



OTTAWA, April 5, 2011

4214-29
AD/1389
4218-28
CVD/126

STATEMENT OF REASONS

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

**CERTAIN METAL BAR GRATING OF CARBON, ALLOY OR STAINLESS STEEL
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

On March 21, 2011, 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 certain metal bar grating of carbon, alloy or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, 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.

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SUMMARY OF EVENTS

- [1] On August 3, 2010, the Canada Border Services Agency (CBSA) received a written complaint from Fisher & Ludlow Ltd. of Burlington, Ontario (the Complainant) alleging that imports into Canada of metal bar grating of carbon, alloy or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, (certain steel grating), originating in or exported from the People's Republic of China (China) are being dumped and subsidized and causing injury or threatening to cause injury to the Canadian industry.
- [2] On August 20, 2010, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. On the same date, the CBSA notified the Government of China (GOC) that a properly documented complaint had been filed with the CBSA and the GOC was also provided with the non-confidential version of the subsidy portion of the complaint, which excluded sections dealing with normal value, export price and margin of dumping.
- [3] On September 16, 2010, consultations were held with the GOC in Ottawa, 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 portion of the complaint.
- [4] On September 20, 2010, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated the investigations respecting the dumping and subsidizing of certain steel grating from China.
- [5] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain steel grating from China have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods. On November 19, 2010, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain steel grating from China have caused injury.
- [6] On December 20, 2010, the President made preliminary determinations of dumping and subsidizing with respect to certain steel grating originating in or exported from China pursuant to subsection 38(1) of SIMA.
- [7] The CBSA continued its investigations and, on the basis of the evidence, the President is satisfied that certain steel grating 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 March 21, 2011, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[8] 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 April 19, 2011.

PERIOD OF INVESTIGATION

[9] The period of investigation with respect to dumping (dumping POI), covered all subject goods imported into Canada from July 1, 2009 to June 30, 2010.

[10] The period of investigation with respect to subsidizing (subsidy POI), covered all subject goods imported into Canada from January 1, 2009 to June 30, 2010.

INTERESTED PARTIES

Complainant

[11] The Complainant is a major producer of certain steel grating in Canada. The Complainant manufactures certain steel grating in Canada at its facility in Burlington, Ontario and at its facility in Wetaskiwin, Alberta.

[12] The name and address of the Complainant is:

Fisher & Ludlow Ltd.
750 Appleby Line
Burlington, Ontario
L7L 2Y7

[13] There is one other known Canadian producer of certain steel grating, Borden Metal Products (Canada) Ltd. (Borden) in Beeton, Ontario. Borden is not a Complainant but fully supports the complaint filed by Fisher & Ludlow Ltd. of Burlington, Ontario (as expressed in Borden's letter to the CBSA dated September 7, 2010).

Exporters

[14] At the initiation of the investigations, the CBSA identified 65 potential exporters of the goods under investigation. The CBSA sent a dumping Request for Information (RFI) to 61 identified potential exporters in China and to four exporters in other countries and a subsidy RFI to each identified potential exporter in China.

[15] The CBSA received responses, for both the exporter dumping RFI and the subsidy RFI, from two exporters located in China. Both of these exporters were requested to provide additional information to supplement or clarify their responses. The

exporters provided the requested information. One additional exporter expressed its intent to submit responses to the RFIs but no such responses were received.

[16] After the dumping and subsidy preliminary determinations on December 20, 2010, the CBSA conducted on-site verifications in early January 2011 with the following cooperative exporters: Shanghai DAHE Grating Co. Ltd. and SinoSteel Yantai Steel Grating Co. Ltd. These exporters fully cooperated during the on-site dumping and subsidy verifications.

Importers

[17] At the initiation of the investigations, the CBSA identified 59 potential importers of subject goods. The CBSA sent an importer RFI to all potential importers of the goods. One importer, Accurate Screen Ltd., provided a complete response to the CBSA's importer RFI.

Government of China

[18] For the purposes of this investigation "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.

[19] At the initiation of the subsidy investigation, the CBSA sent a subsidy RFI to the GOC. The GOC provided its response to the subsidy RFI on time. The CBSA reviewed the response and considered it incomplete. As a result, on November 23, 2010¹, the GOC was notified of the incomplete status of its submission and was provided a list of deficiencies.

[20] On December 5, 2010, the GOC submitted additional information in response to the CBSA's letter dated November 23, 2010. The CBSA reviewed the information and still considered the GOC's subsidy RFI response incomplete for the same reasons listed in its letter dated November 23, 2010, with the exception that the GOC provided some information regarding a previously unidentified subsidy program.

PRODUCT DEFINITION

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

Metal bar grating of carbon, alloy, or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China.

¹ Subsidy Exhibit S049 (NC).

Additional Product Information²

[22] The subject goods can be referred to as “metal bar grating”, “steel grating” or simply “bar grating”. The goods are sold in “panel” or “mat” form, produced as either standard bar grating or heavy-duty bar grating. Standard bar grating is manufactured in Canada according to American National Standards Institute (ANSI) and National Association of Architectural Metal Manufacturers (NAAMM) MBG 531 specifications with maximum bearing bar thickness of 3/16 inches (4.76 millimeters (mm)). Heavy duty bar grating is made according to ANSI/NAAMM MGB 532 specifications with maximum bearing bar thickness of 3/8 inches (9.53mm).

[23] The “mats” or “panels” are typically made in standardized sizes and the most common panel size is 3 feet (.91 meters) wide by 24 feet (7.32 meters) long. In accordance with the ANSI/NAAMM specifications referred to, the size of the bearing bars usually ranges from 1/8”(3.18mm) thickness and 3/4”(19.05 mm) in depth (width) to 3/8”(9.53mm) thickness and 5”(127 mm) in depth (width), depending on the load requirements.

[24] In addition to ANSI/NAAMM specifications, the subject goods may be produced to other recognized standards, such as Chinese, U.K. and Australian specifications³.

[25] The subject goods may be imported and sold even if not made or certified to the ANSI/NAAMM or other recognized standards. Non-certified product includes secondary material or other kinds of “non-spec” grating. These goods lack the requisite mill tests or other proof of compliance with international standards.

