin goods.

DUMPING INVESTIGATION

Section 20 Inquiry

[60] Section 20 of SIMA may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA⁴, it is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Where section 20 is applicable, the normal value of goods is not determined based on domestic prices or costs in that country.

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

⁴ China is a prescribed country under Special Import Measures Regulation Section 17.1.

[62] The mere existence of substantial domestic price determination by the government would be insufficient to apply section 20 of SIMA. The CBSA is also required to examine the price effect resulting from substantial government determination of domestic prices and whether there is sufficient information on the record for the President to have a reason to believe that the resulting domestic prices are not substantially the same as they would be in a competitive market.

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

[64] At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the Complainants, and from its own research, to support the initiation of a section 20 inquiry. The information indicated that the prices of aluminum extrusions in China have been substantially determined, indirectly, by various GOC industrial policies regarding the aluminum and aluminum extrusions industries and by export restrictions and tax changes for aluminum and aluminum extrusions.

[65] Accordingly, the CBSA, at the initiation of the dumping investigation, sent section 20 RFIs to 160 known exporters of aluminum extrusions in China, as well as to the GOC requesting detailed information related to the aluminum extrusions sector. In response to the section 20 inquiry and the relevant questionnaires, the CBSA received substantially complete and verifiable responses from eight Chinese exporters and from the GOC.

[66] The eight cooperative exporters represent approximately 41% of the total exports to Canada of subject goods, by volume during the Dumping POI. These companies represent a far smaller proportion of the Chinese domestic aluminum extrusions industry, which the GOC has indicated is comprised of over 460 producers.⁵ A section 20 inquiry assesses the domestic industry sector as a whole. As such, the review of the aluminum extrusions sector is not limited to an examination of the information provided by the cooperative exporters.

[67] In addition, the CBSA has obtained information from other sources such as previous CBSA reports, market intelligence reports, public industry reports, newspaper and internet articles as well as other government documents.

[68] For purposes of the preliminary determination, the President considered the cumulative effect that the GOC's measures have exerted on the aluminum extrusions sector in China. The information indicated that the wide range and material nature of the GOC measures have resulted in significant influences on the aluminum industry, including the aluminum extrusions sector, through means other than competitive market forces.

[69] Accordingly, the President formed the opinion that domestic prices in the aluminum extrusions sector in China are substantially determined by the GOC and there is sufficient reason

⁵ CBSA Dumping Exhibit# 266. GOC Response to the Government's Request for Information (section 20).

to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[70] The CBSA continued with the section 20 inquiry during the final stage of the investigation.

[71] Taking together all the information obtained during the course of the section 20 inquiry, the President has affirmed the opinion made at the preliminary determination that domestic prices in the aluminum extrusions sector in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[72] **Appendix 3** provides a summary of the findings considered by the President in affirming this section 20 opinion.

Normal Value

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

[74] For purposes of the final determination, the CBSA has concluded that normal values could not be determined on the basis of domestic selling prices in China or on the full cost of goods plus profit, as the CBSA has affirmed the opinion made at the preliminary determination that the conditions of section 20 exist in the aluminum extrusions sector in China.

[75] Where section 20 conditions exist, the CBSA will establish whether normal values can be determined using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)(c) of SIMA. However, no surrogate country producers provided the information necessary to determine normal values in accordance with this provision.

[76] Alternatively, normal values may be determined on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the President, pursuant to paragraph 20(1)(d) of SIMA. However, sufficient information was not submitted by importers in response to the importer RFI to allow for the application of paragraph 20(1)(d).

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

[78] In the complaint, the Complainants submitted that India is an appropriate surrogate country to be used for the calculation of normal values, since it is a major producer of aluminum extrusions and has comparable wage rates. Additionally, the cost of the aluminum raw material input to extruders in India should reflect international, market economy prices.

[79] The CBSA finds that the Complainants' selection of India for purposes of establishing costs for use in determining normal values is reasonable since both India and China are developing countries and the President has designated India as the surrogate country for China previously.

[80] As the cost of aluminum accounts for such a significant portion of the costs of producing aluminum extrusions, the CBSA's starting point for determining normal values is based on the monthly average settlement price of aluminum as reported on the London Metal Exchange (LME). The LME is the largest futures and contract market for various metals including aluminum and is a global reference pricing source for purchases and sales of such goods.

[81] Amounts have been added to the LME prices for the cost to convert the aluminum into a finished aluminum extrusion product, using information provided by the Complainants, adjusted to reflect costs in India as a surrogate. Separate conversion costs have been established to account for cost differences relating to product that is "mill finished" and product that undergoes additional finishing, such as anodizing or painting. An amount for administrative, selling and all other costs has also been added using information provided by the Complainants, again adjusted to reflect costs in India.

[82] Lastly, an amount for profit has been added to these costs based on the profit earned by the Complainants on domestic and export sales of the like goods for the 2007 calendar year in order to determine normal values for the cooperative exporters.

Export Price

[83] 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.

[84] In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices.

[85] For purposes of the final determination, export prices for the cooperative exporters were determined using reported export pricing data provided by the exporters and importers of the goods. For non-cooperative exporters, the export price was determined based on the import pricing data available from customs' information.

Export sales to Canada involving third parties (i.e. intermediaries) which are related to the exporter

[86] For goods shipped directly to Canada from China, the exporter for SIMA purposes is usually the Chinese producer of the goods (i.e. it is usually the producer which knowingly releases the goods for direct shipment to Canada). However, there are situations where the Chinese producer has a related trading company/sales office (i.e., an intermediary) located

elsewhere in China or in other jurisdictions which is involved in the export sale of goods to Canada. While the goods are shipped directly to Canada from the producer's facilities, frequently, there is an internal sale/transfer price between the Chinese producer and the related intermediary.

[87] Under section 24 of SIMA, export price is generally based on the lesser of the exporter's selling price and the importer's purchase price. For certain cooperating exporters, the sale/transfer price between the producer and the related intermediary was used for purposes of estimating export price at the time of the preliminary determination.

[88] This issue was reconsidered as part of the final stage of the investigation. This included an examination of the relationship between the producer and related intermediary and the manner in which the sales to Canada were made during the POI. The investigation revealed that the producer and intermediary are part of the same corporate group and meet the definition of "associated persons" in SIMA. It was found that the intermediary and producer did not deal with each other at arm's length, and in fact were operating as a single business entity on sales of subject goods to Canada during the POI. That is, the related intermediary was acting to facilitate the producer's sale of goods to the Canadian market and was not acting in its own commercial interest or assuming the commercial risk associated with such sales.

[89] Therefore, for purposes of the final determination, where the cooperating Chinese producers were selling to Canada through a related intermediary and the above-noted conditions were met, the sale/transfer price between the producer and related intermediary was not taken into consideration. Rather, the selling price from the related intermediary to the importer in Canada was used as the exporter's selling price under section 24 of SIMA.

Results of Dumping Investigation

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

[91] For the exporters that did not respond to the RFI, or provided an incomplete or deficient submission, the normal values were determined under a ministerial specification pursuant to section 29 of SIMA based on the export price as determined under section 24, 25 or 29 of SIMA, plus an amount equal to 101% of that export price, which represents the highest margin of dumping found for a cooperative exporter during the investigation, excluding anomalies.

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

[93] In calculating the weighted average margin of dumping, the overall margins of dumping found in respect of each exporter were weighted according to each exporter's volume of certain aluminum extrusions exported to Canada during the Dumping POI.

[94] Based on the preceding, 99.8% of the subject aluminum extrusions from China were dumped by a weighted average margin of dumping of 72.6%, as a percentage of export price.

[95] Under Article 15 of the World Trade Organization (WTO) *Anti-dumping Agreement*, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As China is listed on the Development Assistance Committee (DAC) *List of Official Development Assistance (ODA) Aid Recipients*⁶ 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.

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

Dumping Results by Exporter

[97] Specific margin of dumping details relating to each of the exporters that cooperated in the CBSA's dumping investigation are as follows:

Taishan City Kam Kiu Aluminum Extrusion Co., Ltd. (China)

[98] Taishan City Kam Kiu Aluminum Extrusion Co., Ltd. (Kam Kiu) is a 100% foreign owned, limited liability company incorporated in Hong Kong. Kam Kiu uses primary aluminum to cast its own billets and the special tooled precision dies are made by Kam Kiu to produce aluminum extrusions according to customer requirements. The CBSA conducted on-site verification of Kam Kiu's RFI responses from December 4 to December 12, 2008.

[99] Exports to Canada are sold via Kam Kiu's related trader and are shipped from China to customers in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, on the basis of the exporter's selling price from Kam Kiu's related trader, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

⁶ OECD, Development Assistance Committee List of Aid Recipients – As at 1 January 2006, online:
<http://www.oecd.org/dataoecd/23/34/37954893.pdf>

Margin of Dumping

[100] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Kam Kiu were dumped by a weighted average margin of dumping of 27.8%, expressed as a percentage of export price.

Press Metal International Ltd. (China)

[101] Press Metal International Ltd. (PMI) is a 100% foreign owned company with the parent company located in Malaysia. PMI is an aluminum extruder and has a related raw material supplier of aluminum ingots. The CBSA conducted on-site verification of PMI's RFI responses, from November 24 to November 28, 2008, and its related raw material supplier's responses from December 8 to December 9, 2008.

[102] Exports to Canada are sold and shipped directly to several unrelated importers in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

[103] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by PMI were dumped by a weighted average margin of dumping of 35.2%, expressed as a percentage of export price.

PanAsia Aluminum (China) Limited

[104] PanAsia Aluminum (China) Limited (PanAsia) is a Foreign-Invested Enterprise (FIE) and manufacturer of the subject goods exported to Canada. It produces aluminum extrusions for the domestic and various export markets at its production facility located in Zengcheng City in the Chinese province of Guangdong. The CBSA conducted on-site verification of PanAsia's RFI responses from November 24 to November 28, 2008.

[105] Exports to Canada are sold through an affiliated trading company located in Macau and are shipped directly from China to related subsidiaries and unrelated companies in Canada.

[106] In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices. The results of the reliability test for sales made by PanAsia's affiliated trading company to a related subsidiary in Canada revealed that the section 24 export prices to this related subsidiary were unreliable for SIMA purposes. As a result, for all sales to this related subsidiary, the export prices were determined in accordance with section 25 of SIMA, based on the importer's resale

prices in Canada less all costs incurred in importing and selling the goods, and an amount for profit based on the profit earned by vendors of like goods in Canada.

[107] Export prices for all other sales to Canada were determined pursuant to section 24 of SIMA, on the basis of the exporter's selling price from PanAsia's affiliated trading company, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[108] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by PanAsia were dumped by a weighted average margin of dumping of 31.4%, expressed as a percentage of export price.

Guangdong Weiye Aluminum Factory Co., Ltd. (China)

[109] Guangdong Weiye Aluminum Factory Co., Ltd. (Weiye) is a privately owned company and is a manufacturer of aluminum extrusions and stainless steel products. Weiye develops and manufactures a wide range of aluminum extrusions for various industries (such as construction, electronic, IT, sporting goods). The company purchases 100% of its raw materials from several domestic suppliers. The CBSA conducted on-site verification of Weiye's RFI responses from December 1 to December 5, 2008.

[110] Exports to Canada are sold and shipped directly to multiple unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[111] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Weiye were dumped by a weighted average margin of dumping of 42.4%, expressed as a percentage of export price.

Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (China)

[112] Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (Jianmei) is a privately-owned limited liability company. Jianmei has two production plants that produce different types of aluminum profiles, including thermal break series, curtain wall series, doors and windows series and other profiles. Jianmei purchases aluminum ingots and melts them into aluminum billets. The CBSA conducted on-site verification of Jianmei's RFI responses from December 1 to December 5, 2008.

[113] Exports to Canada are sold by JMA (Hong Kong) Company Limited (JMA(HK)), an associated trading company, and are shipped directly from China to multiple unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price from Jianmei's associated trading company, JMA (HK), adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[114] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Jianmei were dumped by a weighted average margin of dumping of 28.5%, expressed as a percentage of export price.

China Square Industrial Limited (China)

[115] China Square Industrial Limited (China Square) is a limited liability company, and includes a Hong Kong based parent company responsible for export sales, and production facilities in China (Zhaoqing). The company produces a range of aluminum extrusion products.

[116] Exports to Canada of subject goods are shipped directly from China to two unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[117] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. The subject goods exported by China Square were dumped by a weighted average margin of dumping of 1.7%, expressed as a percentage of export price.

Guangya Group (China)

[118] The CBSA received dumping and subsidy RFI responses from the Guangya Group, which is comprised of Guangya Aluminum Industries Co., Ltd. (Guangya), Foshan Guangcheng Aluminum Co., Ltd. (Guangcheng), Guangya Aluminum Industries (Hong Kong) Ltd. (Guangya HK) and Guangcheng Aluminum Industries (U.S.A.) Inc. (Guangcheng US). The Group produces and sells a wide range of aluminum products for architecture and industrial markets in China as well as for export.

[119] During the POI, exports to Canada were produced and shipped from China by Guangya and Guangcheng, and sold through one of the four Guangya Group companies (i.e. Guangya, Guangcheng, Guangya HK, or Guangcheng US) to multiple unrelated companies in Canada.

[120] As such, for the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

[121] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the dumping POI, separately for Guangcheng and Guangya. The results reveal that the subject goods exported to Canada by Guangcheng were dumped by a weighted average margin of dumping of 33.8%, expressed as a percentage of export price. The subject goods exported to Canada by Guangya were dumped by a weighted average margin of dumping of 40.4%, expressed as a percentage of export price.

Hunter Douglas (United States)

[122] The Hunter Douglas group of companies is privately owned, and part of a wider corporate group, Hunter Douglas NV, located in the Netherlands.

[123] The Hunter Douglas group includes three USA subsidiaries, two of which are distributors and exporters of Chinese origin aluminum extrusions to Canada - Hunter Douglas Window Fashions (HDWF) and Hunter Douglas Designer Shades (HDDS).

[124] Hunter Douglas Window Coverings Inc (HDWC), the third party in this Hunter Douglas group, sources subject goods from Chinese manufacturers and paints them. Both HDWF and HDDS then purchase the painted subject goods from HDWC and sell them to USA and Canadian fabricators. The fabricators then use the subject goods in the manufacture of window shades and treatments based on the specifications of their dealer customers.

[125] Both HDDS and HDWF make export sales directly from the USA to two related Canadian importers.

[126] In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices. The results of the reliability test for such sales made by HDDS and HDWF indicate that the section 24 export price was reliable.

[127] Accordingly, for the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[128] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. The subject goods exported by

HDDS were found not to be dumped. The subject goods exported by HDWF were dumped by a weighted average margin of dumping of 2.9%, expressed as a percentage of export price.

Non-Cooperative Exporters - Margin of Dumping

[129] For non-cooperative exporters, import pricing information available from the CBSA's internal Customs Commercial Systems was used for purposes of determining export price. The normal value was determined under a ministerial specification pursuant to section 29 of SIMA, based on the export price as determined under section 24, 25 or 29 of SIMA, plus an amount equal to 101% of that export price, which represents the highest margin of dumping found for a cooperative exporter during the investigation, excluding anomalies.

SUMMARY OF RESULTS – DUMPING

Period of Investigation – July 1, 2007 to June 30, 2008

Country	Dumped Goods as Percentage of Country Imports	Weighted Average Margin of Dumping	Country Imports as Percentage of Total Imports	Dumped Goods as Percentage of Total Imports
China	99.8%	72.6%	43%	43%

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

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

1. Grounds for Initiation and Burden of Proof

[131] The GOC submitted that the complaint fell short of establishing a "reasonable indication" of sufficient evidence of dumping or any causal link to any injury as required under Article 5.2 of the WTO *Anti-Dumping Agreement*.⁷

[132] Furthermore, the GOC submitted that the relevant provisions of SIMA must be construed strictly and that their application should be limited to the terms of the applicable provisions.⁸ As such, the GOC argued that the CBSA must interpret and apply the provisions in section 20 of SIMA in a strict manner, as this section provides an exceptional method for determining normal values.⁹

⁷ Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy), paragraph 169, page 40.

⁸ Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy), paragraph 47, page 7.

⁹ Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy), paragraph 47, page 9.

[133] Chinese exporter PanAsia claimed that the CBSA's interpretation of section 20 was inconsistent with SIMA.

[134] Another Chinese exporter, Kam Kiu, also submitted that the use of section 20 or invocation of Article 15 of China's WTO Accession Protocol does not eliminate the need for a fair comparison, and the CBSA has failed to properly interpret and apply Article 15.¹⁰ The company stated that since section 20 is an exception to the general rules, the burden of proof for invoking the exception is on those parties requesting that section 20 be applied and that the evidence provided in the complaint was not sufficient to meet this burden of proof.¹¹

[135] Chinese exporter Pingguo submitted that under section 20, the CBSA is required to adhere to a two-fold test: first, that domestic prices are substantially determined by the government of that country and second, that there is sufficient reason to believe that domestic prices are not substantially the same as they would be if they were determined in a competitive market.¹²

[136] Furthermore, Pingguo stated that at the preliminary determination, the CBSA conclusions referred to indirect price effects by GOC industrial policies and export restrictions, whereas Pingguo proposed that more substantive analysis is necessary.

[137] The GOC submitted that in order to demonstrate that domestic prices are substantially determined by the GOC, the evidence on the record must establish that the GOC has actively taken steps to determine prices. Consequently, the CBSA's list of indirect factors that are considered as methods a government may determine prices, cannot justify a section 20 finding. The GOC asserted that while certain measures may influence or affect prices, this is not sufficient to meet the "determine" threshold of section 20 of SIMA.¹³

[138] Kam Kiu added that the CBSA cannot properly determine that SIMA section 20 conditions exist on the basis of indirect factors and general government policies.¹⁴

[139] The GOC argued that the ordinary meaning of the words "substantially" and "determine" provide that the CBSA must establish that the GOC "determines or decides to a large extent or to a large degree" the domestic prices of aluminum extrusions in China to meet this threshold under section 20.¹⁵

[140] The GOC also submitted that, in assessing whether or not the domestic prices are not substantially the same as they would be if they were determined in a competitive market, that the CBSA must assess all of the factors that determine prices and "net out" other causal factors that may be driving prices. The GOC submitted that the CBSA did not conduct such an analysis at

¹⁰ Exhibit 567 (NC) – Kam Kiu Case arguments, paragraph 8, page 3.

¹¹ Exhibit 567 (NC) – Kam Kiu Case arguments – paragraph 35, page 10.

¹² Exhibit 572 (NC) – Pingguo Case arguments – paragraphs 11 to 22.

¹³ Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy) – paragraph 60, page 11.

¹⁴ Exhibit 566- Kam Kiu Case arguments – paragraph 81.

¹⁵ Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy) – paragraph 54, page 10.

the preliminary determination and simply noted that prices in China appeared lower than prevailing world prices.¹⁶

[141] The GOC further argued that the CBSA is bound by the fundamental principles of interpretation applicable to taxation laws in Canada to the effect that “any reasonable uncertainty or factual ambiguity resulting from a lack of explicitness in the statute should be resolved in favour of the taxpayer”. The GOC submitted that in the event that there is any ambiguity in section 20 of SIMA, that the interpretation that favours the GOC and the exporters should be adopted.¹⁷

[142] The Complainants contended that section 20 of SIMA is applicable on the facts of the present investigation, indicating that the GOC policies exert sufficient influence on the aluminum extrusion industry, in China, so as to substantially determine prices of like goods and prices are not the same as they would be in a competitive market.¹⁸ The Complainants contended that:

- The GOC manipulates aluminum billet cost, the largest material cost in the production of like goods, by providing access to low cost billets;
- The GOC manipulates domestic prices by changing export taxes and rebates; and
- The GOC controls production inputs and finished like goods through its laws, guidelines and through the influence of industry groups controlled by the GOC.¹⁹

[143] Furthermore, the Complainants responded to the issue of the various interpretations of section 20 of SIMA and cited illustrations of why the Chinese aluminum extrusion industry is not a competitive market.²⁰

[144] In response to definitions proposed by the GOC for section 20 terms such as “substantially” and “determines”, the Complainants contended that the GOC’s own definition of these words, “support the interpretation of section 20 which contemplates that indirect government actions can substantially determine (non-market) pricing.”²¹

[145] Regarding the GOC’s suggestion that the CBSA’s interpretation of SIMA relies on presumptions that “favour the taxpayer”, the Complainants argued that such interpretations are based on a false premise and that SIMA’s purpose is to protect the domestic industry.²² The Complainants asserted that SIMA is “economic legislation” aimed to protect Canadian industry and is thus, not a taxation statute.

¹⁶ Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy) – paragraph 64, page 12.

¹⁷ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 39, page 7.

¹⁸ Exhibit 564 (NC) – Complainants Case Arguments, paragraphs 2-3, page 1.

¹⁹ Exhibit 564 (NC) – Complainants Case Arguments, paragraph 3, page 1.

²⁰ Exhibit 579 (NC) – Complainants Reply Submissions (Dumping and Subsidy), paragraph 3, page 1.

²¹ Exhibit 579 (NC) – Complainants Reply Submissions (Dumping and Subsidy, Paragraph 5, page 1.

²² Exhibit 579 (NC) – Complainants Reply Submissions (Dumping and Subsidy), Paragraph 4, page 1.

CBSA Response

[146] Absent sufficient information to the contrary, the CBSA proceeds in an anti-dumping investigation on the presumption that section 20 of SIMA does not apply to the sector under investigation. This approach follows the CBSA's section 20 policy.

[147] The information before the CBSA at the initiation of the investigation included information contained in the complaint from Canadian industry as well as information obtained through the CBSA's own research. The CBSA's analysis of this evidence and justification for initiating a section 20 inquiry is contained in the Complaint Analysis, which was placed on the CBSA's listing of exhibits for this investigation.²³

[148] At the time of initiation, all known exporters, producers and the GOC were informed of the section 20 inquiry, requested to respond to a Request for Information and invited to provide any relevant information, evidence and arguments.

[149] Once a section 20 inquiry is undertaken, the President may, having regard to the information obtained from the complainant, the government of the country of export, producers, exporters or any other sources of relevant information, form an opinion on the basis of fact and positive evidence that the conditions described under section 20 exist in the sector under investigation.

[150] Regarding the sufficiency of information in the complaint to meet the threshold to initiate a section 20 inquiry, the CBSA notes that its policy with respect to the application of section 20 requires complainants to provide sufficient evidence that the conditions of section 20 exist in the relevant industry sector if they wish to base their price and cost estimates on third country information. In their complaint, the Complainants provided evidence that the section 20 conditions were met. The Complainants further provided normal values estimated on surrogate country costs and estimated costs in China.

[151] In short, the arguments regarding the alleged insufficiency of evidence to initiate a section 20 inquiry do not specifically address or refute any of the CBSA evidence or analysis contained in its Complaint Analysis.

[152] As in previous section 20 inquiries, the CBSA references a list of direct and indirect factors that governments may use to substantially determine prices. The CBSA's use of indirect factors is well established and the CBSA is of the opinion that such factors can result in a government's substantial determination of prices. The CBSA considered the cumulative effect that the GOC's regulatory, tax and other measures have exerted on the Chinese aluminum extrusions sector.

[153] The information on the record discloses both the scope and nature of the GOC measures in the aluminum extrusion sector and the related impact of these measures on pricing. The CBSA is satisfied that the evidence on the administrative record for this investigation is reliable and credible. The evidence is sufficient for the President to form the opinion that the GOC is

²³ Exhibit 42 (PRO) – CBSA Complaint Analysis, August 13, 2008.

substantially determining domestic prices of aluminum extrusions in China and that there is sufficient reason to believe that these prices are not the same as they would be if they were determined in a competitive market.

2. Prices for Aluminum Extrusions

[154] The GOC submitted that the CBSA failed to accord proper weight to the “ferociously competitive and fragmented nature of the Chinese aluminum extrusions industry and instead misdirected its analysis mainly to the state of the upstream aluminum industry in general.” The GOC submitted that the primary focus of the section 20 inquiry must be specific to the aluminum extrusions industry, not generalized to the raw material production industry.²⁴

[155] PanAsia also submitted that the CBSA should restrict its sector review to the manufacture, production and sale of “like products.” PanAsia further contended that the process used to determine whether Chinese industry sectors are non-market violates the procedure for determining market economy status agreed upon among WTO members in China’s WTO Accession Protocol.²⁵ PanAsia claimed that by relying on this flawed application, the Government of Canada is acting in violation of its WTO obligation.²⁶

[156] The GOC submitted that the CBSA failed to conduct a “pass-through” analysis in assessing whether or not the alleged price effects on aluminum have indeed passed-through to any downstream users of the raw materials.

[157] The GOC argued that the same fundamental principles for determining whether or not an upstream subsidy is passed-through must be applied. In this regard, the GOC noted that the CBSA has failed to conduct any analysis to show that any benefit from any program in China relating to aluminum has contributed to or benefited producers of aluminum extrusions or had a material impact on aluminum prices paid by aluminum extrusions producers.²⁷

[158] The GOC further stated that the CBSA completely failed to note that approximately half of the aluminum consumed by the aluminum extrusions sector is imported and not produced in China and that imports of aluminum into China rose during the POI, which would not be possible if market prices were artificially suppressed by government interference.²⁸

CBSA Response

[159] Given that the cost of raw aluminum constitutes a high percentage of the cost of aluminum extrusions, the CBSA’s section 20 analysis appropriately considered the impact of the GOC’s involvement in the upstream industry. The evidence on the record and the CBSA’s analysis demonstrates that GOC actions led to the price of aluminum in China being substantially lower than the prices found in the rest of the world during the POI, for what is essentially a commodity product. In both the preliminary and final determinations, the CBSA has

²⁴ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraphs 79 - 80, pages 15 - 16.

