



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

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OTTAWA, May 7, 2013

## **STATEMENT OF REASONS**

**Concerning the initiation of investigations into the dumping and subsidizing of  
CERTAIN SILICON METAL ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

### **DECISION**

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency initiated investigations on April 22, 2013, respecting the alleged injurious dumping and subsidizing of silicon metal containing at least 96.00% but less than 99.99% silicon by weight, and silicon metal containing between 89.00% and 96.00% silicon by weight that contains aluminum greater than 0.20% by weight, of all forms and sizes, originating in or exported from the People's Republic of China.

Cet énoncé des motifs est également disponible en français. Veuillez consulter la section «Information».  
This Statement of Reasons is also available in French. Please refer to the "Information" section.

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## SUMMARY

[1] On March 1, 2013, Québec Silicon Limited Partnership and its affiliate QSIP Canada ULC of Bécancour, Quebec (hereafter ‘the Complainant’), filed a complaint with the Anti-dumping and Countervailing Directorate of the Canada Border Services Agency (CBSA).

[2] On March 22, 2013, 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 respecting the dumping and subsidizing of silicon metal had been received and provided the GOC with the non-confidential version of the subsidy portion of the complaint.

[3] Although the GOC was informed that it was invited for consultations prior to the initiation of the investigations, in accordance with Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*, the GOC did not request any such consultations.

[4] The GOC noted in an email that certain non-confidential information referred to in the non-confidential version of the complaint provided by the CBSA was missing. Following this notification, the CBSA reviewed the non-confidential version of the complaint and forwarded further information to the GOC, including several attachments that had been unintentionally omitted from the original document package.

[5] The Complainant provided evidence to support the allegations that certain silicon metal from the People’s Republic of China (China) has been dumped and subsidized. The evidence discloses a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[6] The GOC provided written comments with respect to the complaint on April 17, 2013. In those comments, the GOC expressed its view that the complaint filed with the CBSA was “frivolous” and “unsubstantiated by evidence”. Based on this view, the GOC argued that the investigations concerning certain silicon metal should not be initiated.

[7] While the CBSA respects the views expressed by the GOC, based on the CBSA’s analysis of the complaint, it was determined that the complaint was properly documented and the information contained therein was sufficient to meet the requirements of SIMA for initiation. On April 22, 2013, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain silicon metal from China.

## **INTERESTED PARTIES**

### **Complainant**

[8] The Complainant is Québec Silicon Limited Partnership and QSIP Canada ULC, of Bécancour, Quebec. The address of the Complainant is:

Québec Silicon Limited Partnership and QSIP Canada ULC  
6500 rue Yvon Trudeau  
Bécancour, QC G9H 2V8

[9] The Complainant is the only producer of silicon metal in Canada.<sup>1</sup>

### **Importers**

[10] The CBSA identified 23 potential importers of certain silicon metal from China during the period of January 1, 2012 to December 31, 2012 from information provided by the Complainant and CBSA import data.

### **Exporters**

[11] The CBSA identified 219 potential exporters and producers of certain silicon metal from China during the period of January 1, 2012 to December 31, 2012 from information provided by the Complainant and CBSA import data.

### **Government of China**

[12] 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, 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.

## **PRODUCT INFORMATION**

### **Definition**

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

Silicon metal containing at least 96.00% but less than 99.99% silicon by weight, and silicon metal containing between 89.00% and 96.00% silicon by weight that contains aluminum greater than 0.20% by weight, of all forms and sizes, originating in or exported from the People's Republic of China.

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<sup>1</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 9, page 8.

## **Additional Product Information**

[14] The subject goods include all forms and sizes of silicon metal, including off-specification material such as silicon metal with higher percentages of other elements, such as aluminum, calcium, iron, etc.

[15] Silicon is a chemical element, metallic in appearance, solid in mass, and steel gray in color, that is commonly found in nature in combination with oxygen either as silica or in combination with both oxygen and a metal in silicate minerals. Although commonly referred to as metal, silicon exhibits characteristics of both metals and non-metals. Silicon metal is a polycrystalline material whose crystals have a diamond cubic structure at atmospheric pressure. It is usually sold in lump form typically ranging from 6" x 1/2" to 4" x 1/4" for the metallurgical industry, 1" by 1" and smaller for the chemical industries and also in crushed powder form.

[16] Silicon metal is principally used by primary and secondary aluminum producers as an alloying agent and by the chemical industry to produce a family of chemicals known as silicones.

## **Production Process**

[17] Silicon metal is produced by combining high purity quartzite (consisting principally of natural crystallized silica ( $\text{SiO}_2$ )) with a carbonaceous reducing agent (such as low-ash coal, petroleum coke, charcoal or coal char) and a bulking agent (such as wood chips) in a submerged-arc electric furnace.

[18] In the furnace, the raw materials are smelted at a very high temperature into molten silicon metal. Periodically, the molten silicon metal is tapped from the furnace and poured into large ladles.

[19] Certain impurities, called "slag" – consisting mainly of calcium, aluminum and silicon oxides – are inherent to the production of silicon metal and therefore end up in the ladle with the molten silicon metal. When the molten silicon metal is tapped from the furnace and exposed to oxygen, the slag and molten silicon metal, which have different densities, tend to separate in the ladle. As the slag and molten silicon metal separate, impurities are removed from the silicon metal.

[20] At this point in the process, oxygen can be used to remove additional impurities (aluminum and calcium) from the molten silicon metal, before it is allowed to cool. Oxygen is introduced into the molten silicon metal in gaseous form by means of a porous plug in the base of the ladle.

[21] The molten silicon metal is next poured into molds or onto areas of the plant floor sectioned off using beds of silicon metal fines or sand. Once all of the molten silicon metal has been tapped (drained) from the furnace, the slag is then removed and placed in a slag pot.

[22] After the silicon metal has cooled, it is pre-crushed (e.g., by lifting and dropping the cooled metal onto the floor using a front-end loader). The purpose of such pre-crushing is to yield pieces suitable for transporting to the silicon metal crushing and sizing equipment, which typically is located in a separate area of the plant. At this point, the silicon metal can be stored (i.e., inventoried as work-in-process).<sup>2</sup>

### **Classification of Imports**

[23] The subject goods are normally imported into Canada under the following HS classification number:

2804.69.00.00

[24] The HS classification number identified is for convenience of reference only. The HS classification number may include non-subject goods. Also, subject goods may be imported under HS classification numbers that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

### **LIKE GOODS**

[25] 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 the uses and other characteristics of which closely resemble those of the other goods.