[26] The subject goods do not include: (1) expanded metal grating comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded and not consisting of welding or joining of multiple pieces of steel; and (2) plank-type safety grating comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, pierced and cold formed and without welding or joining of multiple pieces of steel.

[27] Subject goods produced by different manufacturing processes (welding, hydraulic pressing or riveting) are fully interchangeable. Hydraulically-produced or riveting-produced gratings are substitutable in every respect for grating produced by welding processes and vice-versa. They have the same or comparable physical and mechanical properties in accordance with the international standards and specifications described earlier.

[28] Subject goods have a multitude of load-bearing end uses, including industrial flooring, walkways, mezzanines, stairways, trenches, highway signs platforms and fire

² Complaint Narrative Section 2.2, 2.3 and 2.5, pages 3-5

³ The goods are produced in China in accordance with the foregoing ANSI/NAAMM specifications as well as other standards, including: YB/T 4001.1-2007 (China), BWS4592 (U.K.) and AS-1657 (Australia).

escapes. Primary markets are large-scale oil production structures and systems, electric power generating plants, steel mills, cement plants, saw mills, pulp and paper mills, mining, automotive plants and other industrial facilities. Although primarily used in large industrial projects, commercial and residential applications for these goods are also commonplace.

Production Process⁴

[29] The goods are manufactured on specialized machinery which involves the joining of two components to form a section of grating into a “panel” or “mat”. The main components of the panel are: (1) bearing bars which extend across the length of the grating section; and (2) cross-bars which extend across the bearing bars perpendicular to the bearing bars. The joining of the bearing bars and cross-bars is commonly done through welding, although riveting and hydraulic joining processes may also be used, as described below.

[30] Manufacturing generally includes three phases: slitting, forming/welding or other methods of joining and finishing.

[31] Slitting: The first phase involves the sizing of the “panel” or “mat”. Hot-rolled steel coils used for the main bearing bars are unrolled and slit lengthwise into the appropriate width and then cut into the appropriate length. Flat steel bars may also be used, pre-cut to the prerequisite lengths and widths. Steel bars or rods used as the cross-bars are also cut to size. For grating that utilizes twisted cross-bars, the rod or bar may be placed into a twisting machine and physically twisted before being cut to length. As with the length-wise bearing bars, pre-cut and pre-twisted steel cross rods may be employed.

[32] Forming/Welding: The bearing bars are placed into a setter which ensures the bars are properly spaced. The bars are then run through a high-voltage electrical welder which heats the same spot across each of the bearing bars to high heat. Immediately after heating, the cross-bars are machine-pressed into the heated bearing bars. The pressing of the cross-bars into the bearing bars completes the welding process, forming the semi-finished steel grating in the form of a “panel” or a “mat”. Following this step, the mat undergoes testing and inspection to ensure the integrity of the weldments, that the product possess proper tensile strength, that the bearing bars are aligned correctly and that the panel as a whole can withstand load tolerances.

[33] Other joining methods: (1) In “pressure-locked” grating, a form of hydraulic pressing, the bearing bars and cross-bars are hydraulically pressed together to create a secure bond between the bearing bars and the cross bars. (2) In “swage-locked” grating, a form of hydraulic pressing, the cross-bars are hydraulically driven through the bearing bars (usually through the center). (3) In the riveting process, reticulated cross-bars are riveted to the bearing bars. The bearing bars are pre-punched with a round hole prior to being placed in the jig. The cross bar is pressed into a "W" shape and placed between the

⁴ Complaint Narrative, Section 2.5, pages 6-9.

bearing bars. The height of the "W" becomes the bar spacing. A rivet is used at the apex of the "W" through the hole that was punched in the bearing bar to lock the cross bar to the bearing bar.

[34] The production processes for hydraulic pressed grating and riveted grating are similar to welded grating. In each case, the longitudinal bearing bars are placed in a jig that holds the bars in place. The cross-bars are then joined to the bearing bars through each of the various processes: welding, pressing and/or riveting. Hydraulic pressing and riveting are older forms of production, are more labour intensive, and entail larger material costs than welding.

[35] Finishing: The final phase may involve painting, galvanizing or end finishing. Painted panels are dipped into a bath of lacquer and then air dried. Galvanized panels are dipped into an electrolytically charged bath of zinc to protect against corrosion. End finishing operations may include the addition of end bands, small weldments or basic cut-outs.

Classification of Imports

[36] The subject goods are normally classified under the following 13 Harmonized System (HS) classification codes:

7308.90.90.10	7308.90.90.60	7308.90.90.95
7308.90.90.20	7308.90.90.91	7308.90.90.96
7308.90.90.30	7308.90.90.92	7308.90.90.99
7308.90.90.40	7308.90.90.93	
7308.90.90.50	7308.90.90.94	

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

CANADIAN INDUSTRY

[38] The Complainant, Fisher & Ludlow Ltd, is estimated to account for more than half of the entire domestic production of certain steel grating. Fisher & Ludlow Ltd. manufactures certain steel grating in Canada at its facility in Burlington, Ontario and at its facility in Wetaskiwin, Alberta. The only other identified Canadian producer, Borden, officially stated their position of fully supporting the complaint in their letter dated September 7, 2010.

IMPORTS INTO CANADA

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

[40] The following table presents the CBSA's analysis of imports into Canada of certain steel grating, during the dumping POI:

Imports into Canada of Certain Steel Grating (July 1, 2009 – June 30, 2010)

Imports into Canada	% of Total Imports
China	23.46%
U.S.A.	75.42%
All Other Countries	1.12%
Total Imports	100%

INVESTIGATION PROCESS

[41] Regarding the dumping investigation, information was requested from known and potential exporters, vendors and importers, concerning shipments of subject steel grating imported into Canada during the dumping POI of July 1, 2009 to June 30, 2010.

[42] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters and the GOC concerning financial contributions made to exporters or producers of subject steel grating imported into Canada during the subsidy POI of January 1, 2009 to June 30, 2010.