²⁵ Exhibit 569 (NC) – Pan Asia Case Arguments, paragraph 25, page 8.

²⁶ Exhibit 569 (NC) – PanAsia Case Arguments, paragraph 25, page 8.

²⁷ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 92, page 19.

²⁸ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 136D, page 31.

demonstrated that the prices paid by cooperative exporters for aluminum (i.e. downstream users) are consistent with this conclusion.

[160] Regarding the GOC's assertion that "half of the aluminum consumed by the aluminum extrusions sector is imported and not produced in China," the CBSA notes that amongst the eight cooperative Chinese exporters, only one exporter imported marginal amounts of aluminum during the entire dumping POI; the rest relied entirely upon domestically produced aluminum. The CBSA further notes that the GOC's support for their assertion refers to the fact that aluminum producers in China import half of their alumina requirements, not that aluminum extruders import half of their aluminum.

[161] However, evidence on the record regarding alumina in China indicates that imports of alumina have been decreasing and amounted to approximately 20% of Chinese consumption in 2007.²⁹ The CBSA did not analyze the impact GOC measures would have on the price of alumina in China since alumina is not a direct raw material for aluminum extrusions and, to the extent that the price of alumina is affected by GOC policies, this effect would be reflected in the price of aluminum in China which was already included in the analysis.

[162] Furthermore, the CBSA does not disagree with the GOC's statement that extensive import penetration and rising import penetration for aluminum would not be possible in the POI if the Chinese market prices were artificially suppressed by government influence. Indeed, the evidence on the record demonstrates that imports of aluminum shrank over 60% from 2006 to 2007, and further demonstrates that imports of aluminum comprised less than 1% of China's domestic consumption of primary aluminum in 2007.³⁰ These facts demonstrate that aluminum import penetration was not possible, and was even significantly eroding during the POI, given the artificially suppressed government price of aluminum in China. These facts also support the analysis that the low price of aluminum in China has "passed through" to aluminum extruders in that virtually no imported aluminum was available in China during the POI.

[163] The CBSA's policy regarding the application of section 20 provides that the President may, having regards to the evidence on the record, form an opinion that the conditions described under section 20 exist in the sector under investigation and reflects Canada's implementation of its rights and obligations under the WTO.

3. Assessment of GOC Policies

[164] The GOC submitted that the CBSA has misconstrued the nature of the GOC "policies" it has examined, and reiterated its position that the *Industrial Development Policy for the Aluminum Industry* and the *Special development Plan for Aluminum Industry Development* have not been formally promulgated by the State Council and are not in effect.

[165] The GOC further argued that, even if these policies had been formally adopted, they are at most "aspirational expressions of the GOC's hopes for an industry".³¹ The GOC further

²⁹ Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 347.

³⁰ Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 351.

³¹ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 98, page 20.

argued that the CBSA failed to properly consider the stated objective and intent of these industrial policies, in that they are directed towards concerns such as the environmental impact of inefficient aluminum smelters in China.

[166] In response to the GOC, the Complainants contended that China remains a country where the central government is an authority whose mere “aspirations” have more effect than actively enforced laws in other countries.

[167] The GOC also contested the CBSA’s listed restrictions, minimum standards and thresholds for the aluminum industry, which the CBSA noted as being derived from GOC laws and policies. The GOC argued that these standards are not legally mandated and enforceable, and further noted that they all relate to the aluminum smelting industry and that the CBSA has not shown any causal link to any measurable price effects in the aluminum extrusions industry.

[168] The GOC further argued that policies that restrict investment and new production capacities should serve to limit supply and have a price increasing effect, if any. The GOC also noted that their industrial policies are “market neutral” (i.e. they will not have any impact on market prices)³² and that they had “allowed increases in costs in the aluminum industry. The intended effect was to slow down overproduction”. They further noted that these measures would result in higher costs of production, which would counterbalance the effect of restricting exports.³³

CBSA Response

[169] In making its preliminary determination, the CBSA presented the facts surrounding its request for the *Industrial Development Policy for the Aluminum Industry* and the *Special Development Plan for Aluminum Industry Development*. The CBSA also presented the GOC’s explanations for refusing to provide these two documents. At that time, the CBSA explained that it believed the documents existed and further explained why the documents were requested. The CBSA did not attempt to speculate as to the contents of these two documents that were never provided, nor did the CBSA ever infer that such documents resulted in enforceable measures.³⁴

[170] For the purposes of the preliminary determination, the CBSA did rely upon numerous GOC circulars, regulations and other measures, provided by the GOC in its section 20 RFI responses, that demonstrate the restrictions, minimum standards and thresholds for the aluminum and aluminum extrusions industries. However, those items did not include the *Industrial Development Policy for the Aluminum Industry* and the *Special Development Plan for Aluminum Industry Development*.³⁵

[171] Regarding the GOC’s statement that its industrial policies are “at most aspirational expressions of the GOC’s hopes for an industry”, the CBSA notes that many of the GOC

³² Exhibit 332 (NC) - GOC Response to Supplemental Section 20 RFI #1, page 4.

³³ Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 3.

³⁴ Exhibit 444 (PRO) - Memorandum to file: Section 20 Inquiry of the aluminum extrusions sector in China - Preliminary Determination.

³⁵ Exhibit 444 (PRO) - Memorandum to file: Section 20 Inquiry of the aluminum extrusions sector in China - Preliminary Determination.

documents obtained by the CBSA contain very strict wording, including harsh penalties for companies that fail to conform to the written objectives.

[172] For example, in the *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*, which respects aluminum enterprises that have been using “backward production technology” or are considered “illegal” production facilities according to the industry policy and related regulations, it states rather directly that the government will get the companies “out of the market through stopping supplying power and water.”³⁶ The CBSA is of the opinion that this type of language clearly establishes that the GOC’s industrial policies and regulations are much more than aspirational expressions of hope for an industry.

[173] Regarding the market neutrality of GOC industrial policies, the GOC themselves noted that: “macro-economic adjustment policies have also had some influence on the general level of prices”.³⁷ As previously noted, they further stated that they have “allowed” cost increases within the industry and, without providing any analysis, stated that these cost increases would fully offset the effect of export restrictions. The GOC, in their own statements and arguments, are therefore acknowledging the effects that their industrial policies and export restrictions can have on determining prices.

[174] The CBSA has considered the cumulative effect that the GOC’s measures have exerted on the aluminum extrusions sector in China as part of its “Summary of Findings - Section 20” analysis in **Appendix 3** to this Statement of Reasons.

4. Prices of Aluminum in China and on the London Metal Exchange (LME)

[175] The GOC noted that in its preliminary section 20 determination, the CBSA has assumed a 75% aluminum raw material cost on the overall cost of producing aluminum extrusions. The GOC contended this is a “significant overstatement” of the actual proportion, which the GOC understands is closer to 67%. The GOC noted that certain responding producers will be making detailed arguments in this regard and that the CBSA must fully consider this evidence and related arguments in making its final determination.³⁸

[176] The GOC submitted that the CBSA’s section 20 determination based on the factual assumption that prevailing aluminum prices in China are consistently lower than LME prices is wrong and not supported by the evidence on the record. The GOC states that a comparison between the historical data for the monthly prices of aluminum on the Shanghai Nonferrous Metals Market and the LME during 2007 and the first half of 2008 shows that there is an insignificant price divergence of 3.67% on average. The same comparison with historical spot price information from the Ling Tong Metal (LTM) shows an average price divergence of 2.6%. The GOC argued that these figures demonstrate that the spot prices for aluminum in the Chinese markets closely follow LME and world prices.³⁹

³⁶ Exhibit 266 (NC) - GOC Response to the Government’s RFI (Section 20), page 836.

³⁷ Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 6.

³⁸ Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 135, page 30.

³⁹ Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraphs 129 – 134, pages 28 - 29.

[177] The GOC argued that, in comparing the LME and Shanghai Futures Exchange (SHFE) prices of aluminum, the CBSA only took into account the alleged price differences without considering the similarities in fluctuations, the influence of the LME over the SHFE, and the difference in the size of both markets. These factors should have been examined and considered before concluding that there is a substantial price difference between aluminum in the “world market” and the SHFE.⁴⁰

[178] Pingguo stated that it does not purchase aluminum ingots but molten aluminum, and that the SHFE price for aluminum is sometimes higher than the LME. Pingguo further added that it quotes the LTM price, which is a regional metal market exchange and is generally higher than the Shanghai Futures Exchange price.⁴¹

[179] Pingguo contended that China’s pricing in the aluminum sector is a function of supply and demand forces and China’s aluminum ingot market prices were actually higher than the LME for half of the POI. Pingguo also submitted that global competition necessarily entails there be variations from one market to the other.

[180] The GOC further submitted that the CBSA failed to consider any local premiums for delivery, or the effects of long term supply contracts for aluminum extrusion producers, both of which the CBSA has information on the record to consider.⁴²

[181] The GOC argued that even if prices in China were materially lower, that the CBSA cannot simply assume that it is a result of government intervention. The GOC noted that the CBSA must take into consideration all relevant factors that may drive prices in the Chinese market, but the preliminary determination does not disclose “even a perfunctory attempt at such rigour.”⁴³

[182] In its reply submissions, PanAsia stated that there is absolutely no evidence of GOC involvement in any raw material pricing in the aluminum sector. Furthermore, PanAsia, like many other Chinese extruders, does not buy billets but ingots, which it melts into billets. PanAsia also submitted that the CBSA should acknowledge the difference in the methods of production to establish a fair comparison.

[183] With respect to the Complainants’ arguments that there is manipulation of prices through taxation policies, Pingguo submitted that this was no different than from taxation policies in Canada.⁴⁴ Pingguo submitted that the reasoning in support of the President opinion established at the preliminary determination is weak.

[184] As for difference between prices on the LME, the SHFE and the LTM, the Complainants reiterated that the central fact is that the GOC substantially determined pricing of aluminum extrusions in the POI. To this end, the largest part of the reference price (the SHFE price of the ingot), is not the same as in a competitive market (i.e. the LME).

⁴⁰ Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 136C, page 31.

⁴¹ Exhibit 578 (NC) – Pingguo Reply Submissions, paragraphs 6 - 8, page 2.

⁴² Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraphs 132 - 133, page 29.

⁴³ Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 134, page 29.

⁴⁴ Exhibit 578 (NC) – Pingguo Reply Submissions – paragraphs 3 - 15, pages 1 - 4.

[185] The Complainants alleged that purchasing on the exchange where materials are artificially cheaper, due to the GOC's residency constraints on the SHFE, which is enjoyed exclusively by Chinese producers, allows them to sell goods at below fair market prices. The Complainants indicated that this very fact proves that the SHFE prices are artificially and substantially determined by the GOC and are not the same as in a competitive market.⁴⁵

CBSA Response

[186] In response to the GOC's representation, the CDSA did not assume a 75% raw material cost of aluminum in making its preliminary determination. As stated in the preliminary determination Statement of Reasons, this number is based on the CDSA's review of the cooperative exporters' cost of production information for the dumping POI provided in their responses to the dumping RFI. The CDSA adjusted this analysis for the final determination to reflect cost revisions submitted during the investigation. The CDSA notes that no exporter provided representations stating that the CDSA's figure used at the preliminary determination was incorrect.

[187] The CDSA further notes the GOC assertion that the CDSA overstated the cost of aluminum by 8% (75% of cost versus 67% of cost). The GOC characterized this 8% difference as a "significant overstatement". In this regard, the CDSA would note that the President's opinion that section 20 conditions exist in the Chinese aluminum extrusions sector is based on evidence that clearly shows that the domestic prices of aluminum extrusions in China were lower than in other competitive markets by 16% to 28% during the dumping POI.

[188] The GOC argued that the prices for aluminum on various market exchanges in China closely tracked the LME (world price). However, the Chinese aluminum prices in these Chinese market exchanges are reported inclusive of the 17% Chinese VAT, whereas the LME prices do not include VAT. The GOC did not remove the 17% Chinese VAT included in the Chinese aluminum prices in its comparative analysis. The CDSA's comparison removed this Chinese tax to bring the quoted Chinese aluminum prices to an appropriate comparative basis with the LME quoted prices. With this adjustment, it became clear that the Chinese quoted prices were lower than the LME quoted prices.

[189] The CDSA believes its analysis of LME aluminum prices and prices in China, as evidenced through the SHFE, appropriately considers differences between the two markets. Given the alleged similarities in fluctuations, the CDSA finds the divergence of SHFE prices from LME prices in response to GOC tax changes to be compelling evidence of the GOC's determination of prices through tax changes.

[190] In regards to making proper price comparisons, it should be noted that companies purchasing aluminum from aluminum producers quoting LME prices would also pay local premiums on their purchases. This is evidenced by information contained in both the complaint and in information from a Chinese extruder with a supply agreement for importations of aluminum from an international supplier.

⁴⁵ Exhibit 579 (NC) - Complainants Reply Submissions, paragraph 13, page 6.

[191] The CBSA's analysis of the prevailing price of aluminum in China for the preliminary and final determinations demonstrates that the comparably low price of aluminum in China results from GOC actions. Again, the GOC has not indicated what evidence on the record disputes this analysis.

[192] The CBSA is satisfied that, based on the information collected during the course of the investigation including that obtained and verified during the final stage of the dumping investigation, the GOC is exerting significant influence on the aluminum extrusion sector and related pricing practices, resulting in substantially different domestic prices than would otherwise exist were it a competitive market.

[193] Regarding arguments concerning the interpretation of the section 20 provisions of SIMA and the evidentiary threshold, the CBSA believes that there is evidence on the record that is reliable and credible, has been properly interpreted, and is sufficient to form an opinion that section 20 conditions apply in the aluminum extrusion sector in China. The information on the record discloses both the scope and nature of the GOC measures in the aluminum extrusion sector and the related impact of these measures on pricing. See **Appendix 3** "Summary of Findings - Section 20" for details and analysis.

[194] The CBSA maintains that the information on the record supports the position that the GOC has exerted significant influence on the Chinese aluminum extrusions sector.

5. Normal Value and Surrogate Methodology

[195] PanAsia and Kam Kiu submitted that the CBSA had not been transparent in its analysis and conclusions regarding the application of section 20(1)(c) and 20(1)(d) of SIMA. PanAsia further contended that the CBSA incorrectly chose not to use its privileges of extending the preliminary phase of the investigation by an additional 45 days.

[196] PanAsia claimed that CBSA investigations continue to rely on methodologies that do not result in surrogate values and are thus not in good faith in adhering to the international agreements. Kam Kiu and Pingguo offered similar comments on this issue.

[197] Kam Kiu also indicated that the surrogate methodology employed by the CBSA at the preliminary determination was unfair and inaccurate. Kam Kiu alleged that the CBSA did not have a sound basis for ignoring the alternative methodology in 20(1)(d).

[198] Pingguo referred to the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 – Annex II*, where a hierarchy of information to be used in the course of an anti-dumping investigation is listed. Pingguo referenced that the preferred information is that which is actually provided by the producers and exporters of the subject goods, along with that of the government in the country of examination.

[199] Pingguo argued that such submitted information cannot be rejected or disregarded without a thorough explanation by the investigating authority before information from a secondary source is used. Pingguo argued that the information from a secondary source could

only be used in circumstances where the interested party has failed to cooperate.⁴⁶ Pingguo also submitted that the CBSA failed to make adjustments to ensure a fair comparison between export price and normal value.⁴⁷

[200] PanAsia further contended that section 20 refers to prices and costs in countries other than Canada. The company asserted that there is no reference in section 20 to using Canadian costs even if adjusted per the suggestion of the Complainants.

[201] PanAsia submitted that a determination of normal values under Section 29 of SIMA, which is based on the facts available, would allow the CBSA to use Chinese processing costs and General, Selling and Administrative (GSA) expenses.

[202] PanAsia and Kam Kiu also submitted that the use of the section 20 methodology does not preclude the use of each cooperative exporter's own processing costs and GSA expenses in calculating normal values. Kam Kiu submitted that the CBSA rejected this data in favour of an alternative methodology, based on the self-serving and unverified filings of petitioners, which by its nature, is arbitrary and by definition punitive.⁴⁸

[203] With respect to the section 20 normal values, Kam Kiu submitted that their normal values are far closer to and in fact above Canadian prices and have no relationship to prices in India, the purported surrogate information base. Kam Kiu alleged that the CBSA did not reveal its precise methodology with respect to normal value calculations in any reliable way.⁴⁹

[204] Pingguo further submitted that the cost of production portion of the normal value must be reduced for further finished aluminum extrusions. Pingguo submitted that it purchases molten aluminum not aluminum ingots and deductions to the normal value are necessary to account for these differences.⁵⁰

[205] Pingguo also claimed that the CBSA established normal values based on only the alloy and surface finish of the aluminum extrusions and as a result, ignored the fact that there are standard shapes of aluminum extrusions and also very complex aluminum extrusions. Pingguo argued that this flaw has led to a significant overstatement of the normal values calculated by the CBSA and high margins of dumping.

[206] The GOC further concluded that the CBSA must assign an "all others" rate to all other exporters based on the weighted average margin of dumping found for the responding exporters.⁵¹

⁴⁶ Exhibit 572 (NC) – Pingguo Case arguments, paragraph 29, page 10.

⁴⁷ Exhibit 572 (NC) – Pingguo Case arguments, paragraph 37, page 12.

⁴⁸ Exhibit 567 (NC) – Kam Kiu Case arguments by Kam Kiu, paragraph 179, page 49.

⁴⁹ Exhibit 567 (NC) – Kam Kiu Case Arguments, paragraph 45, page 13.

⁵⁰ Exhibit 572 (NC) - Pingguo Case Arguments, paragraph 39, page 13.

⁵¹ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 239, page 59.

CBSA Response

[207] The CBSA requested, but did not receive sufficient information to estimate or determine normal values pursuant to paragraphs 20(1)(c) and 20(1)(d) of SIMA. All of the information provided to the CBSA was placed on the administrative record and the public listing of exhibits. This information was accessible to all interested parties who have disclosure privileges at any time during the proceedings. The Statement of Reasons issued at the preliminary determination explained that sufficient information had not been received to apply paragraph 20(1)(c), and explained how normal values were estimated for purposes of the preliminary determination. This Statement of Reasons explains that sufficient information was not received to apply either paragraph 20(1)(c) or paragraph 20(1)(d), and explains how normal values were determined for purposes of the final determination. It is evident from the information on the record that the CBSA did not have available sufficient pricing, costing or import data relating to a surrogate country to possibly apply the said provisions of section 20. In the absence of surrogate country information, normal values were determined on the basis of the best information available.

[208] The CBSA has fully met its investigative obligations under section 20 by contacting producers in various surrogate countries and also in requesting information from known importers on their purchases of like goods from countries other than China.

[209] PanAsia contended that the CBSA incorrectly chose not to extend the preliminary phase of the investigation by up to 45 days. The CBSA notes that subsection 39(1) of SIMA permits the President to extend the preliminary investigation under certain circumstances which make it unusually difficult for the decision to be made within the prescribed timeframes. In this investigation and in accordance with the provisions in SIMA, the President was not of the opinion that an extension was warranted.

[210] The President has rendered the opinion that domestic prices in the aluminum extrusion sector are substantially determined by the GOC and that there is sufficient reason to believe that Chinese domestic prices of aluminum extrusions are not substantially the same as they would be in a competitive market. This opinion precludes the CBSA from using sales and associated costing data from the respective cooperating exporters.

[211] For the purposes of the final determination, in the absence of surrogate country information, normal values were determined under a ministerial specification under section 29 of SIMA, based on the best information available to the CBSA, to approximate surrogate normal values. Given this determination, the arguments submitted, which do not favour this approach, fail to provide an acceptable alternative to establish normal values.

[212] In respect of considerations for ‘standard’ versus ‘custom’ shapes, while the CBSA did not establish separate normal values for these two groups, the CBSA did provide information to the Tribunal relating to the margins of dumping for the cooperative exporters for standard shapes and custom shapes as per the definitions provided by the Tribunal on December 18, 2008.

[213] Lastly, the CBSA notes that the GOC did not provide any arguments regarding why the CBSA should use a weighted average margin of dumping for the “all others” rate. The CBSA’s treatment of non-cooperative exporters in this dumping investigation is consistent with its past

practices in this regard. The GOC has not explained why the CBSA should deviate from this established practice.

6. Import Duties, VAT Rebates and Export Taxes

[214] The GOC submitted that there is no evidence to support the CBSA's assertion that the domestic prices of aluminum extrusions in China are substantially determined by the manipulation of VAT rebates. The GOC argued that the CBSA's reasoning in arriving at these conclusions is "riddled with unsubstantiated assumptions," and that the CBSA has failed to demonstrate that movements in domestic prices were not caused by other normal market factors.⁵²

[215] The GOC also asserted that a section 20 determination must be premised on active price determination by a government, and that it is not sufficient to rely upon the fact that a government may have implemented general measures that have some permanent or temporary price suppressive or increasing effect.

[216] The GOC argued that the CBSA has confused the two distinct concepts of "influence" and "determine", and that the simple "effects" of government regulations aimed at environmental or other legitimate areas of government regulation cannot be interpreted to meet the high thresholds required by the wording of section 20 of SIMA ("substantially" and "determine"). They concluded that the CBSA has erred in equating influence or effect with price determination, contrary to the letter and spirit of section 20 of SIMA.⁵³

[217] The GOC further submitted that if the CBSA insists on assessing such indirect factors that it must consider the net effect of all such measures, not just those the CBSA assumes may have driven prices down in China. The GOC noted that the preliminary determination disclosed no such analysis.⁵⁴

CBSA Response

[218] The CBSA analyzed information on the record concerning export volumes of goods affected by the removal of VAT rebates and export taxes. This evidence demonstrates that, immediately following the GOC's tax changes to restrict exports, export volumes of the affected goods plunged dramatically.

[219] The CBSA's analysis at the preliminary determination also demonstrated that the reduction of VAT rebates and imposition of export taxes on aluminum coincided with a significant divergence in SHFE and LME prices. The CBSA is satisfied that this presents reasonable evidence that the reduction of VAT rebates and imposition of export taxes resulted in a reduction in export volumes and corresponding reduction in domestic prices as domestic supply increased.

⁵² Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 114, pages 24 and 25.

⁵³ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 123, page 27.

⁵⁴ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 126, page 28.

[220] The CBSA notes that the GOC has failed to identify information on the record that would provide an alternative explanation as to how the prices of aluminum, a world wide traded commodity product, could be significantly lower in China than the rest of the world. Instead, the GOC supplied other spot price information and conducted its own comparison to show that prevailing prices of aluminum in China are only about 3% below prices on the LME. However, the GOC's analysis did not remove the 17% VAT that is included in the reported spot price data. To make the data comparable to LME quoted prices, the 17% Chinese VAT should be removed.

7. Onsite Verification Meetings

[221] Pingguo submitted that variations do occur between the exporter's official invoices and the commercial invoices issued to customers. Pingguo submitted that while invoices are generally identical in terms of amount and value, certain variations could arise.⁵⁵ Pingguo submitted that variations do not diminish the reliability and accuracy of the information provided to the CBSA in respect of export sales to Canada for the purposes of cooperating in this investigation.⁵⁶

CBSA Response

[222] Issues with respect to the reliability and accuracy of information submitted to the CBSA by Pingguo arose in the course of the verification. For example, Pingguo stated that it was not in a position to reconcile its domestic sales database provided to the CBSA with its financial information.⁵⁷

[223] The reconciliation of domestic and export sales to an enterprise's financial data is a key component of the CBSA's verification and is material to the CBSA's decision whether or not normal values and export prices can be established based on the exporter's information.

[224] As indicated on the CBSA's administrative record, including the assembled verification exhibits,⁵⁸ there were several attempts by Pingguo to provide revised export sales to Canada.

[225] On December 2, 2008, during the company's last attempt to reconcile the data and provide explanations, Pingguo terminated the verification with the CBSA.

[226] On December 24, 2008, Pingguo provided additional information concerning the relevant regulatory provisions under Chinese law concerning export invoices, tax rebate exemptions and enterprise accounting.⁵⁹

[227] However, while Pingguo provided the legislation to the CBSA, it did not make further submissions or provide complete details of its own information concerning these variances, and all other variances, along with the necessary explanations and supporting documentation. As a

⁵⁵ Exhibit 572 (NC) – Pingguo Case Arguments, paragraph 51, page 18.

⁵⁶ Exhibit 572 (NC) – Pingguo Case Arguments, paragraph 53, page 18.

⁵⁷ Exhibit 498 (NC) – Pingguo Verification Exhibit 32, "Representations from PAA Regarding Domestic Sales".

⁵⁸ Exhibit 498 (NC) – Pingguo Verification Exhibit 32, "Representations from PAA Regarding Domestic Sales".

⁵⁹ Exhibit 510 (NC) – Supplemental Information from Pingguo, December 24, 2008.

result, Pingguo's information was deemed to be deficient and could not be used for the purposes of the final determinations.

8. Measures by Investigating Authorities of a Country Other Than Canada

[228] In its representations, Jianmei stated that in South Africa's 2007 anti-dumping investigation on aluminum bars, rods and profiles originating in or exported from China, Jianmei participated and was assessed a dumping rate of zero at the final determination.⁶⁰

CBSA Response

[229] The CBSA's dumping investigation on certain aluminum extrusions is independent of the investigation initiated by South Africa. The determination in that investigation is not relevant to this process.

