



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

OTTAWA, November 15, 2012

4214-34 AD/1393

4218-33 CV/130

## STATEMENT OF REASONS

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

**CERTAIN STEEL PILING PIPE ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

### DECISION

On October 31, 2012, 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 carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3½ inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People's Republic of China, excluding carbon steel welded pipe, in the nominal size range of 3½ inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3½ inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.

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

Canada

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## SUMMARY OF EVENTS

[1] On March 22, 2012, the Canada Border Services Agency (CBSA) received a written complaint from Atlas Tube Canada Inc. of Harrow, Ontario, a division of JMC Steel Group, (hereafter, “the Complainant”) alleging that imports of certain steel piling pipe 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 April 5, 2012, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. The CBSA also notified the Government of China (GOC) that a properly documented complaint had been received and provided the GOC 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] The Complainant provided evidence to support the allegations that certain steel piling pipe from China has been dumped and subsidized. The evidence disclosed a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing these goods.

[4] Although the GOC was invited for consultations prior to the initiation of the investigations, pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*, the GOC did not participate in any such consultations.

[5] On May 4, 2012, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain steel piling pipe from China.

[6] 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 piling pipe from China have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods.

[7] The Tribunal concluded its preliminary inquiry on July 3, 2012. At that time, pursuant to paragraph 35(1)(b) of SIMA, the Tribunal partially terminated the inquiry with respect to a subset of goods (i.e. steel piling pipe of certain sizes and specification), having concluded that the evidence does not disclose a reasonable indication that the dumping and subsidizing of those particular goods have caused injury or retardation or are threatening to cause injury to the domestic industry.

[8] On July 3, 2012, pursuant to subsection 37.1(1) of SIMA, the Tribunal also made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain steel piling pipe from China, excluding the subset of goods which was subject to the partial termination, have caused injury or are threatening to cause injury.

[9] On August 1, 2012, pursuant to subsection 35(2) of SIMA, the President partially terminated his investigations with respect to the specific goods to which the Tribunal’s July 3, 2012, partial termination applied.

[10] On August 2, 2012, pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing regarding certain steel piling pipe from China, excluding the subset of goods which were the subject of the Tribunal's partial termination. Accordingly, the CBSA imposed provisional duties on these imports to offset the harmful effects of the dumping and subsidizing, pursuant to subsection 8(1) of SIMA.

[11] On August 3, 2012, the Tribunal initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry.

[12] The CBSA continued its investigations and, on the basis of the evidence, the President is satisfied that certain steel piling pipe 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 October 31, 2012, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[13] 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 has announced that it will issue its finding by November 30, 2012.

#### **PERIOD OF INVESTIGATION**

[14] The period of investigation with respect to dumping (Dumping POI), covered all subject goods sold to importers in Canada from January 1, 2011 to March 31, 2012.

[15] The period of investigation with respect to subsidizing (Subsidy POI), covered all subject goods sold to importers in Canada from January 1, 2011 to March 31, 2012.

#### **INTERESTED PARTIES**

##### **Complainant**

[16] The Complainant accounts for a major proportion of the production of like goods in Canada. The Complainant's goods are produced at its manufacturing facilities in Harrow, Ontario.

[17] The name and address of the Complainant are:

Atlas Tube Canada Inc.  
200 Clark Street  
Harrow, ON  
N0R 1G0

[18] Other producers of steel piling pipe in Canada include DFI Corporation, of Edmonton, Alberta, Pipe & Piling Supplies Ltd., of Saint-Hubert, Quebec, Spiralco Inc., of Saint-Félix-de-Kingsey, Quebec, and Nova Tube Inc., of Montreal, Quebec.

[19] DFI Corporation and Nova Tube Inc. provided letters supporting the complaint. The other producers either did not provide an opinion or were not included by the CBSA as part of the Canadian industry because they were also importers of subject goods.

## **Exporters**

[20] At the initiation of the investigations, the CBSA identified 236 potential exporters and producers of steel piling pipe from its own research, information provided by the Complainant and CBSA import documentation over the period of January 1, 2011 to March 31, 2012.

[21] The CBSA sent an exporter Dumping Request for Information (RFI), a section 20 RFI, and a subsidy RFI to each of these parties and received timely responses to all three RFIs from three exporters in China. The exporters are Benxi Northern Steel Pipe Co., Ltd. (Benxi), Guangzhou Juyi Steel Pipe Co., Ltd. (Juyi), and Huludao City Steel Pipe Industrial Co., Ltd. (Huludao). These exporters were requested to provide additional information to supplement and clarify their responses.

[22] While the responses from Juyi and Huludao were considered substantially complete, costing information concerning steel piling pipe sold by Benxi was considered incomplete because it did not include information from the producer(s) of the goods, including the manufacturing costs of the subject goods. Accordingly, it was not possible for the CBSA to conduct a complete analysis of Benxi's submission.

## **Importers**

[23] At the initiation of the investigations, the CBSA identified 858 potential importers of steel piling pipe over the period of January 1, 2011 to March 31, 2012 from information provided by the Complainant and CBSA import documentation. Of these potential importers, 425 imported over \$10,000 of goods each during the 15-month period from January 1, 2011 to March 31, 2012, representing 99% of total imports of steel piling pipe, as estimated at the time the investigations were initiated.

[24] The CBSA sent an importer RFI to each of these parties and received eight responses to the importer RFI, with varying degrees of completeness. In addition, several potential importers communicated with the CBSA to indicate that the goods they had imported did not consist of subject goods. The CBSA analysed all responses and further refined its analysis of its own customs import documentation in order to properly identify imports of subject goods. On the basis of its analysis, the CBSA identified 53 importers of subject goods during the POI.

## **Surrogate Producers**

[25] As part of the inquiry to determine whether domestic prices in China are substantially determined by the government of that country and whether there is sufficient reason to believe they are not substantially the same as they would be if they were determined in a competitive market (section 20 inquiry), the CBSA requested that producers in other countries (specifically India, the Republic of Korea, Thailand, and Chinese Taipei) provide domestic pricing and costing information concerning steel piling pipe.

[26] The CBSA received no responses to the surrogate producers RFI.

## **Government of China**

[27] For the purpose 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.

[28] At the initiation of the investigations, the CBSA sent subsidy and section 20 RFIs to the GOC. No response, or any other information with respect to the investigations, was received from the GOC.

## **PRODUCT DEFINITION**

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

Carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3½ inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People’s Republic of China, excluding carbon steel welded pipe, in the nominal size range of 3½ inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3½ inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.

## **Additional Product Information**

[30] The most common grades of steel piling pipe are made to ASTM A500, ASTM A252 (including “modified” ASTM A252 with increased yield strength) or comparable internationally-recognized specifications. The vast percentage of steel piling pipe is made from carbon steel, although small amounts of steel piling pipe may be made with high-strength low-alloy (HSLA) steel or of other steel grades depending on project requirements.

[31] Steel piling pipe is produced either through electrical-resistance welding (“ERW”) or seamless processes. ERW pipe production is either by longitudinal welding or by spiral (also called helical-butt or helical lap) welding. Regardless of the production process, welded and seamless piling pipe are identical in terms of physical, tensile and other properties. They are covered by the same ASTM or comparable specifications and are fully substitutable in terms of end-use applications.

[32] The most common North American specification for steel piling pipe is ASTM A500 and/or ASTM A252. Steel piling pipe can also be produced to higher standards which allows the goods to be dual-certified or multiple-certified for other applications, such as Oil Country Tubular Goods (casing), API-5L (line pipe) or A53 (standard pipe). Casing, line pipe and some types of standard pipe are produced to more stringent standards than steel piling pipe which allows them to be fully substituted in steel piling pipe applications.

[33] The goods are referred to as “steel piling pipe”. However, other names can be used interchangeably, including: pipe piles, driven piles, drilled shafts, caissons, mini caissons, micro piles, piers and casings.

[34] The CBSA considers that tubular goods (such as oil country tubular goods API-5CT), line pipe (such as API-5L), standard pipe (such as ASTM A53) and other steel pipe products that are not commonly identified as steel piling pipe do not constitute subject goods. Subject goods are confined to goods that are commonly identified as steel piling pipe.

### **Production Process**

[35] In ERW production, hot-rolled steel coil is passed through a series of rollers to form a tubular shape and the edges of the strip are heated electrically and welded together under heat and pressure. Once the round is welded, the pipe passes through a series of cold-forming stands to size it to the appropriate dimension and then cut to length.

[36] In spiral/helical welding, pipe of different diameters can be made from a single coil of hot-rolled steel strip. Instead of slitting along its length as in ERW processes, the coil is un-rolled and then re-coiled in spiral fashion on a coiler to the desired outside dimension prior to welding. The welding process is more complex and hence more expensive than the ERW welding process because of the spiral form of the steel coil. However, the end product is identical to ERW pipe in its inherent properties.

[37] Steel piling pipe is produced by the Complainant with plain ends and in standard, unpainted finish. After testing for quality control purposes, the pipe is stencilled, bundled and then loaded on trucks at the Complainant's factory-gate for shipping, either by road or by rail. The goods are normally sold in orders of pounds/tons and bundled in railcar quantities.

### **Classification of Imports**

[38] Prior to January 1, 2012, the subject goods were usually classified under the following Harmonized System (HS) classification codes:

7306.30.10.14	7306.30.90.14
7306.30.10.19	7306.30.90.19
7306.30.10.24	7306.30.90.24
7306.30.10.29	7306.30.90.29
7306.30.10.34	7306.30.90.34
7306.30.10.39	7306.30.90.39



[39] With the January 1, 2012 changes to the Customs Tariff, the equivalent HS codes are now:

7306.30.00.14	7306.30.00.29
7306.30.00.19	7306.30.00.34
7306.30.00.24	7306.30.00.39

[40] 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.

### **LIKE GOODS**

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

[42] Steel piling pipe produced by the domestic industry competes directly with and has the same end uses as the steel piling pipe imported from China. The goods produced in Canada are completely substitutable with steel piling pipe produced in China. Therefore, the CBSA has concluded that steel piling pipe produced by the Canadian industry constitutes like goods to the steel piling pipe produced in China. Steel piling pipe can be considered as a single class of goods notwithstanding that the steel piling pipe from China may be further differentiated in terms of seamless or welded.

### **CANADIAN INDUSTRY**

[43] As previously stated, the Complainant accounts for a major proportion of domestic production of like goods in Canada.

[44] Other producers of steel piling pipe in Canada include DFI Corporation, Pipe & Piling Supplies Ltd., Spiralco Inc., and Nova Tube Inc. Both DFI Corporation and Nova Tube Inc. provided letters supporting the complaint. The other producers either did not provide an opinion or were not included by the CBSA as part of the Canadian industry because they were also importers of subject goods.

### **IMPORTS INTO CANADA**

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

[46] The following table presents the CBSA's analysis of imports of certain steel piling pipe for purposes of the final determinations:

**Imports of Certain Steel Piling Pipe  
(January 1, 2011 – March 31, 2012)**

<b>Imports into Canada</b>	<b>% of Total Import Volume</b>
China	57%
All Other Countries	43%
<b>Total Imports</b>	<b>100%</b>

**INVESTIGATION PROCESS**

[47] Regarding the dumping investigation, sale and costing information was requested from known and potential producers, exporters and vendors concerning shipments of subject steel piling pipe released into Canada during the Dumping POI of January 1, 2011 to March 31, 2012, as well as with respect to like goods sold domestically (i.e. in the country of export) during that period. Importers were also requested to provide information on imports of steel piling pipe from all sources, released into Canada during the Dumping POI.

[48] In addition, known and potential 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. The CBSA also sent RFIs to steel piling pipe producers in surrogate countries requesting sale and costing information.

[49] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters, producers and the GOC concerning financial contributions made to exporters or producers of subject steel piling pipe sold to importers in Canada during the Subsidy POI of January 1, 2011 to March 31, 2012, as well as past financial contributions, where the benefit may have been realized during the POI.