[43] After reviewing the exporters' responses to the RFIs, supplemental RFIs were sent to each of the responding exporters to clarify information submitted by the respective companies. In addition, on-site verification visits were conducted during the final phase of the dumping and subsidy investigations.

[44] As previously explained, after being advised by the CBSA that its original subsidy response was incomplete and could not be used for purposes of the preliminary determination, the GOC provided additional supplemental subsidy information. However, this additional information was also insufficient for purposes of the final determination.

[45] Further details regarding the GOC's subsidy response can be found in the "Subsidy Investigation" section of this document.

[46] In summary, 62 subsidy programs were reviewed and 3 of the subsidy programs were determined to be conferring benefits to the cooperative exporters during the subsidy POI.

[47] As part of the final stage of the investigations, case briefs were provided by the legal representatives of the GOC and one Chinese exporter. Reply submissions were provided by the legal representatives of the Complainants.

DUMPING INVESTIGATION

Normal Value

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

Export Price

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

Results of Dumping Investigation

[50] The CBSA determined a margin of dumping for each exporter by comparing the total normal value with the total export price. When the total export price is less than the total normal value, the difference is the margin of dumping for that specific exporter.

[51] 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 considered to be dumped by that exporter is zero.

[52] In calculating the margin of dumping for China, the margins of dumping found in respect of each exporter were weighted according to each exporter's volume (metric tonnes) of subject steel grating imported into Canada during the dumping POI.

[53] Based on the preceding, 87.46% of certain steel grating from China was dumped by a margin of dumping of 70.63%, expressed as a percentage of the export price.

[54] Under paragraph 41(1)(a) of SIMA, the President shall make a final determination of dumping when he is satisfied that the goods have been dumped and that the margin of dumping of the goods of a country is not insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% is defined as insignificant. The margin of dumping of certain steel grating from China is not less than 2% and is, therefore, not insignificant.

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

[56] A summary of the margins of dumping determined for each exporter is found in **Appendix 1**.

Dumping Results by Exporter

[57] Specific margin of dumping details relating to each of the cooperative exporters are as follows:

Shanghai DAHE Grating Co. Ltd. (DAHE)

[58] DAHE is a producer and exporter of certain steel grating exported to Canada.

[59] Normal values for DAHE's goods could not be determined under section 15 of SIMA by reason that there was not, in the opinion of the President, such a number of sales of like goods that comply with all the terms and conditions referred to in that section or that are applicable by virtue of subsection 16(1) as to permit a proper comparison with the sale of the goods to the importer. As such, normal values were determined in accordance with paragraph 19(b) of SIMA as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[60] The above-mentioned amount for profits was the weighted average profit made on DAHE's domestic sales of goods of the same general category in accordance with subparagraph 11(1)(b)(ii) of the *Special Import Measures Regulations* (SIMR).

[61] For the transactions where DAHE acted as the exporter of the goods the export prices were calculated pursuant to section 24 of SIMA, being the lesser of the exporter's selling price or the importer's purchase 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 of the goods. For the sales made by DAHE the export price was considered to be the exporter's selling price.

Margin of Dumping

[62] The total normal value was compared with the total export price for subject goods imported into Canada during the dumping POI. The total export price exceeded the total normal value, and consequently the goods exported by DAHE were not dumped.

SinoSteel Yantai Steel Grating Co., Ltd. (SinoSteel)

[63] Normal values for SinoSteel's goods could not be determined under section 15 of SIMA by reason that there was not, in the opinion of the President, such a number of sales of like goods that comply with all the terms and conditions referred to in that section or that are applicable by virtue of subsection 16(1) as to permit a proper comparison with the sale of the goods to the importer. As such, normal values were determined in accordance with paragraph 19(b) of SIMA as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[64] The abovementioned amount for profits was the weighted average profit made on SinoSteel's domestic sales of goods of the same general category in accordance with subparagraph 11(1)(b)(ii) of the SIMR.

[65] The export prices for SinoSteel were calculated per section 24 of SIMA, being the lesser of the exporter's selling price or the importer's purchase 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 of the goods. For the sales made by SinoSteel the export price was considered to be the exporter's selling price.

Margin of Dumping

[66] The total normal value was compared with the total export price for subject goods imported into Canada during the dumping POI. The goods exported to Canada by SinoSteel were dumped by a margin of dumping of 16.26%, expressed as a percentage of the export price.

All Other Exporters - Margin of Dumping

[67] For all other exporters, import pricing information available from the CBSA's internal information systems was used for the purposes of calculating the export price. The normal values and related margins of dumping were determined by advancing export prices by the highest amount by which the normal value exceeded the export price on an individual transaction (85%) for a cooperating exporter in accordance with the Ministerial specification.

SUMMARY OF RESULTS – DUMPING

Period of Investigation - July 1, 2009 to June 30, 2010

Country	Volume of Dumped Goods as Percentage of Country Imports	Country Margin of Dumping*	Volume of Country Imports as Percentage of Total Imports	Volume of Dumped Goods as Percentage of Total Imports
China	87.46%	70.63%	23.46%	20.52%

* as a percentage of export price

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

[68] Following the close of the record on February 7, 2011, the CBSA received written representations on various issues from counsel for DAHE. A reply submission was received on February 22, 2011 from counsel for the Canadian complainant. In addition, prior to the preliminary determination on December 20, 2010, counsel for the Canadian complainant made representations that may still have a bearing in the future pending the Tribunal's injury determinations.

[69] Details regarding the issues raised in the representations and the CBSA's response to these issues are provided in **Appendix 3**.

SUBSIDY INVESTIGATION

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

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

- (a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- (b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
- (c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or

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

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

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

[74] Notwithstanding that a subsidy is not specific pursuant to subsection 2(7.2) of SIMA, a subsidy may also be considered specific having regard as to whether:

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

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

[76] Prior to the initiation of the investigation, the Complainant submitted documents alleging that the steel grating producers and exporters in China benefited from actionable subsidies provided by the GOC.

[77] At initiation, the CBSA identified 61 potential subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) and other Designated Areas Incentives;
2. Grants;
3. Equity Programs;

4. Preferential Loan Programs;
5. Preferential Income Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Reduction in Land Use Fees;
8. Goods/Services Provided by the Government at Less than Fair Market Value.