[26] Silicon metal produced by the domestic industry in Canada competes directly with and has the same end uses as the silicon metal imported from China. The goods produced in Canada are completely substitutable with silicon metal produced in China. Therefore, the CBSA has concluded that silicon metal produced by the Canadian industry constitutes like goods to the silicon metal produced in China.

[27] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that subject and like goods constitute only one class of goods.

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<sup>2</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraphs 26-31, pages 12-13.

## **THE CANADIAN INDUSTRY**

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

### **Standing**

[29] Pursuant to subsection 31(2) of SIMA no investigation may be initiated unless:

- a) the complaint is supported by domestic producers whose production represents more than fifty per cent of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- b) the production of the domestic producers who support the complaint represents twenty-five per cent or more of the total production of like goods by the domestic industry.

[30] The CBSA is satisfied that the Complainant alone exceeds the 50% threshold of support required under SIMA section 31(2)(a) and exceeds the 25% threshold for standing required under SIMA section 31(2)(b).

## **THE CANADIAN MARKET**

[31] The Complainant sells silicon metal to end-users for consumption in Canada and for export.

[32] The Complainant estimated the import portion of the Canadian market using their commercial intelligence and information from Statistics Canada.

[33] The Complainant found that China, the United States, and Brazil are the only countries that export commercially significant quantities of silicon metal to Canada.

[34] The CBSA conducted its own analysis of imports of goods based on actual import data.

[35] A review of CBSA import data demonstrated a similar pattern to that provided by the Complainant with respect to subject good imports from China.

[36] As the Complainant is the sole Canadian producer, detailed information regarding the volume of subject imports and domestic production cannot be divulged for confidentiality reasons. The CBSA has, however, prepared the following table to show the estimated import share of certain silicon metal in Canada.



**CBSA Estimates of Import Share  
(By Volume)**

Country of Origin	2010	2011	2012
China	87%	87%	71%
USA	11%	13%	24%
Brazil	0%	0%	4%
Other Countries	2%	0%	1%
Total Imports	100%	100%	100%

**EVIDENCE OF DUMPING**

[37] The Complainant alleged that subject goods from China have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada. The Complainant provided information to support the allegation that the ferroalloy sector in China, which includes silicon metal, may not be operating under competitive market conditions and as such, normal values should be determined under section 20 of SIMA.

[38] Normal values are generally based on the domestic selling price of like goods in the country of export where competitive market conditions exist, or on the full cost of the goods plus a reasonable amount for profits. If there is sufficient reason to believe that conditions described in section 20 of SIMA exist in the sector under investigation, normal values will be determined, where such information is available, on the basis of the domestic selling price or full cost plus a reasonable amount for profit of the like goods sold by producers in any country designated by the President and adjusted for price comparability, or on the basis of the selling price in Canada of like goods imported from any country designated by the President and adjusted for price comparability.

[39] The export price of goods sold to importers in Canada is generally the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges, and expenses resulting from the exportation of the goods.

[40] The Complainant's allegations of dumping are based on a comparison of estimated normal values of the allegedly dumped goods with estimated export prices to Canada.

[41] The CBSA's analysis of the alleged dumping is based on a comparison of the CBSA's estimated normal values with the estimated export prices. Estimates of normal value and export price are discussed below.

## Normal Value

[42] The Complainant was not able to obtain reliable domestic pricing information for silicon metal in China. As such, it was unable to estimate normal values pursuant to section 15 of the SIMA.

[43] Normal values were estimated under a section 19 methodology by the Complainant by using publicly available cost of production information for Chinese silicon metal as reported by *CRU International* (CRU).<sup>3</sup> However, the Complainant alleged that CRU understates actual costs by certain percentage,<sup>4</sup> and adjusted for this in its normal value calculations by increasing CRU's published cost by this percentage.

[44] To achieve an amount for general selling and administrative expenses (GS&A) and an amount for profit, the Complainant used the expense and profit figures from four companies: Globe Metallurgical Inc. (United States), G.S. Energy Co. Ltd. (Thailand), VBC Ferro Alloys Ltd. (India), and Facor Alloys Ltd (India). The Complainant chose Globe Metallurgical Inc. as it is one of the largest silicon metal producers in the world and also has an ownership stake in the Complainant. However, to be conservative in its estimates, the Complainant averaged the United States figures with those of the Thai silicon metal producer and the two Indian ferrosilicon producers, since the information from those producers was used by the authorities in the United States (US) in prior proceedings respecting silicon metal.

[45] The Complainant provided information supporting a request that a section 20 inquiry be initiated in investigating its allegation of injurious dumping of the subject goods. Since the Complainant alleged that the price of silicon metal sold in China is substantially determined by the GOC and is lower than it would be in a competitive market, normal values were also estimated pursuant to a section 20 methodology.

[46] For the section 20 estimate, Thai producer G.S. Energy Co. Ltd., whose costs were provided through CRU, was chosen as the source for ex-plant operating costs since the US had relied upon information from this same producer in its most recent review involving Chinese silicon metal. Applying the same GS&A and profit amounts based on the four aforementioned companies, the Complainant arrived at four estimates of normal values, which were averaged to obtain one estimated section 20 normal value.<sup>5</sup>

[47] The CBSA considered the complainant's use of Thai production costs as reasonable given the similarities between labour and raw material costs between the two countries. Similarly, the CBSA considered that using average GS&A and profit amounts of four companies from various parts of the world provided a reasonable estimate of such amounts found in a competitive market.

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<sup>3</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 81, page 24.

<sup>4</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 85, page 25.

<sup>5</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 150, page 50.

[48] As a result, the CBSA estimated normal value using a section 20 based methodology similar to that of the Complainant. The CBSA used the production costs of the Thai producer as well as the average GS&A and profit amounts from the same four companies as the Complainant. However, the CBSA removed an export tax provision that the Complainant had included in the cost of production, as well as the cost markup applied by the Complainant to the published CRU cost in Thailand.

### **Export Price**

[49] The export price of goods sold to an importer in Canada is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's selling price for the goods and the price at which the importer has purchased or agreed to purchase the goods adjusted by deducting all costs, charges, expenses, duties and taxes resulting from the exportation of the goods.

[50] The Complainant used a deductive methodology to estimate export prices, beginning with price quotes obtained from Canadian buyers of silicon metal. The Complainant provided evidence in the complaint to support these price quotes.<sup>6</sup>

[51] The Complainant calculated the estimated export prices by deducting amounts for estimated inland and ocean freight, importer commissions, and VAT of 17% to arrive at an estimated ex-works Chinese price.