[50] After reviewing the exporters' responses to the three RFIs, supplemental RFIs were sent to clarify information submitted by the companies. Timely responses to those supplemental RFIs were provided. The GOC did not submit a response to any of the RFIs.

[51] As part of the final stage of the investigations, case briefs were provided by counsel representing Juyi and Benxi, as well as Huludao's counsel. No reply submissions were provided by any of the interested parties. Details of all representations can be found in **Appendix 3** to this document.

[52] Under Article 15 of the World Trade Organization (WTO) *Anti-dumping Agreement*, developed country Members 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* maintained by the *Organization for Economic Co-operation and Development (OECD)*<sup>1</sup>, the President recognizes China as a developing country for purposes of actions taken pursuant to SIMA.

[53] 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 exporters in China.

## **DUMPING INVESTIGATION**

### **Section 20 Inquiry**

[54] Section 20 is a provision under the SIMA that is 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<sup>2</sup> under paragraph 20(1)(a) of SIMA, section 20 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. Where section 20 is applicable, the normal values of goods are not determined using domestic prices or costs in that country.

[55] For purposes of a dumping proceeding, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation absent sufficient information to the contrary. 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.

[56] 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.

[57] 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;

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<sup>1</sup> The OECD DAC List of ODA Recipients as at January 1, 2012, the document is available at: <http://www.oecd.org/development/aidstatistics/48858205.pdf>

<sup>2</sup> China is a prescribed country under section 17.1 of the *Special Import Measures Regulations*.

- 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;
- 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.

[58] 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;
- 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.

[59] 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 reason to believe that the resulting domestic prices are not substantially the same as they would be in a competitive market.

[60] The Complainant 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. In their complaint, the Complainant provided information to support these allegations concerning the steel industry in China including the alloy and steel pipe sector (steel pipe sector), which includes steel piling pipe.<sup>3</sup>

[61] At the initiation of the dumping investigation, the CBSA had sufficient information from the Complainant, the CBSA's research and from previous CBSA section 20 opinions to support the initiation of a section 20 inquiry to examine the extent of GOC involvement in pricing in the steel pipe sector, which includes steel piling pipe. The information indicated that domestic prices in China have been influenced by various GOC industrial policies concerning the Chinese steel industry including the steel pipe sector, which includes steel piling pipe.

[62] Consequently, the CBSA sent section 20 RFIs to the GOC and to all known Chinese steel pipe producers to obtain information on the matter.

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<sup>3</sup> Dumping Exhibit 1 (PRO).

[63] For purpose of the Section 20 inquiry, the CBSA sent questionnaires to all known or potential producers and exporters in the steel pipe sector in China. The CBSA received responses from three companies, Benxi, Juyi and Huludao. However, none of the state owned producers in the steel pipe sector that were contacted by the CBSA responded to the questionnaire. In addition, the GOC did not respond to the questionnaire for the section 20 inquiry. As a result of this low response rate, the CBSA did not have complete market information concerning the steel industry or the steel pipe sector in China, which includes steel piling pipe.

[64] The steel pipe sector is a similar sector that was examined in the CBSA's section 20 inquiries of *Certain Carbon Steel Welded Pipe (2008)*<sup>4</sup> and *Certain Carbon Steel Welded Pipe (2011)*<sup>5</sup>. Each of those section 20 inquiries concluded that domestic prices in the welded pipe sector in China are substantially determined by the GOC and that there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[65] The following is the CBSA's analysis of the relevant factors that prevail in the Chinese steel industry, which affect the steel pipe sector, which includes steel piling pipe.

#### Relationship between the Steel Piling Pipe Sector and Other Steel Sectors in China

[66] The President has issued opinions in respect to the following steel sectors that domestic prices are substantially determined by the GOC and that they are not substantially the same as they would be if they were determined in a competitive market:

- certain pup joints (2011)
- certain hot-rolled carbon steel plate and high strength low-alloy steel plate (2010)
- certain flat hot-rolled carbon and alloy steel sheet and strip (2010)
- certain oil country tubular goods (2010)
- certain seamless carbon or alloy steel oil and gas well casing (2008)
- certain carbon steel welded pipe (2008 & 2011)

[67] The domestic selling prices in the above cited steel product sectors have been found by the CBSA not to be the same as they would be if they were determined under competitive market conditions. Steel piling pipe is a very similar downstream steel product.

#### GOC Industrial Policies, Plans, Opinions, Notices and Guidelines

[68] As cited in previous section 20 inquiries, *The Development Policies for the Iron and Steel Industry – Order of the National Development and Reform Commission [No. 35]*,<sup>6</sup> (2005 National Steel Policy) was promulgated on July 8, 2005 and outlines the GOC's future plans for the Chinese domestic steel industry. The major objectives of the 2005 National Steel Policy are:

- The structural adjustment of the Chinese domestic steel industry;
- Industry consolidations through mergers and acquisitions;
- The regulation of technological upgrading with new standards for the steel industry;

<sup>4</sup> Final Determination *Statement of Reasons for Carbon Steel Welded Pipe*; August 5, 2008.

<sup>5</sup> Notice of Conclusion of Re-investigation for Carbon Steel Welded Pipe, February 14, 2011.

<sup>6</sup> Dumping Exhibit 38 (PRO) – Exhibit 1.

- Measures to reduce material and energy consumption and enhance environmental protection; and
- Government supervision and management in the steel industry.

[69] Prior to the *2005 National Steel Policy*, the GOC had implemented several other regulations and policies related to the iron and steel industry. In order to prevent over-capacity in the industry, on November 19, 2003, the National Development and Reform Commission (NDRC), the Ministry of Land and Resources, the Ministry of Commerce, the Ministry of Environmental Protection and the China Banking Regulatory Commission (CBRC) jointly promulgated *Several Opinions Concerning the Prohibition of Irrational Investment in the Iron and Steel Industry (Investment Opinions)*, State Council[2003] No. 103.<sup>7</sup> The *Investment Opinions* increased the minimum requirements for construction of iron and steel production facilities and imposed additional restrictions on iron and steel manufacturers in matters concerning production capacity, land use, environmental protection measures, credit management and manufacturing technology.

[70] On April 26, 2004, the State Council promulgated the *Circular on the Adjustment of the Proportion of Capital Funds for Fixed Asset Investment Projects of Certain Industries*, State Council[2004] No. 13.<sup>8</sup> In order to reduce “blind and irrational investment”, the proportion of internally generated funds required to invest in iron and steel projects was increased from 25% to 40%.

[71] To regulate investment activities in the industry, on April 30, 2004, the NDRC, People’s Bank of China (PBOC) and CBRC jointly promulgated the *Notice of Relevant Issues for Further Strengthening the Coordination of Industry Policy and Credit Policy to Control Credit Risk*, NDRC [2004] No. 746,<sup>9</sup> (*Industrial and Credit Policy Notice*) and the *Catalogue of Industries to Stop Redundant Construction*<sup>10</sup> (*2004 Catalogue of Industries*). The *2004 Catalogue of Industries* has classified some investment projects as “prohibited” and some others as “restricted.” Under the *Industrial and Credit Policy Notice*, manufacturers of “prohibited” projects were directed to stop construction work immediately, close down operations and repay loans associated with the projects. The “prohibited” iron and steel projects were mainly related to backward or outdated production. For manufactures of “restricted” projects, they were directed to withdraw their applications for approval of such projects. In cases where the project was approved and construction had commenced, the manufacturers were instructed to stop the construction work. In addition, any loans relating to the “restricted” project were suspended.

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<sup>7</sup> Dumping Exhibit 104 (PRO) – Exhibit 19.

<sup>8</sup> Dumping Exhibit 104 (PRO) – Exhibit 21.

<sup>9</sup> Dumping Exhibit 104 (PRO) – Exhibit 44.

<sup>10</sup> Dumping Exhibit 104 (PRO) – Exhibit 45.

[72] Pursuant to the State Council decision on the *Reform of Investment System*, State Council[2004] No. 20, dated July 16, 2004<sup>11</sup> and the *2004 Catalogue of Investment Project Requiring Approval by the Government*<sup>12</sup>, any steel manufacturers seeking to increase iron or steel capacity or adding additional steel rolling capacity would need to obtain prior approval from the NDRC. This would be approved under the NDRC Guidelines, *Enterprise Investment Projects Approved by the Interim Measures*, NDRC [2004] No. 19.<sup>13</sup>

[73] On March 12, 2006, the State Council promulgated the *Notice on Accelerating Structural Adjustment on Industries with Excessive Production Capacity*, State Council [2006] No. 11<sup>14</sup> whereby restrictions were implemented on new iron and steel industry projects and the elimination of outdated production capacity was encouraged. The GOC also encouraged mergers and acquisitions in the industry to create larger iron and steel groups and reduce production capacity.

[74] The NDRC released the *Emergency Notice on Curbing the Excessive Production Growth of the Steel Industry*, [NDRC] No. 191, on April 24, 2009.<sup>15</sup> This notice stated that there had been blind expansion of production in the steel industry that had resulted in over-production and a corresponding decline in prices. In order to address this issue of over-production, action was required to stop the expansion of production capacity and accelerate the elimination of backward production.

[75] On April 29, 2007, the NDRC released the *Emergency Notice Concerning Accelerating Structural Adjustment of Industries*, NDRC [2007] No. 933.<sup>16</sup> This notice states that investment in new projects or “renovation” of existing projects which have high energy consumption and are in violation of the GOC’s industrial policies are strictly prohibited. Further, preferential policies and measures related to such projects should be abolished.

[76] Other examples of GOC notices and opinions which set out detailed requirements for existing production and operations are the *Steel Industry, Production and Operation Specification Conditions*, MIIT<sup>17</sup> [2010] No. 105<sup>18</sup> and the *Opinions of the State Council on Further Increasing Energy Conservation Efforts and Accelerating the Restructuring of the Steel Industry (Accelerating the Restructuring of the Steel Industry)*, State Council [2010] No. 34<sup>19</sup>.

[77] These GOC notices, policies, plans, guidelines and opinions can provide motivation for steel enterprises to eliminate backward production, merge operations or restructure. For example, should steel enterprises not comply with the GOC’s requirements, laws and industrial policies. These repercussions can include the withdrawal of steel production licenses and credit support. In respect of construction of new steel facilities or renovation of existing facilities, the GOC’s previously cited documents continue to apply.

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<sup>11</sup> Dumping Exhibit 104 (PRO) – Exhibit 23.

<sup>12</sup> Dumping Exhibit 104 (PRO) – Exhibit 24.

<sup>13</sup> Dumping Exhibit 104 (PRO) – Exhibit 22.

<sup>14</sup> Dumping Exhibit 104 (PRO) – Exhibit 29.

<sup>15</sup> Dumping Exhibit 104 (PRO) – Exhibit 38.

<sup>16</sup> Dumping Exhibit 104 (PRO) – Exhibit 31.

<sup>17</sup> Ministry of Industry and Information Technology

<sup>18</sup> Dumping Exhibit 81 (PRO) – Exhibit 16.

<sup>19</sup> Dumping Exhibit 81 (PRO) – Exhibit 8.

## Recent GOC Industrial Plans

### **Blueprint for the Adjustment and Revitalization of the Steel Industry (2009)**

[78] The *Blueprint for the Adjustment and Revitalization of the Steel Industry (2009 Steel Revitalization/Rescue Plan)*<sup>20</sup>, was released by the State Council on March 20, 2009. This macro-economic policy was the GOC's response to the global financial crisis and is also the action plan for the steel industry for the period of 2009 through 2011. This plan included the following major tasks:

- Maintain the stability of the domestic market and improve the export environment;
- Strictly control the total output of steel and accelerate the process of eliminating what is backward (obsolete);
- Enhance enterprise reorganization and improve the industrial concentration level;
- Spend more on technical transformation and promote technical progress;
- Optimize the layout of the steel industry and overall arrangements of its development;
- Adjust the steel product mix and improve the product quality;
- Maintain stable import of iron ore resources and rectify the market order;
- Develop domestic and overseas resources and guarantee the safety of the industry.