[78] 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: www.cbsa-asfc.gc.ca/sima-lmsi.

Results of the Subsidy Investigation

[79] During the preliminary phase of the investigation, one subsidy program, previously unidentified at the initiation, was identified by one of the cooperative exporters in its response.

[80] Further to the on-site verifications no additional subsidy programs were reported by the cooperative exporters or identified by the CBSA.

[81] In summary, 62 subsidy programs were reviewed. Three of the subsidy programs were determined to be conferring benefits to the cooperative exporters during the subsidy POI.

[82] In conducting its investigation, the CBSA sent a subsidy RFI to the GOC, as well as to the 61 potential exporters located in China that had been identified through internal CBSA documentation. Information was requested in order to establish whether there had been financial contributions made by any level of government and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain steel grating; and whether any resulting subsidy was specific in nature. The GOC was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[83] The CBSA received, after the due date of October 27, 2010, substantially complete subsidy RFI responses from two exporters located in China. Both exporters were granted two additional days as they encountered delivery problems with their courier companies. Both responding companies replied to supplemental RFIs issued by the CBSA.

[84] The CBSA received a response to the subsidy RFI from the GOC on October 27, 2010.

[85] The CBSA's review of the GOC's submission indicated that a major proportion of the information requested had not been provided. As a result, the CBSA considered the GOC's response incomplete. The following list summarizes the information not provided:

- the GOC only provided limited information in respect of the two responding companies, whereas the CBSA requested information in relation to all 61 potential producers and exporters;
- statistical information requested on the steel grating sector and the steel grating enterprises was not provided;
- requested information on the ownership status of the exporters and their suppliers was not provided;
- requested documents on relevant government laws and regulations were missing;
- the requested amount of benefits received by each industry or by company was not reported; and
- one of the two programs reported by the responding exporters was not identified by the GOC.

[86] As a result, in a letter dated November 23, 2010, the CBSA advised the GOC that the information provided had been reviewed and was found to be incomplete.

[87] On December 5, 2010, the GOC submitted additional information to the CBSA. The supplemental submission contained general information on the new program reported by one of the responding exporters and provided explanations as to why some of the information was not submitted. The CBSA reviewed the information and still considered the GOC's subsidy RFI response to be incomplete.

[88] Due to the status of the GOC submission, subsidy amounts for all exporters have been determined under a Ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the level of cooperation received from the two cooperative exporters, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

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

[90] Details regarding the amounts of subsidy for each of the two cooperative exporters are provided in **Appendix 1**. For purposes of the final determination, the aggregate amount of subsidy for the two Chinese cooperative exporters ranges from 543 to 632 Renminbi (RMB) per metric tonne (MT).

[91] Expressed as a percentage of export price, the amounts of subsidy as determined by the CBSA for the cooperative exporters range from 9.45% to 12.58%.

[92] For all other exporters, the amount of subsidy has been determined under a Ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:

- (i) the highest amount of subsidy for each of the three programs, as found at the final determination, for the cooperative exporters located in China, plus

- (ii) the average of the highest amounts of subsidy for the three programs in (i), applied to each of the remaining 59 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[93] Using the above methodology for non-cooperative exporters, the result is an amount of subsidy of 13,064 RMB per MT.

[94] In summary, 100% of the goods from China are subsidized and the amount of subsidy is 174.99%, as a percentage of the export price.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - January 1, 2009 to June 30, 2010

Country	Volume of Subsidized Goods as Percentage of Country Imports	Country Amount of Subsidy	Volume of Country Imports as Percentage of Total Imports	Volume of Subsidized Goods as Percentage of Total Imports
China	100%	174.99%	19.75%	19.75%

* as a percentage of export price

[95] 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.

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

[97] SIMA does not define or provide any guidance regarding the determination of a “developing country” for purposes of Article 27.10 of the *WTO Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance⁵. As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation.

⁵ The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at January 1, 2006, the document is available at: www.oecd.org/dataoecd/23/34/37954893.pdf

As the preceding table illustrates, the amount of subsidy found during this investigation is not insignificant.

[98] 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

[99] Following the close of the record on February 7, 2011, the CBSA received written representations on various issues from counsel for the GOC and counsel for DAHE. A reply submission was received on February 22, 2011 from counsel for the Canadian complainant.

[100] Details regarding the issues raised in the representations and the CBSA's response to these issues are provided in **Appendix 3**.

DECISIONS

[101] The President is satisfied that certain steel grating originating in or exported from the People's Republic of China has been dumped and that the margin of dumping is not insignificant. Consequently, on March 21, 2011, the President made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.

[102] Similarly, the President is satisfied that certain steel grating originating in or exported from the People's Republic of China has been subsidized and that the amount of subsidy is not insignificant. As a result, the President also made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA on this same date.

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

FUTURE ACTION

[104] The provisional period began on December 20, 2011 and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by April 19, 2011. 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 website at: <http://www.cbsa-asfc.gc.ca/sima-lmsi>.

[105] 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.

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

[107] 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*⁶ 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.

[108] 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.

[109] Exporters who were not cooperative in the dumping investigation will have normal values established by advancing the export price by 85% 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 who were not cooperative in the subsidy investigation will be subject to a countervailing duty amount of 13,064 RMB per metric tonne, based on a Ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

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

⁶ *Customs Act* R.S.C. 1985.

[111] 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. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

PUBLICATION

[112] 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

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

Mail	SIMA Registry and Disclosure Unit Anti-dumping and Countervailing Directorate Canada Border Services Agency 100 Metcalfe Street, 11th Floor Ottawa, Ontario, Canada K1A 0L8	
Telephone	Ian Gallant	(613) 954-7186
	Gilles Bourdon	(613) 954-7262
Fax	(613) 948-4844	
Email	Simaregistry-depotlmsi@cbsa-asfc.gc.ca	
Website	www.cbsa-asfc.gc.ca/sima-lmsi	



Daniel Giasson
Director General
Anti-dumping and Countervailing Directorate

Attachments

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

Exporter	Margin of Dumping as Percentage of Export Price	Amount of Subsidy (Renminbi per metric tonne)
Shanghai DAHE Grating Co., Ltd.	0%	632
SinoSteel Yantai Steel Grating Co., Ltd.	16.26%	543
All Other Exporters	85%	13,064

APPENDIX 2 - SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As noted in the body of this document, the information submitted by the GOC was considered to be incomplete. The GOC did not provide the CBSA with sufficient information to enable a proper analysis of the programs for the final determination. The absence of such information would normally prevent the CBSA from determining amounts of subsidy for the cooperative exporters and would result in the use of other available information. However, in recognition of the amount of cooperation and the volume of information 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.