[52] The CBSA estimated export prices based on actual import data for importations of subject goods into Canada during the period of January 1, 2012 to December 31, 2012. The values for each of those importations were adjusted by deducting 15% to account for the export tax imposed on silicon metal exports by the GOC during that period.<sup>7</sup>

[53] In analyzing the import data, the CBSA found that a number of transactions appeared to have taken place between associated parties. In comparing the prices between those associated parties with the prices in transactions between parties that appear not to be associated, the CBSA found the prices between associated parties were significantly higher. As a result, the CBSA decided that for purposes of estimating export prices and estimating a margin of dumping for the initiation, the prices between associated parties would not be used as they do not appear to be reliable.

### **Estimated Margin of Dumping**

[54] The CBSA estimated the margin of dumping by deducting the estimated total export price from the estimated total normal value and expressing the result as a percentage of the export price.

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<sup>6</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraphs 328-381, pages 122-135.

<sup>7</sup> Dumping/Subsidy Exhibit 9 (NC) - CBSA Section 20 Research Documents for Initiation – Tab 25, page 67.3.

[55] Based on this analysis, the subject goods from China were dumped by an estimated margin of dumping of 28%, expressed as a percentage of the total export price.

**MARGIN OF DUMPING AND VOLUME OF DUMPED GOODS**

[56] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the margin of dumping of the goods of a country is insignificant or the actual and potential volume of dumped goods of a country is negligible, the President must terminate the investigation with respect to goods of that country.

[57] Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price is defined as insignificant and a volume of dumped goods is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods.

[58] On the basis of the estimated margin of dumping and the import data for the period of January 1, 2012 to December 31, 2012, summarized in the table below, the estimated margin of dumping is not insignificant and the estimated volume of dumped goods is not negligible.

**Estimated Margin of Dumping and Imports of Certain Silicon Metal  
January 1, 2012 to December 31, 2012**

<b>Country</b>	<b>Estimated Share of Total Imports by Value</b>	<b>Estimated Dumped Goods as a % of Total Imports</b>	<b>Estimated Margin of Dumping as a % of Export Price</b>
China	71%	71%	28%
USA	24%	N/A*	N/A*
Brazil	4%	N/A*	N/A*
Other Countries	1%	N/A*	N/A*
Total	100%	N/A*	N/A*

\* N/A indicates Not Applicable.

**SECTION 20 INQUIRY**

[59] Section 20 is a provision of SIMA that may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country<sup>8</sup> under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the President, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

<sup>8</sup> China is a prescribed country under Section 17.1 of the *Special Import Measures Regulations*.

[60] The Complainant alleged that the conditions described in section 20 prevail in the ferroalloy sector, which includes silicon metal, in China. That is, the Complainant alleged that this industry sector in China does not operate under competitive market conditions and consequently, prices established in the Chinese domestic market for silicon metal are not reliable for determining normal values.

[61] Based on the information available for purposes of initiation, both the CBSA and the complainant believe that silicon metal is best classified as part of the ferroalloy sector. For example, publications such as CRU<sup>9</sup> and Metal Bulletin<sup>10</sup> include silicon metal in their pricing and reporting with respect to the ferroalloy sector. Further, a number of policy-type documents<sup>11</sup> relating to the ferroalloy sector issued by the GOC's Ministry of Industry and Information Technology refer to lists of companies that specifically include silicon metal producers.

[62] The Complainant has relied heavily on the CBSA's preliminary and final determinations in past cases in support of this position. The Complainant has also cited more specific items such as the extensive state ownership of Chinese silicon metal producers and China's Twelfth Five-Year Plan.

[63] The information currently available to the CBSA indicates that there are numerous GOC industrial policies that have been implemented which influence the supply and demand balance of silicon metal in China. The key measures include: controlling exports of silicon metal, controlling exports of inputs used in silicon metal production, government influence on the price of inputs, controlling capacity and production levels, and restricting new entrants to the market.<sup>12</sup>

[64] The CBSA also has information which indicates prices of silicon metal may be significantly affected by the GOC's policies and that the prices of silicon metal in China may not be substantially the same as they would be if they were determined in a competitive market.

[65] Consequently, on April 22, 2013, the CBSA initiated a section 20 inquiry based on the information available in order to determine whether the conditions set forth in paragraph 20(1)(a) of SIMA prevail in the ferroalloy sector, which includes silicon metal, in China. A section 20 inquiry refers to the process whereby the CBSA collects information from various sources so that the President may, on the basis of this information, form an opinion regarding the presence of the conditions described under section 20 of SIMA, in the sector under investigation.

[66] As part of this section 20 inquiry, the CBSA sent section 20 questionnaires to all potential exporters and producers of silicon metal in China, as well as to the GOC requesting detailed information related to the ferroalloy sector, including silicon metal, in China.

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<sup>9</sup> Dumping/Subsidy Exhibit 1 (PRO) – Confidential Attachment 42.

<sup>10</sup> Dumping/Subsidy Exhibit 9 (NC) - CBSA Section 20 Research Documents for Initiation – Tab 34.

<sup>11</sup> Dumping/Subsidy Exhibit 9 (NC) - CBSA Section 20 Research Documents for Initiation – Tabs 8, 23 and 24.

<sup>12</sup> Dumping/Subsidy Exhibit 27 (PRO) – Attachment 5 – Section 20 Report concerning Certain Silicon Metal Originating in or Exported from the People's Republic of China.

[67] In the event that the President forms the opinion that domestic prices of silicon metal in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be if they were determined in a competitive market, the normal values of the goods under investigation will be determined pursuant to paragraph 20(1)(c), where such information is available, on the basis of the domestic selling price or full cost plus a reasonable amount for profits of the like goods sold by producers in any country designated by the President and adjusted for price comparability, or on the basis of the selling price in Canada of like goods imported from any country designated by the President and adjusted for price comparability.

[68] Therefore, the CBSA requested that producers in other countries provide domestic pricing and costing information concerning silicon metal. The countries chosen were Brazil, South Africa and Thailand as available information indicates that a sufficient number of producers of silicon metal operate in these countries, where costs and prices are similar to those that would exist in China if section 20 conditions were not present.

[69] The CBSA will also be requesting information from importers that would enable it to determine normal values based on the importers selling prices pursuant to paragraph 20(1)d) of SIMA if required.

### **EVIDENCE OF SUBSIDIZING**

[70] In accordance with section 2 of SIMA, a subsidy exists where 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.

[71] Pursuant to subsection 2(1.6) of SIMA, a financial contribution exists where:

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

[72] If a subsidy is found to exist, it may be subject to countervailing measures if it is specific. A subsidy is considered to be specific when it is limited, in law or in fact, to a particular enterprise or is a prohibited subsidy. An "enterprise" is defined under SIMA as also including a "group of enterprises, an industry and a group of industries." Any subsidy which is contingent, in whole or in part, on export performance or on the use of goods that are produced or that originate in the country of export is considered to be a prohibited subsidy and is, therefore, specific according to subsection 2(7.2) of SIMA for the purposes of a subsidy investigation.