9. Other Factors

[230] The GOC submitted that the CBSA failed to take into account or to give appropriate weight to other important factors that confirm that the aluminum extrusions industry in China is highly competitive and market driven.

[231] The GOC noted that the CBSA merely mentioned the low market concentration of the aluminum extrusions industry in China (460 above-scale producers), but did not provide reasons why it did not consider this any further in its analysis. The GOC further noted that the CBSA mentions the low levels of state-ownership amongst aluminum extrusions producers in China but ignored this evidence in its analysis.⁶¹

[232] Pingguo submitted that there is a basic flaw in the product definition in that the CBSA's subject goods definition describes a process and not a product.⁶²

[233] Pingguo also submitted that the multiple exchange rate calculations from US currency to the Chinese Renminbi to Canadian currency in the calculation of export prices has erroneously decreased the export price resulting in an inflated margin of dumping.⁶³

[234] PanAsia and Kam Kiu submitted that, as has been accepted in previous CBSA investigations, the proper point in the transaction chain to determine export prices pursuant to section 24 of SIMA is the sales between the company's trading arm and the customers in Canada. PanAsia and Kam Kiu objected to a determination based on the transfer price between the manufacturer in China and trader located in another country (i.e. Macau, Hong Kong).

[235] The Complainants also replied to issues raised in regards to the differences between the LME versus SHFE and LTM prices, the pass-through analysis, the nature of the GOC policies

⁶⁰ Exhibit 188 (NC) – Response to RFI by Jianmei, question A12, page 7.

⁶¹ Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 136A, page 30.

⁶² Exhibit 572 (NC) – Case arguments from Pingguo, paragraphs 4 – 10, pages 1 - 3.

⁶³ Exhibit 572 (NC) – Case arguments by Pingguo – paragraph 42, page 14.

and guidelines as well as on state-owned aluminum companies.⁶⁴ The Complainants concluded that the evidence supported the appropriateness of a section 20 determination.

CBSA Response

[236] The CBSA notes that the information concerning the Chinese aluminum extrusions industry make-up, in terms of low market concentration and low state-ownership, was included, analysed and given appropriate weight in its analysis for both the preliminary and final determinations.

[237] Pingguo's allegation that the CBSA's product definition is flawed on the basis that it defines a process and not a product is unfounded. The CBSA's product definition clearly defines the parameters of the goods under investigation. Any description of the extrusion process that coincides with or follows that definition, as with other product information, is meant to help clarify the nature of the product, so as to best ensure that all interested parties are well informed as to the parameters of the investigation.

[238] With respect to the exchange rates, the nature of export trade is that there are sales made in different currencies. The exchange rates applied by the CBSA were the daily exchange rates as posted by the Bank at Canada on the date of sale of the goods as per subsection 44(1) of the *Special Import Measures Regulations*.

[239] The CBSA recognizes that PanAsia China and PanAsia Macau, although they are set up as two distinct companies, are owned by the same conglomerate and operate as one business entity for the purposes of exporting the subject aluminum extrusions to Canada. As a result, the CBSA recognized the transaction price between PanAsia Macau and the customers in Canada in establishing export prices under section 24 of SIMA for purposes of the final determinations.

SUBSIDY INVESTIGATION

[240] 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.

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

- (a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- (b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;

⁶⁴ Exhibit 579 (NC) - Reply Submissions (Dumping and Subsidy) from Complainants, paragraphs 8-21, pages 4 – 8.

- (c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
- (d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

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

[243] 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.

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

Investigation process

[245] Prior to the initiation of the investigation, the Complainants submitted documents alleging that the producers and exporters of aluminum extrusions in China benefited from actionable subsidies provided by the GOC.

[246] Financial contributions 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.

[247] At initiation, the CBSA identified 54 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/Services from State-owned Enterprises.

[248] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. This document is available through the CBSA website at the following address:

<http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-de-eng.pdf>

[249] In conducting its investigation, the CBSA sent subsidy RFIs to identified potential exporters located in China and to the GOC. Under SIMA, the amount of subsidy is based on the benefits conferred by all levels of a foreign government, to any party engaged in the production, manufacture, growth, processing, purchase, distribution, transportation sale, export or import of the goods. Similarly, the determination of the amount of subsidy normally requires complete information from both the exporters of the subject goods and the government of the country of export. Although some of the exporters involved in this investigation provided the subsidy information that was requested from them, the GOC did not.

[250] Specifically, four of the six Chinese exporters that were verified on-site fully cooperated with the CBSA during the subsidy verifications. In addition, three other Chinese exporters, which submitted late subsidy responses, were verified by desk audit during the final stage of the investigation and their subsidy information is also considered complete for purposes of the final determination.

[251] Regarding the GOC, its original subsidy information was determined to be incomplete. The GOC was contacted prior to the preliminary determination and advised that its subsidy submission had been reviewed, was found to be incomplete and would not be used for purposes of the subsidy investigation. At the same time, the GOC was informed that if it subsequently submitted a complete response to the RFI, the CBSA would endeavour to use this information for the investigation provided that it was provided in sufficient time for the CBSA to analyze and verify before the closing of the record on December 31, 2008.

[252] On November 28, 2008, the GOC provided additional information relating to its subsidy submission. On December 31, 2008, after careful consideration of many factors, the CBSA notified the GOC that their information was not submitted within a reasonable amount of time, and consequently would not be used by the CBSA for purposes of the investigation.

[253] The following considerations, amongst others, were salient in considering whether the supplemental information from the GOC was submitted within a reasonable period of time:

- the CBSA made efforts to ensure that the GOC received the RFI as soon as possible, by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated, August 18, 2008;

- the fact that a one week extension had already been provided to the GOC for purposes of providing a response to the RFI, extending the original deadline of September 24, 2008, to October 1, 2008;
- the length of time by which the GOC missed the original deadline date for providing its subsidy RFI response. The supplemental information was filed on November 28, 2008, a full eight weeks past the October 1 deadline;
- there was insufficient time for the CBSA to verify the large quantity and complex nature of information submitted, given that the additional subsidy information was filed so late in the investigation;
- the late subsidy filing precluded the CBSA from planning and scheduling an on-site verification with the GOC, particularly considering that on-site verifications were already scheduled and underway with Chinese exporters at the time the supplemental information was submitted to the CBSA;
- the CBSA is bound by tight legislative and administrative timeframes to conduct its investigations, and to reach the final determination; and
- that using the information would likely compromise the orderly conduct of the investigation and prejudice the interests of other parties to the investigation.

In addition, the CBSA's review of the supplemental information submitted by the GOC still revealed deficiencies in the subsidy response.

[254] As a result, the information submitted by the GOC in response to the subsidy RFI was not used for purposes of the final determination. Notwithstanding that the GOC's subsidy information was not used, the CBSA, in recognition of the amount of cooperation and the volume of information that has been provided by the cooperative exporters, has determined individual amounts of subsidy under ministerial specification for the seven cooperative Chinese exporters.

Results of the Subsidy Investigation

[255] For the purposes of the final determination, the CBSA determined specific amounts of subsidy for each of the seven cooperative exporters on the basis of the program(s) that the exporter had utilized during the Subsidy POI.

[256] In summary, 56 potential subsidy programs were investigated and 15 of the potential subsidy programs were determined to have conferred benefits to the cooperative exporters. The information received from the cooperative exporters indicates that they received benefits under one or more of the following programs:

- Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in Economic and Technological Development Zones
- Research & Development (R&D) Assistance Grant
- Superstar Enterprise Grant
- Matching Funds for International Market Development for SMEs
- One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

- Export Brand Development Fund
- Preferential Tax Policies for Foreign Invested Enterprises – Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years
- Preferential Tax Policies for Foreign-Invested Export Enterprises
- Local Income Tax Exemption and/or Reduction
- Exemption of Tariff and Import VAT for Imported Technologies and Equipment
- Patent Award of Guangdong Province⁶⁵
- Training Program for Rural Surplus Labor Force Transfer Employment⁶⁶
- Reduction in Land Use Fees
- Provincial Scientific Development Plan Fund
- Primary aluminum Provided by Government at Less than Fair Market Value

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

[258] For purposes of the final determination, the amounts of subsidy for the seven cooperative Chinese exporters range from 2.59 Renminbi per kilogram to 3.88 Renminbi per kilogram, or from 8% to 16% expressed as a percentage of export price. The resultant amounts of subsidy for each of the cooperative exporters are provided in **Appendix 1**.

[259] For the non-cooperative exporters, the amount of subsidy has been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:

- 1) the highest amount of subsidy (Renminbi per kilogram) found for each of the 15 subsidy programs for the seven cooperative exporters located in China; plus
- 2) the simple average of these highest amounts in 1) applied to each of the remaining 41 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[260] As a result, the total amount of subsidy for the non-cooperative exporters is 15.84 Renminbi per kilogram, or 60% as a percentage of export price.

⁶⁵ This program was not identified at initiation but was found to have been used following the analysis of the cooperative exporter responses to the Subsidy RFI.

⁶⁶ This program was not identified at initiation but was found to have been used following the analysis of the cooperative exporter responses to the Subsidy RFI.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - January 1, 2007 to June 30, 2008

Country	Subsidized Goods as Percentage of Country Imports	Weighted Average Amount of Subsidy*	Country Imports as Percentage of Total Imports	Subsidized Goods as Percentage of Total Imports
China	100%	47%	43%	43%

*As percentage of the export price

[261] The final results indicate that 100% of the subject goods imported into Canada during the Subsidy POI were subsidized. The overall weighted average amount of subsidy is equal to 47% of the export price.

[262] 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.

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

[264] The CBSA normally makes reference to the DAC List of Official Development Assistance 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 the table above illustrates, the amount of subsidy found during this investigation is not insignificant.

[265] 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

[266] Listed below are details of representations made to the CBSA with respect to the subsidy investigation, including case arguments and reply submissions, from exporters, the GOC and the

Complainants. Following the representations on each issue is a response explaining the position of the CBSA.

1. Grounds for Initiation

[267] The GOC argued that the CBSA did not have sufficient grounds to initiate the subsidy investigation.⁶⁷ They contended that the Complainants and the CBSA have failed to provide *prima facie* evidence that any of the exporters benefited from the majority of the alleged programs identified.

[268] The GOC asserted that the Complainants failed to provide a reasonable indication of subsidization as is required by section 31 of SIMA and that the CBSA failed to provide the basis for its decision to initiate in relation to materials submitted by the Complainants.

[269] The GOC also argued that the initiation of the investigation was inconsistent with respect to Articles 11.2 and 11.3 of the ASCM and submitted that there was not sufficient evidence with respect to:

- The existence or nature of the subsidies contained within the complaint;
- Proof that these alleged subsidies applied to the industry sector concerned; or
- That the alleged subsidies were used by the aluminum extruders in China relevant to this investigation.

CBSA Response

[270] At the time of the initiation of the subsidy investigation, based on the information provided in the complaint, other available information, and the CBSA's internal data on imports, there was evidence that aluminum extrusions originating in or exported from China had been subsidized, and a reasonable indication that such subsidizing had caused or was threatening to cause injury to the Complainants.

[271] The Statement of Reasons issued at the initiation of this investigation publicly outlined the reasons for initiating the investigation and the evidence considered in making that determination. This document can be accessed at:

<http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-de-eng.html>

2. Level of Cooperation by the GOC and Use of the Facts Available

[272] In their case arguments, the Complainants asserted that the GOC had not fully cooperated in the subsidy investigation. They contended that since the GOC had chosen to answer with specific information relating to only 12 exporters, that such a selective response cannot reflect any amounts of subsidy benefiting exporters not selected by the GOC. They stated that the GOC has been non-cooperative and has "designed, intentionally, a response based on information regarding certain selected exporters."⁶⁸

⁶⁷ Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 39-45.

⁶⁸ Exhibit S492 – Reply Submissions (Dumping and Subsidy) – Canadian Complainants, paragraph 23.

[273] Furthermore, the Complainants stated that this type of non-cooperation, if not properly addressed by the CBSA, could easily be used to manipulate results. Accordingly, they argued that amounts of subsidy from selected exporters should not subsequently be applied to calculate countervailing duties for non-cooperative or new exporters.⁶⁹

[274] The Complainants also submitted that, it is unreasonable to assume that subsidies given to non-cooperative exporters are reflected in any cooperative exporter's RFI response. The Complainants submitted that the non-cooperative exporters should accordingly be assessed the highest possible amount of subsidy. Consequently, the Complainants contended that the CBSA should exercise its discretion in its approach to assessing duties to protect the Complainants from imports of the subsidized goods.⁷⁰

[275] Lastly, the Complainants stated that CBSA policies should not contemplate or encourage partial cooperation by foreign governments in a subsidy investigation. They further asserted that the GOC has not cooperated with the subsidy investigation and provided an incomplete response even in respect of the selected exporters, which includes the cooperative exporters. Accordingly, the Complainants argued that all exporters of the subject goods from China should be deemed non-cooperative and have countervailing duty rates determined for them under a ministerial specification.⁷¹

[276] The GOC argued that their ability to provide a complete response to the RFI was significantly hampered because the CBSA did not provide the GOC with requested particulars.⁷²

[277] Specifically, the GOC alleged that the CBSA did not provide clarification and information to allow the GOC to confirm the existence of programs and identify the level of government involved, nor did the CBSA supply a detailed list of deficiencies found in their original RFI response.

[278] Furthermore, the GOC argued that the CBSA should not use the "facts available" clause under Article 12.7 of the ASCM in its treatment of the GOC.⁷³ The GOC argued that this Article only applies where a country "refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation." The GOC asserted that its participation in the subsidy investigation does not meet this standard.

[279] In response to the Complainants' arguments, Kam Kiu submitted that WTO rules and procedural fairness require that actual verifiable information is to be preferred to information from unreliable sources.⁷⁴

⁶⁹ Exhibit s477 – Case Arguments (Subsidy) – Canadian Complainants, paragraphs, 2-3 and 15.

⁷⁰ Exhibit s477 – Case Arguments (Subsidy) – Canadian Complainants, paragraphs 7-8.

⁷¹ Exhibit s477 – Case Arguments (Subsidy) – Canadian Complainants, paragraphs 10-11, 13.

⁷² Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 56-58.

⁷³ Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 37-38.

⁷⁴ Exhibit 580 – Reply arguments by Kam Kiu, paragraph 45.

CBSA Response

[280] The GOC failed to provide a complete and timely response to the CBSA's subsidy RFI and as a result, the CBSA was unable to use their information for the purposes of the investigation. The information requested by the CBSA, which the GOC failed to provide, would have enabled the CBSA to conduct a proper analysis for each of the alleged programs and determine amounts of subsidy in the manner prescribed by SIMA.

[281] Therefore, in accordance with SIMA subsection 30.4(2), where, in the opinion of the President, sufficient information was not provided or was otherwise not available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy was determined under a ministerial specification.⁷⁵

[282] Notwithstanding the incomplete GOC response, the CBSA is satisfied that the information on the CBSA's subsidy administrative record, where provided in a timely fashion by the cooperative exporters from China, is complete and verified. Therefore, for the final determination, the CBSA determined amounts of subsidy for these cooperative exporters, under a ministerial specification pursuant to subsection 30.4(2) of SIMA, using information provided by those respective parties.

[283] In respect of the concerns raised by the GOC regarding the quality of the CBSA's notification of deficiencies, the CBSA did notify the GOC, in a letter dated October 15, 2008, that their original response to the subsidy RFI was not sufficiently complete to be used for the investigation. In that letter, the CBSA explained the most significant aspects of the submission that were found to be deficient, including the following:

- The GOC limited its response to account for only 12 "responding companies" it identified instead of taking into account all 160 of the exporters identified by the CBSA.
- In many instances, the GOC did not answer the question posed by the CBSA and simply stated that none of the "responding companies" received benefits under the identified programs.
- In cases where "responding companies" received benefits under a program, the GOC failed to answer all of the CBSA's questions, failed to provide the amount of benefits given to the "responding companies", did not provide information concerning the number of industries and enterprises that received, applied for, or were denied benefits.
- The GOC failed to provide copies of 33 government documents specifically requested for various reasons, most notably, because the GOC believed the majority of the documents were irrelevant to "responding companies" and the GOC simply refused to submit them.
- The GOC failed to provide all of the provincial five-year plans, limiting their response to provinces where "responding exporters" were located.
- The GOC failed to provide the China Non-Ferrous Metals Yearbook and other statistical publications requested.

⁷⁵ Though technically all exporters had their amounts of subsidy calculated under a ministerial specification pursuant to subsection 30.4(2), exporters that were deemed 'cooperative' were treated differently than non-cooperative exporters under the methodology of the ministerial specification.

- The GOC provided only partial information on 1 of 27 newly identified grant programs and claimed to have no knowledge of the remaining 26 programs.

[284] In addition to identifying the major areas of deficiency through this correspondence, the CBSA attempted to assist the GOC in its response concerning the grant programs by indicating that the reference material used by the CBSA to identify these programs could be found on the CBSA's Exhibit Listing for this investigation as Exhibits S38, S43, and S48.

[285] In a further effort to assist the GOC, the CBSA also noted through this correspondence that some of the cooperative exporters indicated they had received benefits under some of the newly identified grant programs for which the GOC stated they had no knowledge.

[286] As with the reference material, the submissions received from cooperative exporters were also placed on the CBSA's administrative record and were available to the GOC and their counsel.

3. Rejection of Other GOC Filings

[287] The GOC further argued that the CBSA should consider information the GOC submitted on November 28, 2008, for purposes of the investigation.⁷⁶ The GOC indicated that the reasons provided by the CBSA for not accepting the information have no merit and that the WTO Appellate body has shown that a submission cannot simply be rejected for being untimely.

[288] The GOC alleged that the CBSA failed to provide a detailed list of deficiencies relating to their original October 1, 2008 submission and that the CBSA did not provide a deadline to submit additional information.

[289] The GOC asserted that this information was submitted within a reasonable amount of time before the closing of the record date of December 31, 2008, and that the CBSA would have been able to verify the information.

[290] The GOC also argued that the CBSA is not limited to considering only verified information, that the administrative deadlines are artificial and could have been changed, and that the CBSA could have extended the date for the preliminary determination.

CBSA Response

[291] As previously stated, the CBSA's letter dated October 15, 2008, notified the GOC that their original response to the subsidy RFI was not sufficiently complete to be used in this investigation. In that letter, the CBSA also indicated that if the GOC were to submit a complete response to the RFI, that the CBSA would endeavour to use such information for the purposes of the investigation, provided the information was submitted in sufficient time for the CBSA to analyze and verify it before the closing of the record on December 31, 2008.

⁷⁶ Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 51-56.

[292] In a letter dated October 30, 2008, the GOC indicated that additional information in respect of the subsidy investigation would be submitted shortly. On the same date, the CBSA acknowledged this letter with its own correspondence and reminded the GOC that any such information submitted would be used if it were provided in sufficient time for the CBSA to analyze and verify it before the closing of the record.

[293] On November 28, 2008, the GOC submitted additional information to the CBSA in respect of the subsidy investigation, in excess of 1,100 pages.

[294] On December 29, 2008, counsel for the GOC requested confirmation that the information submitted would be considered to be a complete response from the GOC and would be used as part of the subsidy investigation final determination.

[295] On December 31, 2008, the CBSA responded in a letter to the GOC indicating that the information would not be used, as it was not submitted within a reasonable period of time.⁷⁷ In considering whether the additional information was submitted within a reasonable period of time, the CBSA considered a number of factors including:

- the CBSA made efforts to ensure that the GOC received the RFI as soon as possible, by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated, August 18, 2008;
- the fact that a one week extension had already been provided to the GOC for purposes of providing a response to the RFI, extending the original deadline of September 24, 2008, to October 1, 2008;
- the length of time by which the GOC missed the original deadline date for providing its subsidy RFI response. The supplemental information was filed on November 28, 2008, a full eight weeks past the October 1 deadline;
- there was insufficient time for the CBSA to verify the large quantity and complex nature of information submitted, given that the additional subsidy information was filed so late in the investigation;
- the late subsidy filing precluded the CBSA from planning and scheduling an on-site verification with the GOC, particularly considering that on-site verifications were already scheduled and underway with Chinese exporters at the time the supplemental information was submitted to the CBSA;
- the CBSA is bound by tight legislative and administrative timeframes to conduct its investigations, and to reach the final determination; and
- that using the information would likely compromise the orderly conduct of the investigation and prejudice the interests of other parties to the investigation.

⁷⁷ Exhibit S463 (NC).

[296] While the information submitted by the GOC on November 28, 2008 was not submitted within sufficient time for the CBSA to analyze and verify, the CBSA did conduct a review of the submission for general content and completeness. As a result of that review, it was noted that significant aspects of the submission were still deficient. In brief, some of the deficiencies included:

- The GOC's response remained limited to the 12 "responding companies" that they had previously identified, ignoring the CBSA's request for the GOC to consider all 160 exporters identified by the CBSA;
- Where the GOC acknowledged that exporters may have received benefits under a particular program, the GOC does not name that company, referring to them only as "responding companies";
- Similarly, in cases where "responding companies" received benefits under a program, the GOC failed to answer all of the CBSA's questions, failed to provide the amount of benefits given to the "responding companies", and did not provide information concerning the number of industries and companies that received, applied for, or were denied benefits;
- The GOC failed to provide information for a number of programs, noting the information with respect to the programs are unclear, broad, and difficult to identify, while noting in the same response that "responding companies" have advised them that they have not benefited from the programs;
- For programs administered in many different provinces, the GOC limited the information submitted to the provinces and areas where the GOC's list of "responding companies" are located;
- A complete and accurate list of SOE Primary Aluminum producers, though previously requested, was still not provided;
- The more than 30 government documents requested by the CBSA in the RFI, which the GOC refused to provide, were still absent from the submission; and
- The requested statistical publications and industry association yearbooks were omitted.

[297] This list above is not an exhaustive list of the deficiencies or a complete analysis of the submission, which was not undertaken for reasons noted earlier. However, it demonstrates that the information submitted by the GOC on November 28, 2008, was still incomplete and would have required additional information and clarification on numerous issues prior to any formal verification and consideration of the information for purposes of the final phase of the investigation.

[298] This also further substantiates the fact that the submission was not submitted within a reasonable period of time given the amount of time that would have been required by the CBSA to properly address these issues.

4. Extension of RFI Filing Deadline for GOC

[299] The GOC claimed that the refusal to grant a reasonable extension to their deadline for filing the subsidy RFI response breached the GOC's procedural rights in this investigation.⁷⁸

⁷⁸ Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 48-51.

The GOC argued that this refusal by the CBSA is inconsistent with ASCM Articles 11.11 and 12.1.1, as the CBSA failed to give due consideration to the request given the special circumstances.

[300] The GOC referenced previous investigations where the CBSA gave extensions and submitted that their two-week extension request should have been granted considering the complexity of the case. The GOC argued that had their extension request been granted, the initial response to the subsidy RFI may have contained additional information which may have allowed its response to be deemed substantially complete.

CBSA Response

[301] In terms of consistency with Article 12.1.1 of the ASCM, the CBSA also addressed this issue in a letter addressed to the GOC on September 23, 2008. The CBSA noted that, while Article 12.1.1 states that authorities should consider and grant extensions where practicable, Article 12.12 qualifies this directive in stating that other provisions of Article 12 are not intended to prevent the investigating authorities from proceeding expeditiously with their investigations.

[302] As a result of the due consideration given to Article 12 of the ASCM, the CBSA granted a one-week extension to the GOC instead of the two-week extension requested. This decision was meant to represent a balance between the rights of the GOC to defend their interests with the CBSA's own right to proceed expeditiously with this investigation.

[303] It should also be noted that in addition to granting a one-week extension to the GOC, the CBSA made efforts to ensure the GOC received the RFI as soon as possible by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated (August 18, 2008). The result of the extension and provision of the RFI on the day of the initiation, in effect, afforded the GOC 44 days to respond to the RFI on the deadline of October 1, 2008.

5. Developing Country Status

[304] In a position paper submitted to the CBSA, the GOC argued that Canada and other WTO members must take into consideration China's developing country status and the importance of permitting developing country Members to use special measures in order to promote their trade and development.⁷⁹

[305] The GOC asserted that Canada's international obligations mandate that developed Members refrain from introducing or increasing trade barriers against products of particular export interest to developing countries, particularly primary products in raw or processed form.⁸⁰

[306] The GOC submitted that the significant demand for aluminum extrusions from North America demonstrates that this product is of particular interest to developing countries and thus falls squarely within this provision.

⁷⁹ Exhibit S476 - Government of China consultations (Talking Points) with CBSA, pages 13-14.

⁸⁰ Article XXXVI: 4 of the GATT 1947 and 1994.

CBSA Response

[307] The CBSA is aware of China's developing country status and takes this, and Canada's WTO obligations, into consideration when conducting a subsidy investigation.

[308] In making a final determination under section 41.2 of SIMA, the President must take into account the provisions of paragraphs 10 and 11 of Article 27 of the ASCM. These provisions set higher negligibility and insignificance thresholds for amounts of subsidy determined in respect of developing countries, and have accordingly been addressed in the current investigation.

[309] In this subsidy investigation, the overall level of subsidies found on the subject goods exceeded 2 per cent of its value calculated on a per unit basis and the volume of subsidized imports represented more than 4 per cent of the total imports of subject goods imported into Canada during the period of investigation.⁸¹ As noted previously, it is recognized that in accordance with subsection 42(4.1) of SIMA, the Tribunal now has the responsibility for determining if the actual or potential volume of subsidized goods is negligible.