This appendix consists of descriptions of the three subsidy programs used by the 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 the 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.

With respect to calculations of amounts of subsidy for the non-cooperative exporters for Programs 1 to 3, the CBSA has no information, or incomplete information, regarding benefits received under those programs by the non-cooperative exporters. Therefore, the CBSA was 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.

On the basis of available information, these three programs constitute financial contributions pursuant to subsection 2(1.6) of SIMA.

Program 1: Export Assistance Grant

General Information:

This program was established in the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000*, which was promulgated and came into force on October 24, 2000. This program was established to support the development of Small and Medium-sized

Enterprises (SMEs), to encourage SMEs to join in the competition of international markets, to reduce the business risks of the enterprises, and to promote the development of the national economy. The granting authority responsible for this program is the foreign trade and economic department and the program is administered at local levels.

The funds provided under this program are for the purpose of: (i) holding or participating in overseas exhibitions, (ii) accreditation fees for quality management system, environment management system or for the product, (iii) promotion in the international market, (iv) exploring a new market, (v) holding training seminars and symposiums, and (vi) overseas bidding.

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.

Program 2: Award of Taxpayers in Yanghang Industrial Park

General Information:

This program appears to be established by governments at the local level and was established to provide grants to taxpayers located in Yanghang Industrial Park. The administrative authority responsible for this program is identified as Yanghang Enterprise Development Co.

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.

Program 3: Input Materials Provided by Government at Less than Fair Market Value

General Information:

This program relates to the acquisition cost of the input materials from SOEs. With respect to this investigation, the input materials for subject steel grating vary from exporter to exporter and may comprise one or a combination of hot-rolled steel coils, bearing bars (slit hot-rolled coils) and wire.

The information submitted by the cooperative exporters contained a breakdown of input material purchases, i.e., hot-rolled steel coils, bearing bars and wire. The information also included the names and addresses of suppliers and the material producers, as well as the ownership status of these parties, where known.

Information obtained from third-party sources and placed on the record has indicated that even companies in China that claim to be privately-owned may in fact be SOEs.⁷ While the cooperative exporters identified to the best of their ability the ownership status of their suppliers and/or material producers, they were unable to provide verifiable information. Furthermore, without a complete response to the subsidy RFI from the GOC, the CBSA was unable to definitively determine whether the raw material suppliers/producers were SOEs or non-SOEs. For purposes of the final determination, the CBSA determined the amount of subsidy for raw materials as if it was all being sourced from SOEs regardless of whether the cooperative exporters identified some suppliers as being non-SOEs.

Calculation of Amount of Subsidy:

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.

As mentioned earlier, the input materials for subject steel grating vary from exporter to exporter and may comprise one or a combination of hot-rolled steel coils, bearing bars and wire. As a result, the CBSA considered using different fair market value for different types of input materials (i.e., hot-rolled steel coils, bearing bars and wire).

In respect of hot-rolled steel sheet, the CBSA has determined, in the re-investigation of *Certain Steel Plate* (concluded on July 16, 2010), that section 20 conditions exist in the Chinese flat-rolled steel sector, including hot-rolled steel sheet. As a result, the domestic selling prices for hot-rolled steel sheet in China are not appropriate for the purposes of determining the fair market value of these goods. The CBSA further reviewed information regarding hot-rolled steel sheet purchases by the cooperative exporters and found that none of the cooperative exporters had imported hot-rolled steel sheet from suppliers located outside of China during the subsidy POI.

In the absence of appropriate domestic benchmark prices of hot-rolled steel sheet in China and of import prices reported by the cooperative exporters, the CBSA determined that the average of the monthly prices of hot-rolled steel sheet in the three regions (excluding China) reported by *SteelBenchmarker* are appropriate for purposes of establishing the fair market value of hot-rolled steel sheet in China. *SteelBenchmarker* is designed to provide a reliable index of the current “standard” or “base” transaction prices for use by participants in the steel industry. These prices are based on the average of the

⁷ CBSA Subsidy exhibit S092 Non-Confidential

price assessments collected from buyers and sellers of steel after the elimination of outliers, and are designed to be robust (robust in this context meaning that the price is accurate and not able to be manipulated). In addition, a third-party auditor regularly audits the *SteelBenchmarker* processes and procedures to assure its effectiveness and prevent its misuse. As per information available to the CBSA from prior investigations, the monthly prices of hot-rolled steel sheet in the three regions reported by the *SteelBenchmarker* represent fairly the fair market value of hot-rolled steel in China.

With respect to bearing bar, these bars are produced by unrolling and slitting hot-rolled coils. As noted above, the CBSA has determined that section 20 conditions exist in the Chinese flat-rolled steel sector, including hot-rolled steel sheet. As a result, the domestic selling prices for hot-rolled steel sheet and, consequently, bearing bar in China are not appropriate for the purposes of determining the fair market value of these goods. The CBSA further reviewed information regarding bearing bar purchases by the cooperative exporters and found that none of the cooperative exporters had imported bearing bar from suppliers located outside of China during the subsidy POI.

Since bearing bar is a product whose selling prices are not monitored, the CBSA was unable to obtain information from either published commercial reports or participants in the investigation regarding the fair market selling prices of this good. Since hot-rolled steel sheet is the raw material input for the production of bearing bar, the CBSA concluded that it was appropriate to determine the fair market value of bearing bar by adding to the average of the monthly prices of hot-rolled steel sheet in the three regions (excluding China) reported by *SteelBenchmarker* the costs to convert hot-rolled steel sheet into bearing bar. The CBSA determined the weighted average cost to convert hot-rolled steel sheet into bearing bar using information provided by the cooperative exporters. Based on this information, the weighted average conversion cost expressed as a percentage of the cost of hot-rolled steel sheet was 9.51%.