[73] A state-owned enterprise (SOE), may be considered to constitute "government" for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard:

- 1) the SOE is granted or vested with authority by statute;
- 2) the SOE is performing a government function;
- 3) the SOE is meaningfully controlled by the government; or some combination thereof.

[74] In accordance with subsection 2(7.3) of SIMA, notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific in fact, having regard as to whether:

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

[75] For purposes of a subsidy investigation, the CBSA refers to a subsidy that is specific as an "actionable subsidy," meaning that it is countervailable.

[76] The Complainant alleged that the exporters of subject goods originating in China have benefited from actionable subsidies provided by various levels of the GOC, which may include the governments of the respective provinces in which the exporters are located and the governments of the respective municipalities in which the exporters are located. The Complainant referred to the CBSA's *Statement of Reasons* for various investigations, including Certain Steel Grating; Certain Oil Country Tubular Goods; Certain Aluminum Extrusions; Certain Stainless Steel Sinks; Certain Piling Pipe; and Certain Laminate Flooring. These CBSA decisions identify subsidy programs, which the Complainant contends also apply to silicon metal from China. In its subsidy allegations, the Complainant similarly referenced the USDOC decision respecting aluminum extrusions.<sup>13</sup>

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<sup>13</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, Public Attachment 84.

[77] The Complainant has also relied on a substantial body of publicly available information outlining numerous benefit programs offered by the central government in China, as well as by the provincial or municipal governments of Fuzhou, Xiamen, Shanghai, Nanhai, Guangzhou, Hainan, Dalian, Beihai, Xinjiang, Liaoning, Heilongjian, Chongqing, Tianjin and Yunnan, regions where producers of silicon metal are believed to be located.<sup>14</sup>

### **Programs Being Investigated**

[78] In reviewing the information provided by the Complainant<sup>15</sup> and obtained by the CBSA through its own research, the CBSA has developed the following categories of programs and incentives that may be provided to manufacturers of the subject goods in China:

1. Special Economic Zones (SEZ) Incentives;
2. Grants;
3. Preferential Loan Programs and Loan Guarantees;
4. Preferential Tax Programs;
5. Relief from Duty and Taxes on Materials and Machinery;
6. Goods/Services Provided by the Government at less Than Fair Market Value;
7. Reduction in Land Use Fees; and
8. Additional Programs and Incentives in China's latest Notification.<sup>16</sup>

[79] A full listing of all 89 programs to be investigated by the CBSA may be found in **Appendix 1**. As explained in more detail therein, there is sufficient reason to believe that these programs provided by the GOC may constitute actionable subsidies and that the exporters and producers of the subject goods may have benefited from these programs. Many of these programs were identified and/or have been investigated by the CBSA in past subsidy investigations.

[80] The CBSA is satisfied that there is sufficient evidence indicating that the exporters and producers of subject goods may receive subsidies in the form of grants, preferential loans, relief from duties or taxes, and provision of goods and services, which provide a benefit and that are not generally granted to all companies in China.

[81] In the case of programs where an enterprise's eligibility or degree of benefit is contingent upon export performance or the use of goods that are produced or originate in the country of export, such programs may constitute prohibited subsidies under SIMA.

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<sup>14</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 182, page 59.

<sup>15</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 177, page 57.

<sup>16</sup> “New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures”, WTO Doc. G/SCM/N/186/CHN (October 21, 2011) [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-1.aspx?language=E&CatalogueIdList=89855.732.60584.95033.105001.104493.97140.67305.59602.61766&CurrentCatalogueIdIndex=2&FullTextSearch](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-1.aspx?language=E&CatalogueIdList=89855.732.60584.95033.105001.104493.97140.67305.59602.61766&CurrentCatalogueIdIndex=2&FullTextSearch).



[82] For the programs where incentives are provided to enterprises operating in specified areas such as Special Economic Zones, the CBSA considers that these may constitute actionable subsidies for the reason that eligibility is limited to enterprises operating in such regions or is limited to certain enterprises operating within those regions.

[83] The CBSA will investigate whether exporters and producers of subject goods received benefits under these programs, and whether such programs constitute actionable subsidies.

### ***Programs Not Being Investigated***

[84] The following three alleged subsidy programs were identified by the Complainant under the category of "Special Economic Zones." In that these grant programs comprise specific GOC policies that cover incentives encompassed within other more general program descriptions, it was decided that they need not be specifically named:

- *Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong Area);*
- *Preferential Tax Policies for FIEs Established in the Coastal Economic Open Area and in the Economic and Technological Development Zones; and*
- *Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai.*

[85] Respecting *Accelerated Depreciation on Fixed Assets for Enterprises*, information available to the CBSA indicates that this program has been terminated,<sup>17</sup> and will therefore not be investigated.

[86] Two of the 47 grant programs identified by the Complainant were found by the CBSA to be awards for energy savings, which are covered in several other programs. Furthermore, *Loan Guarantee Fund for Science & Technology Enterprises by Liaoning Governments* will be moved to the category for Preferential Loan Programs.

[87] Of the three preferential loan programs identified by the Complainant, the *Credit Guarantee for Enterprises Operating in Liaoning (Yingkou) Coastal Industrial Bases* is covered in Program 12: *Preferential Access to Loans for Enterprises Operating in Zones* and will therefore not be separately investigated.

[88] The CBSA will be investigating the sole program identified by the Complainant under the Relief from Duties and Taxes on Materials and Machinery category, but will amend the title slightly to: *Relief from Duties and Taxes on Imported Materials, Other Manufacturing Inputs and Equipment*, in order to more accurately reflect the benefits described.

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<sup>17</sup> Circular of the Ministry of Finance and the State Administration of Taxation concerning the Related Preferential Policies of Enterprise Income Tax for Supporting the Development of Openness of Binhai New Area of Tianjin, found at: [http://www.fdi.gov.cn/pub/FDI\\_EN/Law\\_en\\_info.jsp?docid=75684](http://www.fdi.gov.cn/pub/FDI_EN/Law_en_info.jsp?docid=75684).

[89] Information available to the CBSA indicates that silicon metal producers in China are selling their product to state-owned aluminum producers in China at prices that are lower than fair market value. The CBSA has, therefore, concluded that silicon metal producers are not receiving any subsidies through such sales and will not be investigating the sale of silicon metal to state-owned enterprises within the context of the subsidy investigation.