[79] There are common measures between the *2005 National Steel Policy* and the *2009 Steel Revitalization/Rescue Plan*. The 2009 plan is an acceleration of the major objectives of the 2005 policy. In the 2009 plan, the GOC asserts its strict control over new or additional steel production capacity, promotes new GOC directed mergers and acquisitions to reform the Chinese steel industry into larger conglomerates, along with an increased emphasis on steel product quality and elimination of backward capacity.

[80] There are also provincial versions to the *2009 Steel Revitalization/Rescue Plan*. An example of the provincial version of the national plan is the *Shandong Province Iron and Steel Industry Restructuring and Revitalization Plan*, Shandong Province [2009] no. 45.<sup>21</sup> This provincial plan mirrors the policy objectives of the national *2009 Steel Revitalization/Rescue Plan*, but is tailored to reflect the actual iron and steel industry in Shandong Province.

### **12th Five-Year Plan: Iron and Steel Industry (2011-2015)**

[81] A recent development concerning the iron and steel industry was the *12th Five-Year Plan: Iron and Steel (2011 Steel Development Plan)*, which was released on November 7, 2011.<sup>22</sup> It is the guiding document for the development of the Chinese steel industry for the period 2011-2015 and sets out the following goals:

- increased mergers and acquisitions to create larger, more efficient steel companies;
- restrictions on steel capacity expansion;
- upgrading of steel industry technology;
- greater emphasis on high-end steel products; and

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<sup>20</sup> Dumping Exhibit 38 (PRO) – Exhibit 2.

<sup>21</sup> Dumping Exhibit 104 (PRO) – Exhibit 15.

<sup>22</sup> Dumping Exhibit 38 (PRO) – Exhibit 5.



- directed relocation of iron and steel companies to coastal areas.

[82] Also included in this 2011 plan are minimum requirements for steel production in order to eliminate smaller producers in the market. Through this plan, the GOC is continuing its reform and restructuring of the Chinese steel industry. The GOC's target is to have China's top 10 steel producers represent 60% of the country's total steel output by 2015. According to the *2005 National Steel Policy*, the long-range GOC target for mergers and acquisitions is to have the top 10 Chinese steel producers account for 70% of total national steel production by 2020.<sup>23</sup> This 2011 plan is the next development stage of GOC plans aimed at achieving this long-range 2020 target.

[83] The *2011 Steel Development Plan* addresses existing issues in the steel industry with the directive to strictly control expansion of steel production capacity, accelerate the development of new materials for higher value products, continue to encourage mergers and restructuring and enhance industrial clustering.

[84] According to the 2011 plan, the more highly concentrated steel industry will reduce overcapacity, decrease pollution and will improve Chinese steel producers' bargaining power when negotiating prices on iron ore imports. In addition, through the *2011 Steel Development Plan*, the GOC is progressing with its initiative in the *2009 Steel Revitalization/Rescue Plan* to move Chinese steel production facilities to China's coast. Under the 2009 plan, 40% of China's steel production will be relocated to the coast by the end of 2015.<sup>24</sup>

[85] In the *2011 Steel Development Plan*, the GOC's policies and measures include:

- Improve the industry management system. This would include the GOC's *Criterion for the Production and Operation of the Steel Industry (Steel Operations Standards)*<sup>25</sup> released in 2010;
- Create an environment for fair competition, strengthen and improve macro adjustment and control;
- Regulate the production and operation of the steel industry;
- Standardize the operation of the industry;
- Strengthen the macro guidance of the policy;
- Promote international exchange and co-operation;
- Improve industry information flow, capital flow and material flow. Support enterprise groups to establish and improve the information system in different regions;
- Improve planning by regional authorities of industries to develop the steel industry, combine the regional mergers and reconstruction and eliminate obsolete construction. Related enterprises should put forward the planning scheme corresponding to the foregoing plan. The China Iron and Steel Industry should assist and put forward advice on the policy.

<sup>23</sup> Dumping Exhibit 38 (PRO) – Exhibit 1.

<sup>24</sup> Dumping Exhibit 38 (PRO) – Exhibit 2.

<sup>25</sup> Dumping Exhibit 38 (PRO) – Exhibit 4.

[86] The GOC's direction of the steel industry includes enabling regional or provincial governments to combine enterprises across boundaries. Furthermore, as a result of the GOC's administration of steel production capacity, the Chinese steel industry is under the purview of the GOC.

[87] There are also provincial versions of the *2011 Steel Development Plan*. Examples of these provincial versions of the national plan are: the *12<sup>th</sup> Five-year Plan for the Iron and Steel Industry of Hunan Province*, Hunan [2011] no. 685,<sup>26</sup> and the *Shanghai<sup>27</sup> Iron and Steel Industry 12th Five-Year Development Plan*, Shanghai [2012] No. 409<sup>28</sup>. These plans mirror the policy objectives of the national *2011 Steel Development Plan*, but are tailored to reflect the actual iron and steel industry in the specific province. These provincial plans provide an overview of the previous five-year development plan achievements and outline the future development and restructuring of the industry for the next five-years.

### **12th Five-Year Plan: Steel Pipe Industry (2011-2015)**

[88] On June 23, 2011, the Steel Pipe Branch Association (Steel Pipe Branch) of the China Steel Construction Society, released the *12th Five-Year Plan for the Steel Pipe Industry (2011 Steel Pipe Plan)*<sup>29</sup> covering the period 2011-2015. The Steel Pipe Branch is supervised by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC).<sup>30</sup> The CBSA considers the China Steel Construction Society and the Steel Pipe Branch to be "government" as they are under the administration of SASAC as per their Articles of Association.<sup>31</sup>

[89] The *2011 Steel Pipe Plan* is the second five-year plan for the steel pipe industry.<sup>32</sup> In the previous five-year period (2006-2010), the steel pipe industry experienced rapid growth and numerous modern pipe facilities were constructed. The construction of the new facilities allowed the industry to shift production to higher value pipe products, such as submerged arc welded pipe, high frequency resistance welded pipe, oil country tubular goods (OCTG) and line pipe. However, at the end of the 11th five-year period the steel pipe industry was experiencing excess production capacity, intensified market competition, continued backward production and low industry concentration. These issues were addressed in the *2011 Steel Pipe Plan*.

[90] The *2011 Steel Pipe Plan* directs that the output of steel pipe should be controlled at 67.75 million metric tonnes (MMT). In addition to controlling the capacity of the steel pipe production, the plan also addresses the issue of overcapacity which was estimated to be 15 MMT, of which 8 MMT is surplus seamless pipe and 7 MMT is surplus welded pipe.

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<sup>26</sup> Dumping Exhibit 109 (PRO) – Exhibit 30.

<sup>27</sup> Shanghai is a province-level municipality of the People's Republic of China.

<sup>28</sup> Dumping Exhibit 104 (PRO) – Exhibit 12.

<sup>29</sup> Dumping Exhibit 83 (PRO) – Exhibit 1.

<sup>30</sup> Dumping Exhibit 104 (PRO) – Exhibit 6, page 18.

<sup>31</sup> Final Determination *Statement of Reasons for Pup Joints*; March 27, 2012, paragraph 89.

<sup>32</sup> Dumping Exhibit 109 (PRO) – Exhibit 4, page 3.

[91] The plan also states that the top 20 Chinese steel enterprises are to be responsible for more than 60% of the aggregate steel pipe output with the top 10 seamless steel pipe producers accounting for 70% of the seamless production and the top 10 welded pipe producers accounting for 50% of the welded production. These industry concentration targets are largely to be obtained through mergers and acquisitions.

[92] One of the main tasks of the *2011 Steel Pipe Plan* is to control total volume by eliminating obsolete (backward) production and controlling new production capacity. The scope of these GOC-initiated reforms in the Chinese pipe sector is to be obtained by industry concentration targets through mergers and acquisitions by the end of 2015. These GOC objectives are likely to conflict with the commercial interests of steel pipe producers by affecting production volumes, competition and ultimately prices.

[93] A current example of the GOC's continuing involvement in the iron and steel industry is the recent release by the Ministry of Industry and Information Technology (MIIT) of the *Steel Industry Specification Conditions – (Revised 2012)*, MIIT [2012] No. 35, on September 3, 2012.<sup>33</sup> The document sets out several conditions “in order to further strengthen the management of the steel industry and to regulate the production and operation of existing iron and steel enterprises”. These conditions further support the goals of the *2009 Steel Revitalization/Rescue Plan* and the *2011 Steel Development Plan*.

[94] One of the factors that suggest section 20 conditions may exist is when the government administers control of the production capacity of the goods in the specified sector. The CBSA considers a government's regulation or control of production levels in an industry as an influence on the supply of goods that indirectly affects the price of the goods. This factor is indicative that section 20 conditions are present when prices are not substantially the same as they would be if they were determined in a competitive market. The CBSA's section 20 inquiry concerning the welded pipe sector in the *Carbon Steel Welded Pipe* investigation confirmed that the GOC's control of existing or new steel production capacity extended to the welded pipe sector.<sup>34</sup>

[95] As noted above, there are examples of the GOC continuing to be actively involved in the control of existing or new production capacity in the steel industry, which affects the steel pipe sector, which includes steel piling pipe.

[96] The CBSA has identified and catalogued the GOC macro-economic policies, laws, directives and guidelines relating to the iron and steel industry in China, including the steel pipe sector. From these macro-economic policies, laws, notices and guidelines it is clear that the GOC continues to administer the Chinese steel industry and to direct mergers, relocations and production expansion and contraction of the Chinese iron and steel industry, including the steel pipe sector, which includes steel piling pipe. This evidence demonstrates that the GOC is in charge of the reform of the Chinese steel industry.

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<sup>33</sup> Dumping Exhibit 109 (PRO) – Exhibit 32.

<sup>34</sup> Final Determination *Statement of Reasons for Carbon Steel Welded Pipe* – August 5, 2008.

[97] The GOC's measures, notices and observations as addressed in this section 20 inquiry serve to illustrate the fact that the GOC is administering and directing the steel industry in China. Based on the information on the record, the scope of the GOC's macro-economic policies, plans, opinions, notices and other measures provide evidence that the GOC is influencing the Chinese steel industry and the steel pipe sector, which includes steel piling pipe.

#### Domestic Price Analysis

[98] Sufficient information with respect to world market prices for steel piling pipe was not available for comparison with the Chinese domestic steel piling pipe prices. In this regard, the CBSA sought selling information from surrogate producers but none provided a response. Further, there was no published pricing data available with respect to steel piling pipe. Given the lack of pricing information, for purposes of the analysis, the CBSA employed a pricing analysis of the main raw material component of welded piling pipe, hot-rolled steel.<sup>35</sup>

[99] Welded piling pipe is a downstream steel product from the hot-rolled steel sector. The raw material for welded piling pipe is hot-rolled steel. Simply explained, welded piling pipe is flat hot-rolled steel strip that is roll-formed to a round hollow shape and welded on the joined seam. The costs of welded piling pipe is effectively the cost of the hot-rolled steel in addition to an amount to roll-form and weld the pipe plus an amount for the enterprise's general, selling and administration expenses.

[100] The complainant provided confidential information regarding the relationship between the cost of hot-rolled steel and the selling price of the finished product, referred to as the conversion factor.<sup>36</sup> This conversion factor accounts for the costs incurred by a producer of steel piling pipe to convert hot-rolled steel to the subject goods<sup>37</sup>, and includes an amount for general, selling and administrative expenses, and an amount for profit. Mindful of the confidential nature of this information, the CBSA also sought other publically available information.

[101] The record also contained publicly available information from the previous carbon steel welded pipe (CSWP) section 20 inquiry.<sup>38</sup> In the CSWP section 20 inquiry, two Canadian producers of carbon steel welded pipe provided information on the relationship between the cost of hot-rolled steel and the selling price of the finished product.<sup>39</sup> A comparison of these conversion factors with the conversion factor from the complainant indicates that they are comparable and reasonable. This information indicated that on average, the raw material costs (i.e. the hot-rolled steel) accounted for 70% to 80% of the total cost in the manufacture of CSWP. Based on this information, the CBSA reviewed independent pricing for hot-rolled steel, the main raw material input for steel piling pipe, as a surrogate price analysis. In order to protect the complainant's proprietary information on its conversion factor, the CBSA used the publically available data from the CSWP investigation for its analysis.