Regarding wire, the CBSA found that none of the cooperative exporters imported wire from suppliers outside of China during the subsidy POI. In order to establish the fair market value of wire in China, the CBSA reviewed the information available and found that the best information that could be used for establishing the fair market value of wire in China was Chinese high speed wire rod prices filed by one of the cooperative exporters.⁸

Based on the above, the CBSA has determined that the two 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.

⁸ CBSA Subsidy exhibit S082.

SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS

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

I. Special Economic Zone (SEZ) Incentives and Other Designated Areas

- Program 4: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)
- Program 5: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
- Program 6: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
- Program 7: Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
- Program 8: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
- Program 9: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas
- Program 10: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
- Program 11: Income Tax Refund where Profits Re-invested in SEZs and Other Designated Areas
- Program 12: Preferential Costs of Services and/or Goods Provided by Government or SOEs in SEZs and Other Designated Areas

II. Grants

- Program 13: The State Key Technology Renovation Projects
- Program 14: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- Program 15: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin

- Program 16: Supportive Fund Provided by the Government of Xuyi County, Jiangsu Province
- Program 17: Repaying Foreign Currency Loan by Returned VAT
- Program 18: Government Export Subsidy and Product Innovation Subsidy
- Program 19: Research & Development (R&D) Assistance Grant
- Program 20: Innovative Experimental Enterprise Grant
- Program 21: Superstar Enterprise Grant
- Program 22: Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”
- Program 23: Export Brand Development Fund
- Program 24: Provincial Scientific Development Plan Fund
- Program 25: Technical Renovation Loan Interest Discount Fund
- Program 26: Venture Investment Fund of Hi-Tech Industry
- Program 27: National Innovation Fund for Technology Based Firms
- Program 28: Guangdong - Hong Kong Technology Cooperation Funding Scheme
- Program 29: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- Program 30: Five Points, One Line Strategy in Liaoning Province
- Program 31: Innovative Small and Medium-Sized Enterprise Grants
- Program 32: Product Quality Grant
- Program 33: Changzhou Qishuyan District Environmental Protection Fund
- Program 34: 2007 Technology Innovation Award
- Program 35: 2007 & 2008 Energy-Saving Fund
- Program 36: Enterprise Innovation Award of Qishuyan District
- Program 37: Energy-Saving Technique Special Fund

Program 38: 2008 Water-Saving Technique Assistance

Program 39: Grants to Privately-Owned Export Enterprises

Program 40: Grants for Export Activities

Program 41: Grants for International Certification

Program 42: Liaoning High-Tech Products & Equipment Exports Interest Assistance

Program 43: Income Tax Refund for Enterprises Located in Tianjin Jinnan Economic Development Area

Program 44: Enterprise Technology Centers of Tianjin City and Jinnan District

Program 45: Jiulong Lake Town Grant 2008

Program 46: Energy Saving Grant 2008

III. Equity Programs

Program 47: Debt-to-Equity Swaps

Program 48: Exemptions for SOEs from Distributing Dividends to the State

IV. Preferential Loans

Program 49: Loans and Interest Subsidies Provided Under the Northeast Revitalization Program

V. Preferential Income Tax Programs

Program 50: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years

Program 51: Preferential Tax Policies for Foreign Invested Export Enterprises

Program 52: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive

Program 53: Preferential Tax Policies for the Research and Development of FIEs

Program 54: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments

Program 55: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose

Program 56: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors

Program 57: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps

Program 58: Corporate Income Tax Reduction for High-New Technology Enterprises

VI. Relief from Duties and Taxes on Materials and Machinery

Program 59: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment

Program 60: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

VII. Reduction in Land Use Fees

Program 61: Reduction in Land Use Fees

VIII. Goods/Services Provided by Government at Less than Fair Market Value

Program 62: Electricity Provided by Government at Less than Fair Market Value

APPENDIX 3 - REPRESENTATIONS

Representations Concerning the Dumping Investigation

The details of representations made to the CBSA with respect to the dumping investigation, including case arguments from Shanghai DAHE Grating Co. Ltd. (DAHE) and the reply submission from Fisher & Ludlow Ltd. (the Complainant) are listed below. Following the representations on each issue is a response explaining the position of the CBSA.

DAHE Representations

Sufficiency of DAHE's Response

At the time of the preliminary determination of dumping DAHE's information was not sufficient to estimate normal values, and consequently used to estimate a margin of dumping for DAHE.

For purposes of the final determination of dumping DAHE argued that:

*"DAHE has fully cooperated to the best of its capacity in providing information in regard to its business during the POI as required by CBSA for purpose of dumping"*⁹

Reply Submission

In their reply submission the Complainant argued:

*"Repeating assertions that DAHE's RFI response provides the Agency with all the required information is no answer to whether, in reality, that is so. That is up to the Agency to determine in accordance with the requirements of SIMA and the Regulations."*¹⁰

CBSA Response

In the case of DAHE, for purposes of the final determination, the normal values, export prices and amounts of subsidy were all calculated based on information provided by DAHE in response to the Requests for Information (RFIs) and supplemental information provided during the on-site verification.

Complainant's Estimations of Normal Values

DAHE further argued that the *"complainant's method in formulating normal value is seriously flawed"* in that *"VAT should not be included in the materials cost"*, and that the complainants estimates should not for a basis of normal value calculations for final

⁹ CBSA Dumping Exhibit 82 Non-Confidential

¹⁰ CBSA Dumping Exhibit 83 Non-Confidential

determination. *“As is clear to CBSA,(sic) surrogate value plays a role in establishing normal value for export goods under consideration in antidumping investigation if and only if there is no Section 20 inquiry in this investigation, therefore, no surrogate value should be used.”*¹¹

Reply Submission

In response the Complainant argued that:

*“DAHE argues that the Complainant's calculation of normal values is "seriously flawed" because it included the 17% VAT and that VAT should not be included in estimating COP (p. 6). Whether this is so, the Complainant's estimates of production costs are no longer in issue. It is the CBSA's calculation of production costs that are now the operative determination.”*¹²

CBSA Response

In the case of DAHE the normal values, export prices and amounts of subsidy were all calculated based on information provided by DAHE in response to the RFIs and supplemental information provided during the on-site verification. Any value-added tax (VAT) included in the cost of materials (i.e. any production costs) was removed for the purposes of determining normal values pursuant to paragraph 19(b) of SIMA.