[90] The above-mentioned programs will not be investigated by the CBSA unless sufficient information is provided to justify their investigation.

## **Conclusion**

[91] Sufficient evidence is available to support the allegation that the subsidy programs outlined in **Appendix 1** are available to exporters and producers of the subject goods in China. In investigating these programs, the CBSA has requested information from the GOC, exporters and producers to determine whether the exporters and/or producers of subject goods received benefits under these programs, and whether benefits from these programs are "actionable subsidies" and, therefore, countervailable under SIMA.

## **Estimated Amount of Subsidy**

[92] The Complainant was unable to determine the actual amounts of subsidy received by the Chinese exporters under each program and therefore estimated the amounts of subsidy by calculating the difference between the estimated export price of the subject goods from Canadian purchasers and the estimated full cost to produce and sell the goods.

[93] The CBSA estimated the amount of subsidy conferred on producers of the subject goods by comparing the estimated weighted average export price of subject goods for the year 2012 with the average of the estimated full costs of like goods produced in Thailand, India and by Globe Metallurgical Inc. in the United States. These were the cost figures that were available to the CBSA prior to the initiation of the investigation.

[94] The CBSA's analysis of the information indicates that subject goods imported into Canada during the period of January 1, 2012, to December 31, 2012, were subsidized and that the estimated amount of subsidy is 19% of the export price of the subject goods.

## **AMOUNT OF SUBSIDY AND VOLUME OF SUBSIDIZED GOODS**

[95] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the amount of subsidy on the goods of a country is insignificant or the actual and potential volume of subsidized goods of a country is negligible, the President must terminate the investigation with respect to the goods of that country. Under subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the export price of the goods is defined as insignificant and a volume of subsidized goods is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description as the subsidized goods, the same threshold for the volume of dumped goods.

[96] However, according to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the *WTO Agreement on Subsidies and Countervailing Measures* when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a 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 or the volume of subsidized imports represents less than 4% of the total imports of the like product in the importing Member.

[97] SIMA does not define or provide any guidance regarding the determination of a "developing country" for purposes of Article 27.10 of the *WTO Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance.<sup>18</sup> As China is included in the listing, the CBSA extends developing country status to China for purposes of this investigation.

[98] The CBSA used actual import data for all countries for the period of January 1, 2012, to December 31, 2012. On the basis of this information, the volume of subsidized goods as a percentage of the volume of total imports is estimated as follows:

**Estimated Amount of Subsidy and Imports of Silicon Metal  
January 1, 2012 to December 31, 2012**

Country	Estimated Share of Total Imports by Value	Estimated Subsidized Goods as % of Total Imports	Estimated Amount of Subsidy as % of Export Price
China	71%	71%	19%

[99] The volume of subsidized goods, estimated to be 71% of total imports from all countries, is greater than the threshold of 4% (for a developing country) and is therefore not negligible. The amount of subsidy, estimated to be 19% of the export price, is greater than the threshold of 2% (for a developing country) and is therefore not insignificant.

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<sup>18</sup> The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as of January 1, 2013, the document is available at <http://www.oecd.org/dac/stats/DAC%20List%20used%20for%202012%20and%202013%20flows.pdf>

## **EVIDENCE OF INJURY**

[100] SIMA refers to material injury caused to the domestic producers of like goods in Canada. The CBSA has accepted that the silicon metal produced by the Complainant are like goods compared to those imported from China. The CBSA's analysis of injury primarily included a review of the Complainant's domestic sales, with a focus on the impact of the allegedly dumped and subsidized goods on the production and sale of like goods in Canada.

[101] The Complainant alleged that the subject goods have been dumped and subsidized and that such dumping and subsidizing has caused and is threatening to cause material injury to the production of certain silicon metal in Canada. In support of their allegations, the Complainant provided evidence of lost market share, lost sales, price undercutting/suppression, reduced profitability, reduced capacity utilization, and reduced employment.

### **Lost Market Share**

[102] The Complainant's market share decreased by half from 2010 to 2011, and increased one percent in 2012.

[103] Canadian customers indicated that since the Chinese price was significantly lower than the Canadian price, some of them were not even interested in hearing the Complainant's offer.<sup>19</sup>

[104] The Complainant maintains that these dumped and subsidized imports have been the direct cause of the Complainant's loss of market share.

[105] The CBSA finds the Complainant's allegations of loss of market share to be reasonable and properly supported. The loss of market share has been reasonably linked to the allegedly dumped and subsidized imports.

### **Lost Sales**

[106] The Complainant provided numerous examples of lost sales.<sup>20</sup>

[107] Instead of buying from the Complainant, Canadian consumers have begun to purchase silicon metal from Chinese sources.

[108] The Complainant maintains that dumped and subsidized imports have been the direct cause of the Complainant's reduced sales volumes.

[109] The CBSA finds the Complainant's allegations of lost sales to be reasonable and properly supported. The lost sales have been reasonably linked to the allegedly dumped and subsidized imports.

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<sup>19</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 316, page 119.

<sup>20</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, Public Attachments 127, 128, and 129.

## **Price Undercutting and Suppression**

[110] The Complainant demonstrated the amount by which Chinese import prices have undercut Canadian prices by comparing average selling prices in 2010 and 2011.<sup>21</sup>

[111] The Complainant was forced to drop its prices in order to compete with subject goods, and argues that if its desired pricing had been maintained, the price differential between Canadian and Chinese goods would have been even more significant.

[112] Furthermore, the average selling prices of silicon metal from China included related-party transactions, which may have inflated the prices and, in turn, caused the price undercutting to be understated.

[113] The complaint also contains numerous other examples of the Complainant dropping their prices in order to compete with subject goods, but they were ultimately not awarded the sales contracts because they could not reach the selling price levels of the Chinese.

[114] The CBSA finds the Complainant's allegations of price undercutting and suppression to be reasonable and properly supported. The price undercutting and suppression has been reasonably linked to the allegedly dumped and subsidized imports.

## **Reduced Profits**

[115] The Complainant has provided aggregate and individual income statement highlights containing their revenue, cost of goods sold, gross margin, other costs, and net income relating to the sales of certain silicon metal for 2010, 2011, and 2012.<sup>22</sup>

[116] The Complainant's aggregate income statement shows a decline in many indicators of financial performance from 2010 to 2012, such as revenue and gross margin.

[117] The Complainant maintains that these dumped and subsidized imports have been the direct cause of the Complainant's reduced profitability.

[118] The CBSA finds the Complainant's allegations of reduced profitability to be reasonable and properly supported. The reduced profitability has been reasonably linked to the allegedly dumped and subsidized imports.