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<sup>35</sup> Dumping Exhibit 109(PRO) – Exhibit 8, page 5.

<sup>36</sup> Dumping Exhibit 71(PRO)

<sup>37</sup> This would include labour and overhead expenses.

<sup>38</sup> Certain Carbon Steel Welded Pipe Originating in or Exported from The People's Republic Of China, Case# 4214-16 AD/1373, 4218-24 CVD/123.

<sup>39</sup> Dumping Exhibit 113 (NC)

[102] A comparison of hot rolled band (hot-rolled steel)<sup>40</sup> prices from China, United States of America - East of the Mississippi River, Western Europe and the World Export Market was conducted for the period January 2011 to March 2012.<sup>41</sup> This price analysis indicated that the Chinese hot-rolled steel prices were always significantly below any of the other reported prices. Depending on the month and benchmark market used for comparison, the pricing differential varied between 9% and 38%.

[103] The CBSA is of the opinion that this pricing differential is the result of the GOC policies and measures such as the *2005 National Steel Policy*, the *2009 Steel Revitalization/Rescue Plan*, the *2011 Steel Development Plan* and the *2011 Steel Pipe Plan*.

[104] In making corporate decisions, Chinese steel enterprises must be ever mindful of the GOC's macro-economic policies including GOC measures on steel production capacity, mergers, etc. As a result, corporate decisions that would normally be based on market dynamics of supply and demand must comply with the GOC's policies, directives and mandates.<sup>42 43</sup>

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

[106] Given that hot-rolled steel makes up the predominant cost of welded piling pipe, the domestic price distortion in hot-rolled steel would influence the domestic price in welded piling pipe. Based on the analysis, the information provides sufficient reason to believe that domestic welded piling pipe prices in China are not substantially the same as they would be if they were determined in a competitive market.

[107] The CBSA also found information that the GOC currently monitors the production volume, cost, profitability and the price of steel. Two examples are *Jiangxi Price Appraisal Monitoring Authority, Investigation and Analysis - September 2011 Steel Prices*<sup>44</sup> and *Jiangxi Price Appraisal Monitoring Authority, Investigation and Analysis - April 2012 Steel Prices*<sup>45</sup>. A review of the two documents indicates that the Jiangxi Price Appraisal Monitoring Authority carried out these investigations at Xinyu Iron and Steel Group Company.<sup>46</sup>

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<sup>40</sup> Hot-rolled Band (Hot-Rolled Steel) - A coil of steel rolled on a hot-strip mill. It can be sold in this form to customers or further processed into other finished products.

<sup>41</sup> Dumping Exhibit 112 (PRO) Steel Pricing - SteelBenchmarker™ Prices - January 2008 to March 2012

<sup>42</sup> Dumping Exhibit 81 (PRO) – Exhibit 3, pages 32-33.

<sup>43</sup> Dumping Exhibit 104 (PRO) – Exhibit 1, pages 8-9 and 15-16.

<sup>44</sup> Dumping Exhibit 109 (PRO) – Exhibit 35.

<sup>45</sup> Dumping Exhibit 109 (PRO) – Exhibit 29.

<sup>46</sup> Located in Xinyu, Jiangxi Province, Xinyu Iron and Steel Co., Ltd. is a state-owned iron and steel company consisting of 25 main units, 14 solely owned affiliates and five economic entities. (source: china.org.cn)

[108] The reports provide details on products produced, sales volumes, pricing and company profitability. In addition, the report provides information on current and future market trends for the Ganzhou steel market. Both reports conclude with same recommendations, namely:

- to further relax the financing channels;
- to further reduce the tax burden of the production and operation of enterprises;
- to implement the elimination of backward production capacity; and
- to further regulate the iron ore import market and create a unified national price of steel, iron ore and other information publishing platform.

[109] Both of these studies state that they were conducted in accordance with the NDRC Price Monitoring Center Notice for Survey on Steel Prices. The 2011 study was conducted under the NDRC Price Monitoring Center [2011], No. 27 guidelines, while the 2012 study was conducted under the NDRC Price Monitoring Center [2012] No. 7 guidelines.

[110] Information on the Price Monitoring Center<sup>47</sup> of NDRC indicates that its main functions are:

- Monitoring of domestic and international market commodity and service prices;
- Implementation of the National Development and Reform Commission price monitoring and reporting systems;
- Investigation and analysis of important goods and services prices;
- Monitoring of supply and demand changes;
- Track effects of important national economic policies;
- Conduct price forecasts and develop price warning recommendations and response measures; and
- Assist the cost survey work in conjunction with local price monitoring authorities.

[111] The CBSA has not been able to ascertain the purpose of these GOC steel studies and the corresponding impact that they have on domestic steel prices.

### Section 20 Inquiry Conclusion

[112] The wide range, length and the material nature of the GOC measures have resulted in significant influence on the Chinese steel industry including the steel pipe sector, which includes steel piling pipe. The conditions described in paragraph 20(1)(a) of SIMA exist in this sector. Domestic prices are substantially determined by the GOC, and there is sufficient reason to believe that the domestic prices of steel piling pipe are not substantially the same as they would be in a competitive market.

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<sup>47</sup> Dumping Exhibit 109 (PRO) – Exhibit 34.

[113] Based on the above analysis, for the purposes of the final determination, the President affirmed the opinion rendered at the preliminary determination that the conditions described in paragraph 20(1)(a) of SIMA apply in the steel pipe sector in China, which includes steel piling pipe.<sup>48</sup>

### **Normal Value**

[114] 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 profits.

[115] 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 profits, as the President formed the opinion that the conditions described in paragraph 20(1)(a) of SIMA apply in the steel pipe sector in China, which includes steel piling pipe.

[116] 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.

[117] Where, in the opinion of the President, sufficient information has not been furnished or is not available to enable the normal value of the goods to be determined as provided for in paragraph 20(1)(c), 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. For such purpose, re-sale information was requested from importers with respect to their imports of steel piling pipe from other countries. Of the eight importers that provided a response to the importer RFI, only one importer reported imports of steel piling pipe from a country other than China (i.e. the United States in this case). The CBSA thus determined that the data available is insufficient to calculate normal values under this provision, because normal values determined using these sales would divulge proprietary data from a single importer. Thus, sufficient information was not submitted by importers in response to the importer RFI to allow for application of paragraph 20(1)(d).

[118] Accordingly, in the opinion of the President, sufficient information has not been furnished or is not available to determine normal values as provided for in section 20 of the SIMA. The normal values for purposes of the final determination were therefore determined in the manner specified by the Minister pursuant to a ministerial specification under subsection 29(1) of SIMA.

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<sup>48</sup> Preliminary determination *Statement of Reasons* for Piling Pipe; August 17, 2012, paragraph 72.

[119] The methodologies specified by the Minister to determine normal values are as follows. Given that all requested information with respect to Juyi and Huludao's production and sale of subject and like goods was provided in the course of the investigation, the Minister specified a methodology to determine the normal values for goods produced and exported by these exporters during the POI. This methodology was meant to provide normal values that would closely resemble normal values determined pursuant to paragraph 20(1)(c) of SIMA, had the information been furnished or available.

[120] There was no publically available international pricing information for steel piling pipe and no information was provided by producers in surrogate countries. However, there was publically available information on the record with respect to the international prices of hot-rolled steel, the main raw material in the production of steel piling pipe, as well as information on the costs to convert the hot-rolled steel into finished products (i.e. direct labour and overhead expenses), and other additional costs (i.e. general, selling and administrative expenses) and profits. Accordingly, the CBSA had sufficient information to construct an international price of steel piling pipe. The methodology specified by the Minister therefore consists of multiplying the price of hot-rolled steel by a "conversion factor".

[121] The hot-rolled steel price is the average published pricing data for hot-rolled band (i.e. hot rolled steel coil) for all regions, excluding China, as provided by the authoritative industry trade publication, the *Metal Bulletin World Steel and Metal News*, in its *Steelbenchmarker* prices during the period of investigation. The specific prices used are those published for a 60-day period that corresponds with the time of sale to Canada or, absent that information, the time of accounting of the goods for Customs purposes.

[122] The conversion factor represents the costs incurred in forming and welding the hot-rolled steel into a tubular form, and finishing and testing the product. This factor was calculated using cost information provided by two Canadian steel pipe producers. This conversion factor accounts for the costs incurred by a producer of piling pipe to convert hot-rolled steel sheet to the subject goods, and includes an amount for profit. In order to produce the most up-to-date data, the CBSA sought publically available information on profits from steel pipe manufacturers, realized during the POI. In this regard, the CBSA used an amount for profits that was obtained from publicly available information from Northwest Pipe Company, a manufacturer of welded steel pipe with production facilities in Mexico and the United States of America, for the fiscal year 2011.<sup>49</sup>

[123] For all other exporters, given that requested information with respect to the production and sale of subject and like goods was not furnished, the normal values were determined on the basis of an advance over the export price equal to the highest amount by which the normal value exceeded the export price on an individual transaction from Juyi or Huludao, in the course of this investigation, as specified by ministerial specification pursuant to section 29(1) of SIMA.

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<sup>49</sup> Piling Pipe Exhibit 111 (NC) - Northwest Pipe Company 10K 2011 Statement - Tubular Goods.



## **Export Price**

[124] 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. 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.

[125] For purposes of the final determination, export prices for exporters that provided all requested information on their export sales were determined using their reported export price of the goods. For all other exporters, import pricing information available from the CBSA's internal information systems and, where applicable, importer RFI responses, were used for the purposes of determining export prices.

## **Results of Dumping Investigation**

[126] The CBSA determined the 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.

[127] 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.

[128] In calculating the margin of dumping for the country, the margins of dumping found in respect of each exporter were weighted according to each exporter's volume of subject goods exported to Canada during the dumping POI.

[129] Based on the preceding, 100% of the subject goods from China were dumped by a margin of dumping of 89.6%, expressed as a percentage of the export price.

[130] 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 piling pipe from China is not less than 2% and is, therefore, not insignificant.

[131] 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.

[132] A summary of the margins of dumping determined for this investigation is found in **Appendix 1**.

### **Guangzhou Juyi Steel Pipe Co., Ltd.**

[133] The company's response to the exporter and section 20 RFIs was received by the June 11, 2012 deadline.<sup>50</sup> The company also responded to a supplemental RFI.<sup>51</sup>

[134] A review of the information submitted by Juyi revealed that the company had insignificant domestic sales during the POI. Most of Juyi's production is for export and only a portion of all products are steel piling pipe.

[135] As mentioned above, 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 profits, as the President formed the opinion that the conditions described in paragraph 20(1)(a) of SIMA apply in the steel pipe sector in China, which includes steel piling pipe. Further, in the opinion of the President, sufficient information has not been furnished or is not available to determine normal values as provided for in section 20 of the SIMA. The normal values for Juyi were therefore determined in the manner specified by the Minister pursuant to a ministerial specification under subsection 29(1) of SIMA.

[136] As mentioned, the methodology for Juyi, specified by the Minister, consists of multiplying the price of hot-rolled steel by a conversion factor. Accordingly, the normal value for each subject good, exported to Canada by Juyi, over the period of investigation was based on the SteelBenchmark<sup>TM</sup> price of hot-rolled steel as the benchmark, multiplied by a conversion factor. Normal values were determined for each 60-day period of the POI.

[137] Export prices were based on the lesser of the exporters selling price or the importers purchase price, less the required statutory deductions per section 24 of SIMA.

### **Guangzhou Juyi Steel Pipe Co., Ltd. – Margin of Dumping**

[138] The total normal value, as calculated in the manner described above, was compared with the total export price for all subject goods imported into Canada during the dumping POI. It was found that the goods exported by Juyi were dumped by a margin of dumping of 72.9%, expressed as a percentage of the export price.

### **Huludao Steel Pipe Industrial Co., Ltd.**

[139] The company's complete response to the exporter and section 20 RFIs was received by the June 11, 2012 deadline.<sup>52</sup>

[140] A review of the information submitted by Huludao revealed that the company had no domestic sales of like goods during the POI.