6. Scope of the Investigation

[310] The GOC submitted that the CBSA unilaterally expanded the scope of the subsidy investigation far beyond the scope of the complaint by including programs identified through CBSA research.⁸² The GOC alleged that the CBSA's research does not identify the factual and legal basis for these programs and does not provide a basis for considering them actionable.

[311] The GOC further argued that Article 11 of the ASCM sets out a process based on the sufficiency of information within the complaint filed by the domestic industry and that Article 13 of the ASCM reinforces this obligation by providing the ability for WTO Members, whose products are under investigation, to formally consult with the investigating authority.

[312] The GOC argued that the CBSA must adopt the process set out in Article 11 of the ASCM. Furthermore, the GOC alleged that even if the CBSA were to have "self initiated" the subsidy investigation, as per the stipulation in paragraph 6 of Article 11 of the ASCM, that the CBSA did not satisfy the conditions of that provision to permissibly do so.

[313] The GOC also asserted that the CBSA failed to consult the GOC regarding programs not specifically identified in the complaint during pre-initiation consultations. In this regard, the GOC contended that the CBSA denied the GOC its right under Article 13 of the ASCM to pre-initiation consultation with respect to targeted programs.

CBSA Response

[314] Upon receiving a formal complaint, the CBSA conducts its own research concerning alleged subsidy programs in order to analyze and validate the information submitted by the

⁸¹ ASCM Article 27, paragraphs 10(a) and (b) respectively.

⁸² Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 33, 40, 42-43.

Complainants in order to determine whether there is enough evidence to proceed with the initiation of an investigation.

[315] In some instances, during the course of this research, the CBSA may identify new programs that were not included in the complaint. While the Complainants are required to provide evidence that is reasonably available to them, this does not preclude the CBSA from including additional evidence found through its own research for purposes of the investigation. Any evidence found to support the identification of newly identified programs is placed on the CBSA's administrative record, which is also listed publicly as a 'Listing of Exhibits' on the CBSA's website. This supporting evidence was made available to interested parties upon request during the course of the investigation.

[316] In conducting a subsidy investigation, the scope of the CBSA's investigation includes all potential programs that the CBSA has identified at initiation or identifies during the course of the investigation, including programs identified in the complaint, in previous subsidy investigations, in information submitted by governments or exporters, and those found as a result of CBSA research.

[317] In addition, RFIs issued by the CBSA to the GOC included a section which directed the GOC to identify if any of the items listed as potential subsidy programs, which were not specifically identified by the CBSA at initiation, may have provided benefits to exporters in the industry under investigation. By including these potential programs the CBSA identifies through its own research, the CBSA aimed to assist the GOC in identifying such previously unidentified programs.

[318] It should be noted that, based on information submitted by cooperative exporters in this investigation, a number of new programs identified through CBSA research were found to have benefited those exporters. These programs had not been previously identified by either cooperative exporters or the GOC in previous subsidy investigations involving China.

7. Analysis of Actionable and Specific Nature of Subsidies

[319] The GOC argued that the CBSA analysis respecting the actionable and specific nature of subsidies was deficient.⁸³ In making this argument, the GOC provided a list of programs, which they stated had been repealed and could thus not have possibly been received by any of the exporters being investigated.

[320] The GOC also listed a number of programs they identified as being non-existent, as they could not locate relevant documents to support their existence. Consequently, the GOC claimed there was no legal or factual basis for which the CBSA is investigating those programs.

[321] The GOC characterized the CBSA as being unfair and abusive for requiring them to respond to questions on these programs, noting that the CBSA failed to provide particulars that might have assisted them in locating information on such programs.

⁸³ Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 39-45.

[322] In addition to the programs the GOC listed as being repealed or non-existent, the GOC listed two programs for which they argued the CBSA must have confused with programs previously investigated, as the CBSA failed to include the province's name in the title of the program. The GOC noted that while they could not obtain details on these programs, they were able to confirm that none of the cooperative exporters received benefits under the programs. As such, the GOC argued that there is no basis for the CBSA to assume non-responding exporters received benefits under these programs.

[323] For the remaining programs not included in the list referenced above, the GOC asserted that their responses to the initial RFI combined with their November 28, 2008 submission are adequate. The GOC contended that this information must be considered by the CBSA as it provides clear and compelling confirmation that these remaining programs are not specific and thus not actionable under SIMA.

[324] In addition, Pingguo, a Chinese exporter in this investigation, submitted that the CBSA has countervailed programs that are generally accessible and do not meet the specificity threshold. Pingguo argued that as part of the preliminary determination, the CBSA made no specificity finding and that none of the factors statutorily identified in Section 2 of SIMA were examined.⁸⁴ Pingguo submitted that the absence of rigor in the examination and application of countervailing measures is prejudicial to trade and export companies in China.

[325] Pingguo also submitted that the subsidy calculated for Pingguo was 0.92%, which was a *de minimis* amount, and that the CBSA's methodology for calculating the amount of the subsidy for non-cooperative exporters was unreasonable and unfairly countervailed presumptive non-existent subsidies.⁸⁵

CBSA Response

[326] As previously stated, the CBSA did not receive a complete and timely response to the subsidy RFI from the GOC. The reasons for not using the GOC subsidy response are addressed in the responses to other arguments made by the GOC and will not be further addressed in this response.

[327] Regarding the argument that the CBSA's analysis of the subsidy programs identified in this subsidy investigation was deficient, the CBSA notes that the GOC failed to provide the requested and necessary information required by the CBSA. This required information would have enabled the CBSA to conduct a proper *de jure* and *de facto* specificity analysis for each of the programs identified, which in turn would have enabled the CBSA to properly determine whether these programs were in fact specific and constituted actionable subsidies.

[328] In the absence of this information, the CBSA was unable to conduct an appropriate and meaningful analysis of the subsidy programs identified based solely on its own research, the information submitted by the Complainants, and the information submitted by exporters. In

⁸⁴ Exhibit S485 – Case Arguments (Dumping and Subsidy) - Pingguo Asia Aluminum Co., Ltd., paragraph 63.

⁸⁵ Exhibit S485 – Case Arguments (Dumping and Subsidy) - Pingguo Asia Aluminum Co., Ltd., paragraphs 58 to 60.

many cases, only the GOC is in a position to provide the legal and government policy documents requested, as well as application and usage statistics for each of the programs. Without this information, the CBSA cannot undertake a thorough analysis of the programs to determine whether they are specific and actionable.

[329] As a result of the absence of this information at the preliminary determination, the CBSA, in the Statement of Reasons, was only able to provide a description of the programs that the cooperative exporters in China are known to have used.

[330] For the purposes of the final determination, the CBSA determined amounts of subsidy for both cooperative and non-cooperative exporters using a methodology under a ministerial specification. The determination of the amount of subsidy was made in accordance with SIMA subsection 30.4(2), where, in the opinion of the President, sufficient information has not been provided or is otherwise not available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy shall be determined in such manner as the Minister specifies.

[331] In respect of the argument that the CBSA has countervailed programs that are generally accessible and do not meet the specificity threshold, the CBSA notes that in the absence of a complete response from the GOC, the CBSA was unable to conduct specificity analyses, and instead determined amounts of subsidy for the cooperative exporters under ministerial specification on the basis of the information provided by those exporters.

8. Subsidy Calculations without use of Sampling

[332] The GOC submitted that it is inappropriate for the CBSA to calculate amounts of subsidy without sampling exporters.⁸⁶ The GOC argued that requiring 261 exporters to respond to RFIs is unreasonable, is a departure from the CBSA's normal approach, and does not follow the CBSA's own Statement of Administrative Practices. In choosing not to sample for this investigation, the GOC accused the CBSA of setting up the investigation process to ensure the imposition of punitive (i.e. non-cooperative) subsidy rates on the majority of exporters.

[333] The GOC argued that a weighted-average subsidy rate based on the amounts of subsidy found for the responding exporters should be used to assess non-respondents for the CBSA's final determination.

CBSA Response

[334] The CBSA is legislatively required to calculate amounts of subsidy for all exporters identified in a subsidy investigation. SIMA does not contain provisions for amounts of subsidy based on sampling. It should be noted that sampling in an investigation is only provided for in SIMA for purposes of determining a margin of dumping as prescribed by section 30.3. In addition, there are no provisions for sampling in a subsidy investigation contained in the ASCM.

⁸⁶ Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 58-60.

[335] It should also be noted that the CBSA has never used sampling in any of its previous subsidy investigations involving China. In previous cases involving China where both subsidy and dumping investigations were conducted and the CBSA sampled for the dumping investigation,⁸⁷ the CBSA did not sample for purposes of the subsidy investigation.

[336] In those cases, a dumping margin was calculated for cooperative exporters and non-cooperative exporters while an average dumping margin was calculated for non-sampled exporters. However, for the subsidy investigations involving those products, amounts of subsidy were calculated for only two categories - cooperative and non-cooperative exporters - as the CBSA does not use sampling in subsidy investigations.

[337] As such, the CBSA followed its own administrative practices and acted in accordance with the provisions of SIMA in conducting its subsidy investigation.

Upstream Subsidy Concerning Press Metal International Ltd. (PMI)

[338] Subsequent to the onsite verification with the company, PMI made two separate representations on December 15 and 31, 2008 respectively.⁸⁸ The company argued that PMI should not be treated as a non-cooperative exporter as a result of the verification conducted at Hubei Press Metal Huasheng Aluminum-Electric Co. Ltd. (PMH), an associated aluminum raw material supplier of PMI.

[339] In their representations, PMI argued that the documentation requested by the CBSA regarding the acquisition of state-owned assets by PMI's Malaysian parent company is outside the scope of the subsidy investigation and that such documentation was not listed in the verification outline provided to PMH.

[340] In addition, PMI argued that the requested documentation was in the possession of its parent company and it thus could not provide the documents without permission of the parent company. PMI further contended that the parent company was not obligated to participate in this investigation according to the original and supplemental subsidy RFIs.

CBSA Response

[341] Pursuant to subsection 2(1) of SIMA, "subsidized goods" refers to goods in which "a subsidy has been or will be paid, granted, authorized or otherwise provided, directly or indirectly, by the government of a country other than Canada". The CBSA considers that an indirect subsidy includes an "upstream subsidy".

[342] In other words, a producer of the goods under investigation can receive a subsidy through the acquisition of goods and services where the producer or supplier of those goods and services has received a subsidy.⁸⁹

⁸⁷ For example: *Certain Copper Pipe Fittings and Carbon Steel and Stainless Steel Fasteners*.

⁸⁸ CBSA Subsidy Exhibits S474 and S449.

⁸⁹ The subsidy is thus 'passed through' to the producer of the goods under investigation.

[343] In determining whether an upstream subsidy has been passed-through to the producer of the goods under investigation, the CBSA considers whether the upstream recipient and the downstream purchaser are associated persons as defined in SIMA. If so, the amount of the subsidy that is deemed to have been received by the downstream purchaser is the total amount of the subsidy that is attributable to the upstream product.

[344] In this case, PMI, PMH and the parent company are associated persons pursuant to subsection 2(2) of SIMA. During the subsidy POI, PMI purchased significant amounts of aluminum raw material from its associated supplier, PMH. As a result, any subsidy received by PMH (i.e. upstream subsidy) during the subsidy POI should be included in the total amount of the subsidy determined for PMI.

[345] In its responses to the subsidy RFIs, PMI failed to provide a full disclosure of the history of PMH. During the verification at PMH, CBSA officers were informed that prior to its establishment as 'PMH', the company was a state-owned enterprise (SOE) and that PMI's parent company purchased most of the state-owned assets of the operation in 2006.

[346] The requested documentation was necessary for the CBSA to determine whether any subsidy had been received by PMH under one of the subsidy programs identified in the subsidy RFI, (i.e. *Purchases of Goods and Services from State-Owned Enterprises*). The CBSA did not receive any of the requested documentation from PMI by the closing of the record date. As a result, the CBSA considered PMI to be non-cooperative in the subsidy investigation.

10. Concurrent use of Countervailing Remedy with Section 20 Conditions

[347] Pingguo submitted that in the absence of a competitive market economy, which forms the basis of a CBSA section 20 determination, it is impossible to measure specificity and the "financial contribution" made by a government to a recipient, which is required in order to countervail a subsidy.⁹⁰

CBSA Response

[348] The CBSA maintains that it has adhered to the provisions of both SIMA and the relevant international rules governing anti-dumping and countervailing investigations.

[349] Neither the WTO *Anti-Dumping Agreement*, the *ASCM*, nor SIMA preclude the imposition of countervailing duties in respect of goods that are also subject to anti-dumping duties, where normal values have been determined pursuant to a surrogate country methodology (i.e. section 20 determination).

[350] More specifically, SIMA does not restrict or limit the applicability of the subsidizing provisions set forth in the Act when, in the opinion of the President, section 20 conditions exist in the industry sector under investigation, which requires that normal values be determined in a manner other than those set forth in sections 15 or 19 of SIMA.

⁹⁰ Exhibit 572 – Case arguments by Pingguo, paragraphs 56 & 57.

[351] With respect to concurrent dumping and subsidy investigations, section 10 of SIMA does direct that anti-dumping duties levied, collected and paid in respect of goods will only reflect the margin of dumping that is not, in the opinion of the President, attributable to the export subsidy.⁹¹

[352] Accordingly, the CBSA will, where necessary, offset the amount of anti-dumping duty levied or collected on goods imported into Canada by an amount that is attributable to an export subsidy.

[353] In short, the CBSA treats dumping and subsidy investigations as separate processes. In so doing, the CBSA is in no way prohibited in law or in practise, from conducting concurrent dumping and subsidy investigations where the conditions of section 20 are found to exist in the industry sector under investigation. In effect, neither investigation impedes nor restricts the process of the other and thus, it is well within the scope of the CBSA to conduct both concurrently.

11. Aluminum pricing on all Chinese exchanges reflect the forces of supply and demand

[354] Chinese exporter Kam Kiu submitted that the CBSA should not determine that differences in Chinese and LME prices constitute a subsidy.

CBSA Response

[355] The CBSA has not determined that primary aluminum purchased in China at prices different than LME solely constitute a subsidy on that basis.

[356] However, in cases where the CBSA found that goods were provided by the government through State-Owned Enterprises (SOEs) at prices below fair market value, the difference between the purchase price and the fair market value of the goods was determined to be a financial contribution that benefitted an exporter. Purchases of primary aluminum from private enterprises and, where applicable, manufacturers that are in fact not SOEs would not constitute a subsidy regardless of the price at which the transactions took place.

[357] Regarding the determination and method of calculation of subsidy amounts in respect of the subsidy program Primary Aluminum Provided By Government at Less Than Fair Market Value, the details are addressed in **Appendix 2** as Program 15.

DECISIONS

[358] The CBSA is satisfied that certain aluminum extrusions originating in or exported from the People's Republic of China, have been dumped and that the margins of dumping are not insignificant. Consequently, on February 16, 2009, the CBSA made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.

⁹¹ This is consistent with Article VI, paragraph 5 of the General Agreement on Tariffs and Trade 1994. Note that an error in the original wording of this footnote was corrected on April 15, 2009.

[359] Similarly, the CBSA is satisfied that certain aluminum extrusions originating in or exported from China have been subsidized and that the amounts of subsidy are not insignificant. As a result, the CBSA also made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA on this same date.

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

FUTURE ACTION

[361] The provisional period began on November 17, 2008, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by March 17, 2009. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the Statement of Reasons issued for the preliminary determinations, which is available on the CBSA web site at:
<http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html>

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

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

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

[365] Normal values and amounts of subsidy have been provided to the cooperating exporters for future shipments to Canada in the event of an injury finding by the Tribunal. These normal values and amounts of subsidy will come into effect the day after the date of the injury finding, if there is one.

[366] Exporters that were non-cooperative in the dumping investigation will have normal values established by advancing the export price by 101% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters that were non-cooperative in the subsidy investigation will be subject to a countervailing duty amount of 15.84 Renminbi per kilogram, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

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

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

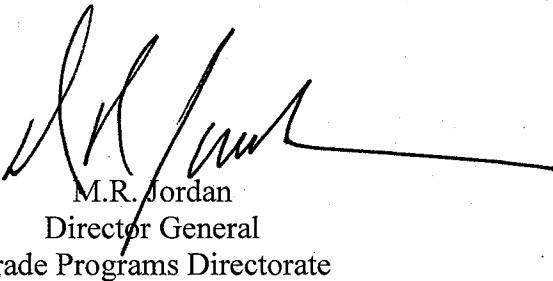
PUBLICATION

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

INFORMATION

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

Mail	SIMA Registry and Disclosure Unit Anti-dumping and Countervailing Program Trade Programs Directorate Canada Border Services Agency 100 Metcalfe Street, 11th Floor Ottawa, Ontario K1A 0L8 CANADA
Telephone	Rob Wright (613) 954-1643 Matt Lerette (613) 954-7398
Fax	(613) 948-4844
Email	SIMARRegistry@cbsa-asfc.gc.ca
Website	http://www.cbsa-asfc.gc.ca/sima-lmsi/



M.R. Jordan
Director General
Trade Programs Directorate

Attachments

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

Exporter(Country)	Margin of Dumping*	Amount of Subsidy (Renminbi per kilogram)
Kam Kiu Aluminium Extrusion Co., Ltd. (China)	27.8%	3.88
Press Metal International Ltd. (China)	35.2%	15.84
Panasia Aluminium (China) Limited (China)	31.4%	3.51
Guangdong Weiye Aluminium Factory Co., Ltd., (China)	42.4%	3.65
Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (China)	28.5%	2.59
China Square Industrial Limited (China)	1.7%	2.82
Foshan Guangcheng Aluminum Co., Ltd., (China)	33.8%	2.95
Guang Ya Aluminum Industries Co., Ltd., (China)	40.4%	3.07
Hunter Douglas Designer Shades (USA)	0.0%	N/A**
Hunter Douglas Window Fashions (USA)	2.9%	N/A**
All other exporters	101.0%	15.84

* As percentage of the export price.

**No amount of subsidy was found for this U.S. exporter. However, countervailing duties are applicable to this exporter, based on the amount of subsidy found for the Chinese supplier of the goods that the U.S. exporter sold to Canada.

APPENDIX 2 - SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As addressed earlier, the original information submitted by the GOC was reviewed by the CBSA, was considered to be incomplete, and was not used for the purposes of the preliminary determination. The additional information submitted by the GOC was not received within a reasonable period of time to allow the CBSA to analyze and verify the information prior to the closing of the record. As a result, none of the information submitted by the GOC was used for the purposes of the final determination. Sufficient information was not provided to the CBSA to enable a proper analysis of the programs or to demonstrate whether or not programs used by the cooperative exporters were specific and would therefore constitute actionable subsidies. The absence of such information would normally prevent the CBSA from determining amounts of subsidy for the cooperative exporters and would result in the CBSA resorting to the use of facts available. However, in recognition of the amount of cooperation and the volume of information that has been provided by the cooperative exporters, the CBSA has determined an amount of subsidy for each cooperative exporter under ministerial specification pursuant to subsection 30.4(2) of SIMA. The ministerial specification provides the authority to determine amounts of subsidy for the cooperative exporters based on the available information, absent the information needed from the GOC.

This appendix consists of descriptions of the 15 subsidy programs used by cooperative exporters in the current investigation, followed by a listing of the other subsidy programs investigated by the CBSA that were not found to have been used by cooperative exporters.

SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS

Without a complete response to the subsidy RFI from the GOC, the CBSA has used the best information available to describe the subsidy programs used by the cooperative exporters in the current investigation. This includes using information obtained from CBSA research on potential subsidy programs in China, information provided by the cooperative exporters and descriptions of programs that the CBSA has previously publicly published in recent Statements of Reasons relating to subsidy investigations involving China.

Program 1: 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 was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order 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, Foreign Invested Enterprises (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%.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 2: Research & Development (R&D) Assistance Grant

General Information:

This program appears to be established by governments at the local level and was established to encourage and support enterprises to develop new technologies and products, to promote energy savings, to enhance product quality, to improve export structure, and to cultivate and develop high-tech industry and new pillar industry. The granting authority responsible for the program for this investigation is the government of Jiangmen City, in accordance with the *Administrative Measures of Science & Technology Three Kinds of Funds of Jiangmen City*.⁹²

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

⁹² CBSA Subsidy Exhibit# 206, Non-confidential Response to the Exporter's Subsidy RFI for Taishan City Kam Kui Aluminium Extrusions Co., Ltd., page 25.

Program 3: Superstar Enterprise Grant

General Information:

Under this program, enterprises located in certain cities and selected as “Superstar Enterprises” may receive grants from the local government. In order to qualify for a “Superstar Enterprise”, total annual sales of the superstar enterprise have to reach a threshold. The granting authority responsible for this program appears to be the local municipal government.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 4: Matching Funds for International Market Development for SMEs

General Information:

This program appears to be established by governments at the local level. According to a document obtained through CBSA research, entitled *Investing in China: Incentives Offered by Local Governments*⁹³, the municipality of Zhengzhou will provide one-to-one matching funds for the international market development funds of small and medium-sized export enterprises that are supervised at the provincial level.

This program does not appear to be limited to the municipality of Zhengzhou as, in the current investigation, a cooperative exporter located in a different municipality received funding under this program.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those

⁹³ Exhibit S43: Tab 4 - Information on Zhengzhou, *Investing in China: Incentives Offered By Local Governments*.

exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 5: One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”

General Information:

This program appears to be established by the State level government and administered by both the provincial and local authorities. According to a document obtained through CBSA research, entitled *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy*⁹⁴, published by the Yunnan provincial government, the provincial government shall grant a one-time award to NSOEs whose products are qualified as “Well-known Trademarks of China” or “Famous Brands of China”, or are listed among the most famous export commodities identified by the state trading authority. In addition, should an enterprise qualify as a well-known trademark or famous brand of the province, one-time awards will be granted by local authorities.

This program does not appear to be limited to the province of Yunnan as, in the current investigation, one of the cooperative exporters located in a different province received awards under this program.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 6: Export Brand Development Fund

General Information:

This program appears to be established by the State government and administered by the provincial authorities. According to a document obtained through CBSA research, entitled

⁹⁴ Exhibit S43: Tab 5 - Information on Yunnan, *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy*, Yunnan Province, Article 6 paragraph 19.

*Notice on Issuing the Directive on Supporting the Development of Name Brands for Export*⁹⁵, within its Foreign Trade Development fund, the state shall arrange a special item under the heading “export brand development fund” to support enterprises in building up their independent brands and nurture and develop name brand exports.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 7: Preferential Tax Policies for Foreign Invested Enterprises - Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years

General Information:

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

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

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.

⁹⁵ Exhibit S48: Tab 6 - Information on Brand Names in China, *Notice on Issuing the Directive on Supporting the Development of Name Brands for Export*, Section III.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 8: 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 was promulgated on April 9, 1991, and 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 abovementioned conditions, shall pay enterprise income tax at the tax rate of 10%.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 9: Local Income Tax Exemption and/or Reduction

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 Enterprises*, which was promulgated on April 9, 1991, and came into force on July 1, 1991. This program was established to provide preferential tax treatment to FIEs to accelerate the development of local economies. 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, any FIE that operates in an industry or undertakes a project encouraged by the State may receive an exemption or reduction in local income taxes.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 10: Exemption of Tariff and Import VAT for Imported Technologies and Equipment

General Information:

The exemptions of 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 was established on December 29, 1997, and came into effect on January 1, 1998. This program was established to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement and to maintain the sustained, rapid and healthy development of the national economy.

The granting authorities responsible for this program are the Ministry of Finance and the General Administration of Customs and the program is administered by local provincial and municipal customs branches.

Under this program, enterprises meeting the eligibility criteria set forth below may apply for exemption from tariffs and VAT on imported equipment and its related technologies,

components and parts. The enterprise must receive approval of its application from the appropriate authority, and subsequently that approval documentation is submitted to the local customs officials who verify that the documents presented are adequate and that the imported items are not listed in the catalogues of commodities that are not eligible for tax exemptions.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 11: Patent Award of Guangdong Province

General Information:

This program appears to be administered by municipal authorities. According to information submitted by one of the cooperative exporters⁹⁶, the program is provided for in the *Administrative Measures of Patent Award of Guangdong Province* and is administered by the Intellectual Property Office of Guangdong Province and the Bureau of Personnel of Guangdong Province. The program was established to support improvement in technology innovation and to promote intellectual property. The grant is provided in the form of a one-time award or bonus and the enterprise is also issued a certificate.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

⁹⁶ Exhibit S206 - Response to the Exporter's Request for Information (Subsidy) - TaiShan City Kam Kiu Aluminium Extrusion Co., Ltd. (Non-Confidential).

Program 12: Training Program for Rural Surplus Labor Force Transfer Employment

General Information:

This program appears to be administered by municipal authorities. According to information submitted by one of the cooperative exporters⁹⁷, the program is provided for in the *Implemental Scheme of Training Program for Rural Surplus Labor Force Transfer Employment of Taishan City from the year of 2005 to 2009* and is administered by the Labour and Social Security Bureau of Taishan City. Enterprises meeting the qualification are entitled to receive funds from the local government for providing training to the rural surplus labor force which is aimed at supporting agriculture and villagers.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 13: 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 administrated by the State Administration of Taxation and local tax authorities.

⁹⁷ Exhibit S206 - Response to the Exporter's Request for Information (Subsidy) - TaiShan City Kam Kiu Aluminium Extrusion Co., Ltd. (Non-Confidential).