The complainant's estimates of raw material costs, conversion factors or any other estimates made in their complaint were not used in the determination of normal values

No normal values were determined under section 20 of SIMA.

Complainant Representations

Use of Intermediary Countries

A representation was made at the preliminary determination which may still have a bearing in the future pending the Tribunal's injury determinations. The Complainant's counsel made representations concerning the submission by Accurate Screen Ltd. (Accurate), an importer. Counsel presented four issues, three of which were in regard to highlighting the accuracy of the Complainant's estimates in their complaint. The fourth issue related to Accurate's imports of certain steel grating from the United States of America (USA).

Counsel referenced the CBSA Complaint Analysis on this issue. The Complaint Analysis states that there is a “possibility of shipments of subject goods through intermediary countries”. Counsel for the Complainant stated in their representation that Accurate's response to the RFI does not include imports of subject goods from the USA:

¹¹ CBSA Dumping Exhibit 82 Non-Confidential

¹² CBSA Dumping Exhibit 83 Non-Confidential

This is confirmed in Accurate's subject goods income statement filed as part of its RFI response, which states that subject goods are imported from both China and the United States ...

...Given that these imports have not been reported by Accurate, the dumping margins and subsidy amounts for these volumes during the POI should be determined pursuant to section 29 of SIMA.¹³

CBSA Response

In this context, it should be noted that the CBSA does not rely solely on importer submissions when it analyzes import volumes. Instead, the information contained within importer submissions is compared with that included within the exporter submissions, and verified using the CBSA's own statistical data.

For purposes of the final determination, the total import volumes remained identical to the import volumes determined at the preliminary determination with some modifications to specific exporter's volumes as a result of the verified exporter information.

¹³ CBSA Dumping Exhibit 47 Non-Confidential Fisher and Ludlow Non-Confidential Representation, 3 November 2010, Page 2,

Representations Concerning the Subsidy Investigation

The details of representations made to the CBSA with respect to the subsidy investigation, including case arguments from DAHE and the Government of China (GOC) and the reply submission from the Complainant are listed below. Following the representations on each issue is a response explaining the position of the CBSA.

GOC Representations

CBSA's Demand for Information not Relevant to the Investigation

The GOC contends that the CBSA, by requiring information relating to all 61 exporters in China it identified at initiation, requested information that was not relevant to the investigation. The GOC maintains that only two companies in China exported the subject goods, and that the onus is on the CBSA to provide evidence that other exporters exist. In the absence of this evidence, the GOC contends that its response, which was limited to two exporters, is complete.

Reply Submissions

Counsel for the Complainant submitted that the CBSA's request for information was legitimate and that it was in compliance with the *World Trade Organization (WTO) Agreement* and SIMA. Furthermore, counsel referenced information on record which it stated confirms that there were numerous exporters and potential exporters of subject goods to Canada.

CBSA Response

At the initiation of an investigation, the CBSA identifies potential exporters from information submitted in the complaint and CBSA import documentation. The CBSA identifies the Harmonized System classification numbers or "HS codes" under which the goods under investigation are normally imported. The CBSA then conducts a thorough analysis of the import documentation for the importations reported under these HS codes in order to determine the potential exporters of the goods under investigation.

The CBSA has maintained throughout the subsidy investigation that it requires information from the GOC pertaining to all of the exporters/producers in China identified at the time of initiation, notwithstanding the fact that the GOC identifies only two of these companies as having exported the subject goods during the POI. It should be noted that, in its response to the RFI, the GOC stated that it was unable to identify exporters who had actually exported subject goods from those who had exported other goods falling under the same tariff description. It remains unexplained how the GOC was later able to positively identify the number and identities of the exporters of subject goods. In addition, it is of note that Accurate, an importer, identified a third exporter in its response

to the CBSA RFI.¹⁴ However, this exporter chose not to participate in the CBSA's investigations.

Input Material Provided by the Government at Less than Fair Market Value

The GOC claims that the CBSA cannot rely on decisions in prior investigations or re-investigations to determine that section 20 conditions exist in the Chinese flat-rolled steel sector unless these decisions and the corresponding evidence has been filed on the administrative record of the current investigation.

The GOC also claims that the CBSA failed to take into consideration Article 15(b) of China's WTO Protocol of Accession. The GOC further stated that in circumstances where there are special difficulties to use the internal benchmark in China the CBSA should have considered making adjustments to the prevailing terms and conditions in China before using an external benchmark. It was argued that in these circumstances, the CBSA decision to use a benchmark outside of China to determine the input raw material prices is in direct contravention of Article 14(d) of the SCM Agreement. Moreover, the GOC claims that purchases of raw materials were made in the ordinary course of trade under competitive market conditions and therefore the *SteelBenchmarker* prices do not reflect the prevailing market conditions in China.

Furthermore, the GOC argues that if a subsidy exists in regard to hot-rolled steel sheet in China it is not specific simply by the limitation in number of producers under investigation or by reasons that no accurate number of end-users of the materials in question can be provided to establish wide spectrum of end-users of hot-rolled steel in the economy.

The GOC also takes issue with the CBSA's treatment as a countervailable subsidy of the provision of steel by SOEs at less than fair market value. Per the GOC's arguments, SOEs are not public bodies and should not be treated as an arm of the GOC.

Reply Submissions

Counsel for the Complainant stated that the CBSA is entitled to refer to prior decisions on investigations and re-investigations as they are part of the public record. Counsel also indicated that the Complainant filed documented reports on the record as evidence that the GOC was heavily involved in the steel producing sector.

In its reply submission, counsel for the Complainant stated that Article 15(b) of China's WTO *Protocol of Accession* cannot be invoked since the GOC never made submissions to the effect that there were special difficulties encountered in applying the provisions of the WTO *Agreement on Subsidies and Countervailing Measures*.