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<sup>50</sup> Dumping Exhibit 60 (PRO) and 62 (PRO).

<sup>51</sup> Dumping Exhibit 78 (PRO).

<sup>52</sup> Dumping Exhibit 53 (PRO) and 56 (PRO).

[141] As mentioned above, 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 profits, as the President formed the opinion that the conditions described in paragraph 20(1)(a) of SIMA apply in the steel pipe sector in China, which includes steel piling pipe. Further, in the opinion of the President, sufficient information has not been furnished or is not available to determine normal values as provided for in section 20 of the SIMA. The normal values for Huludao were therefore determined in the manner specified by the Minister pursuant to a ministerial specification under subsection 29(1) of SIMA.

[142] As mentioned, the methodology for Huludao, specified by the Minister, consists of multiplying the price of hot-rolled steel by a conversion factor. Accordingly, the normal value for each subject good, exported to Canada by Huludao, over the period of investigation was based on the SteelBenchmarker™ price of hot-rolled steel as the benchmark, multiplied by a conversion factor. Normal values were determined for each 60-day period of the POI.

[143] Export prices were based on the lesser of the exporters selling price or the importers purchase price, less the required statutory deductions per section 24 of SIMA.

**Huludao Steel Pipe Industrial Co., Ltd. – Margin of Dumping**

[144] The total normal value, as calculated in the manner described above, was compared with the total export price for all subject goods imported into Canada during the dumping POI. It was found that the goods exported by Huludao were dumped by a margin of dumping of 77.1%, expressed as a percentage of the export price.

**All Other Exporters – Margin of Dumping**

[145] 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 for these goods were determined by advancing export prices by 96.4%, the highest amount by which the normal value exceeded the export price on an individual transaction from Juyi or Huludao, as per the ministerial specification. The total normal value, as calculated in the manner described above, was compared with the total export price for all subject goods imported into Canada during the Dumping POI for each of the other exporters. The resulting margin of dumping for all other exporters is equal to 96.4%, expressed as a percentage of the export price.

**SUMMARY OF RESULTS – DUMPING**

*Period of Investigation - January 1, 2011 to March 31, 2012*

Country	Volume of Dumped Goods as Percentage of Country Imports	Margin of Dumping	Volume of Country Imports as Percentage of Total Imports	Volume of Dumped Goods as Percentage of Total Imports
China	100%	89.6%	57%	57%

[146] A summary regarding the margins of dumping for this investigation is provided in **Appendix 1**.

### **REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION**

[147] Following the September 17, 2012 close of the record, one case brief pertaining to the dumping investigation was received from counsel representing Juyi and Benxi.

[148] Issues raised in the case arguments pertaining to the dumping investigation and the CBSA's response to these issues are provided in **Appendix 3**.

### **SUBSIDY INVESTIGATION**

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

[150] 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.

[151] 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.

[152] 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.

[153] Notwithstanding that a subsidy is not specific in law pursuant to subsection 2(7.2) of SIMA, under subsection 2(7.3) 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/or
- (d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[154] 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.

[155] At initiation, the CBSA identified 100 potential subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) Incentives and other Designated Areas;
2. Grants and Grant-equivalents;
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; and
8. Goods/Services Provided by the Government at Less than Fair Market Value.

[156] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. **Appendix 2** to this *Statement of Reasons* has been updated to reflect the programs found not to have been used by the exporters that provided complete responses to the subsidy RFI which included all of the requested information.

### **Results of the Subsidy Investigation**

[157] As previously stated, the GOC did not provide a response to the subsidy RFI, which significantly impeded the CBSA’s ability to conduct a proper analysis of the programs for the final determination.

[158] For this reason, in the opinion of the President, sufficient information has not been provided or is not otherwise available to enable the determination of the amount of subsidy in the prescribed manner, for subject goods exported from China.

[159] Therefore, the amounts of subsidy were determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA.

## **Guangzhou Juyi Steel Pipe Co., Ltd.**

[160] For shipments of steel piling pipe exported to Canada by an exporter that provided a complete response and fully cooperated in the investigation, and where all required information on the production and sale of the goods was provided, the Minister specified that the amount of subsidy shall be based on the total amount of benefits found for that exporter, distributed over the total quantity of goods to which the benefits are attributable.

[161] Of the total 100 potential actionable programs, the following program was found at the preliminary determination to benefit Juyi:

- *Program 98: Input Materials Provided by Government at Less than Fair Market Value*

[162] A further review during the final phase of the investigation confirmed, on the basis of the information available, that Program 98 constitutes a financial contribution pursuant to subsection 2(1.6) of SIMA. The review also resulted in a calculation revision to the program.

### *Program 98: Input Materials Provided by Government at Less than Fair Market Value*

[163] During the final stage of the investigation, the CBSA received and analysed Juyi's response to supplemental subsidy RFIs. Based on this information, and other information on the record, the CBSA was able to calculate the benefit provided in the form of acquisition of raw material from the government at less than fair market value (Program 98)<sup>53</sup>.

[164] Regarding this "program", pursuant to section 36 of the SIMR, a subsidy can be provided in the form of the provision, by a government, of goods or services if the price at which the goods or services were provided by that government is lower than the fair market value of the goods or services in the territory of that government.

[165] For the purpose of assessing if such a subsidy is applicable, the CBSA investigated the acquisition of steel, given the significance of the cost of steel in proportion to the overall cost of production and sale of the subject goods. State-owned or state-invested steel suppliers may be considered to constitute "government" pursuant to the definition in subsection 2(1) of SIMA if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- evidence that an entity is, in fact, exercising governmental functions; and
- evidence that a government exercises meaningful control over an entity.

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<sup>53</sup> Attachment 2 contains a list of all programs under investigation.

[166] In order to determine whether the exporter acquired its raw material from state-owned enterprises (SOEs), the CBSA requested detailed information from the exporters regarding their acquisition of raw material. The subsidy RFI also contained a short-form questionnaire intended for the domestic steel suppliers. The exporters were instructed to forward this questionnaire to their domestic steel suppliers. This questionnaire requested information regarding the ownership status of the supplier and other relevant information with respect to assessing whether the supplier is considered an SOE. Further, information was also requested from the GOC with respect to the ownership status of the steel producers and with respect to governmental measures affecting the steel industry as a whole, in order to assess whether SOEs are “government”.

[167] The CBSA did not receive all the information required for its analysis from either the GOC or the suppliers. During the final stage of the investigation, the CBSA obtained confirmation from Juyi that they had forwarded the short form questionnaire intended to be submitted by their suppliers of raw material, but the CBSA did not receive a response to the questionnaire from any of Juyi’s suppliers.

[168] This lack of information significantly impeded the CBSA’s ability to properly assess whether the steel suppliers are SOEs. Juyi did identify, presumably to the best of their knowledge, which of their suppliers as well as the steel manufacturers, are known SOEs and which are not. However, the CBSA was unable to corroborate the information provided by Juyi. There is evidence on the record suggesting substantial government ownership in the primary steel industry. For instance, the American Iron and Steel Institute and the Steel Manufactures Association stated the following in a study: “This report further examines the Chinese government’s ownership and control over its steel industry. New data demonstrate that the government’s ownership of its steel producers continues to increase. By the end of 2009, eight of the ten largest Chinese steel groups were 100 percent owned and controlled by the Chinese government, while 16 of the top 20 steel groups were 100 percent owned and controlled by the government. More than 95 percent of the production of the top 20 steel groups was subject to some government ownership.”<sup>54</sup> Accordingly, even if Juyi states that a supplier is not an SOE, there is a strong possibility that the supplier is nevertheless state-invested. Given the inability to corroborate claim that some of the suppliers are not SOEs, and in light of the evidence suggesting a strong government ownership or control of the steel industry, the CBSA considered all of Juyi’s suppliers to be SOEs.

[169] The lack of cooperation by the GOC also significantly impeded the CBSA’s ability to assess whether the SOEs that supplied or produced the steel used by Juyi in its production of steel piling pipe possess, exercise or are vested with government authority as described in the above mentioned factors.

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<sup>54</sup> Dumping Exhibit 39 (PRO) Exhibit 14: The Reform Myth, How China is Using State Power to Create the World's Dominant Steel Industry, prepared for the American Iron and Steel Institute and the Steel Manufactures Association, by Wiley Rein LLP, October 2010. Page 3

[170] Nevertheless, the CBSA determined that the conclusions reached in the context of the section 20 inquiry are quite relevant to this analysis as well. Although the inquiry was conducted for a different purpose, the CBSA considers this information relevant and applicable for the purpose of determining if the raw material suppliers are “government”, particularly since the analysis focused on the GOC’s control and influence over the primary steel industry. For instance, as discussed in the section above regarding the section 20 inquiry, the GOC continues to direct, and administer the Chinese steel industry through its five-year plans on iron and steel, as well as steel pipe. Accordingly, the CBSA determined that there is sufficient evidence, as described in the section on the section 20 inquiry above, that the GOC exercises meaningful control over state-owned steel suppliers and producers. In fact, the inquiry provided positive evidence that the GOC exercises meaningful control over the entire steel industry.

[171] Accordingly, there is reason to believe that the suppliers of raw materials are “government” as they possess, exercise or are vested with government authority, as described in the factors above.

[172] Having determined that there is a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA<sup>55</sup>, the CBSA examined whether the financial contribution conferred a benefit to Juyi. This involved the comparison of the price at which the goods were provided by the government with the fair market value of the goods in China. Given that the CBSA has reason to believe that suppliers in China are “government”, and given the absence of information on imported steel by any of the exporters, the CBSA looked for an appropriate benchmark outside of China. While information had been requested from steel pipe producers in surrogate countries in the course of this investigation, none provided a response to the CBSA. The CBSA therefore used *SteelBenchmarker* monthly world price of hot-rolled steel during the POI, which was considered to be the best information available on the record.

[173] The CBSA then calculated the difference between Juyi’s acquisition price and the benchmark price and multiplied the difference by the purchased tonnage. Given that there is roughly one MT of hot-rolled steel in one MT of subject goods, the benefit per MT of raw material could easily be allocated to the subject goods.

[174] In the course of the final phase of the investigation, revisions were made to the benchmark hot-rolled steel prices used in the calculation of the amount of subsidy. In this regard, the CBSA used a monthly average cost, corresponding to the date the steel was acquired, instead of an average calculated over a wider period.

[175] The CBSA also made additional revisions to some calculations for Juyi. For purposes of estimating the amount of subsidy during the preliminary stage of the investigation, certain sales were presumed to be incorrect or outliers skewing the final amount of subsidy calculated, and for this reason were omitted from the calculations. During the final stage of the investigation, documentation provided in the supplemental RFI responses was reviewed and considered to be accurate, and a fair representation of the information provided in the RFI response.

[176] For Juyi, this resulted in a reduced amount of subsidy of 419.82 RMB per MT, or 10.3% when expressed as a percentage of the export price.

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<sup>55</sup> The government provides goods or services, other than general infrastructure, or purchases goods.



## Guangzhou Juyi Steel Pipe Co., Ltd. – Amount of Subsidy

[177] The total amount of subsidy determined for Juyi is equal to 419.82 RMB per MT, or 10.3% when expressed as a percentage of the export price.

## Huludao City Steel Pipe Industrial Co., Ltd.

[178] As mentioned above, for shipments of steel piling pipe exported to Canada by an exporter that provided a complete response and fully cooperated in the investigation, and where all required information on the production and sale of the goods was provided, the Minister specified that the amount of subsidy shall be based on the total amount of benefits found for that exporter, distributed over the total quantity of goods to which the benefits are attributable.

[179] Of the total 101 potential actionable programs, the following programs were found at the preliminary determination to benefit Huludao :

- *Program 53 - Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings*
- *Program 98: Input Materials Provided by Government at Less than Fair Market Value*
- *Other Program: Loans from Public Banks at Preferential Rates*

[180] A further review during the final phase of the investigation confirmed, on the basis of the information available, that Programs 53 and 98 constitute financial contributions pursuant to subsection 2(1.6) of SIMA, while a further review during the final phase of the investigation resulted in the CBSA removing the Other Program: *Loans from Public Banks at Preferential Rates* from consideration.