## **Reduced Capacity Utilization**

[119] The Complainant provided a table that contains their production capacity utilization for 2010, 2011, and 2012.<sup>23</sup>

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<sup>21</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 319, page 120.

<sup>22</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, Confidential Attachment 130.

<sup>23</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, Confidential Attachment 131.

[120] The information provided by the Complainant show that their production and capacity utilization has decreased steadily from 2010 to 2012.

[121] By not producing at capacity, the plant's efficiency reduces and the cost per unit rises.<sup>24</sup>

[122] The Complainant maintains that these dumped and subsidized imports have been the direct cause of the Complainant's decrease in production capacity utilization.

[123] The CBSA finds the Complainant's allegations of reduced production capacity utilization to be reasonable and properly supported. The reduced production capacity utilization has been reasonably linked to the allegedly dumped and subsidized imports.

### **Reduced Employment**

[124] The Complainant has chosen to reduce prices in order to keep their facility in operation and their employees working.

[125] Nevertheless, the information provided by the complaint indicates that 30 employees were eventually laid off in 2012 as a cost reduction measure.

[126] The Complainant expects additional layoffs if the imports of unfairly priced Chinese goods continue.<sup>25</sup>

[127] The Complainant maintains that these dumped and subsidized imports have been the direct cause of the Complainant's reduction in employment.

[128] The CBSA concluded that there has been a reduction in employment for the Complainant, and that these reductions in employment can be reasonably linked to the importation of the allegedly dumped and subsidized goods.

### **THREAT OF INJURY**

[129] The Complainant submits that the evidence provided in the complaint provides a reasonable indication that the domestic industry is threatened with material injury by the dumping and subsidizing of Chinese silicon metal. The Complainant provides evidence of threat of injury from: Chinese dominance of the Canadian market, size of Chinese production capacity, decline in Chinese domestic demand, diversion of subject goods, and removal of Chinese export tax.

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<sup>24</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 389, page 137.

<sup>25</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 391, page 137.

## **Chinese Dominance of Canadian Market**

[130] Chinese imports have played a significant role in the Complainant's loss of market share.

[131] The Complainant maintains that if no SIMA duties are in place to prevent the continuation of dumped and subsidized imports from China, Canadian-made silicon metal may be completely displaced.

[132] The CBSA concludes that the Complainant's claims of threat of injury, due to the Chinese dominance of the Canadian market, are reasonable and properly supported. The CBSA agrees that the continued exportation of subject goods to Canada is likely, and that there is a reasonable indication that domestic producers will suffer injury.

## **Size of Chinese Production Capacity**

[133] The information provided in the complaint shows that China's silicon metal industry consists of large and numerous producers with the sum of their disposable capacity able to dwarf the entire Canadian market.<sup>26</sup>

[134] The Complainant alleged that China's production capacity (including existing and planned capacity) is over 200 times larger than the entire Canadian market for silicon metal.

[135] The CBSA concludes that the Complainant's claim of threat of injury, due to the combined factors of the large number of producers and enormous production capacity of the subject goods in China, is reasonable and properly supported. The CBSA agrees that these factors indicate that the continued exportation of subject goods to Canada is likely, and that there is a reasonable indication that domestic producers will suffer injury.

## **Decline in Chinese Domestic Demand**

[136] The Complainant noted that local silicon demand in China was expected to drop by more than 5% from 2011 to 2012.<sup>27</sup>

[137] As China is the largest exporter of silicon metal in the world and exports half of their overall production, the decline in domestic demand will force Chinese producers to increase their exports of subject goods.

[138] Coupled with the reduction in domestic demand is the fact that Chinese silicon metal inventory has remained high in 2012 and that these stocks will be released in 2013. Canada will be a likely destination for Chinese exports, as it is an attractive export market with relatively higher priced silicon metal.

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<sup>26</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraph 403, page 140.

<sup>27</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraphs 406-412, pages 141-144.

[139] With the potential influx of Chinese imports, the Complainant asserts that, absent an anti-dumping and/or countervailing finding, it will suffer further injury.<sup>28</sup>

[140] The CBSA agrees with the Complainant's claim that these factors could cause an increase in exports by Chinese suppliers to be reasonable, and as such, there is an indication that a threat of injury may exist.

### **Diversification of Subject Goods**

[141] The Complainant expressed a concern that the products intended for the U.S., European Union (EU), and Australian markets would make their way to Canada. This is due to the anti-dumping restrictions imposed by these countries on imports of Chinese silicon metal.

[142] Silicon metal could be diverted to Canada from the U.S. as a response to their third continuation of the anti-dumping order first issued in 1991, from the EU due to their extension of anti-dumping measures in 2010, and from Australia, due to their imposition of anti-dumping duties in 2004.<sup>29</sup>

[143] CBSA finds that the Complainant's claim of the diversion of subject goods to be properly supported, as evidence has been provided for three countries specifically. The CBSA agrees that there is a reasonable indication that the inability for Chinese imports to penetrate the U.S., EU, and Australian markets will cause an increase of subject goods exported to Canada.

### **Removal of Chinese Export Tax**

[144] China announced its termination of the 15% export tax on silicon metal in late 2012, effective January 2013. As a result, Chinese traders reduced the export pricing of silicon metal, allowing them to offer lower pricing to Canada.

[145] The Complainant has already begun to see the effects of this policy change in early 2013, as its potential Canadian customers have indicated that pricing from China will in fact be much lower, particularly in the second half of 2013.<sup>30</sup>

[146] The CBSA concludes that the information in the complaint supports the Complainant's claim that the removal of the Chinese export tax is a reasonable indication that an increase in subject goods exported to Canada is on the horizon.

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<sup>28</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraphs 406-412, pages 141-144.

<sup>29</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraphs 413-417, pages 144-147.

<sup>30</sup> Dumping/Subsidy Exhibit 2 (NC) – Complaint, paragraphs 418-422, pages 147-148.



## **CAUSAL LINK – DUMPING/SUBSIDIZING AND INJURY**

[147] The CBSA finds that the Complainant has sufficiently linked the injury they have suffered to the dumping and subsidizing of subject goods imported into Canada. The injury the Complainant has suffered in terms of lost market share, lost sales, price undercutting/suppression, reduced profits, reduced capacity utilization, and reduced employment is related to the price advantage the alleged dumping and subsidizing has created between the subject goods and the Canadian-produced goods. The Complainant also provided sufficient evidence that the continued alleged dumping and subsidizing of subject goods imported into Canada threatens to cause injury to the Canadian industry producing these goods.

[148] In summary, the information provided in the complaint has established a reasonable indication that the alleged dumping and subsidizing has caused injury and is threatening to cause injury to the Canadian production of like goods.