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 14: Provincial Scientific Development Plan Fund

This program appears to be established and administered by the Provincial level governments. According to a document obtained through CBSA research, entitled *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy*⁹⁸, published by the Yunnan provincial government. According to this document, projects launched by NSOEs, which boast intellectual properties and good marketing prospects, can be included in the projects that enjoy the support of the province's special funding such as the Provincial Scientific Development Plan Fund.

This program does not appear to be limited to the province of Yunnan as, in the current investigation, a cooperative exporter located in a different province received awards under this program.

Calculation of Amount of Subsidy:

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

⁹⁸ Exhibit S43: Tab 5 - Information on Yunnan, *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy*, Yunnan Province, Article 6 paragraph 18.

Program 15: Primary Aluminum Provided By Government at Less Than Fair Market Value

General Information:

At the preliminary determination, the CBSA stated that information was still being reviewed to determine whether aluminum extrusion producers had purchased goods or services from state-owned enterprises (SOEs), including major manufacturing inputs, at prices below fair market value. Pursuant to this review, the CBSA examined the information provided by the cooperative exporters in respect of primary aluminum purchases during the Subsidy POI.

The information submitted by the cooperative exporters provided a detailed breakdown of primary aluminum purchases, such as billets and ingots. The information also included the names and addresses of suppliers and the raw material manufacturers as well as the ownership structure of these parties, when known. The cooperative exporters indicated that primary aluminum was purchased from SOEs, private trading companies, and other manufacturers during the Subsidy POI. The primary aluminum purchased by aluminum extrusion producers from private trading companies is provided to the private trading companies by producers that have been identified as SOEs or Non-SOEs by the cooperative exporters, where known. However, only one of the cooperative exporters was able to reliably and accurately identify purchases in which the supplier, trading company and/or manufacturer, was not an SOE. These purchases were imported by the cooperating exporter and were priced according to a pricing agreement that was in effect during the entire Subsidy POI.

Calculation of Amount of Subsidy:

In many instances, the CBSA was unable to identify whether primary aluminum was being provided indirectly by SOEs through private trading companies. For a large number of such purchases, exporters were unable to identify the manufacturer of the primary aluminum. Also, in many cases where they did identify the manufacturer, they could not indicate whether the manufacturer was in fact an SOE and, in some cases, the exporter identified known SOE suppliers and manufacturers as being Non-SOEs.

As a complete submission was not received from the GOC, which was to include a complete list of all primary aluminum manufacturers for which the GOC retains partial or complete ownership, the CBSA was unable to verify the SOE/Non-SOE designations made by exporters for accuracy. As a result, where the CBSA found that an exporter identified one or more known SOE suppliers as being Non-SOEs, the designations were determined to be unreliable and all purchases designated as Non-SOE were treated as SOE purchases.

In cases where the exporter was unable to designate a supplier (either trader or manufacturer) as being either an SOE or Non-SOE, or where they could not identify the name of a manufacturer for purchases made from a trading company, such purchases were also treated as SOE purchases.

Where a subsidy relates to the provision of goods by government, the CBSA determines whether there is a difference between the fair market value of the goods in the territory of the government

providing the subsidy, and the price at which the goods were provided by that government. For the purposes of determining a fair market value benchmark for primary aluminum in China, the CBSA considered using the Shanghai Metals Market (SMM) or the Shanghai Futures Exchange (SHFE) pricing. A summary of this analysis follows.

Based on research conducted by the CBSA in combination with information provided by exporters during the course of the investigation, the CBSA was able to identify more than 30 state-owned primary aluminum producers and trading companies. However, without a complete subsidy submission from the GOC, it is unclear whether these companies would form the majority of primary aluminum sold by SOEs. Further, without information from the GOC, the CBSA was unable to accurately determine the production and sales figures for the SOEs which it identified.

While the CBSA cannot accurately determine what percentage of primary aluminum is in fact produced and sold by all SOEs in China, the CBSA did obtain the 2007 Annual Report⁹⁹ for Aluminum Corporation of China Limited (Chalco) that was filed with the United States Securities and Exchange Commission. The report states that Chalco's largest shareholder and parent company is the Aluminum Corporation of China (Chinalco), a state-owned company. In addition, the CBSA noted that Chalco is also listed as one of the 150 "Central SOEs" on the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) website¹⁰⁰.

According to Chalco's annual report¹⁰¹, it produced 2.8 million metric tonnes of primary aluminum in 2007, accounting for approximately 22% of China's total primary aluminum production for 2007. This percentage appears to be correct as the International Aluminum Institute¹⁰² reported that 12.6 million metric tonnes of primary aluminum was produced in China in 2007. It should be noted that the total production figure reported by Chalco does not include an amount of production for Baotou Aluminum, an SOE acquired by Chalco at the end of 2007, which has annual capacity of 307,000 metric tonnes¹⁰³. Based on this information pertaining to only one SOE, at a minimum, SOEs account for almost a quarter of the total production of primary aluminum in China.

In addition to a significant amount of SOE produced primary aluminum being sold in the Chinese domestic metal markets, the analysis conducted as part of the Section 20 inquiry also noted that a number of GOC export and VAT tax policies as well as trade restrictive industrial policies may also have a material impact on the prevailing price of primary aluminum in China.

Based on the above, the domestic selling prices of primary aluminum on the SHFE or SMM markets in China are not appropriate for purposes of determining the fair market value of primary aluminum for comparing to the prices paid by exporters on purchases of primary aluminum from SOEs.

⁹⁹ Exhibit s402 NC - SEC Form 20-F – Aluminum Corporation of China Limited (December 31, 2007).

¹⁰⁰ SASAC Website: <http://www.sasac.gov.cn/n2963340/n2963393/2965120.html>.

¹⁰¹ Exhibit s402 NC - SEC Form 20-F – Aluminum Corporation of China Limited (December 31, 2007).

¹⁰² Exhibit s407 NC – International Aluminum Institute Statistics for China's Primary Aluminum Production.

¹⁰³ Exhibit s402 NC - SEC Form 20-F – Aluminum Corporation of China Limited (December 31, 2007).

To establish the fair market value of primary aluminum in China, the CBSA reviewed the information available. As noted above, the CBSA found that one cooperative exporter had imported primary aluminum from a supplier located outside of China during the Subsidy POI and that the exporter also had a contract in place through the POI establishing the price for such purchases.

The CBSA is unable to use the actual pricing of those specific transactions that took place between the cooperative exporter and its Non-SOE supplier as disclosing the confidential information may be harmful to that entity as the premium portion of the price is negotiated by the exporter. Therefore, in order to determine a fair market value price to compare with all cooperative exporters' purchases of primary aluminum from SOEs, the CBSA based the fair market value price on the non-confidential terms found in the pricing agreement. The pricing agreement between the cooperative exporter and the Non-SOE supplier was based on the monthly average LME price plus a negotiated premium. In order to protect the confidentiality of the negotiated portion of the contract, the CBSA used the official LME monthly average cash settlement price for primary aluminum (US\$/Tonne) for purposes of establishing the fair market value of primary aluminum in China. As non-confidential information relating to premiums paid on primary aluminum imported into China is not available, a premium amount will not be included in establishing the fair market value.

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

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS

The following programs were included in the current investigation. Questions concerning these programs were included in the RFIs sent to the GOC and to all known exporters of subject goods in China. None of the cooperative exporters reported using these programs during the subsidy POI. Without complete responses to the Subsidy RFI from the GOC and all known exporters, the CBSA does not have detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not constitute actionable subsidy programs. In other words, the CBSA does not have sufficient information to determine that any of these programs should be removed from the investigation for the purposes of the final determination.

Special Economic Zone (SEZ) Incentives and Other Designated Areas

- Program 16. Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area).
- Program 17. Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.
- Program 18. Preferential tax policies in the Western Regions.
- Program 19. Local Income Tax Exemption and/or Reduction for SEZs and Designated Areas.
- Program 20. Exemption/reduction of special land tax and land use fee.
- Program 21. Tariff and Value-added Tax (VAT) exemptions on imported materials and equipments.
- Program 22. Income Tax Refund where Profits Re-Invested.
- Program 23. Preferential costs of services or goods provided by government bodies or state-owned enterprises.
- Program 24. Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas.

Grants

- Program 25. The State Key Technology Renovation Projects.
- Program 26. Reimbursement of Antidumping and/or Countervailing Legal Expenses by the Local Governments.
- Program 27. Grant for Key Enterprises in Equipment Manufacturing Industry.
- Program 28. Export Assistance Grant.
- Program 29. Innovative Experimental Enterprise Grant.
- Program 30. Inward Remittance of Export Earnings.
- Program 31. Interest Subsidies for Loans Secured by Tax Refund Accounts.
- Program 32. Special Support Fund for Non-State-Owned Enterprises (NSOEs).
- Program 33. State Fund for R&D Technology Projects.
- Program 34. Innovation Fund for Medium and Small Business.
- Program 35. Technical Renovation Loan Interest Discount Fund.
- Program 36. Special Project Support Fund.
- Program 37. Special Funds for Foreign Economic and Technical Cooperation.
- Program 38. Special Fund for Brand Development.
- Program 39. Key Export Enterprise Assistance Fund.
- Program 40. Support Fund for Key Commercial and Industrial Enterprises.
- Program 41. Venture Investment Fund of Hi-Tech Industry.
- Program 42. National Innovation Fund for Technology Based Firms.
- Program 43. Guangdong – Hong Kong Technology Cooperation Funding Scheme.
- Program 44. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.
- Program 45. State Fund with Interest Discount.

Equity Infusions/Debt-to-Equity Swaps

Program 46. Debt-to Equity Swaps.

Preferential Loans

Program 47. Loans and Interest Subsidies provided under the Northeast Revitalization Program.

Program 48. Loan Guarantee Fund for Small and Medium Enterprises.

Program 49. Interest-Free Loans to High and New Technology Projects.

Preferential Income Tax Programs

Program 50. Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive.

Program 51. Preferential tax policies for the research and development of foreign-invested enterprises.

Program 52. 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.

Program 53. Preferential tax policies for domestic enterprises purchasing domestically produced equipment for technology upgrading purpose.

Program 54. Income Tax Refund for Re-investment of FIE Profits by Foreign Investors.

Program 55. VAT and Income Tax Exemption/Reduction for Enterprises adopting Debt-to-Equity Swaps.

Relief from Duties and Taxes on Materials and Machinery

Program 56. Relief from Duties and Taxes on Imported Materials and Other Manufacturing Inputs.

APPENDIX 3 – SUMMARY OF FINDINGS – SECTION 20

INTRODUCTION

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

EVIDENCE OF SECTION 20 CONDITIONS

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

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

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

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

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

- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.

BACKGROUND

Recent China Section 20 Inquiries

Since June 2005, the CBSA has conducted two investigations and three normal value re-investigations involving section 20 inquiries on steel products from China. The investigations covered carbon or alloy steel oil and gas well casing (oil country tubular goods or OCTG) products and carbon steel welded pipe, while the three re-investigations involved hot-rolled steel sheet and hot-rolled steel plate products. In all instances, information available to the CBSA indicated that there was reason to believe that section 20 conditions exist in the steel sector in China. Accordingly, the President was of the opinion that the conditions of section 20 were present in the Chinese domestic steel industry.

This investigation is Canada's first dumping and subsidy investigation involving an aluminum product from China. Accordingly, while there are some similar characteristics shared between the Chinese steel and aluminum industries, a separate, detailed analysis of the aluminum extrusions sector must be conducted to determine if the conditions of section 20 exist.

Investigation Process

At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the Complainants, and from its own research, to support the initiation of a section 20 inquiry. The information indicated that the prices of aluminum extrusions in China have been substantially determined, indirectly, by various GOC industrial policies regarding the aluminum industry and by export restrictions and tax changes for aluminum and aluminum extrusions.

Accordingly, the CBSA, at the initiation of the dumping investigation, sent section 20 Requests For Information (RFIs) to all 160 known exporters of aluminum extrusions in China, as well as to the GOC requesting detailed information related to the aluminum extrusions sector. In response to the section 20 inquiry and the relevant RFIs, the CBSA received substantially complete and verifiable responses that are usable for the section 20 inquiry from eight Chinese exporters and from the GOC.

In addition, the CBSA has obtained information from secondary sources such as previous CBSA reports, market intelligence reports, public industry reports, newspaper and internet articles as well as other government documents.

The eight cooperative exporters represent approximately 41% of the total exports to Canada of subject goods, by volume during the Dumping Period of Investigation (Dumping POI). These companies represent a far smaller proportion of the Chinese domestic aluminum extrusions industry, which the GOC has indicated is comprised of over 460 producers.¹⁰⁴ A section 20

¹⁰⁴ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 24.

inquiry assesses the domestic industry sector as a whole. As such, the review of the aluminum extrusions sector is not limited to an examination of the information provided by the cooperative exporters.

For the purposes of the preliminary determination, the President formed the opinion that domestic prices in the aluminum extrusions sector in China were substantially determined by the GOC and there were sufficient reasons to believe that the domestic prices were not substantially the same as they would be if they were determined in a competitive market. In arriving at this opinion, the President considered the cumulative effect that the GOC's measures exerted on the Chinese aluminum extrusions sector in China. The information indicated that the wide range of GOC influence and measures have a material impact nature on the aluminum and aluminum extrusions industries through means other than market forces.

CBSA ANALYSIS FOR FINAL DETERMINATION

China As An Economy In Transition

The GOC started to move from a “planned economy” to “socialist market economy” in the early 1990’s. China’s current economic structure reflects the legacy of central planning and the elements of a modern and increasingly market based competitive system.¹⁰⁵

There are differences between a socialist market economy and a market economy. The main difference rests with the government involvement in various industrial sectors deemed to be important to the Government. For example, the GOC has identified two industry groups where the GOC must maintain a degree of control. The two groups are “strategic industries”¹⁰⁶ and “fundamental and pillar industries”, with the non-ferrous metals industry listed as a pillar industry.¹⁰⁷ As reported in the United States International Trade Commission (USITC) Report of December 2007, the State-owned Assets Supervision and Administration Commission (SASAC) noted that for “strategic industries” the government must maintain absolute control, which is a minimum of 50% government equity stake in every company in the industry group. For “fundamental and pillar industries” the government should maintain relatively strong control over the principal companies, which is a minimum of 50% government equity in the principal enterprises in the industry group.¹⁰⁸ It appears that the GOC considers the non-ferrous metals industry, including the aluminum industry, to be a “fundamental and pillar industry”.

An annual report (Form 20-F) filed with the United States Securities and Exchange Commission (SEC) by the Aluminum Corporation of China Limited (Chalco) provides some insight into the oversight role of the GOC in the economy and aluminum industry in general. Chalco is a subsidiary of the Aluminum Corporation of China Limited (Chinalco), which is listed as one of

¹⁰⁵ CBSA Dumping Exhibit #364. China: Description of Selected Government Practices and Policies Affecting the Decision-Making in the Economy, USITC December 2007 [page xiv].

¹⁰⁶ *Ibid*, page 18. Strategic industries include armaments, power generation and distribution, petroleum and petrochemicals, telecommunication, coal, civil aviation and shipping.

¹⁰⁷ *Ibid*, page 18. Pillar industries include machinery and equipment, automobiles, information technology, construction, iron and steel, nonferrous metals, chemicals, mining resources exploration, and science and technology.

¹⁰⁸ *Ibid*, pages 18 and 27.

the state-owned enterprises directly under the SASAC.¹⁰⁹ In their Form 20-F filing, they stated the following regarding the status of the economy in China and their own risks related to conducting business in China:

*A significant portion of our business, assets and operations are located in China. The economy of China differs from the economies of most developed countries in many respects. The economy of China has been transitioning from a planned economy to a market-oriented economy. Although in recent years the PRC government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets and the establishment of sound corporate governance in business enterprises, a substantial portion of productive assets in China are still owned by the PRC government. In addition, the PRC government continues to play a significant role in regulating industry by imposing industrial policies. It also exercises significant control over China's economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. Some of these measures benefit the overall economy of China, but may have a materially adverse impact on us.*¹¹⁰

China's National Five-Year Plans

Five-Year Plans for National Economic and Social Development (Five-Year Plans) are established by the GOC and arrange national key construction projects, manage the distribution of productive asset and economic development, map the direction of future regional development and establish social and economic targets. The first Five Year Plan was issued in 1953 and since that time, the GOC has issued Five-Year Plans on a consistent basis.

China's current plan is known as "Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development 2006-2010" (Eleventh Five-Year Plan)¹¹¹ and was compiled according to the suggestions of the Central Committee of the Communist Party of China.

The Eleventh Five-Year Plan specifically sets out a framework for adjusting raw material industrial structure and distribution in Chapter 13, section 1 entitled "Optimize the Development of Metallurgical Industry", which notes that the GOC intends to:

*Control the total quantity of electrolytic¹¹² aluminium, moderately develop alumina, encourage the development of deep aluminium processing and new type alloy material and enhance the comprehensive utilization level of aluminium industrial resources.*¹¹³

¹⁰⁹ CBSA Dumping Exhibit #372. SASAC website, "Name List of Central SOEs", available at: <http://www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html>.

¹¹⁰ CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2007*. United States Securities and Exchange Commission, commission file number: 001-15264, page 38. ["Chalco SEC filing 2007"].

¹¹¹ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 971.

¹¹² The term electrolytic refers to the electrolysis process used to produce aluminum. Electrolytic aluminum is synonymous with the term primary aluminum.

¹¹³ *Ibid*, page 986.

The inclusion of a specific reference to the aluminum industry in a broad national-level planning document signifies the importance of the aluminum industry to the Chinese economy and highlights the extent of GOC attention the industry receives. Despite being a general planning document, that the GOC notes is a non-binding blueprint for economic and social development¹¹⁴, there is very clear and specific wording that the GOC will “control the total quantity of electrolytic aluminum”. It is also worth noting that the design and production of aluminum extrusions would fall under the realm of the “development of deep aluminum processing and new type alloy material” that the GOC is broadly noting should be encouraged during the 11th five-year planning period.

Flowing from the Eleventh Five-Year Plan, the provinces/municipalities develop their own specific Five-Year plans which reflect the GOC’s objectives, as detailed below.

China’s Provincial Five-Year Plans

Similar to the central Government’s Eleventh Five-Year Plan explained above, Chinese provinces/municipalities have their own corresponding five-year development plans. The Provincial Five-Year Plans reflect the Central Government’s overall objectives and incorporate the specific National objectives for that province.

The CBSA requested that the GOC provide fully translated copies of the Provincial 10th and 11th Five-year Plans for all of the provinces and cities in which the known exporters were located. The GOC initially only provided provincial five-years plans for the two provinces where they believed all of the responding exporters were located. In the GOC’s supplemental section 20 response they provided partial translations of the provincial plans for an additional five provinces in China. The GOC noted in their supplemental RFI response that these seven provinces contained aluminum extruders that account for over 80% of the production volume for aluminum extrusions in China in 2007.¹¹⁵

Some of the provincial plans reference aluminum only in a general way. For instance, the provincial five-year plans for Guangdong province only mentions that the province will “restrict the exported products which take lots of resources with high energy consumption and pollution”¹¹⁶, which would presumably include exports of aluminum. Shandong province also only has general comments about the aluminum industry, including “take joint management of aluminum industry with power supply industry, accelerate the development of electrolytic aluminum, form the aluminum industrial system integrated with aluminum plate, strip, foil and shaped aluminum”.¹¹⁷ The five-year plans themselves contain no additional details on how the provinces plan on implementing these initiatives. However, with respect to Shandong province the CBSA has requested and received a copy of *Shandong Government Opinion on Speeding-up Adjustment in Structure of Aluminum Industry in the Area of Shandong*, which does contain additional details regarding their intentions towards the aluminum industry in their province. Details on the contents of this plan can be found in **Appendix 4**.

¹¹⁴ CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, pages 2 and 3.

¹¹⁵ CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 6.

¹¹⁶ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 1166.

¹¹⁷ CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 130.

Other provinces' five-year plans contained much clearer plans for the aluminum industry. For instance, Henan province had the following in their 11th five-year plan:

To further strengthen aluminum centralized non-ferrous industry. To rationally allocate bauxite resources and to develop alumina intensively¹¹⁸. To build 3 alumina bases in Zhengzhou, Jiaozuo and Yuxi. To promote the reorganization of electrolytic aluminum enterprises and to increase the concentration of electrolytic aluminum industry. To vigorously develop the deep processing of aluminum, with an emphasis on high-precision foil strip, die castings and industrial profiles, decorative building material in order to guide gathering of aluminum processing enterprises in aluminum industrial park.¹¹⁹

Like the national five-year plans, the provincial-level plans' inclusion of specific references to the aluminum industry, plans for the aluminum industry, and even specific company names, signifies the importance of the aluminum industry and its major companies to these provincial economies and highlights the extent of GOC attention the industry receives overall.

Industry Structure and State-Owned Enterprise Involvement

Aluminum is the primary raw material input for aluminum extrusions and comprises a large percentage of the cost of aluminum extrusions. A review of the information submitted by the cooperating exporters shows that aluminum constitutes an average of approximately 81% of total cost of the aluminum extrusions they produce.¹²⁰ Given the importance of aluminum as a raw material input and cost component for aluminum extrusions, it is important to examine the GOC's involvement and influence over the Chinese aluminum industry, and any corresponding impact that would have an affect on the price of aluminum extrusions in China.

China is, by far, the world's largest producer of aluminum. In 2007, China produced 12.6 million metric tonnes (mt) of primary aluminum.¹²¹ This accounted for over one third of the world's 37.4 million mt of primary aluminum production in 2007.¹²² To provide for the production of aluminum, China produced 19.5 million mt of alumina in 2007.¹²³ As it takes approximately 2 mt of alumina to produce 1 mt of aluminum, China is, and will remain, a large importer of alumina.

¹¹⁸ Aluminum originates as an oxide called alumina. Deposits of bauxite ore are mined and refined into alumina one of the feedstocks for aluminum metal. Then alumina and electricity are combined in a cell with molten electrolyte called cryolite. Direct-current electricity is passed from a consumable carbon anode into the cryolite, splitting the aluminum oxide into molten aluminum metal and carbon-dioxide. (The Aluminum Association, www.aluminum.org).

¹¹⁹ *Ibid*, page 371.

¹²⁰ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

¹²¹ CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Primary Aluminium Production", April 21, 2008. Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=11.

¹²² CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "Consolidated IAI Primary Aluminium Production", April 21, 2008. Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=16.

¹²³ CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008. Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=13.

Chinalco and its various subsidiaries, including Chalco, dominate the Chinese aluminum sector. Chinalco is listed as one of the state-owned enterprises directly under SASAC. Chinalco produced 10 million mt of alumina in 2007, or 46% of Chinese alumina production (down from 73% in 2006).¹²⁴ Aluminum production information for Chinalco for 2007 is not available, but their subsidiary Chalco produced 2.8 million mt of aluminum, accounting for 22% of Chinese production in 2007.¹²⁵ Chalco is the major, but not the only, aluminum producing subsidiary of Chinalco. Chalco is a publicly traded company, of which Chinalco currently owns 40% of the outstanding shares.

Apart from a small amount of export sales, Chalco sells all of their aluminum production domestically in China. There are approximately 100 aluminum smelting companies operating in China, which, like Chalco, sell substantially all of their products in China. In 2007, only 14 aluminum-smelting companies had production capacities in excess of 300,000 mt, with the rest having relatively smaller capacities.¹²⁶

China's Aluminum Extrusion Production

While the Chinese primary aluminum industry is dominated by state-owned enterprises (SOE), particularly by Chinalco, the same situation is not prevalent in the aluminum extrusions sector. The downstream producers of aluminum extrusion products appear to have little direct state ownership and the industry is very fragmented. The GOC's RFI response indicated there are 460 aluminum extruders in China that each produce and sell at least 5 million RMB annually. Of these 460 companies, the GOC indicated that only 12 are wholly or partially state-owned. In their supplemental section 20 RFI response, the GOC provided the production volume of aluminum extrusions for these 12 companies. Only one of the 12 companies is a large producer of aluminum extrusions, producing over 75,000 mt in 2007. Canada customs information shows that these 12 companies accounted for only 3.4% of the imports of aluminum extrusions from China during the POI.

Government Industrial Policies

Like steel, aluminum has been identified by the GOC as an industry with “production capacity redundancy” that requires GOC mandated structural adjustment. The government industrial policies include several broader documents that discuss policies and approaches to multiple industries (such as steel, cement, non-ferrous metals, etc.). The GOC's industrial policies also include several documents that are specifically authored regarding the aluminum industry, including the mining of bauxite, production of alumina, production of primary aluminum, and the further processing of aluminum (including aluminum extrusions).

In past section 20 inquiries regarding steel products, the CBSA analyzed the GOC's *China Iron and Steel Industry Development Policy* as the main authoritative document outlining the GOC's

¹²⁴ CBSA Dumping Exhibit #372. Xinhua. “China's Top Alumina Maker Reports 24% Rise In 2007 Revenue”, January 14, 2008. Online at: <http://english/mofcom.gov.cn>.

¹²⁵ CBSA Dumping Exhibit #363. Aluminum Corporation of China, “Announcement of 2007 Annual Results”, March 17, 2008.

¹²⁶ Chalco SEC filing 2007, *supra* note 7, page 38.

policies and plans that are specific to the steel industry. The CBSA, through its own research, is aware of three documents that were authored around the same time as the *China Iron and Steel Industry Development Policy* that may contain similar GOC policies and plans related to the aluminum industry. These documents are *The Industrial Development Policy for the Aluminum Industry* (Industrial Development Policy), *The Special Development Plan for the Aluminum Industry Development* (Special Development Plan), and *China's Aluminum Industry Layout and Restructuring Proposal* (Layout and Restructuring Proposal).