### *Program 53: Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings*

[181] During the preliminary stage of the investigation, Huludao acknowledged receiving a grant under this program, which constitutes a financial contribution as per paragraph 2(1.6)(a)<sup>56</sup> of SIMA. The local government grant, as per Huludao's explanation, was for purposes of assisting with the commercialization of the roller system in the production of certain non-subject goods. The total amount of subsidy estimated under this program for purposes of the preliminary determination was 2.06 RMB per MT once allocated over total production of steel piling pipe.

[182] Following the preliminary determination, Huludao argued that the benefit was unfairly allocated to the production of steel piling pipe because it did not relate to the production of steel piling pipe, but rather for machinery used in the production of goods that fall outside the dimensions of subject goods.

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<sup>56</sup> Practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities.

[183] During the final stage of the investigation, the CBSA requested additional documentation and clarification concerning the grant. Huludao was unable to provide any further details about the program itself, including the requirements for receiving this grant. The only documentation provided was considered to be insufficient. Further, since the GOC did not submit a response to the subsidy questionnaire, the CBSA was unable to confirm the requirements for this program, how Huludao fulfilled the requirements, what the grant was actually issued for, the authenticity of the grant certificate, and to confirm whether this grant was generally available.

[184] In light of the exporter's inability to furnish the required information, which was not otherwise available, and the lack of a GOC submission, the CBSA allocated the total amount of the grant over Huludao's total production of steel piling pipe.

[185] The total amount of subsidy received by Huludao under this program during the POI was 2.06 RMB per MT, once allocated over total production of steel piling pipe.

*Program 98: Input Materials Provided by Government at Less than Fair Market Value*

[186] During the final stage of the investigation, the CBSA received and analysed Huludao's response to supplemental subsidy RFIs. Based on this information, and other information on the record, the CBSA was able to calculate the benefit provided in the form of acquisition of raw material from the government at less than fair market value (Program 98)<sup>57</sup>.

[187] The CBSA obtained confirmation from Huludao that they had forwarded the short form questionnaire intended to be submitted by their suppliers of raw material. Some of the suppliers responded to the questionnaire, but provided very limited information. For this reason, and given the GOC's lack of response, the CBSA did not receive all the information required in order to conduct a thorough analysis to determine whether the suppliers of raw materials are SOEs, and whether they are "government".

[188] For the same reasons discussed in the section above regarding the Section 20 inquiry and the relevance of the information as it pertains to the subsidy investigation, the CBSA considered that all acquisition of hot-rolled steel by Huludao was supplied by SOEs and that these suppliers are "government", and that there is a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA<sup>58</sup>.

[189] In order to determine whether the financial contribution provided a benefit to Huludao (i.e. whether steel was provided by the government at less than fair market value), the CBSA calculated the difference between Huludao's acquisition price and the *Steel Benchmark* price of hot-rolled steel and multiplied the difference by the purchased tonnage. Given that there is roughly one MT of hot-rolled steel in one MT of subject goods, the benefit per MT of raw material could easily be allocated to the subject goods.

[190] As mentioned above, during the course of the final phase of the investigation, revisions were made to the benchmark hot-rolled steel prices used in the calculation of the amount of subsidy. The CBSA used a monthly average cost, corresponding to the date the steel was acquired, instead of an average calculated over a wider period.

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<sup>57</sup> Attachment 2 contains a list of all programs under investigation.

<sup>58</sup> The government provides goods or services, other than general infrastructure, or purchases goods.

[191] For Huludao, this resulted in an amount of subsidy of 437.41 RMB per MT, or 10.3%, when expressed as a percentage of the export price.

#### Program 101: *Preferential Loans*

[192] At the preliminary stage of the investigation, the CBSA estimated that some of the loans on which Huludao accrued interest during the POI were at a rate lower than the People's Bank of China's (PBC) benchmark rate.

[193] The loans were provided by a number of financial institutions within China. In light of the lack of cooperation by the GOC, the CBSA considered all banks as "government" for the purposes of the preliminary determination. The amount of subsidy amounts to 0.68 RMB per MT once allocated over all exported products of all goods since the loans related to exported goods. Preferential loans constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA<sup>59</sup>.

[194] Following the preliminary determination, Huludao argued that the benefit was unfairly calculated, as the CBSA applied the PBC's benchmark loan rates for calculating the preferential loans amount for loans issued in USD.

[195] During the final stage of the investigation, the CBSA requested additional documentation and clarification concerning the bank loans, including the benchmark rates for loans issued in USD. Huludao provided the relevant loan agreements, as well as a suggested benchmark for loans issued in USD which it considered more acceptable. The CBSA accepted the suggested benchmark rates, known as the London Interbank Offered Rate (LIBOR). After conducting the same exercise using the LIBOR as the benchmark, the loans were found not to be at preferential rates. Given that this program was only added to the list of investigated programs at the preliminary determination on the basis of the preliminary results, and then found not to be applicable, the program was also removed from the list of programs potentially applicable to all other exporters.

#### **Huludao City Steel Pipe Industrial Co., Ltd. – Amount of Subsidy**

[196] The total amount of subsidy calculated for Huludao is equal to 439.47 RMB per MT, or 10.3%, when expressed as a percentage of the export price.

#### **All other Exporters - Amount of Subsidy**

[197] For shipments of certain steel piling pipe produced or exported by any other exporter, the amount of subsidy was determined to be 641.35 Chinese Renminbi (RMB) per metric tonne (MT), as specified by the Minister under a ministerial specification pursuant to subsection 30.4(2) of SIMA. This amount is composed of the sum of:

- (1) the amount of subsidy (437.41 RMB per MT) determined for Huludao with respect to Program 98: Input Materials Provided by Government at Less than Fair Market Value, at the final determination; plus
- (2) the amount of subsidy determined for Huludao (2.06 RMB per MT) with respect to Program 53 - Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings, at the final determination; plus

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<sup>59</sup> The government provides goods or services, other than general infrastructure, or purchases goods.

- (3) the amount of the actionable subsidy program in (ii) above (i.e. 2.06 RMB per MT), applied to each of the remaining 98 of the 100 subsidy programs investigated during the investigation, for which information is not available or has not been provided at the final determination. It is noted that the CBSA did not include here the additional program (Program 101 at the preliminary determination) that was added at the preliminary determination and then removed for purposes of the final determination.

[198] Using the above methodology, the amount of subsidy for all other exporters is 641.35 RMB per MT, or 12.3%, when expressed as a percentage of the export price.

[199] On the basis of the above, the CBSA determined that 100% of the subject goods imported from China were subsidized. The estimated overall weighted average amount of subsidy is equal to 11.7% of the export price.

### **SUMMARY OF RESULTS – SUBSIDY**

*Period of Investigation - January 1, 2011 to March 31, 2012*

<b>Country</b>	<b>Volume of Subsidized Goods as Percentage of Country Imports</b>	<b>Weighted Average Amount of Subsidy*</b>	<b>Volume of Country Imports as Percentage of Total Imports</b>	<b>Volume of Subsidized Goods as Percentage of Total Imports</b>
China	100%	11.7%	57%	57%

\*As percentage of the export price

[200] A summary regarding the amounts of subsidy for this investigation is provided in **Appendix 1**.

[201] In making a final determination of subsidizing under paragraph 41(1)(a) 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.

[202] 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.

[203] 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 guidance.<sup>60</sup> As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. As the preceding table illustrates, the amount of subsidy found during this investigation is not insignificant.

[204] 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**

[205] Following the September 17, 2012 close of the record, two case briefs were received from counsel representing Juyi and Benxi, as well as counsel for Huludao.

[206] Issues raised by participants through case arguments pertaining to the subsidy investigation and the CBSA’s response to these issues are provided in **Appendix 3**.

### **DECISIONS**

[207] On the basis of the results of the investigation, the President is satisfied that certain steel piling pipe originating in or exported from China, have been dumped and that the margin of dumping is not insignificant. Consequently, on October 31, 2012, the President made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA respecting the subject goods.

[208] Similarly, on the basis of the results of the investigation, the President is satisfied that certain steel piling pipe originating in or exported from China have 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 respecting the subject goods on this same date.

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

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<sup>60</sup> The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at January 1, 2012, the document is available at: <http://www.oecd.org/development/aidstatistics/48858205.pdf>

## FUTURE ACTION

[210] The provisional period began on August 2, 2012, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by November 30, 2012. 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>.

[211] 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.

[212] 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.

[213] 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*<sup>61</sup> 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.

[214] Normal values and amounts of subsidy have been provided to Juyi and Huludao for future shipments to Canada in the event of an injury finding by the Tribunal. The normal values and amount of subsidy will come into effect the day after the date of the injury finding, if there is one. Information regarding normal values of the subject goods should be obtained from the exporter.

[215] All other exporters will have normal values established by advancing the export price by 96.4%, 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, all other exporters will be subject to a countervailing duty amount of 641.35 Renminbi per metric tonne, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

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<sup>61</sup> *Customs Act* R.S.C. 1985.

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[216] 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 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 investigations 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 determinations could be subject to anti-dumping and/or countervailing duty.

[217] 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**

[218] 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

[219] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site, 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  
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**Web site:** [www.cbsa-asfc.gc.ca/sima-lmsi](http://www.cbsa-asfc.gc.ca/sima-lmsi)



Caterina Ardito-Toffolo  
Acting Director General  
Anti-Dumping and Countervailing Directorate

Attachments



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

<b>Exporter</b>	<b>Margin of Dumping (as Percentage of Export Price)</b>	<b>Amount of Subsidy (Renminbi per metric tonne)</b>	<b>Amount of Subsidy (as Percentage of Export Price)</b>
Guangzhou Juyi Steel Pipe Co., Ltd.	72.9%	419.82	10.3%
Huludao City Steel Pipe Industrial Co., Ltd.	76.9%	439.47	10.3%
All Other Exporters	96.4%	641.35	12.3%
<b>China Overall</b>	<b>89.6%</b>		<b>11.7%</b>

## **APPENDIX 2 – SUMMARY OF FINDINGS FOR THE NAMED SUBSIDY PROGRAMS**

In addition to the three programs utilized by the exporters who provided a complete response to the subsidy RFI which included all of the required information, 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 exporters who provided responses 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.