## **CONCLUSION**

[149] Based on information provided in the complaint, other available information, and the CBSA's import documentation, the President is of the opinion that there is evidence that certain silicon metal originating in or exported from China have been dumped and subsidized, and there is a reasonable indication that such dumping and subsidizing has caused and is threatening to cause injury to the Canadian industry. As a result, based on the CBSA's analysis of the evidence, the President initiated dumping and subsidy investigations on April 22, 2013.

## **SCOPE OF INVESTIGATION**

[150] The CBSA is conducting investigations to determine whether the subject goods have been dumped and/or subsidized.

[151] The CBSA has requested information relating to the subject goods imported into Canada from China during the period of January 1, 2012 to December 31, 2012, the selected period of investigation for the dumping investigation. The information requested from potential exporters and importers will be used to determine normal values and export prices and ultimately to determine whether the subject goods have been dumped.

[152] The CBSA has also requested costing and sales information from producers of silicon metal in Brazil, South Africa and Thailand. Where sufficiently available, this information may be used to determine normal values of the goods in the event that the President of the CBSA forms an opinion that the evidence in this investigation demonstrates that section 20 conditions apply in the ferroalloy sector, which includes silicon metal, in China.

[153] Information relating to the subject goods imported into Canada from January 1, 2012 to December 31, 2012, the selected period of investigation for the subsidy investigation, has been requested from the GOC and the potential exporters. The information requested will be used to determine whether the subject goods have been subsidized and to determine the amounts of subsidy by exporter.

[154] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

### **FUTURE ACTION**

[155] The Canadian International Trade Tribunal (Tribunal) will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the goods has caused or is threatening to cause injury to the Canadian industry. The Tribunal must make its decision on or before the 60<sup>th</sup> day after the date of the initiation of the investigations, by June 21, 2013. If the Tribunal concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigations will be terminated.

[156] If the Tribunal finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the CBSA investigations preliminarily reveal that the goods have been dumped and/or subsidized, the CBSA will make a preliminary determination of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by July 22, 2013. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[157] If the CBSA's investigations reveal that imports of the subject goods have not been dumped or subsidized, that the margin of dumping or amount of subsidy is insignificant or that the actual and potential volume of dumped or subsidized goods is negligible, the investigations will be terminated.

[158] Imports of subject goods released by the CBSA on and after the date of a preliminary determination of dumping and/or subsidizing may be subject to provisional duty in an amount not greater than the estimated margin of dumping or the estimated amount of subsidy determined during the preliminary phase of the investigations.

[159] Should the CBSA make a preliminary determination of dumping and/or subsidizing, the investigations will be continued for the purpose of making a final decision within 90 days after the date of the preliminary determinations.

[160] If a final determination of dumping and/or subsidizing is made, the Tribunal will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The Tribunal is required to make a finding with respect to the goods to which the final determination of dumping and/or subsidizing applies, not later than 120 days after the CBSA's preliminary determinations.

[161] In the event of an injury finding by the Tribunal, imports of subject goods released by the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping and countervailing duty equal to the amount of subsidy on the imported goods. Should both anti-dumping and countervailing duties be applicable to subject goods, the amount of any anti-dumping duty may be reduced by the amount of subsidy that is attributable to an export subsidy.

### **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[162] When the Tribunal conducts an inquiry concerning material injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[163] Should the Tribunal issue such a finding, anti-dumping and countervailing duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the day of the CBSA making a preliminary determination of dumping and/or subsidizing.

[164] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy, as explained in the previous section "Evidence of Subsidizing." In such a case, the amount of countervailing duty applied on a retroactive basis will be equal to the amount of subsidy on the goods that is a prohibited subsidy.

### **UNDERTAKINGS**

[165] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[166] Similarly, after a preliminary determination of subsidizing by the CBSA, a foreign government may submit a written undertaking to eliminate the subsidy on the goods exported or to eliminate the injurious effect of the subsidy, by limiting the amount of the subsidy or the quantity of goods exported to Canada. Alternatively, exporters with the written consent of their government may undertake to revise their selling prices so that the amount of the subsidy or the injurious effect of the subsidy is eliminated.

[167] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address, if available, to one of the officers identified in the "Information" section of this document.

[168] If an undertaking were to be accepted, the investigations and the collection of provisional duty would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA's investigations be completed and that the Tribunal complete its injury inquiry.

## **PUBLICATION**

[169] Notice of the initiation of these investigations is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

## **INFORMATION**

[170] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping and subsidizing. Written submissions should be forwarded to the attention of one of the officers identified below.

[171] To be given consideration in this phase of these investigations, all information should be received by the CBSA by May 29, 2013.

[172] Any information submitted to the CBSA by interested parties concerning these investigations is considered to be non-confidential information unless clearly marked "confidential." Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[173] Confidential information submitted to the President will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the Tribunal, any court in Canada, or a WTO/NAFTA dispute settlement panel. Additional information respecting the Directorate's policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA's Web site.

[174] The investigation schedules and a complete listing of all exhibits and information are available at <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html>. The exhibits listing will be updated as new exhibits and information are made available.

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

**Mail:** SIMA Registry and Disclosure Unit  
Anti-dumping and Countervailing Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11<sup>th</sup> floor  
Ottawa, ON KIA OL8  
Canada

**Telephone:** Vera Hutzuliak 613-954-0689  
Matthew Lurette 613-954-7398  
Manshun Tong 613-954-1666

**Fax:** 613-948-4844

**E-mail:** [simaregistry-depotlmsi@cbsa-asfc.gc.ca](mailto:simaregistry-depotlmsi@cbsa-asfc.gc.ca)

**Website:** <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html>



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

Attachment

## **APPENDIX 1 – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES**

Evidence provided by the Complainant or otherwise available to the CBSA suggests that the Government of China may have provided support to manufacturers of subject goods in the following manner. For purposes of this investigation, "Government of China" (GOC) refers to all levels of government, i.e. federal, central, provincial/state, regional municipal, city, township, village, local, legislative, administrative or judicial. Benefits provided by state-owned enterprises, which possess, exercise or have been vested with governmental authority may also be considered to be provided by the GOC for purposes of this investigation.