The CBSA requested all three of these documents in the section 20 RFI to the GOC. In response, the GOC noted that the Industrial Development Policy and the Special Development Plan had been “formulated in 2005” but that they had not “come into effect” and had not “been circulated to the local governments for implementation”. However, the GOC provided a document authored in 2006 entitled *Guidelines for Accelerating the Restructuring of the Aluminum Industry* which contained the following measure:

(1) *strengthen the direction to the industrial policy and industrial layout and plan*

“It is important to complement the *Industrial Development Policy of Aluminum Industry* approved by the State Council, to stipulate the detailed measures for the implementation, and to accelerate the structural adjustment of the industry. According to the *Special Development Plan for the Aluminum Industry Development*, the aluminum industry will be designed well and developed orderly”.¹²⁷

Additionally, in another document provided by the GOC entitled *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*, promulgated in April 2007, the Industrial Development Policy is again referenced:

“The local governments should implement the *Decision of Publishing and Implementing the 'Interim Measures of Accelerating Adjustment of Industrial Structure' by the State Council*, the *Development Policy of Aluminum Industry*, and the *Notice Concerning Guiding Opinion of Accelerating Adjustment of Aluminum Industrial Structure* to advance the process of adjustment of industrial structure.”¹²⁸

In both of the above referenced quotes, the Industrial Development Policy is referenced by its official title in italics (or in brackets in the manner of noting official documents in the original Chinese version), in the same manner as the title of other documents the GOC provided as officially approved documents. Additionally, the first quote above specifically notes that the Industrial Development Policy is “approved by State Council” and the second quote instructs the local governments to implement the noted policies.

In its second supplemental RFI response the GOC also provided the CBSA with articles published in the *China Non-ferrous Metals Monthly*. This publication is under the administration

¹²⁷ CBSA Dumping Exhibit #266. GOC Response to the Government's RFI (Section 20), page 495.

¹²⁸ *Ibid*, page 834.

and management of China Minmetals Corporation, an SOE under SASAC control.¹²⁹ In an article entitled “*The Major Events of China’s Aluminum Industry in 2005*”, this state-owned publication noted the following:

*In October 2005, the Project on the aluminium Industry Development and the Policies on the Aluminium Industry Development were passed at a conference held by the State Council. This project and the policies presented the principles for China’s aluminium industry development in the future including total output control, improved industry structure and rational distribution, lower energy cost, etc.*¹³⁰

Regarding the Layout and Restructuring Proposal, the GOC noted that this document was merely a proposal drafted by the Industry Department of the NDRC in 2005 and listed on its website. They further noted that it had not been submitted to State Council for examination and approval, and it had never come into effect.¹³¹ The CBSA does not have any information indicating that this proposal has been adopted, however, the “proposal” was still publicly listed on the NDRC’s website three years later.¹³² This Layout and Restructuring Proposal also made reference to the other two industrial policies:

*In order to optimize the layout of the structure of China's aluminum industry, the state has drawn up a special aluminum industry development planning and industrial development policies, to be made public after the approval of the State Council. In order to further strengthen the aluminum industry to adjust industrial layout and structure of the guide. All localities should strictly enforce the aluminum industry development policy, approved the project strictly to prevent redundant construction.*¹³³

In a supplemental section 20 RFI, the CBSA reiterated its request to the GOC to provide the Industrial Development Policy, the Special Development Plan and the Layout and Restructuring Proposal. In their response the GOC noted that for these documents “the required legislative procedure has never been completed and, therefore, they are not in force”.¹³⁴ The GOC also provided a statement by the NDRC noting that the policies were not in force. The GOC, therefore, again refused to provide the documents to the CBSA. The CBSA requested these documents again in its second supplemental section 20 RFI, and also requested the minutes of the State Council Executive meeting where the policies were discussed. The CBSA requested the meeting minutes to ascertain what direction the State Council had given in either approving the policies or limiting the policies to draft status. The GOC again refused to provide documents, noting that they “are not in force and are internal documents. The GOC did not provide these policies since its disclosure would mislead the domestic and/or international community.”¹³⁵ The GOC also noted that “any discussions on these policy documents within the

¹²⁹ CBSA Dumping Exhibit #372. SASAC website, “Name List of Central SOEs”, available at: <http://www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html>.

¹³⁰ CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 222.

¹³¹ *Ibid.*, page 30.

¹³² CBSA Dumping Exhibit #375.

¹³³ *Ibid.*

¹³⁴ CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 4.

¹³⁵ CBSA Dumping Exhibit #475, GOC Response to Supplemental Section 20 RFI #2, page 1.

State Council are also privileged”,¹³⁶ and therefore refused to provide the State Council Executive meeting minutes.

The GOC has requested that the CBSA give due consideration to its statement that the documents are not in effect and are non-legal drafts only. In its case briefs the GOC argued that the CBSA has placed an undue emphasis on these draft policies. Given the GOC refusal to provide these documents, the CBSA is wholly unaware of the contents of these policies, and therefore, cannot place an undue emphasis on their importance. The analysis of the GOC’s industrial policies contained in the rest of this report analyzes the impact of GOC policies and regulations that have been provided by the GOC in its responses as being in force.

However, the CBSA notes the GOC’s unwillingness to provide these policies and their failure to provide the minutes of the State Council Executive meeting that would have showed the context in which these policies were discussed and the direction the State Council provided regarding their implementation (or lack thereof). Even if the documents are “internal” as the GOC asserts, the fact that they are subsequently referenced in other official GOC policy documents at least demonstrates that these policies direct or guide, internally within the GOC, government officials in their overall policies objectives and treatment of the aluminum and aluminum processing industries. The CBSA therefore maintains that the documents are highly relevant to this investigation and takes note of the GOC’s refusal to provide the documents after repeated requests. A report by the People’s Daily on the policies’ planned “launch” noted that they would “curb China’s aluminum exports and call on domestic producers to mainly target the home market”¹³⁷ As discussed later in this report, the GOC has adopted measures that are in line with the apparent contents of these unofficial plans.

GOC Industrial Policies Summary

The GOC did provide numerous documents that cover their general industrial policies and investment guidance, as well as several documents more specific to the production of alumina, aluminum and aluminum products. The CBSA has extensive information on the record regarding numerous GOC industrial polices in general and polices that are specific to the aluminum industry. This information demonstrates a substantial amount of GOC involvement directed specifically towards the aluminum industry in China. **Appendix 4** details, in chronological order, the information that has been obtained regarding various GOC laws, circulars and policy measures affecting the Chinese aluminum and aluminum extrusions industry from 2002 until present.

¹³⁶ *Ibid*, page 8.

¹³⁷ CBSA Dumping Exhibit #372. People’s Daily Online --- <http://english.people.com.cn>. *China to Reveal Aluminium Reforms*, September 22, 2005.

To summarize, the GOC has laws and policies relating to the aluminum industry that dictate:

- the type of aluminum smelting processing technology that is permitted and bans on certain types of technology used in aluminum production; restricting foreign investment in the primary aluminum industry;
- minimum annual production capacity for new primary aluminum producers;
- minimum capital investment requirements for new aluminum projects;
- minimum efficiency standards for new and existing aluminum projects (in terms of electricity and coal usage per MT produced); and
- minimum amounts of raw materials the alumina or aluminum producer is required to have access to in order to be granted project approval.

Furthermore, the GOC has laws and policies relating specifically to the aluminum extrusions sector that dictate:

- minimum annual production capacity for new aluminum fabricators (including a minimum 50,000 MT capacity for new aluminum extruders); and
- minimum efficiency standards for new and existing aluminum extrusion facilities (in terms of electricity usage and raw material consumption per output).

The policies show that over time the GOC's restrictions in the aluminum industry in China have progressed further downstream. Earlier policies sought to restrict additional aluminum production, but encouraged the further processing of aluminum products, including aluminum extrusions. However, the most recent GOC policies now also place restrictions directed towards aluminum processors, including aluminum extrusions producers.

Another important aspect is that the earliest policies sought to restrict or outright ban inefficient technology for producing aluminum, but in the years following these restrictions aluminum smelting capacity actually increased substantially.¹³⁸ Analysis on the record from Metal Bulletin Research attributes much of the growth in China's aluminum capacity to the GOC's industrial policies. The report notes the following with respect to the elimination of older smelting technology:

The government repeatedly stated its intention to close all inefficient and polluting smelting capacity. Around 1.4m tpy of Chinese smelting capacity was based on Söderberg¹³⁹ pot technology during 2001/2002. The authorities announced in early 2003 a plan to phase out all this capacity during 2003, although it took until early 2005 for the vast majority of this capacity to be closed. Many smelters decided the best approach to

¹³⁸ CBSA Dumping Exhibit #552, Information submitted by - Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, *An Analysis of the Global Market for Extruded Aluminium*, February 2006.

¹³⁹ There are two main types of aluminium smelting technology - Söderberg (or self-baked) and Pre-baked. The principal difference between the two is the type of anode used. Söderberg technology uses a continuous anode which is delivered to the cell (pot) in the form of a paste, and which bakes in the cell itself. Pre-bake technology uses multiple anodes in each cell, which are pre-baked in a separate facility and attached to rods that suspend the anodes in the cell. The Pre-baked technology is newer, and is much more efficient in terms of energy use. Over 80% of the world's aluminum smelters employ the Pre-baked technology.

dealing with the threat of closure was to firstly expand capacity by building prebake potlines and then subsequently close old Söderberg technology. However, in many cases, the capacity of the newly installed potlines far exceeded the scale of the Söderberg pots and hence resulted in increased capacity.¹⁴⁰

In response to the GOC's move to ban a form of production technology, Chinese aluminum producers eventually complied but, overall, they first increased their production capacity with GOC approved technology. This response, combined with increasing domestic consumption, and preferential government treatment in the form of low electricity tariff rates and government grants for expansion, led to a surge in aluminum production in China.¹⁴¹ As is reflected in the specific policies summarized in **Appendix 4**, the GOC's policy emphasis during the subsequent years (2003 and 2004) focussed on closing Söderberg technology to reduce capacity. While Chinese smelters still found this production method to be profitable they resisted attempts to be closed down.¹⁴² As a result, Chinese aluminum production capacity continued to increase, partly fuelled by the GOC's mandate to shift into modern manufacturing methods. Having their attempts at restraining aluminum production capacity by closing Söderberg method production prove ineffective, or less effective than desired, the GOC was forced to pursue other measures, such as tax regime changes, to restrain production (see the import and export restrictions section of this report).

It should be noted that none of the GOC policies or regulations obtained by the CBSA in this investigation demonstrate any degree of direct price setting within the aluminum or aluminum extrusions industries. However, these policies and regulations do demonstrate the degree of control the GOC has over the industry in general. Overall, the extent of GOC oversight and control within the industry via their various policies and regulations is quite significant. The GOC's involvement is extensive enough to significantly affect companies within the industry. As Chalco notes in their 2007 SEC filing:

The central and local PRC governments continue to exercise a substantial degree of control and influence over the aluminum industry in China and shape the structure and characteristics of the industry by means of policies in respect of major project approvals, preferential treatments such as tax incentives and safety, environmental and quality control. If the PRC government changes its current policies or the interpretation of those policies that are currently beneficial to us, we may face pressure on profit margins and significant constraints on our ability to expand our business operations or to maximize our profitability.¹⁴³ (emphasis added)

Clearly, in Chalco's opinion, the GOC's extent of regulatory control is substantial and could significantly constrain their profitability and business operations. This wording, by a state-owned company, clearly reflects the strength and impact of GOC industrial policies and

¹⁴⁰ CBSA Dumping Exhibit #552, Information submitted by - Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, *An Analysis of the Global Market for Extruded Aluminium*, February 2006.

¹⁴¹ CBSA Dumping Exhibit #372. Robin Bhar, Base Metals Analyst at Standard Bank London Ltd. *Commodities Now : "Aluminum – The China Syndrome"*, June 2003.

¹⁴² *Ibid.*

¹⁴³ Chalco SEC filing 2007, *supra* note 7, page 13.

defies the GOC's assertions that they are "aspirational expressions of the GOC's hopes for an industry".¹⁴⁴

GOC Preferential Treatment and Subsidies

At the same time they were banning older technology, the GOC was providing preferential treatment to large aluminum smelters. In their 2005 SEC filing Chalco provided an explanation of their competition in the domestic market and the preferential treatment they were receiving from the GOC:

It is the PRC government's industrial policy to consolidate the Chinese primary aluminum industry into one consisting of larger, less polluting and more efficient producers. Accordingly, the larger smelters are being granted favorable treatment, including priority in the allocation of raw materials and electricity supplies and prices. These preferential treatments, especially discounts in electricity prices, represent stronger competitive advantage large domestic smelters have over small domestic smelters. In addition, since January 1, 2005, the PRC government prohibits domestic aluminum smelters whose annual production capacity lower than 100,000 tonnes from directly importing alumina to China. We are among a few companies in the PRC that are currently qualified to directly import alumina for our primary aluminum production. As imported alumina will usually be cost effective, we believe our competitiveness is enhanced as a result. ...

*PRC governmental policies directed at fostering the growth of larger domestic smelters are likely to be retained after China enters the WTO, such as tax benefits, preferential electricity tariffs, and subsidies for research and development.*¹⁴⁵

Further, in 2005 Chalco noted that their domestic competition mostly came from sizable smelters and that there were only nine smelters with annual production capacity in excess of 200,000 mt. By their 2007 SEC filing, Chalco noted that there were fourteen Chinese smelters with annual capacity of at least 300,000 mt. Chalco notes that "Effective September 1, 1999, the former State Economic and Trade Commission, has prohibited construction of any new smelter with less than 100,000 tonnes in annual primary aluminum production capacity". Therefore, while the GOC was moving to ban older production technology they were providing strong incentives and encouragement to larger smelters to expand, and they were setting a minimum annual capacity, forcing such encouraged expansions to be large ones. As a result, Chinese aluminum smelting output increased from 5.5 million mt in 2003 to 7.8 million mt in 2005.¹⁴⁶ China also became a net exporter of aluminum in 2005.¹⁴⁷

¹⁴⁴ CBSA Dumping Exhibit #565. GOC case arguments, page 20.

¹⁴⁵ CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2005*. United States Securities and Exchange Commission, commission file number: 001-15264, pages 29 and 30. ["Chalco SEC filing 2005"].

¹⁴⁶ CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008.

Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=13.

¹⁴⁷ CBSA Dumping Exhibit #475, GOC Response to Supplemental Section 20 RFI #2, page 249.

Perhaps the most significant aspect of the GOC's preferential treatment of aluminum smelters is the preferential electricity rates charged to Chinese aluminum producers. The smelting of aluminum employs an electrolytic reduction process that requires a large and continuous supply of electricity. Electricity comprises a significant percentage of the cost of production for aluminum. For Chalco, the cost of electricity represents 30% of their cost of production for aluminum.¹⁴⁸ The GOC has had a policy of providing preferential electricity rates to large producers of aluminum. Reports indicate that the preferential power tariffs were in excess of RMB 0.10/kwh, and that the elimination of the preferential power rates is to be phased in by RMB 0.05/kwh annual increments.¹⁴⁹ In 2006, Chalco reported that their average cost of electricity was RMB 0.348 per kwh.¹⁵⁰ Therefore, the average preferential electricity concession of RMB 0.02 to greater than RMB 0.10 per kwh could represent substantial savings on the cost of electricity. However, in their 2007 annual SEC filing, Chalco notes that their preferential electricity rates were cancelled at the end of 2007 pursuant to a GOC circular ending the preferential electricity rates program.¹⁵¹

In their RFI response, the GOC provided the notice implementing the cancellation of preferential electricity rates. This notice provides for a phased approach whereby a benefit of 5 cents per kwh was to be eliminated by December 2007; a benefit of between 5 and 10 cents would be reduced by 5 cents in December 2007 with the remainder eliminated in July 2008; and where the benefit was more than 10 cents, for 5 cents to be eliminated in December 2007, 5 cents eliminated in July 2008, and the remainder eliminated in January 2009.¹⁵² The GOC was therefore still providing preferential electricity rates for the production of aluminum during the POI and, prior to the POI, was in some cases providing preferential electricity rates in excess of 10 cents per kwh.

Regarding preferential treatment for aluminum extruders themselves, it should be noted that the CBSA is also conducting a countervailing investigation with respect to benefits provided by the GOC to aluminum extruders in China. The final results of that investigation will show an amount of subsidy for each of the cooperative exporters that were investigated. The amount of benefits received ranges between 8% and 16% of the export prices of aluminum extrusions sold to Canada.

As noted by the World Bank in their *China Quarterly Update – February 2008*, provided by the GOC in the second supplemental RFI response:

Fiscal measures such as direct subsidies and taxes can sometimes substitute for administrative measures and have a different economic impact. Overall, they tend to keep incentives closer to being market determined and thus to be less distortive. A producer subsidy increases the incentive to supply and leaves demand market

¹⁴⁸ *Ibid* page 28.

¹⁴⁹ CBSA Dumping Exhibit #62. China Strategies LLC, "China Renewable Energy and Sustainable Development Report", January 2008: Volume 1, page 8.

¹⁵⁰ CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2006*. United States Securities and Exchange Commission, commission file number: 001-15264, page 30. ["Chalco SEC filing 2006"].

¹⁵¹ Chalco SEC filing 2007, *supra* note 7, page 11.

¹⁵² CBSA Dumping Exhibit #266, GOC Response to the Section 20 RFI, page 817.

*determined. We would normally expect a producer subsidy to result in a (somewhat) lower market price, and higher supply and demand.*¹⁵³

Therefore, the GOC's preferential treatment and subsidies available to aluminum and aluminum extrusions producers in China would have served to artificially increase the supply of the products in China. As previously noted, Chinese aluminum smelting production was 5.5 million mt in 2003. China's aluminum capacity rapidly expanded during the next few years and production reached 12.6 million mt in 2007.¹⁵⁴ Similarly, China's aluminum extrusion output rose from 2.62 million mt in 2003 to 5.5 million mt in 2007.¹⁵⁵

Import and Export Restrictions

An important tool the GOC uses in implementing their industrial policy objectives is their tax regime regarding import tariffs, value-added tax rebate rates and export taxes. In general terms, China's value-added tax (VAT) system is similar to a consumption tax, with the ultimate burden borne by the consumer. A manufacturer in China pays 17% VAT on its purchases of raw materials, processes the goods, and then sells the end-products, collecting 17% VAT in the process. The manufacturer then remits the difference between the VAT collected and the VAT paid on the purchases of the raw materials. In this manner, a manufacturer does not incur any VAT related costs on his production materials. However, VAT on export sales is treated differently.

With exports, the exporter still pays the same 17% VAT on their purchases of raw materials, however, when they export the goods, they only receive a VAT tax refund (tax refund) of a fixed percentage, which is established by the GOC. In addition, the tax refund cannot exceed the VAT paid on raw materials. Consequently, the tax refund on exports would offset the VAT paid on the raw materials.

¹⁵³ CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, page 420.

¹⁵⁴ CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008.

Online at: http://stats.world-aluminum.org.iai/stats_new/formServer.asp?form=13.

¹⁵⁵ CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, page 354.

Over the previous three years, the GOC has made substantial changes to the import tariffs, VAT rebates for exports, and export duties on aluminum raw materials, aluminum, and finished aluminum products. These changes are summarized in the table below.¹⁵⁶

January 2004	Lowered VAT rebate on aluminum from 15% to 8%
January 2005	Fully removed VAT rebate and imposed a 5% export tax on aluminum
September 2006	Lowered VAT rebates on various aluminum products from 13% to 5-11% (11% for aluminum extrusions, except aluminum pipe and tube which remains at 13%)
November 2006	Increased the export tax on aluminum to 15%
July 2007	Fully removed VAT rebates on alloy and non-alloy aluminum bar, wire and profiles
August 2007	– Removed 5% import tariff on aluminum – Imposed a 15% export tax on non-alloy aluminum rod and bar
January 2008	– Removed 3% import tariff on alumina – Imposed 15% export tax on alloy aluminum rod, bar and some solid aluminum profiles

When considering the above VAT rebate changes, it is also very important to note the GOC's treatment of export sales for which the VAT rebate has been fully removed. When VAT rebates are fully removed the GOC deems an export sale to be a domestic sale for VAT purposes.¹⁵⁷ What this means is that the exporter's FOB Port selling price is effectively treated by Chinese authorities as being a VAT-inclusive price, and the exporter is assessed a VAT liability equal to 14.53% (1-(1/1.17)). Therefore, when the VAT rebates on aluminum extrusions were reduced to zero, aluminum extrusion exporters went from a position of receiving an 11% refund on their FOB selling price to their FOB selling price being deemed VAT inclusive and effectively being reduced by 14.53%. This change in tax treatment is quite significant.

Another important aspect affecting imports and exports is the restrictions placed on processing trade. Processing (or tolling) trade involves importing goods duty and VAT free provided the finished good is then exported. In October 2004, the GOC banned processing trade for alumina (importing alumina VAT and duty free if aluminum is exported) for all but the largest smelters

¹⁵⁶ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, pages 47, 48, and 577.

CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 8.

CBSA Dumping Exhibit #332. pages 7 and 8.

WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 75.

CBSA Dumping Exhibit #372. Interfax-China. "New Aluminium Product Export Tax Policy to Hasten Industry Reform", June 25, 2006. Online at: <http://www.chinamining.org/Policies/2007-06-25/1182738229d5773.html>.

CBSA Dumping Exhibit #372. Chinamining.org. "China Adjusts Tariff on Aluminum Products to Cut Energy Consumption, Pollution", July 20, 2007. Online at:

<http://www.chinamining.org/Policies/2007-07-20/1184893800d6266.html>.

CBSA Dumping Exhibit #372. Interfax-China. "China to Cancel Aluminium Import Tax, Impose Export Tax", July 19, 2007. Online at: <http://resourceinvestor.com/pebble.asp?relid=34031&t=60>

CBSA Dumping Exhibit #372. Resource Investor, Ida Chen. "China to Remove Import Tax on Alumina and refined Copper", December 26, 2007. Online at: <http://www.resourceinvestor.com/pebble.asp?relid=39029&t=60>.

¹⁵⁷ CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, pages 8, 9 and 20.

that were in conformity with their industrial policies. The GOC fully banned processing trade for alumina in August 2005.¹⁵⁸

The removal of VAT rebates, export taxes and restrictions on processing trade, were enacted in accordance with an official GOC plan directed at reducing exports of certain products. In July 2005, the GOC issued a circular explaining the need for export controls of certain products and its plan to control export levels within certain products. The stated government goal for these measures was to curb the export of energy-intensive, highly polluting and resource-wasting products, encourage energy conservation and raw material imports.¹⁵⁹ The specific products that were identified in the plan are steel billets and ingots, electrolytic aluminum, and other non-ferrous metals. Recent reports also suggest that the government is not satisfied with the results of the export taxes and may increase the export taxes on aluminum to divert more primary aluminum output towards domestic demand.¹⁶⁰

An effect of these tax changes is that it increases the cost of exports and reduces their profitability, which in turn reduces the volume of material that is exported and leaves additional capacity to serve the domestic market. While the GOC has stated that many of these policies are intended to address environmental and resource efficiency issues, these measures are dramatically changing the demand and supply balance in the domestic market and materially affecting the domestic prices of aluminum and aluminum extrusion products. As noted by China Non-ferrous Metals Industry Association in the China non-ferrous Metals Yearbook, “The adjustment for provisional export tax rate will increase the cost of enterprises which may affect the export of enterprises. The intent of the structural adjustment [to VAT rebates] is obvious. This is for the purpose of guiding resources and energy enterprises to domestic markets and optimizing exported products structure when carrying out macro control”¹⁶¹.

The GOC provided information regarding the export volume of the aluminum and aluminum extrusions products that are affected by these tax changes. This information is summarized in the following chart, which shows the quarterly export volume of primary aluminum affected by VAT rebate removal and export taxes, and aluminum extrusions covered by the VAT rebate removal.¹⁶² The chart shows the information, as provided by the GOC, only for the Chinese commodity tax codes that were affected by the tax changes.

¹⁵⁸ CBSA Dumping Exhibit #552, Information submitted by - Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, *An Analysis of the Global Market for Extruded Aluminium*, February 2006, page 46.