### **I. Special Economic Zone (SEZ) Incentives and other Designated Areas**

- Program 1: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)
- Program 2: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
- Program 3: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
- Program 4: Preferential Tax Policies in the Western Regions
- Program 5: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 6: Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 7: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas
- Program 8: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas
- Program 9: Income Tax Refund where Profits Re-invested in SEZs and other Designated Areas
- Program 10: Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas
- Program 11: VAT Exemptions for the Central Region
- Program 12: Income Tax Refund for Enterprises Located in Tianjin Jinnan Economic Development Area

### **II. Grants and Grant-equivalents**

- 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: Repaying Foreign Currency Loan by Returned VAT
- Program 16: Government Export Subsidy and Product Innovation Subsidy
- Program 17: Export Assistance Grant
- Program 18: Research & Development (R&D) Assistance Grant
- Program 19: Innovative Experimental Enterprise Grant

- Program 20: Superstar Enterprise Grant
- Program 21: Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”
- Program 22: Export Brand Development Fund
- Program 23: Provincial Scientific Development Plan Fund
- Program 24: Technical Renovation Loan Interest Discount Fund
- Program 25: Venture Investment Fund of Hi-Tech Industry
- Program 26: National Innovation Fund for Technology Based Firms
- Program 27: Guangdong – Hong Kong Technology Cooperation Funding Scheme
- Program 28: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- Program 29: Innovative Small and Medium-Sized Enterprise Grants
- Program 30: Product Quality Grant
- Program 31: 2009 Energy-saving Fund
- Program 32: Energy-Saving Technique Special Fund
- Program 33: Grants to Privately-Owned Export Enterprises
- Program 34: Grants for Export Activities
- Program 35: Grants for International Certification
- Program 36: Emission Reduction and Energy-saving Award
- Program 37: Grant for Market Promotion and Trade Development
- Program 38: Refund of Land Transfer Fee
- Program 39: Grant – Assistance for Exhibition Booth Fees
- Program 40: Grant – Patent Application Assistance
- Program 41: Grant – State Service Industry Development Fund
- Program 42: Grant – Changzhou Five Major Industries Development Special Fund
- Program 43: Grant – Ecological Garden Enterprise Reward
- Program 44: Grant – Municipal Construction Reward
- Program 45: Grant – Cleaning-production Qualified Enterprise Reward
- Program 46: Grant – Provisional Industry Promotion Special Fund
- Program 47: Grant – Jiangsu Province Finance Supporting Fund
- Program 48: Grant - Water Pollution Control Special Fund for Taihu Lake
- Program 49: Grant – Provincial Foreign Economy and Trade Development Special Fund
- Program 50: Grant – Subsidy from Water Saving Office
- Program 51: Grant – Insurance Expense Compensation
- Program 52: Grant – Industrial Science and Technology Breakthrough Special Fund
- Program 54: Grant – Changzhou City Key Supporting Industry Upgrading Special Fund
- Program 55: Grant – Special Fund for Fostering Stable Growth of Foreign Trade in 2009
- Program 56: Grant – Financial Subsidies from Wei Hai City Gao Cun Town Government
- Program 57: Grant – Policy on Value-added Tax for Recyclable Resources
- Program 58: Grant – Large Taxpayer Award
- Program 59: Grant – Resources Conservation and Environment Protection Grant
- Program 60: Grant – Wendeng Government (Shandong)
- Program 61: Jiangdu City Industrial Economy Performance Award (Jiangsu)
- Program 62: Changzhou Qishuyan District Environmental Protection Fund (Jiangsu)
- Program 63: Changzhou Technology Plan (Jiangsu)
- Program 64: Supportive Fund Provided by the Government of Xuyi County, Jiangsu
- Program 65: Enterprise Innovation Award of Qishuyan District (Jiangsu)
- Program 66: Environment Protection Award (Jiangsu)
- Program 67: Enterprise Technology Centers (e.g. Tianjin City and Jinnan District)

Program 68: Liaoning High-Tech Products & Equipment Export Interest Assistance  
Program 69: Five Points, One Line Strategy in Liaoning Province  
Program 70: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin  
Program 71: Allowance to Pay Loan Interest (Zhongshan City, Guangdong)  
Program 72: Supporting Fund for Non-refundable Export Tax Loss on Mechanical & Electrical Product and High-tech Product (Jiangmen City)  
Program 73: International Market Fund for Export Companies (Jiangmen City)  
Program 74: International Market Fund for Small- and Medium-sized Export Companies)  
Program 75: Business Development Overseas Support Fund (Foshan)  
Program 76: Refund from Government for Participating in Trade Fair (Foshan)  
Program 77: Interim Measures of Fund Management of Allowance for Zhongshan Enterprises to Attend Domestic and Overseas Fair (Zhongshan)  
Program 78: Reimbursement of Foreign Affairs Services Expenses (Foshan)  
Program 79: Award for Advanced Enterprises

### **III. Equity Programs**

Program 80: Debt-to-Equity Swaps  
Program 81: Exemptions for SOEs from Distributing Dividends to the State

### **IV. Preferential Loan Programs**

Program 82: Loans and Interest Subsidies provided under the Northeast Revitalization Program  
Program 83: Loan From Local Finance Bureau

### **V. Preferential Income Tax Programs**

Program 84: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years  
Program 85: Preferential Tax Policies for Foreign Invested Export Enterprises  
Program 86: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive  
Program 87: Preferential Tax Policies for the Research and Development of FIEs  
Program 88: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment  
Program 89: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose  
Program 90: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors  
Program 91: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps  
Program 92: Corporate Income Tax Reduction for New High-Technology Enterprises  
Program 93: Pre-tax Deduction of Enterprise R&D Expenses for Enterprises in the New and High Technology Fields

## **VI. Relief from Duties and Taxes on Materials and Machinery**

Program 94: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment

Program 95: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

## **VII. Reduction in Land Use Fees**

Program 96: Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices

Program 97: Deed Tax Exemptions For Land Transferred through Merger or Restructuring

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

Program 99: Utilities Provided by Government at Less than Fair Market Value

Program 100: Acquisition of Government Assets at Less than Fair Market Value

## **APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS**

The details of representations made to the CBSA with respect to the dumping and subsidy investigations, including case arguments from counsel representing Juyi and Benxi, as well as counsel for Huludao, are listed below. Following the representations on the issues is a response explaining the position of the CBSA. Since there are at times common positions from multiple parties, the CBSA may make specific reference to only one or two parties when documenting the issue raised.

Given that the CBSA's final determination supersedes any decision made at the preliminary determination stage of the investigation, the CBSA will only address issues raised within the context of the preliminary determination to the extent that these issues carry relevance for the final determination.

### **Arguments Pertaining to the Dumping Investigation**

#### ***The CBSA's International Obligations***

Counsel for Juyi made representations identifying the CBSA's obligations under the WTO's *Anti-Dumping Agreement* as it relates to both the procedures and methodologies employed in the anti-dumping investigation. In identifying these obligations, counsel has alleged a number of CBSA violations of these agreements, including, but not limited to the CBSA's use of the best information available for the purposes of normal value calculations.

#### **CBSA Response**

The CBSA acknowledges its obligations to the WTO Agreements and believes it has met the standards set forth in the *Anti-Dumping Agreement*.

With this said, the CBSA's anti-dumping investigation was conducted under the authority of the *Special Import Measures Act* (SIMA). The CBSA's responsibility is to administer and follow the relevant Canadian legislation in the form of SIMA. The CBSA believes it has adhered to the standard set forth in SIMA in the conduct of the investigation.

#### ***The CBSA's Use of Section 20 of SIMA***

Juyi and Benxi argue that the use of section 20 is not justified under the circumstances of the present dumping investigation as it is inconsistent with SIMA and the evidence on the record. The following are among the arguments made with respect to the use of section 20:

- The decision must be based on positive evidence;
- The requirements for a non-market finding are not met, the requirements being that "...domestic prices in China are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market...";<sup>62</sup>
- The GOC must take active steps or actions to determine the prices and that it is not acceptable to consider indirect influence on price;

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<sup>62</sup> SIMA paragraph 20(1)(a)

- The significance of the price difference. In addition, the parties argue that the CBSA must carefully assess all factors that may influence the price difference;
- The CBSA is focussing unduly on the upstream steel industry instead of primarily on the steel piling pipe industry, and that it erred in its analysis and conclusions relating to alleged GOC policies;
- The CBSA is required to perform a pass through analysis in the context of a section 20 analysis;
- The CBSA failed to demonstrate a measurable connection between the policies and the price of steel piling pipe in China.

### **CBSA Response**

As part of the preliminary and final determinations of dumping, the President formed the opinion that domestic prices of steel piling pipe in China 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. Despite the lack of cooperation by the GOC, the CBSA has undertaken extensive research into the GOC's involvement in the steel industry, including the Chinese steel pipe sector, which includes steel piling pipe. The full details of this research are available on the CBSA's listing of exhibits. It is noted that RFI responses from interested parties form only part of the information on the record. The results of the CBSA's analysis in this case are consistent with the evidence on the record as well as with the President's previous section 20 opinions regarding steel industry sectors, including steel piling pipe.<sup>63</sup> Further explanation of the CBSA's position regarding its section 20 opinion can be found in the "Section 20 Inquiry" portion of this document. Further, the President has formed the opinion that domestic prices of steel products in China are substantially determined by the government of that country and there is sufficient reason to believe that they are not the same as they would be if they were determined in a competitive market in several previous investigations, including *Seamless Steel Casing* (2008), *Oil Country Tubular Goods* (2010), and *Pup Joints* (2012). In addition, all other relevant evidence used to affirm this opinion can be found on the CBSA's listing of exhibits.

Regarding the arguments that the GOC must take active steps or actions to determine the prices and that it is not acceptable to consider indirect influence on price, similar arguments were presented to the Federal Court of Appeal by Tianjin Pipe (Group) Corporation with respect to certain seamless carbon or alloy steel oil and gas well casing originating in or exported from China<sup>64</sup>. However, the Court rejected the argument and stated that in its view, "...the use of the expression "substantially determined" necessarily implies something less than completely determined and as such, Parliament did not intend the provision to be restricted to situations where a foreign government directly sets the prices. Indeed, the phrase captures the various ways in which governments can exert a determinative influence on pricing, whether directly or indirectly."<sup>65</sup>

<sup>63</sup> CBSA *Pup Joints* preliminary determination *Statement of Reasons*, paragraph 85.

<sup>64</sup> Dockets: A-103-08, Citation: 2009 FCA 164, May 20, 2009

<sup>65</sup> *Ibid.*

Further, the CBSA disagrees that there is a requirement under SIMA to conduct a “pass-through” test in the context of Section 20. Indeed, section 20 applies when the President forms the opinion that the domestic prices in China are substantially determined by the government of that country and that there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. The President has formed such an opinion on the basis of positive evidence, as detailed in the “Section 20 Inquiry” portion of this document. The CBSA’s explanations contained in that section also address the significance of the price difference.

Regarding the comments that the CBSA must assess all factors that may influence the price difference, while acknowledging that there may be other factors influencing price difference at play, the President is required to form his opinion regarding the price difference on the basis of whether there is sufficient reason to believe that those prices are not substantially the same as they would be if they were determined in a competitive market. These reasons are detailed in this report, in the section on the Section 20 inquiry. That section also explains why it is appropriate, in the case of steel piling pipe, to focus on the upstream industry. As detailed in the “Section 20 Inquiry” portion of this document, hot-rolled steel represents a substantial proportion of total costs of steel piling pipe, a commodity product. This is not equivalent to focussing on a minor cost element such as electricity, contrary to the claims made by Benxi and Juyi’s counsels in their arguments. Further, the analysis also focused on the upstream steel industry to compensate for the lack of information available on domestic sales of steel piling pipe.

The CBSA is of the opinion that steel piling pipe producers benefit from low-priced steel that is only available to Chinese producers. Further, on the basis of the evidence available on the record, there is sufficient reason to believe that such low-priced steel is only available to Chinese producers directly because of the government measures and policies affecting the upstream steel supply, which were discussed in the section of this document regarding the CBSA’s section 20 inquiry. The CBSA is of the opinion that the government therefore substantially determines the domestic prices of steel piling pipe.

### *The CBSA Failed to Apply a Legitimate Normal Value Methodology*

Benxi and Juyi argued that the CBSA failed to apply a legitimate normal value methodology. In particular, the parties allege that it was not permissible, and that the CBSA does not have the legal authority, to “estimate” normal values on the basis of an alternative methodology for the purposes of the preliminary determination. Rather, they argued that normal values should have been “determined” in the prescribed manner, pursuant to paragraphs 20(1)(c) or (d). They argued that the CBSA does not have the statutory authority that would allow it to abandon the methodologies set out in SIMA paragraphs 20(1)(c) or (d) in favor of an alternative method.

Further, Benxi and Juyi argued that the CBSA failed to take action to obtain sufficient information that would allow the CBSA to determine the normal values, for the preliminary determination, pursuant to paragraphs 20(1)(c) or (d), which they argue is a requirement under SIMA. In other words, they allege that the CBSA failed to demonstrate that the information was not available, and that the CBSA was therefore not allowed to determine normal values pursuant to section 29 of SIMA.



## CBSA Response

In accordance with subsection 38(1) of SIMA, the President is required to make a preliminary determination after estimating the margin of dumping or the amount of subsidy and specifying the goods to which the preliminary determination applies. Consequently, the authority to make the preliminary determination and estimate the margin of dumping or the amount of subsidy is provided in this subsection.