### **I. Special Economic Zone (SEZ) Incentives**

- Program 1: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 2: Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 3: Exemption/Reduction of Special Land Tax, Property Tax, Real Estate Tax and Land Use Fees in SEZs and Other Designated Areas
- Program 4: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas
- Program 5: Income Tax Refund where Profits Re-invested in SEZs and other Designated Areas
- Program 6: Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas
- Program 7: VAT exemptions
- Program 8: Export duty exemptions for exports from zone
- Program 9: Tax exemption for products produced within the zone and eligible for import substitution
- Program 10: Special import substitution treatment for enterprises operating in zone.
- Program 11: Investment Credits and R&D Deductions for preferentially supported and encouraged enterprises operating in a zone
- Program 12: Preferential access to loans for enterprises operating in zones
- Program 13: Preferential transfer price for land

### **II. Grants**

- Program 14: Government Export Subsidy and Product Innovation Subsidy
- Program 15: Export Assistance Grant
- Program 16: Research & Development (R&D) Assistance Grant
- Program 17: Superstar Enterprise Grant
- Program 18: Matching funds for international market development for SMEs
- Program 19: Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

- Program 20: Export Brand Development Fund
- Program 21: Provincial Scientific Development Plan Fund
- Program 22: Patent Award of Guangdong Province
- Program 23: Training Program for Rural Surplus Labor Force Transfer Employment
- Program 24: Provincial Scientific Development Plan Fund
- Program 25: International Market Exploration Fund
- Program 26: National Innovation Fund for Technology Based Firms
- Program 27: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- Program 28: Export Rebate for Mechanic, Electronic, and High-Tech Products
- Program 29: Provincial Government of Guangdong Science and Technology Bureau Project Fund
- Program 30: Energy-Saving Technique Special Fund
- Program 31: Grants for Export Activities
- Program 32: SME international market expansion funds to export enterprises in Liaoning (Yingkou) Coastal Industrial Base
- Program 33: Grants for “International Top 500 Enterprises” that establish offices in Yingkou
- Program 34: Foreign Trade Development Fund of Old Industrial Bases of Northeast China
- Program 35: New Product Award
- Program 36: Capital Increase Award
- Program 37: Emission Reduction and Energy-saving Award
- Program 38: Grant for Market Promotion and Trade Development
- Program 39: Refund of Land Transfer Fee
- Program 40: Subsidy from Water Saving Office
- Program 41: Special Supporting Fund for Commercialization of Technological Innovation and Research Findings
- Program 42: Environment Protection Award (Jiangsu)
- Program 43: Enterprise Technology Centers
- Program 44: Allowance to Pay Loan Interest
- Program 45: Supporting Fund for Non-refundable Export tax loss
- Program 46: International Market fund for Export Companies
- Program 47: International Market Fund for Small and Medium sized export companies
- Program 48: Business Development Overseas Support Fund
- Program 49: Refund from Government for Participating in Trade Fair
- Program 50: Reimbursement of Foreign Affairs Services Expenses
- Program 51: Special Fund for Fostering Stable Growth of Foreign Trade
- Program 52: Subsidy for Technology Development
- Program 53: Grants, Loans, and Other Incentives for Development of Famous Brands, China Top World Brands or other well-known Brands
- Program 54: “Five Points, One Line” Program of Liaoning Province

- Program 55: State Special Fund for Promoting key Industries and Innovation Technologies  
Program 56: Provincial Fund for Fiscal and Technological Innovation  
Program 57: Supporting Fund for the Development from Guangzhou Local Governments

### **III. Preferential Loans and Loan Guarantees**

- Program 58: Loan Guarantee Fund for Science & Technology Enterprises by Liaoning Governments  
Program 59: Chinese Government Concessional Loan and Preferential Export Buyer's Credit  
Program 60: Subsidized Loans for Stockpiled production

### **IV. Preferential Tax Programs**

- Program 61: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period Not Less Than 10 Years  
Program 62: Tax Preference Available to Companies that Operate at a Small Profit  
Program 63: Preferential Tax Policies for Foreign Invested Export Enterprises  
Program 64: 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 65: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose  
Program 66: Refund of Housing Tax  
Program 67: Refund of Stamp Tax  
Program 68: Income Tax Refunds for Senior Managers  
Program 69: Exemption from administrative charges and licence fees  
Program 70: Preferential Tax refunds for Merging with Underperforming Local Enterprises or Investing in Renovation of Enterprises  
Program 71: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors  
Program 72: Corporate Income Tax Reduction for New High-Technology Enterprises  
Program 73: Exemption from income tax on foreign investor's profits  
Program 74: Local Income Tax Exemption and/or Reduction  
Program 75: Export VAT Refunds  
Program 76: Preferential Tax Program for FIEs Recognized as HNTes (High and New Technology Enterprises)  
Program 77: Tax Offset for R&D Expenses in Guangdong Province  
Program 78: Preferential Tax Treatment for the Technology Development Expenses by Liaoning Governments



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

Program 79: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs and Equipment

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

Program 80: Utilities Provided by Government at Less than Fair Market Value

Program 81: Inputs Provided by Government at Less than Fair Market Value

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

Program 82: Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices

## **VIII. Additional Programs and Incentives in China's Latest Notification<sup>31</sup>**

Program 83: Fiscal Fund to Alleviate Poverty

Program 84: Incentives for Environmental Preservation and Recycling

Program 85: Preferential Tax Policies for Township Enterprises

Program 86: Specific Employed Persons Programs

Program 87: Preferential Tax Policies for Research and Development of New Products, New Technologies and New Crafts

Program 88: Preferential Tax Policies for Enterprises Transferring Technology

Program 89: Specific Funds for SMEs

### **Analysis of Subsidy and Specificity**

Available information indicates that the programs identified under: *SEZ Incentives; Preferential Loans and Loan Guarantees; Preferential Tax Programs; Relief from Duties and Taxes on Materials and Machinery; Reduction in Land Use Fees;* and certain *Additional Programs in China's Latest Notification* may constitute financial contributions pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

*Grants* and certain *Additional Programs in China's Latest Notification* may constitute financial contributions pursuant to paragraph 2(1.6)(a) of SIMA in that they involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities; and pursuant to paragraph 2(1.6)(b) of SIMA as amounts owing and due to the government that are forgiven or not collected.

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<sup>31</sup> "New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures," WTO Doc. G/SCM/N/186/CHN (October 21, 2011).

*Goods/Services Provided by the Government at Less than Fair Market Value* may constitute financial contributions pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure.

Benefits provided to certain types of enterprises or limited to enterprises located in certain areas under program categories: *SEZ Incentives; Preferential Loans and Loan Guarantees; Preferential Tax Programs; Relief from Duties and Taxes on Materials and Machinery; Reduction in Land Use Fees; and Additional Programs in China's Latest Notification* may be considered specific pursuant to paragraph 2(7.2)(a) of SIMA in that the manner in which it is limited to particular enterprises within the jurisdiction of the granting authority or it is prohibited.

As well, *Grants and Goods/Services Provided by Government at Less than Fair Market Value* may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.