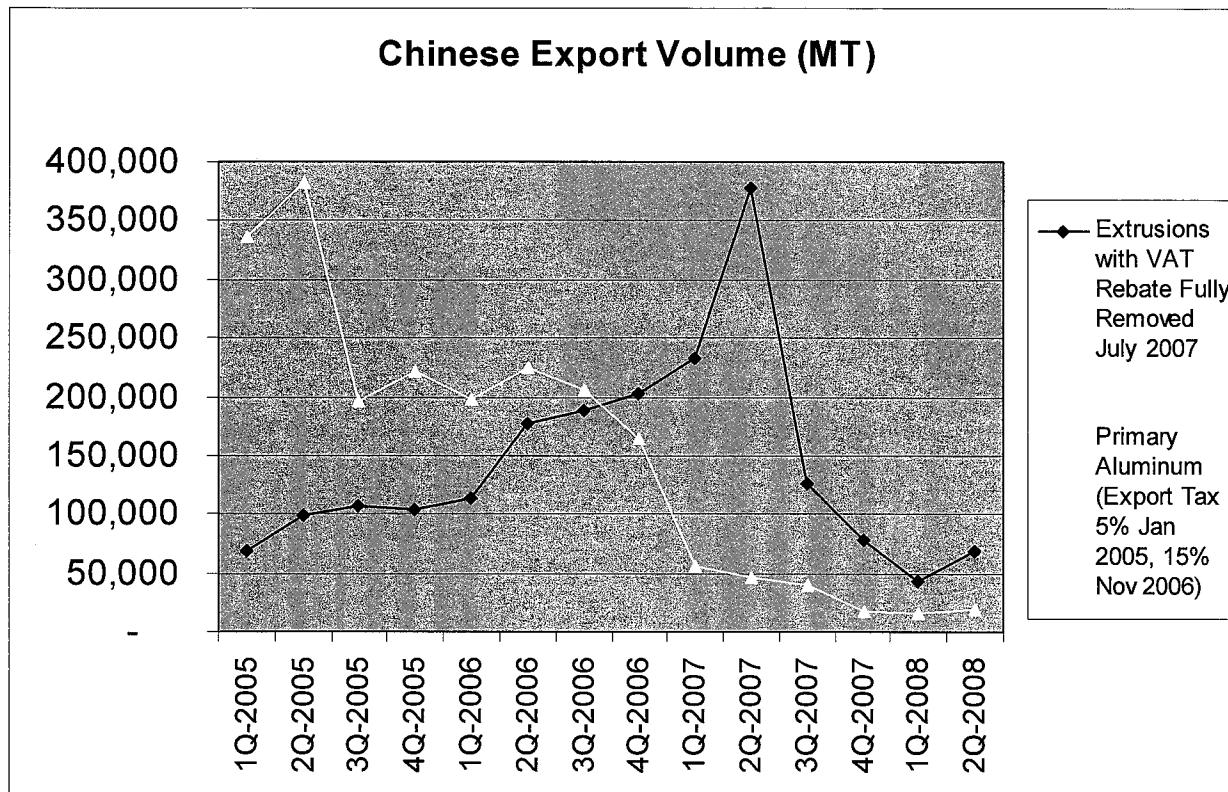
¹⁵⁹ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 865.

¹⁶⁰ CBSA Dumping Exhibit #372. China Aluminum Network. “China May Raise Primary Aluminum Export Tax to Secure Domestic Supplies”, May 30, 2008. Online at: http://www.alu.com.cn/enNews/NewsInfo_1580.html.

¹⁶¹ CBSA Dumping Exhibit #488. Addendum to the GOC Response to Supplemental Section 20 RFI #2, page 27.

¹⁶² CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, pages 368-374.

CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.



Regarding aluminum exports, this chart shows the significant impact that the VAT rebate cancellation, export taxes and banning of processing trade had on Chinese exports. The volume of exports of aluminum decreased significantly during 2005, as the cancellation of VAT rebates, imposition of a 5% export tax and banning of processing trade of alumina took effect. Chinese export volume remained steady for several quarters until the GOC raised the export tax to 15% in November 2006, again causing a significant decrease in export volume, from 200,000 mt per quarter to 50,000 mt or less per quarter.

Regarding exports of aluminum extrusions, the above chart shows the significant growth in export volume during 2006 and the first half of 2007. Export volumes peaked at a high of 372,000 mt in the second quarter of 2007, and then plunged to 43,000 mt by the first quarter of 2008, which precisely coincides with the cancellation of VAT rebates and imposition of export taxes on some extrusions. Again, the effect of the GOC's tax changes is clear and results in a significant reduction in export volumes for the affected products.

The information available to the CDSA shows a strong level of GOC involvement in the aluminum industry through import tariffs, VAT rebate levels and export taxes. The use of such measures by the GOC is shown to severely restrict the export volume of the affected products. Arguments submitted by the GOC noted that there was no information on the record that demonstrates that reduced export volumes resulted in increased domestic supply (versus a reduction in production) or resulted in suppressed domestic prices. The next two sections of this report deal with the impact on domestic supply and prices that GOC policies have had on aluminum and aluminum extrusions.

Impact of GOC Policies on Domestic Chinese Supply and Price of Aluminum

In its first supplemental request to the GOC, the CBSA requested domestic sales volume and value statistics for aluminum and aluminum extrusions. The GOC noted that “neither the GOC nor the CNMIA maintain statistical data on domestic sales”.¹⁶³ The CBSA therefore relied upon other information on the record to demonstrate the increasing volume of domestic supply.

The following information summarizes the domestic market situation of Chinese aluminum in 2006 and 2007:¹⁶⁴

Units in Tons	2006	2007
Production	9,350,000	12,256,000
Imports	289,855	111,363
Exports	838,286	160,793
Net Exports	548,431	49,430
Stock Change in SHFE	-34,983	69,716

The above information demonstrates that domestic production increased in 2007 over 2006. At the same time, export volumes were significantly lower (as previously noted). Also, import volumes were significantly reduced, lowering 61% between 2006 and 2007. The stock change in the SHFE also increased significantly, by over 100,000 mt. While Chinese consumption also grew during this period, it is clear that export volumes were diverted to the domestic market in China, causing increased availability of product, as evidenced through increasing SHFE stocks, and reduced import penetration due to domestic oversupply.

Regarding the first imposition of the 5% export tax on primary aluminum in January 2005, Chalco noted in their 2005 annual SEC filing that:

The abolishment of export tax refund and the imposition of export tax affected the allocation of domestic and export sales by aluminum producers in China and resulted in an increase in domestic sales. The increase in domestic sales further intensified the competition in domestic primary aluminum market, where we conduct most of our primary aluminum business. Intensified domestic competition could have a material adverse effect on the price and margins of our products and market share.¹⁶⁵

One indicator of the domestic price of aluminum in China is the price of aluminum futures traded on the Shanghai Futures Exchange (SHFE). Trading on the SHFE is only open to corporations organized and registered in China.¹⁶⁶ In addition, companies that wish to trade in overseas futures markets have to be approved by the China Securities Regulatory Commission. Only

¹⁶³ CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 14.

¹⁶⁴ CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, pages 351 and 352.

¹⁶⁵ Chalco SEC filing 2007, *supra* note 41, page 5.

¹⁶⁶ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 1994.

31 Chinese companies in any industry in the entire country are currently allowed to conduct overseas futures transactions.¹⁶⁷

It is important to note that SHFE prices are quoted Chinese VAT inclusive.¹⁶⁸ As previously explained, Chinese aluminum extruders would be eligible to be reimbursed for the amount of VAT they pay on raw materials. The quoted SHFE prices are therefore 17% higher than the effective cost that SHFE aluminum would represent to Chinese aluminum extruders.

Market Spot Prices	2003	2004	2005	2006	2007	1H 2008
SHFE spot price RMB/mt ^{169 170} ,	14,595	16,242	16,744	19,000	19,580	
SHFE spot price converted to US\$/mt ¹⁷¹	\$ 1,763	\$ 1,962	\$ 2,046	\$ 2,388	\$ 2,583	\$ 2,677
SHFE spot price US\$/mt (net of VAT)	\$ 1,464	\$ 1,629	\$ 1,698	\$ 1,982	\$ 2,144	\$ 2,222
LME spot price US\$/mt ^{172 173} ,	\$ 1,437	\$ 1,722	\$ 1,901	\$ 2,568	\$ 2,661	\$ 2,868

As can be seen from this comparison of London Metal Exchange (LME) and SHFE aluminum contract pricing, the price of aluminum in China is not always reflective of the international price. Prices of aluminum on the SHFE (excluding VAT) were reflective of international prices until 2004. Since then, prices on SHFE have not moved in sync with LME prices, and have often been substantially lower. This divergence of prices is also evident in the chart below.¹⁷⁴ In addition to showing both the LME and SHFE (net of VAT) prices for aluminum, the chart includes aluminum prices as traded on the New York Mercantile Exchange (NYMEX). While there may be some temporary differences, the LME and NYMEX prices for aluminum closely track each other, or are exactly equivalent, for the entire period from 2003 to June 2008. This reflects the commodity nature of aluminum and establishes that there is a world price for this commodity product.

¹⁶⁷ WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 160.

¹⁶⁸ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 2007.

¹⁶⁹ CBSA Dumping Exhibit #363. Aluminium Holdings Limited. *Global Offering on Hong Kong Exchange*, March 17, 2008, page 67. Note their source for the information is *The 2006 Yearbook of Non-ferrous Metals Industry of China of CNIA*.

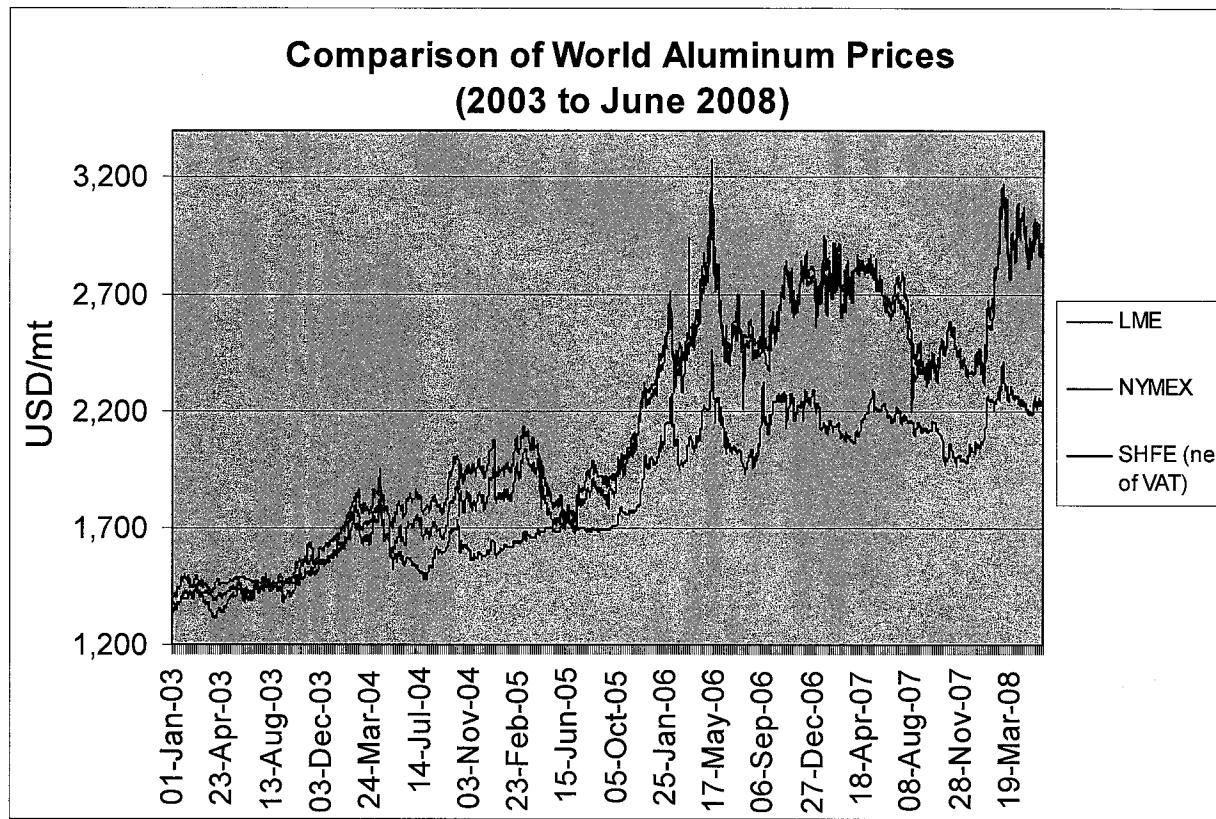
¹⁷⁰ Chalco SEC filing 2007, *supra* note 7, page 51.

¹⁷¹ Converted at the average yearly exchange rate.

¹⁷² CBSA Dumping Exhibit #1. Aluminum Extrusions Complaint. Confidential attachment 6, page 149.

¹⁷³ Chalco SEC filing 2007, *supra* note 7, page 51.

¹⁷⁴ Source information for the chart is CBSA Dumping Exhibit #365, aluminum prices on different commodity exchanges.



Again, it is evident that the SHFE price of aluminum traded at the world price of aluminum in 2003, but began to diverge from the world price in 2004, coinciding with the timing of the GOC first adjusting the VAT rebates available for primary aluminum. This divergence in pricing continued to increase during 2005 and 2006, which coincides with the timing of the GOC's full removal of VAT rebates (January 2005) and imposition of export taxes (5% in January 2005, and 15% in November 2006) on primary aluminum and primary aluminum products. As the WTO Trade Policy Review Body notes:

*Removal of the VAT rebate together with the imposition of the export tax tends to reduce exports of primary aluminum and thus increase its domestic supply. As a result, the domestic price of primary aluminum tends to be lower than would otherwise be the case.*¹⁷⁵

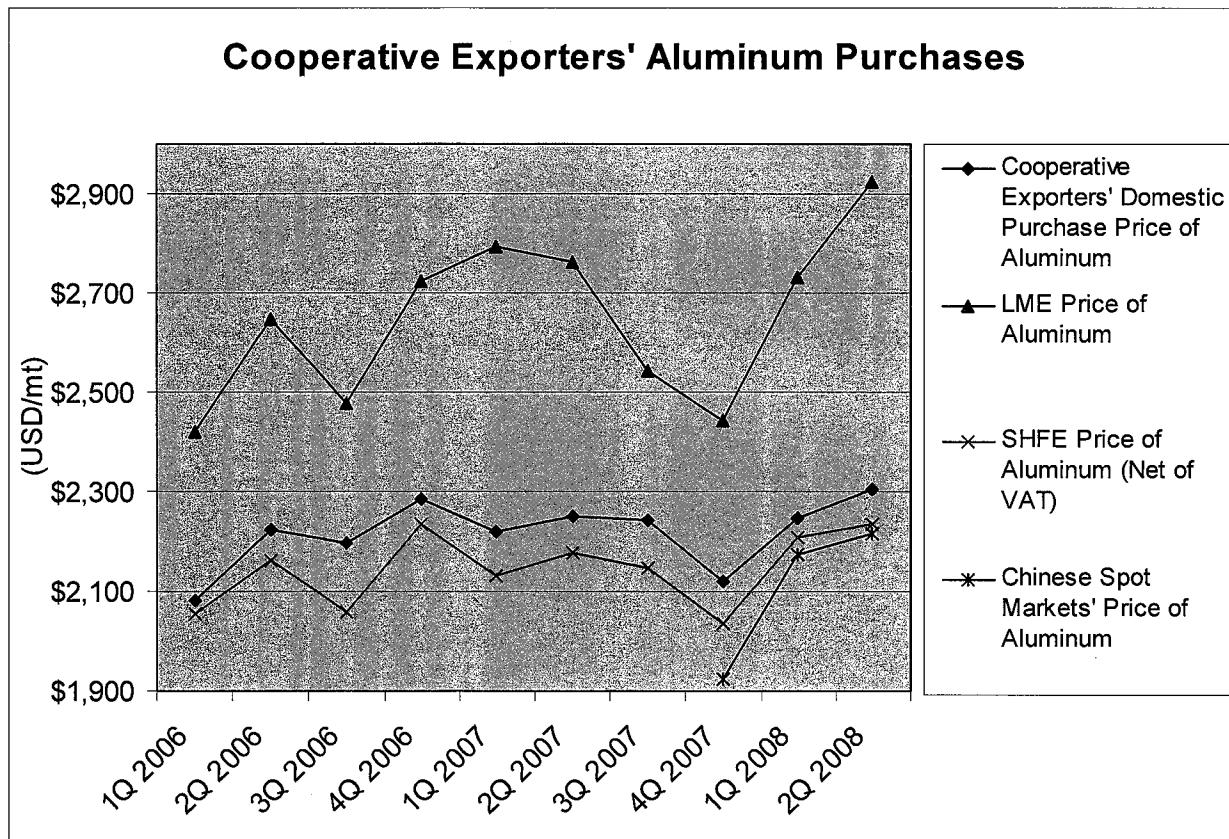
There is also information on the record that shows that SHFE prices generally reflect the prices of aluminum bought and sold in China (between two parties and not through the commodities exchange). In their 2007 SEC filing, Chalco notes "Like most primary aluminum producers in China, we price our primary aluminum products by reference to the Shanghai Futures Exchange spot prices".¹⁷⁶ Chalco further notes the average SHFE 3-month contract price during 2007 was

¹⁷⁵ WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 75.

¹⁷⁶ CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2006*. United States Securities and Exchange Commission, commission file number: 001-15264, page 51. ["Chalco SEC filing 2006"].

RMB19,580 per mt (or RMB16,251 excluding VAT) and that their own average selling price during 2007 was at a comparable level of RMB16,914 per tonne (excluding VAT).¹⁷⁷

Additionally, the CBSA has information on the record regarding the actual purchases of aluminum by the cooperating exporters and information provided by the GOC for two spot markets in China. The following chart shows that the cooperating exporters' actual transaction prices of domestically sourced aluminum in China were at prices marginally higher than aluminum traded on the SHFE, but still substantially below the world price established on the LME.¹⁷⁸



When the cooperative Chinese aluminum extruders imported aluminum, they did so at a price that was generally comparable to the LME.¹⁷⁹ The cooperative exporters' aluminum purchase data also confirms that the low level of aluminum import penetration in the Chinese market applies to aluminum extruders' purchases. In 2006, the cooperative extruders sourced 22% of their purchased aluminum from imports. In 2007 the cooperative extruders sourced only 3% of their aluminum from imports, and there were virtually no imports of aluminum by the cooperative extruders during the Dumping POI.¹⁸⁰

¹⁷⁷ Chalco SEC filing 2007, *supra* note 7, pages 52 and 53.

¹⁷⁸ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

¹⁷⁹ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

¹⁸⁰ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

The chart also demonstrates that different spot markets in China also sell at or below the SHFE futures price of aluminum. The GOC provided average spot price information for two spot markets in China, one in Guangdong and one for the Yangtze River area.¹⁸¹ The CBSA averaged these two spot markets prices together and removed VAT included in the price¹⁸² for comparing to LME prices.

The cost of aluminum, as a raw material input, is the largest cost component of producing aluminum extrusions. A review of the cooperative exporters' cost of production information for the period of investigation reveals that, on average, the raw material cost of aluminum constitutes over 81% of their total cost of production for aluminum extrusions.¹⁸³ (Note: Many Chinese extruders purchase aluminum ingots, which they then melt, add alloying elements, and cast their own billets. Billets are the aluminum input placed in extrusion presses. This differs from the Canadian industry where producers purchase billets directly, at a premium over the price of aluminum ingots). Given this high cost proportion, the availability of low priced aluminum in China would clearly impact the domestic prices of aluminum extrusions in China.

The above information demonstrates that the GOC's trade restrictions and preferential policies have had a material impact on the prevailing price of aluminum in China. The GOC has been substantially affecting the Chinese aluminum extrusions industry through its above-noted policies and SOE involvement in the primary aluminum industry.

Impact of GOC Policies on Domestic Chinese Supply and Price of Aluminum Extrusions

As previously noted, the GOC explained that they do not collect or maintain information regarding domestic sales. The information on the record concerning Chinese domestic sales of aluminum extrusions is from the domestic sales of the cooperative exporters and from the China Minmetals' *China Nonferrous Metals Monthly*. This limited information does show an increasing amount of aluminum extrusions production serving the domestic market.

As previously noted, overall Chinese output for aluminum extrusions was reported to have increased from 2.6 million mt in 2003 to 5.5 million mt in 2007, an increase of 112% in four years.¹⁸⁴ At the same time, apparent Chinese consumption grew from 2.5 million mt to 4.6 million mt, an increase of 84%. As a result, China's export volume of aluminum extrusions increased over the same period, from only 169 thousand mt in 2003 to nearly 1 million mt in 2007.¹⁸⁵ However, in mid-2007 the GOC moved to restrict exports of some aluminum extrusions through their VAT rebate removals and export taxes on aluminum bar and rod. The impact of these tax changes on the export volume of extrusions has already been discussed and, given that exports still represented approximately 18% of the sales of Chinese production in 2007, the GOC's restrictions on exporting this volume of production would force an oversupply situation in the domestic market for aluminum extrusions.

¹⁸¹ CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, pages 987 to 1002.

¹⁸² CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 11.

¹⁸³ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

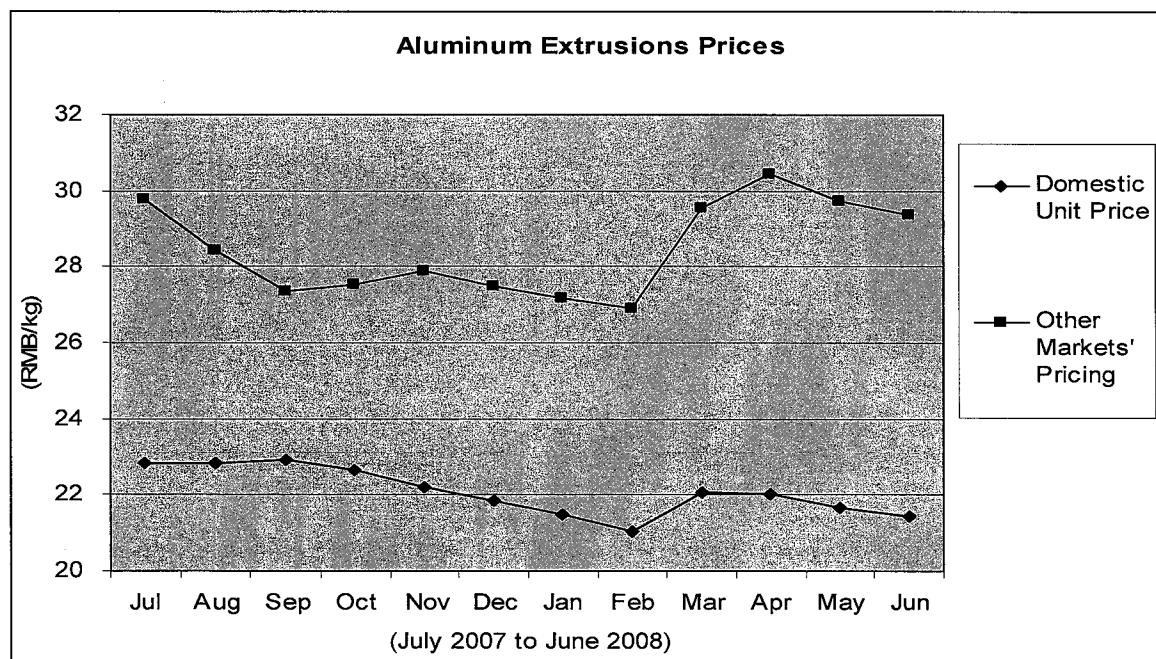
¹⁸⁴ CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 354.

¹⁸⁵ *Ibid.*

Amongst the cooperative exporters, the first half 2008 domestic sales of aluminum extrusions were nearly double the amount during 2006 (approximately 160,000 mt annualized in the 1st half of 2008 versus 89,000 mt in 2006).¹⁸⁶ During the same years, the cooperative exporters reported export sales of aluminum extrusions increased from 100,000 mt in 2006 to 121,000 mt in the 1st half of 2008 (annualized), an increase of 21%.¹⁸⁷ This information demonstrates the increasing amount of aluminum extrusions that were being sold in the domestic market as the GOC moved to restrict export sales on some aluminum extrusions.

The CBSA's understanding of pricing practices in the aluminum extrusions industry is that extrusions are priced by producers based on the current price of aluminum plus a conversion factor. The Chinese aluminum extrusions industry follows this pricing practice. Many of the cooperating exporters explained that they base their domestic prices on the SHFE or published local spot market rate, plus their own conversion factor.¹⁸⁸ Therefore, the below world market price of aluminum available to aluminum extruders in China must impact their domestic selling prices for aluminum extrusions, which can be shown to be lower than other markets in the world.