Paragraphs 38(1)(a) and (b), direct the President to 'estimate' the margin of dumping and the amount of subsidy using the information available to him at the time the estimates are made. It is the position of the CBSA that the use of the word 'estimate' recognizes that the President has the authority to approximate the margin of dumping and the amount of subsidy using the information before him. For example, the President must often estimate the margin of dumping and the amount of subsidy based on information unverified by the CBSA or that is subsequently amended by a party to the proceeding.

It is only at the point of making a final determination under section 41 of SIMA that the President must 'specify' the margin of dumping or the amount of subsidy on the goods. The purpose of the final phase of the investigation is to establish precise margins of dumping or amounts of subsidy, under the provisions of SIMA and SIMR, for use in the President's final determination. At this point, recourse is made to subsection 29(1) and 30.4(2) where the President is of the opinion that sufficient information has not been furnished or is not available to determine normal values, export prices, or the amounts of subsidy under the other provisions of SIMA. In this investigation, as disclosed in the normal value section of this *Statement of Reasons*, the President is of the opinion that sufficient information has not been furnished or is not available to determine normal values under the normal provisions of SIMA. Accordingly, pursuant to subsection 29(1), the President specified manners of determining the normal values.

Further, the CBSA disagrees with the argument that the CBSA failed to take action to obtain sufficient information to determine normal values pursuant to paragraphs 20(1)(c) or (d) of SIMA. As disclosed in the normal value section of this *Statement of Reasons*, the CBSA sought information from steel pipe producers in other countries. While an RFI was sent to 44 producers in four potential surrogate countries, none provided a response. Further, as discussed, the CBSA also requested information from importers with regards to their imports of steel piling pipe for countries other than China. Of the eight importers that provided a response to the importer RFI, only one importer reported imports of steel piling pipe from a country other than China (i.e. the United States in this case). The CBSA thus determined that the available import data and data on re-sale in Canada is insufficient to calculate normal values under this provision, because normal values determined using these sales would divulge proprietary data from a single importer. Thus, sufficient information was not submitted by importers in response to the importer RFI to allow for application of paragraph 20(1)(d). Accordingly, the CBSA believes a reasonable attempt was made in its efforts to obtain information that may have been usable under paragraphs 20(1)(c) or (d) of SIMA.

***The CBSA has no Authority to Perform a “Flow-through” Analysis and to Look Beyond Benxi’s Acquisition Costs***

Benxi claims that it was fully cooperative in the context of the investigation. Benxi argued that it reported all of its acquisition costs, and thus has fulfilled the requirements in order to be considered cooperative, and that the CBSA has no authority to perform a “flow-through” analysis and to look beyond Benxi’s acquisition costs.

**CBSA Response**

The CBSA disagrees with Benxi’s contention that the CBSA has no authority to verify the costs beyond the acquisition costs (i.e. the costs of manufacturing the subject goods). For instance, the CBSA stresses that the application of paragraph 19(b) requires complete information on cost of production specifically. For this reason, the CBSA’s determination of normal values and export prices under other provisions of SIMA requires costing data from the producer.

For the purposes of the final determination, given that the President is of the opinion that sufficient information has not been furnished or is not available to determine normal values under other provisions of SIMA, the President specified manners of determining the normal values pursuant to subsection 29(1) of SIMA.

***The Alternative Methodology is Inappropriate***

Benxi and Juyi also alleged that there has been no attempt by the CBSA to rely on valid and verifiable data for the purpose of its alternative methodology, that corresponds, in any meaningful sense, to either Benxi or Juyi.

Benxi and Juyi also disagreed with the use of *SteelBenchmarker* data and argued that the CBSA has not verified the information and that it is absurd to reject verifiable data they provided in favor of unverified data (i.e. *SteelBenchmarker*). They also argued that these prices reflect the prices in various markets, and that the information is voluntarily submitted by any company wishing to do so. In addition, Benxi and Juyi also expressed concern with the conversion factors used in the calculation of normal values, their unverified nature and the lack of available information about them.

## **CBSA Response**

As explained in the *Normal Value* section of this *Statement of Reasons*, the President is of the opinion that sufficient information has not been furnished or is not available to determine normal values under the normal provisions of SIMA. Accordingly, pursuant to subsection 29(1), the President specified manners of determining the normal values.

It is noted that given that the President formed the opinion that the domestic prices in China are substantially determined by the government of that country and that there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market, the normal values, had sufficient information been furnished or been available, would have been provided on the basis of selling or costing information from producers in a country designated by the President, or on the basis of information on the re-sale in Canada of like goods produced in a country designated by the President. Such information would not have corresponded to either Benxi or Juyi. Again, despite the CBSA's attempt to gather such information, sufficient information was not provided or was not available. Accordingly, the CBSA disagrees with the claim that it rejected verifiable data in favor of unverified data. The CBSA believes that the information used, as specified by the Minister, consists of the best information that was available on the record. Further, all relevant information, including information on the conversion factors, can be found on the CBSA's listing of exhibits.

### ***Anti-dumping Duty Must Only Counteract Injurious Dumping***

Benxi and Juyi also alleged that the CBSA failed to take care of ensuring that the methodology it adopts to determine normal values results in anti-dumping duties that only counteract injurious dumping without interfering in non-injurious trade.

## **CBSA Response**

Anti-dumping duties are only assessed to the extent that the normal value exceeds the export price. In such case, the duty is automatically limited to the margin of dumping.

### ***CBSA Failed to Make Required Adjustments***

Counsel for Benxi and Juyi also alleged that the CBSA failed to make required adjustments, where there are differences affecting the fairness of the comparison made between the normal values and the export prices. They argued that there is no indication that the CBSA made such adjustments. The counsels argued that section 20 does not relieve the CBSA from the requirements to make such adjustments. Counsels then further argued that adjustments must also be made under Section 29.

## **CBSA Response**

The SIMA and its accompanying regulations do have provisions to make adjustments to the normal values determined under the normal provisions of the Act, including under section 20. However, given that normal values had to be determined pursuant to paragraphs 20(1)(c) or (d) of SIMA and since the information required to determine normal values pursuant to these paragraphs was not furnished or was not available, the normal values for all parties were determined pursuant to section 29 under a ministerial specification. In other words, the Minister has specified the methodology to use in determining the normal values. The SIMA does not have provisions to make adjustments to the methodology specified by the Minister.

## **Arguments Pertaining to the Subsidy Investigation**

### ***The CBSA's International Obligations***

Juyi and Huludao made representations identifying the CBSA's obligations under the WTO's *Agreement on Subsidies and Countervailing Measures (ASCM)* as it relates to both the procedures and methodologies employed in the countervailing investigation. In identifying these obligations, counsel has alleged a number of CBSA violations of these agreements. For example, Benxi and Juyi argued that they were cooperating respondents and that neither impeded the CBSA's investigation, and that accordingly, the CBSA does not have the authority under the WTO ASCM to use "adverse facts available".

## **CBSA Response**

The CBSA acknowledges its obligations to the WTO Agreements and believes it has met the standards set forth in the ASCM.

With this said, the CBSA's anti-dumping investigation was conducted under the authority of the SIMA. The CBSA's responsibility is to administer and follow the relevant Canadian legislation in the form of SIMA. The CBSA believes it has adhered to the standard set forth in SIMA in the conduct of the investigation.

The CBSA maintains that sufficient information had not been provided or was not otherwise available to enable the determination of the amount of subsidy in the prescribed manner. For the purposes of the final determination, the amount of subsidy was therefore determined in the manner specified by the Minister, pursuant to subsection 30.4(2). The CBSA also considered whether the information provided with respect to an export sale of subject and like goods related to the full production and sale of those goods. Due to the same factors described in the above responses, the CBSA did not have all the information required in order to determine an amount of subsidy in the prescribed manner.

Further, in the context of Article 12.7 of the ASCM, the CBSA considers the GOC to have refused access to, or otherwise did not provide necessary information within a reasonable period. Thus the CBSA was unable to verify the information submitted by the exporters.

### ***SOEs are not “Public Bodies”***

Juyi argued that the CBSA did not properly apply the concept of “public bodies” in its subsidy investigation, as per the WTO’s guidance in DS379. They argued that for the purposes of the preliminary determination, the CBSA simply assumed, without further analysis, that China’s steel producing SOE’s are “government” given that the “GOC exercises meaningful control over the steel sector and therefore all domestic suppliers are considered government”. Counsels argued that the CBSA’s reasoning is contrary to Canada’s obligations under the ASCM and should be reversed.

Huludao also argued that it had cooperated in previous similar investigations by the CBSA, namely the recently concluded 2011 OCTG subsidy re-investigation and in the 2009 OCTG investigation. In those investigations, Huludao claims that the CBSA had fully verified the information in those proceedings, and that most of its suppliers and manufacturers had been determined to be non-public bodies, and thus were not used to calculate the benefits for purposes of this program. Huludao claims that the majority of the suppliers from whom it purchased raw materials to manufacture the subject goods under this investigation are the same as in such past CBSA proceedings.

### **CBSA Response**

For purposes of the final determination, the CBSA expanded on the positive evidence that the steel suppliers possess, exercise or are vested with government authority. Details pertaining to this matter were discussed in the “Results of the Subsidy Investigation” section above.

In response to Huludao’s arguments, the CBSA notes that the steel piling pipe subsidy investigation is a separate proceeding from OCTG. In this investigation, the information provided could not be corroborated and was considered to be insufficient, especially due to the complete lack of cooperation by the GOC. Further, there was information on the record suggesting that government ownership in the steel industry was quite substantial. Further, on the basis of the evidence on the record, the CBSA determined that there is sufficient evidence, as described in the section on the Section 20 inquiry above, that the GOC exercises meaningful control over state-owned steel suppliers and producers. In fact, the inquiry provided evidence that the GOC exercises meaningful control over the entire industry. Accordingly, there is reason to believe that the suppliers of raw materials are “government”; that they possess, exercise or are vested with government authority, as described in the factors described earlier.

### ***Specificity***

Juyi submitted that steel-producing SOEs supply steel in various forms to a broad range of buyers in multiple different industries. Accordingly, it claims, the CBSA cannot consider the “benefits conferred” to be specific.

### **CBSA Response**

For purposes of the final determination, sufficient information had not been provided or was not otherwise available for the CBSA to determine amounts of subsidy in the prescribed manner. Most importantly, the lack of cooperation by the GOC prevented the CBSA from properly assessing the question of specificity. For this reason, as explained above, the amount of subsidy was determined in the manner specified by the Minister, pursuant to subsection 30.4(2).

## ***Double Remedies***

Juyi and Benxi submitted that “In DS379<sup>66</sup>, the Appellate Body reversed the panel’s finding on the issue of “double remedies” and found that the “imposition of double remedies, that is, the offsetting of the same subsidization twice by the concurrent imposition of anti-dumping duties calculated on the basis of an NME<sup>67</sup> methodology and countervailing duties, is inconsistent with Article 19.3 of the SCM Agreement”. They argue that the same principles and logic apply in Canada under SIMA and the CBSA should not impose both countervailing duties and anti-dumping duties based on a section 20 finding.

### **CBSA Response**

With respect to the issue of double remedy, the CBSA is in the process of assessing any possible implications of the Appellate Body decision in DS379. At this time, the CBSA is not in a position to make any further comments.

### ***The CBSA erred in their calculation and used an inappropriate benchmark to calculate an amount of subsidy for loans programs***

Huludao provided arguments regarding the CBSA’s use of an inappropriate benchmark in its determination that certain loans were preferential. The issue related to loans denominated in United States dollars. As mentioned in the subsidy section above, Huludao argued that such loans should be compared with the LIBOR rate.

### **CBSA Response**

As mentioned in the subsidy section above, the CBSA revised its methodology and calculations with respect to Huludao’s loans, and did not find that Huludao benefited from preferential loans. Further, given that this program was only added to the list of investigated programs at the preliminary determination on the basis of the preliminary results, and then found not to be applicable, the program was also removed from the list of programs potentially applicable to all other exporters. Accordingly, no subsidy was found to exist with respect to this program. This question is therefore moot.

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<sup>66</sup> WTO Dispute DS379. United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, March 11, 2011.

<sup>67</sup> Non market economy