Counsel for the Complainant submitted that the GOC's arguments pertaining to the competitive market conditions in China and the arguments related to SOEs should be

¹⁴ CBSA Dumping Exhibit 23 Non-Confidential

rejected since it is new information not on the record and is not supported with credible evidence.

CBSA Response

At the time of the preliminary determination, the CBSA indicated its position in respect of hot-rolled steel sheet. The CBSA determined in a recent re-investigation that section 20 conditions exist in the Chinese flat-rolled steel sector and, as a result, it was inappropriate to use a steel price index in China as a benchmark to establish the fair market value of hot-rolled steel coils in China. The CBSA further reviewed information regarding hot-rolled steel sheet purchases by the responding exporters and found that none of the responding exporters had imported hot-rolled steel sheet from suppliers located outside of China during the subsidy POI.

The CBSA determined that the steel prices reported by *SteelBenchmarker* were appropriate. *SteelBenchmarker* is designed to provide a reliable index of the current “standard” or “base” transaction prices for use by participants in the steel industry. These prices are based on the average of the price assessments collected from buyers and sellers of steel after the elimination of outliers, and are designed to be robust (robust in this context meaning that the price is accurate and not able to be manipulated). In addition, a third-party auditor regularly audits the *SteelBenchmarker* processes and procedures to assure its effectiveness and prevent its misuse.

The CBSA maintains that raw material provided by the government at less than fair market value is a specific subsidy since it is specific to the users of that raw material.

In regard to SOEs, as stated in the CBSA’s subsidy questionnaire for purposes of this investigation, the GOC refers to all levels of government and 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. Without a complete response to the subsidy RFI from the GOC, the CBSA was unable to definitively determine whether the raw material suppliers/producers were SOEs or non-SOEs.

Overlapping, Non-applicable, Non-existent and Repealed Programs

The GOC claims that a number of programs investigated by the CBSA have either been repealed, do not exist, are overlapping and have been covered by other programs or are not applicable to the subject goods.

Reply Submissions

Counsel for the Complainant submitted that the list of overlapping, non-applicable, non-existent or repealed programs provided by the GOC in its case arguments must be rejected as it does not form part of the record. Furthermore, counsel also states that the

information was not substantiated and that the GOC should have provided the necessary verifiable information in its response to the subsidy RFI.

CBSA Response

The CBSA notes that it is possible for subsidy programs to be in operation or to confer benefit, notwithstanding the fact that these programs have been repealed or have not immediately appeared to be applicable to certain industries. As such, it is appropriate for the CBSA to investigate such subsidy programs in order to confirm whether these programs are in operation and are applicable to the subject goods.

DAHE Representations

Benchmark Price to Establish the Fair Market Value of Raw Materials

Counsel for DAHE argues that the prices of hot-rolled steel sheet in the three regions (excluding China) reported by *SteelBenchmarker* are inappropriate since the three regions are located in developed countries, their markets have features differing from China in terms of the stage of development, and that these prices may have been subject to collusion as these markets are controlled by a few producers.

Counsel for DAHE argues that the CBSA has not determined that section 20 conditions exist in the Chinese wire rod and bearing bars sector. Furthermore, counsel claims that hot-rolled steel coil is a low-end product subject to competitive market conditions in China which are the same as the market conditions encountered in the three regions reported by *SteelBenchmarker*. Therefore, counsel claims that the prices of hot-rolled steel coils, wire rod and bearing bars in China should be used as a benchmark for raw materials purchased in China.

Counsel for DAHE claims that in the event that the CBSA continues to determine that Chinese prices are inappropriate as a fair market benchmark price for raw material inputs, then the CBSA should use the prices in Turkey as a benchmark since the Turkish and Chinese economies are at a similar development stage and the Turkish economy is supported by a sound domestic steel manufacturing sector.

Reply Submissions

Counsel for the Complainant submitted that these arguments are newly devised and are not based on information on the record and, therefore, should be dismissed.

Counsel for the Complainant stated that DAHE never filed information on record to demonstrate that section 20 conditions do not exist in the hot-rolled steel coil and bar sector. Furthermore, Counsel states that the Complainant and the CBSA are entitled to rely on prior CBSA investigations and re-investigations which found that the prices were substantially determined by the government.

CBSA Response

The CBSA determined in a recent re-investigation that section 20 conditions exist in the Chinese flat-rolled steel sector and, as a result, it was inappropriate to use a steel price index in China as a benchmark to establish the fair market value of hot-rolled steel coil in China. Therefore, the CBSA determined that the hot-rolled steel coil prices reported by *SteelBenchmarker* were appropriate as explained in **Appendix 2**. These prices were used to determine the amount of subsidy on purchases of hot-rolled steel coil and bearing bars (slit hot-rolled steel coils) as described in **Appendix 2**.

In regard to wire rod input material, the CBSA has determined the amount of subsidy for wire rod using as a benchmark the Chinese high speed wire rod prices filed by DAHE.¹⁵

Zeroing of the Subsidy Benefit

Counsel for DAHE argues that the CBSA did not comply with section 36 of the *Special Import Measures Regulations* when determining the amount of subsidy for raw materials and, consequently, overstated the amount of subsidy. Counsel claims that the amount of subsidy for raw materials should have been determined by netting the benefits by taking into account both the positive and negative benefits rather than only considering the positive benefits.

CBSA Response

Neither the SIMA nor the SIMR specifically require that a benefit conferred on a recipient through one or more transactions be offset where other transactions between the recipient and the government are concluded on terms that are less favourable than prevailing market terms. Therefore, the CBSA's position regarding the "zeroing" of the amount of subsidy received from the government, in this context is not to offset amounts by which the government sold raw materials at a below-market price with amounts paid to the government on separate transactions which were above the market price to arrive at a "net" amount of subsidy. Given an incomplete response to the CBSA's RFI by the GOC, the amounts of subsidy have been determined under a Ministerial specification pursuant to subsection 30.4(2) of SIMA.

¹⁵CBSA Subsidy exhibits S082 Non-Confidential, Appendix 4