The CBSA has information that substantiates this difference based on aluminum extrusions pricing information in some European and North American markets from a Metal Bulletin Research publication for aluminum extrusions. This pricing information shows that prices for aluminum extrusion in other countries are higher than the average domestic prices of aluminum extrusions sold in China by the cooperative exporters during the POI.¹⁸⁹



¹⁸⁶ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

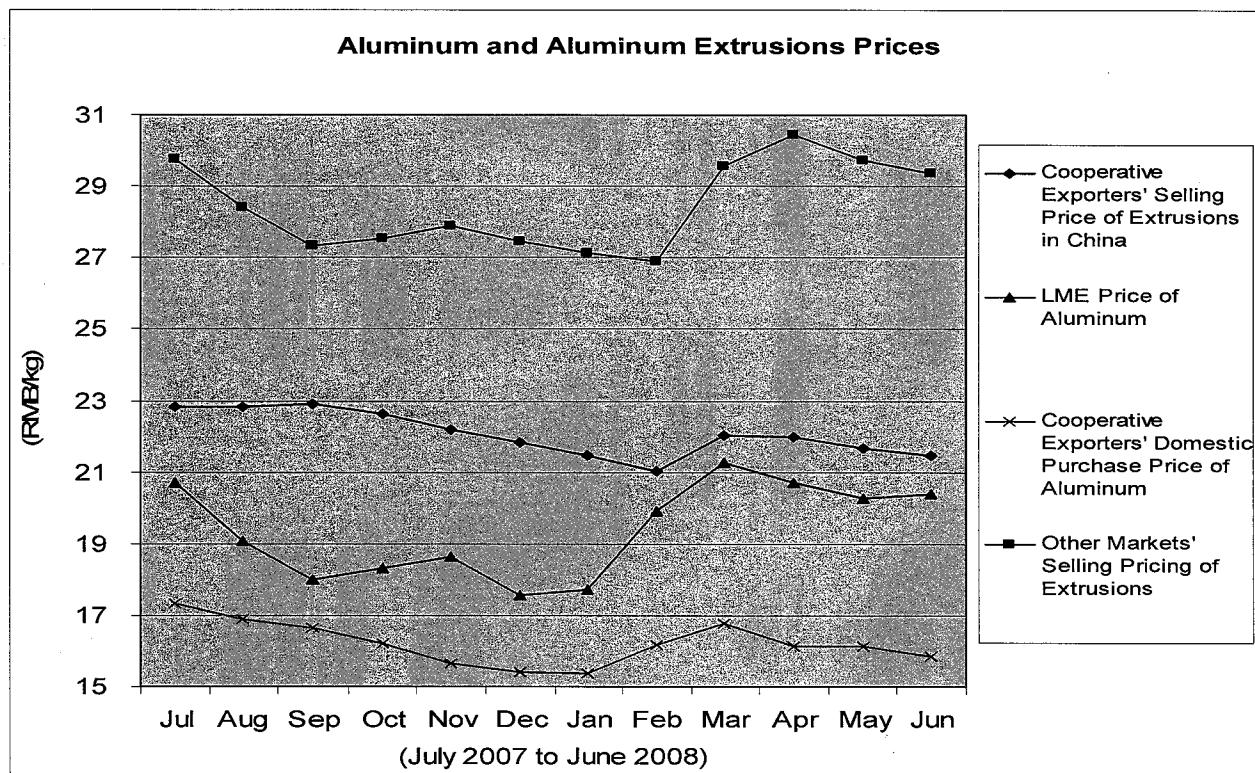
¹⁸⁷ *Ibid.*

¹⁸⁸ CBSA Dumping Exhibit #188, page 24. CBSA Dumping Exhibit #209, page 17. CBSA Dumping Exhibit #220, page 21. CBSA Dumping Exhibit #236, page 24.

¹⁸⁹ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

The chart above clearly demonstrates that the prices of aluminum extrusions in China are substantially lower than in other markets in the world. During the dumping POI, prices in China ranged from 16 to 28% lower than the published prices shown in the Metal Bulletin Research (MBR) publication. It is also worth noting that while the prices in the MBR publication are for more developed markets, they are “regional prices for standard extruded shapes”, which should represent a very conservative comparison to the full product mix, including some higher value-added products, that the cooperative exporters sold in the domestic market during the dumping POI.

The above selling price comparison chart becomes even more insightful when LME price of aluminum and the cooperative exporters' actual purchase prices of aluminum are added to the chart.¹⁹⁰



From the chart above, it is apparent that there is a strong correlation between the underlying cost of aluminum and the fluctuation in aluminum extrusions prices. The MBR published prices respond to fluctuations in the world price of aluminum (as represented by the LME), whereas the cooperative exporters' domestic selling prices show less volatility and appear strongly correlated to their own actual purchase prices of aluminum domestically.

It is also very revealing to compare the cooperative exporters' domestic selling prices with the LME price of aluminum in the chart above. In early 2008, the world price of aluminum was almost equivalent to the cooperative exporters' domestic selling prices for aluminum extrusions

¹⁹⁰ CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

in China. Clearly, if the cooperative exporters had purchased aluminum at the world price during this period, their domestic selling prices would have had to be significantly higher to even recover their costs of production.

SUMMARY

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

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

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

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

APPENDIX 4 – GOC POLICIES AFFECTING THE CHINESE ALUMINUM AND ALUMINUM EXTRUSIONS INDUSTRIES

The following represents a chronological listing, from 2002 to present, of excerpts from the various policies that are relevant to the GOC's involvement in the aluminum and aluminum extrusions industries.

2002

In 2002, the State Economic and Trade Commission published the *Guidance of Recent Development in the Industrial Sector*. This notice was formed to carry-out the framework established in the Outline of the Tenth Five-year Plan for National Economic and Social Development" and aimed to "strengthen the macro-control, guide the direction of the investments with the fixed assets in the whole country, optimize the allocation of resources, reduce the repeated construction, and promote the healthy and stable development in all industries".¹⁹¹ Regarding the aluminum industry, this document noted:

We should accelerate the pre-baked transformation of aluminum electrolysis, and must combine newly built and transformed pre-baked aluminum cells with the elimination of Söderberg electrolytic cells, and try to eliminate Söderberg aluminum cells in 2003. We should accelerate the construction of high-level hot tandem rolled aluminum plates and belts production lines, develop high-precision aluminum plates and belts, electronic aluminum foils, large industrial section bars and other varieties. We should stop the repeated construction of electrolytic aluminum, and any newly built electrolytic aluminum project must be strictly subject to the approval formalities in accordance with the relevant provisions.¹⁹² [emphasis added]

2003

In late 2003, the State Council published a document entitled *Several Opinions on Curbing Illegal Construction and Irrational Investment in the Electrolytic Aluminum Industry*. This document begins by noting that:

Electrolytic aluminum industry is an important industry producing basic raw materials and also an industry with high requirements for input, high energy and resource consumption, which may significantly affect the environment. In recent years, pushed by demand growth of domestic market, stipulated by price collapse of alumina and price rise of electrolytic aluminum in international market, driven by economic interest, some areas and enterprises illegally construct and irrational invest in electrolytic aluminum projects without following stipulated procedures.

... we should readjust the aluminum industrial development structure and industrial policy according to the need for a new approach to industrialization in order to make the development of aluminum industry and area distribution clear, to make the industrial access system strictly, to guide the orderly development of industry.

¹⁹¹ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 737.

¹⁹² *Ibid*, page 752.

...
*Electrolytic aluminum and alumina projects which do not conform to industrial policy and development plan shall not be approved by government department.*¹⁹³

It is interesting to note that, in the first paragraph of the above caption, the GOC acknowledges that the aluminum industry has been growing in response to demand growth and price factors in the industry, particularly in response to a high international price for aluminum. While this growth is in response to the industry's own economic interests, the GOC decided it was "irrational" investment because it did not conform to their industrial policy and development plans for the aluminum industry as stipulated by the GOC.

Also during 2003, the GOC issued the *Catalogue of Encouraged Hi-tech Products for Foreign Investment (2003)*.¹⁹⁴ This catalogue established products that governments at various levels were to "actively conduct work in encouraging foreign investment and create favourable conditions for the quickening development of high-tech industry". This catalogue listed the following items of relevance under the section for new materials:¹⁹⁵

1. *Large-scale aluminum alloy bar section of special type*
2. *Precise die forging of aluminum alloy*
3. *High-intensity aluminum alloy material*
4. *Pre-stretching thick plate of aluminum alloy and enveloped plate of aluminum alloy*
5. *PS aluminum alloy plate*
6. *Aluminum plate for beverage can*
7. *Compound aluminum foil for radiator*

This demonstrates that while the GOC was working to restrict investment in the production of primary aluminum, they were encouraging investment in products that further processed aluminum, including in aluminum extrusions.

2004

During 2004, investment in the aluminum industry continued to be heavily restricted. In a circular from the State Council on *Liquidating Fixed Asset Investment Projects*, the GOC noted that "a new project of steel, electrolytic aluminum and cement shall in principle not be launched in this year".¹⁹⁶

In the same year, the GOC issued the *Notice Regarding the Further Enhancement of the Environmental Regulation of the Electrolytic Aluminum Industry*.¹⁹⁷ This notice called for the strengthening of the supervision and regulation on aluminum producers by the departments of environmental protection at various levels of government. The document focussed on

¹⁹³ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 576-577.

¹⁹⁴ CBSA Dumping Exhibit #372. Document of the Ministry of Science and Technology and the Ministry of Commerce. "Catalogue of Encouraged Hi-tech Products for Foreign Investment (2003)", Guo Ke Fa Ji Zi [2003] No. 179, June 2, 2003. Online at:

http://www.fdi.org.cn/pub/FDI_EN/Laws/InvestmentDirection/IndustrialGuidance/t20060620_51273.jsp.

¹⁹⁵ *Ibid.*

¹⁹⁶ Dumping Exhibit #266. GOC Response to Section 20 RFI, page 567.

¹⁹⁷ *Ibid.* page 585.

implementing the desired move away from Söderberg cell aluminum production technology to the pre-baked cell method.

Another GOC circular in 2004 increased the capital requirements for new aluminum projects. A circular from the State Council *On Adjusting the Proportions of Registered Capital in Fixed asset Investment Projects of Some Industries*, ordered that “the proportion of registered capital of projects of cement, electrolytic aluminum and real estate development... shall be raised from 20% or more to 35% or more”.¹⁹⁸

2005

In 2005, the State Council promulgated the *Interim Provisions on Promoting Industrial Structure Adjustment*. The provisions were formulated for “the purpose of ensuring the all-round implementation of the scientific view of development, strengthening and improving the macro-control policy, guiding social investments, and promoting industrial structure optimization and upgrading”.¹⁹⁹

The Interim Provisions noted above, led to the issuance of the *Guiding Catalogue for Industry Restructuring*, which was issued by the NDRC on December 2, 2005.²⁰⁰ The decision of the State Council notes:

*The “Catalogue for the Guidance of Industrial Structure Adjustment” is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.*²⁰¹

The Catalogue is divided into three groups;

- I. Catalogue of Encouraged Investment Industries,
- II. Catalogue of Restricted Investment Industries, and
- III. Catalogue of Eliminated Investment Industries

The following lists are the references under each above noted catalogue that may be applicable to aluminum or aluminum fabrication products of note:

*Guiding Catalogue for Industrial Restructuring (2005)*²⁰²

Encouraged:

- Construction of medium-sized copper, aluminum, lead, zinc and nickel mines
- Production of high-performance, high-precision rigid alloy, deep processing products and ceramic materials
- Manufacturing of the high-performance metal materials used for rail traffic

¹⁹⁸ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page734.

¹⁹⁹ *Ibid*, page 525.

²⁰⁰ *Ibid*, page 531.

²⁰¹ *Ibid*.

²⁰² CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI. National Development and Reform Commission. “Directory Catalogue on Readjustment of Industrial Structure (Version 2005)”, NDRC decree No. 40, December 2, 2005.

- Manufacturing of light autos and environmentally-friendly new materials
- Development and manufacturing of new-type of materials for aviation and aerospace
- Manufacturing of high-performance external encircling structural materials and parts for residence

Restricted:

- Electrolytic aluminum projects (except self-baked cell production capacity replacement and environmental protection reconstruction project)
- Secondary aluminum reverberatory furnace project of below 4 tons
- Reverberatory furnace project directly burning coals in renewable non-ferrous metal production
- Wet method fluoride salt in the production of aluminum
- Project of independent carbonaceous materials used in the production of aluminum of below 100,000 tons/year

Eliminated:

- Aluminum self-baking electrobath
- Recycled aluminum alloy and recycled lead melting technology with crucible furnace (2005)

This catalogue contains the government regulations that are used to “guide” investment into or out of a number of targeted industries and activities in accordance with the GOC’s industrial policies. Such guidance includes, for example, instructions to financial institutions not to provide credit for investment in certain sectors, as well as to the authorities in charge of approving such investments to no longer accept proposals for such investment. Other measures that can be taken include land and tax policies, pricing policies (regarding electricity specifically) as well as trade restrictions.

This catalogue again demonstrates that while the GOC was working to restrict investment in the production of primary aluminum, they were encouraging investment in products that further processed aluminum, including in product areas that would use aluminum extrusions. The extent of the restriction on investment in primary aluminum was confirmed in a recent report, which quoted an official from the State Administration for Industry and Commerce (SAFIC) that “No foreign investment projects in the steel, cement or electrolysed aluminum sectors have been approved since 2005”.²⁰³

The CBSA has several reports on the impact of the measures taken from 2003 to 2005, indicating that during these years 28 aluminum smelters that used the Soderberg method were closed (with a total capacity 300,000 mt), and a total of 43 smelters were closed by the end of 2005. “These smelters were forced to close because of a shortage of alumina or electricity, or both”.²⁰⁴ Under GOC trade policy at the time, only Chalco, China Minmetals Nonferrous Metals Co (Minmetals) and several large smelters were allowed to import alumina directly. The government of the PRC prohibited domestic aluminum smelters with annual production capacity lower than 100,000 mt

²⁰³ CBSA Dumping Exhibit #372. China Daily. “Foreign Investment Hits \$2.11 tn in 30 Years”, March 13, 2008, Online at: <http://english.mofcom.gov.cn/article/counselorsreport/europereport/200803/20080305427267.html>.

²⁰⁴ CBSA Dumping Exhibit #61. Pui-Kwan Tse. “U.S. Geological Survey Minerals Yearbook – 2004, The Mineral Industry of China”, page 8.3.

from directly importing alumina into China.²⁰⁵ The remaining Chinese smelters had to purchase alumina from Chalco or Minmetals. “Owing to environmental concerns, Chalco and Minmetals preferred to supply alumina to larger and pre-baked smelters”.²⁰⁶ Other reports further indicated that smelters suspended construction or expansion plans to a significant degree.

In September 2005, the *China Daily* reported that the National Development and Reform Commission (NDRC) was releasing a national policy to reorganize the aluminum sector. The policy would encourage domestic aluminum producers to form bigger groups through mergers and acquisitions. The policy further required capital investment in all new aluminum projects to account for at least 35% of the total investment. The policy would curb aluminum exports and call on aluminum producers to focus on the domestic market. The report noted that in September 2005, the GOC had already banned tolling and processing trade of alumina. The restrictions on exports (processing trade ban and export taxes) came as most (65%) of the aluminum producers in China made losses on the year due to high prices of alumina and electricity. Forty small aluminum plants had already shut down on the year due to heavy losses.²⁰⁷ As previously noted, the GOC has denied that the *Industrial Development Policy for the Aluminum Industry* and the *Special Development Plan for the Aluminum Industry* are in force, and have therefore not provided the CBSA with copies of these documents.

2006

In March 2006, the GOC issued a circular entitled *Accelerating the Structure Adjustment of the Industries with Production Capacity Redundancy*. This circular covered the general approach and macro-economic control measures the GOC would take to curb further investment in the iron and steel, electrolytic aluminum, calcium carbide, ferroalloy, coke and automobile industries. The macro-economic measures that were noted as being useful to curb investment in these industries was for the GOC to strictly control access to land, financing, environmental protection approval and construction permits. The GOC would encourage mergers and acquisitions within these industries and eliminate inferior producers through bankruptcy. This circular also noted:

*We should, based on the market orientation, utilize the restrictions on the market and resources to intensify the reversed transmission of the pressure for easing monetary condition so as to promote the gross balance and structural optimism. We should adjust and rationalize the prices of resource products so as to better exert the function of the price leverage in adjustment and thus to promote enterprises' independent innovation and structural adjustment.*²⁰⁸

...
We should intensify the guidance for industrial policies, support credit policies, adjustment by the policies for finance and taxes so as to promote industrial restructuring. We should evaluate and strictly implement the relevant standards for market access regarding environmental protection, security, techniques, land and investment. We

²⁰⁵ Chalco SEC filing 2005, *supra* note 41, page 38.

²⁰⁶ Chalco SEC filing 2005, *supra* note 41, page 32.

²⁰⁷ CBAS Dumping Exhibit #372. *China Daily*, “China to Reveal Aluminium Reforms”, September 22, 2005.

Online at: http://english.peopledaily.com.cn/200509/22/print20050922_210123.html.

²⁰⁸ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 550.

*should improve and strictly implement the relevant laws and regulations and regulate the acts of both enterprises and the government.*²⁰⁹

...
*As to the relevant development planning of as well as industrial policies for such industries as iron & steel, electrolytic aluminum and automobiles, we should intensify the implementation of these policies.*²¹⁰

Of particular note is that in the first paragraph referenced above, the GOC appears to be specifically noting that they intend to actively have an effect on the pricing of resource products such that it will achieve their structural adjustment objectives.

In order to achieve the objectives for industrial restructuring in the aluminum industry, in 2006 the GOC also published the *Guidelines for Accelerating the Restructuring of the Aluminum Industry* (the Guidelines). This document first noted the importance of the aluminum industry as a “fundamental raw material for the development of the national economy”, and then defined the aluminum industry in China as “comprised of three sectors, alumina, electrolytic aluminum and aluminum processing”.²¹¹

The Guidelines also notes the accomplishments that have been met in restricting the aluminum industry since 2003, as follows:

*Pursuant to the requirements of the state macro-control, the electrolytic aluminum sector has made a significant achievement by carrying out a file Guo Ban Fa [2003] NO. 103 enacted by the executive office of the State Council. 23 illegal electrolytic aluminum projects have been terminated, which involve investments valuing 1,730 million RMB. The total production capacity terminated or postponed projects will be 2,470,000 tons... Some electrolytic aluminum enterprises, which adopt backward techniques or which production cost is high, have been terminated. The terminated production capacity would be approximately 1,200,000 tons.*²¹²

The 2003 document referenced in the above quotation is *Several Opinions On Curbing Illegal Construction and Irrational Investment in the Electrolytic Aluminum Industry*, which was previously discussed in this report. This quotation demonstrates that the GOC’s industrial policies are being followed and implemented, and are having a measurable impact on the aluminum industry in China.

The Guidelines next note the problems that have yet to be resolved within the Chinese aluminum industry. These problems include:²¹³

- A deficient level of government management and supervision over bauxite mining in China;
- The number of planned alumina projects that have not met all of their legal approvals or confirmed their required level of bauxite resources;

²⁰⁹ *Ibid.*

²¹⁰ *Ibid*, page 553.

²¹¹ *Ibid*, page 489.

²¹² *Ibid*, page 491.

²¹³ *Ibid*, pages 491-493.

- Additional aluminum projects under construction despite industry capacity utilization at approximately 75%;
- Aluminum smelting capacity in excess of alumina supply in the domestic market, resulting in high cost of alumina and a high production cost for aluminum. The export volume of aluminum is too high; and
- Industrial concentration in aluminum processing is too low. Equipment, technology and techniques have fallen behind, and the variety of high-value added products is insufficient

The Guidelines then note the guiding principles and main objectives of the document as follows:

The guiding principles are comprised of focusing on transference of the growth pattern of aluminum industry, centering the structural adjustment, optimizing the industrial structure, innovating production technology and techniques, designing and planning in scientific way, considering situation as a whole as undertaking adjustment, reducing the production consumption , and protecting the environment. These principles should be exercised as a guide for macro-control.

...
It is necessary to keep the balance of electrolytic aluminum between supply and demand. It is important to support the good enterprises and eliminate the inferior through the market, and to encourage the good enterprises to increase their production up to 75% out of entire production for the whole industry.²¹⁴

The Guidelines then note and describe eight specific policy measures to accelerate structural adjustment within the aluminum industry. Each of these eight measures are described in detail in the document. The eight policy measures are:²¹⁵

1. *Strengthen the direction to the industrial policy and industrial layout and plan*
2. *Enhance the concentration of the industry, and encourage to comprehensively use and save resources*
3. *Strengthen the coordination between credit policy and industrial policy, build upon exit mechanism under the legal system*
4. *Strengthen environmental law enforcement, and eliminate backward production capacity*
5. *Rectify the bauxite exploitation order, and exploit the domestic resources reasonably*
6. *Encourage to exploit overseas resources, and widen the channels of using overseas alumina resources*
7. *Strictly control the export of electrolytic aluminum, improve the mechanisms of power price formation and power supply*
8. *Develop the aluminum smelting orderly, and develop highly-added value aluminum process products*

²¹⁴ *Ibid*, pages 493-494.

²¹⁵ *Ibid*, pages 495-500.

2007

In 2007, the GOC updated its catalogue guiding the direction of foreign investment in China. The *Catalogue for the Guidance of Foreign Investment Industries (amended in 2007)*, contains the following updated provisions applicable to the aluminum and aluminum extrusions industries.²¹⁶

Encouraged:

- Production of high tech non-ferrous metallurgical materials:... special kind of large aluminum alloy materials, aluminum alloy precise model forge product...
- Production of lightened car, automobile and environment protecting new materials (bodywork aluminum board, aluminum magnesium alloy materials, automobile aluminum alloy frame and so on)
- Design, manufacturing and maintaining of metal product moulds (such as extrusion moulds of pipe, stick and shape of copper, aluminum, titanium, and zirconium)

Restricted:

- Non-ferrous metal refining of electrolytic aluminum, copper, lead, zinc and other non-ferrous metal

In early 2007, as electricity shortages eased and aluminum prices rose, investment in China in the aluminum smelting sector surged 124% in January and February compared with the previous year. In April 2007, the NDRC issued a circular entitled: *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*. This circular noted the importance of GOC control over the aluminum industry and called on local governments to maintain their efforts at restraining the aluminum industry:

*At present the adjustment of the industry structure is at the key stage of the adjustment reform. The government should deepen and strengthen the macro-control and adjustment on the industrial structure, avoid unhealthy growth of blindly investment and exploitation capacity. All governmental departments at various levels must carry-out strictly the measures for the macro-control and adjustment of industry structure on a long view of scientific development.*²¹⁷

The circular called on GOC officials at all levels to:

1. regulate investing activities according to the industrial policy and the administrative measure on investment projects;
2. strengthen the coordination between industry policy and policy of land utilization, policy of the environmental protection, and financing policy, and reinforce the market monitoring;
3. accelerate abolishing the backward production techniques and producing device, and preventing backward production projects from reappearing;
4. strengthen environmental protection and avoid environmental pollution;
5. regulate the system of exploitation and smelting of ore resource;
6. strengthen the monitoring and examination of safe production;

²¹⁶ CBSA Dumping Exhibit #444, page 31.

²¹⁷ CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 834.

7. facilitate energy saving and consumption reduction, and accelerate the adjustment of industry structure; and
8. check up on current projects and future projects.²¹⁸

The circular further noted that the GOC would prevent self-baked cell facilities from resuming production. Companies attempting to operate such facilities would have their power and water supply forcefully disconnected.

On October 29, 2007, the NDRC promulgated the *Requirements of Entry Into the Aluminum Industry* (the Requirements), placing further restrictions on the aluminum industry in China and introducing new requirements for minimum capacity, location and energy consumption. These requirements are to be used by all GOC departments when conducting reviews for approving investment proposals within the industry in terms of verifying adequate investment, land supply, business registrations, environmental impact assessments, safety permits and credit financings.²¹⁹ This notice contained the following specific provisions:²²⁰

- New alumina projects using domestically produced bauxite must have an initial annual capacity in excess of 800,000 tons.
- Alumina projects that rely on imported bauxite must possess a minimum of 5-years worth of bauxite supply through a joint venture company, and this must be able to meet 60% of the bauxite required to meet production needs. These projects must be capable of producing 600,000 tons of alumina per annum.
- Any new electrolytic aluminum project must be approved by NDRC and that only environmental renovation projects, or projects replacing outdated production techniques, will be approved in accordance with the GOC's plan for the industry.
- New bauxite mining projects must have a minimum capacity output of 300,000 tons per annum, and a lifespan of at least 15 years.
- Proposed secondary aluminum projects require a minimum annual capacity of 50,000 tons, while existing projects must exceed 20,000 tons or face decommissioning. Approval of reconstruction or expansion projects must exceed 30,000 tons per annum.
- Aluminum processing projects must have a minimum annual capacity of 100,000 tons per annum (processing is defined as covering plate, strip, foil, **and extrusions**). Further, a single-product project must have a capacity of 50,000 tons for plate and strip, 30,000 tons for foil, and **50,000 tons for extrusions**. [emphasis added]
- A minimum of 35% of the total investment in all mining, smelting and recycling projects must be made in cash.
- New Bayer-method alumina projects must limit energy consumption to less than 500 kgs of coal per tonne of alumina produced, all other alumina projects must consume no more than 800 kgs coal/ tonne of alumina.
- New or upgraded electrolytic aluminum projects are restricted to a maximum of 14,300 kilowatt hours for every tonne of aluminum produced.

²¹⁸ *Ibid*, pages 834-838.

²¹⁹ *Ibid*, page 73.

²²⁰ *Ibid*, pages 74-81.

Regarding the minimum annual capacity requirements for new extrusions facilities of 50,000 mt per year, it is important to put the magnitude this capacity requirement into perspective by considering that the estimated size of the Canadian market for aluminum extrusions was 200,000 mt in 2007.

The Requirements further note very specific energy consumption and raw material utilization amounts for bauxite mining, alumina production, aluminum production and aluminum processing. These provisions apply to both new and existing facilities. The following is a summary of the type of detail the Requirements contain with respect to aluminum processing projects:

Comprehensive energy consumption for new aluminum processing projects should be lower than 350 kg of coal/ton; comprehensive electrical consumption should be lower than 1150 kwh/ton of aluminum products produced. Existing facilities must adhere to energy consumption limits of 410 kg of coal/ton and comprehensive electrical consumption lower than 1250 kwh/ton of aluminum products produced. New facilities' consumption of metal must be lower than 1025kg/ton of aluminum products produced, **including lower than 1015 kg/MT for aluminum extrusions**; overall rate of finished products must be higher than 75% for new facilities and 72% for existing facilities; metal consumption for existing facilities must be lower than 1035 kg/ton of aluminum product produced, **including 1020 kg/ton for aluminum extrusions production.**²²¹ [emphasis added]

²²¹ CBSA Dumping Exhibit #62. China Strategies LLC, "China Renewable Energy and Sustainable Development Report", January 2008: Volume 1, page 11.