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OTTAWA, August 6, 2013

STATEMENT OF REASONS

Concerning the preliminary determinations with respect to the dumping and subsidizing of

**CERTAIN SILICON METAL ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

Pursuant to subsection 38(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made preliminary determinations of dumping and subsidizing on July 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.
This Statement of Reasons is also available.

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SUMMARY OF EVENTS

[1] On March 1, 2013, the Canada Border Services Agency (CBSA) received a written complaint from Québec Silicon Limited Partnership and its affiliate QSIP Canada ULC of Bécancour, Quebec (hereafter ‘the Complainant’) alleging that imports of certain silicon metal originating in or exported from the People’s Republic of China (China) are being dumped and subsidized and causing injury to the Canadian industry producing these goods.

[2] On March 22, 2013, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. The CBSA also notified the government of China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy portion of the complaint. Although the GOC 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.

[3] The Complainant provided evidence to support the allegations that certain silicon metal from China has been dumped and subsidized. The evidence also disclosed a reasonable indication that the dumping and subsidizing had caused injury and were threatening to cause injury to the Canadian industry producing these goods.

[4] 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.¹

[5] While the CBSA recognized the views expressed by the GOC, the analysis of the complaint indicated that it was properly documented and the information contained therein was sufficient to meet the requirements of SIMA for initiation. Therefore, 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.

[6] The Canadian International Trade Tribunal (Tribunal) then commenced a preliminary injury inquiry on April 23, 2013, pursuant to subsection 34(2) of SIMA. On June 21, 2013, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain silicon metal from China have caused injury or are threatening to cause injury.

[7] Further to the CBSA’s preliminary investigations and pursuant to subsection 38(1) of SIMA, on July 22, 2013, the President made preliminary determinations of dumping and subsidizing with respect to certain silicon metal originating in or exported from China.

¹ CBSA Exhibits: 8nc, s8nc – Comments on Silicon Metal Complaint – Government of China

[8] On July 22, 2013, pursuant to subsection 8(1) of SIMA, provisional duty was imposed on imports of dumped and subsidized goods that are of the same description as any goods to which the preliminary determination applies, and that are released during the period commencing on the day the preliminary determination was made and ending on the earlier of the day on which the President of the CBSA causes the investigation to be terminated pursuant to subsection 41(1) of SIMA or the day the Tribunal makes an order or finding pursuant to subsection 43(1) of SIMA

PERIOD OF INVESTIGATION

[9] The period of investigation with respect to dumping (Dumping POI), covered all subject goods sold to or imported into Canada from January 1, 2012 to December 31, 2012. The period of investigation with respect to subsidizing (Subsidy POI), covered all subject goods sold to or imported into Canada from January 1, 2012 to December 31, 2012.

INTERESTED PARTIES

Complainant

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

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

[11] The Complainant is the only producer of silicon metal in Canada².

Importers

[12] At the initiation of the investigations, the CBSA identified 23 potential importers of the subject goods from information provided by the Complainant and from CBSA import data over the period of January 1, 2012 to December 31, 2012. Requests for Information (RFIs) were sent to each of these potential importers.

[13] The CBSA received nine responses of varying degrees of completeness, to the Importer RFI, all of which were received by the due date.³

Exporters

[14] At the initiation of the investigations, the CBSA identified 219 potential exporters and producers of the subject goods from information provided in the complaint and CBSA import entry documentation. RFIs respecting Dumping, Section 20 of SIMA, and Subsidy were sent to each of these potential exporters and/or producers in China.

² CBSA Exhibits: 2nc, s2nc – Complaint, paragraph 9, page 8.

³ CBSA Exhibits: 31pro, 32nc, 33nc, 34pro, 34pro, 35pro, 36pro, 37pro, 38nc, 39pro, 40nc, 41pro, 42nc, 43pro, 44nc, 48pro, 46nc, 53nc.

[15] The CBSA received seven responses to the exporter Dumping RFI⁴; two responses to the exporter Section 20 RFI;⁵ and six responses to the exporter Subsidy RFI.⁶ Of these 15 responses, only one dumping submission was received by the due date. All responses received were missing data required to estimate the margin of dumping and amount of subsidy based on exporter information.

Surrogate Producers

[16] As part of the section 20 inquiry, RFIs were sent to 16 known producers of silicon metal in Brazil, South Africa and Thailand. These producers were requested to provide domestic selling price and costing information for silicon metal produced at their facilities.

[17] The above-mentioned countries were selected as their growing economies and silicon metal industries are comparable to the situation in China.

[18] Of the 16 surrogate producers contacted, only one provided a response to the RFI, which was received subsequent to the due date.⁷

Government of China

[19] For the purpose of these investigations, Government of China (GOC) refers to all levels of government, whether 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.

[20] At the initiation of the investigations, the CBSA forwarded Subsidy and Section 20 RFIs to the GOC. The GOC did not provide responses to either the Subsidy or the Section 20 RFI.

PRODUCT INFORMATION

Definition

[21] 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.

⁴ CBSA Exhibits: 54pro, 55nc, 58pro, 59nc, 60pro, 61nc, 62pro, 63nc, 65pro, 64nc, 66pro, 67nc, 75pro, 76nc.

⁵ CBSA Exhibits: 68pro, 69nc, 77pro, 78nc.

⁶ CBSA Exhibits: s58pro, s59nc, s60pro, s61nc, s62pro, s63nc, s64pro, s65nc, s66pro, s67nc, s70pro, s71nc.

⁷ CBSA Exhibits: 71pro, 72nc.

Additional Product Information

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

[23] 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.

[24] 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

[25] Silicon metal is produced by combining high purity quartzite (consisting principally of natural crystallized silica (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.

[26] 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.

[27] 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.

[28] 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.

[29] 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.

[30] 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).⁸

Classification of Imports

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

2804.69.00.00

[32] 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

[33] 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.

[34] 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.

[35] 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.

THE CANADIAN INDUSTRY

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

IMPORTS INTO CANADA

[37] During the preliminary phase of the investigations, the CBSA refined the estimated volume of imports based on information from CBSA import entry documentation and information received from exporters and importers.

⁸ CBSA Exhibits: 2nc, s2nc – Complaint, paragraphs 26-31, pages 12-13.

[38] The following table presents the CBSA's analysis of imports of certain silicon metal for purposes of the preliminary determinations:

Imports of Certain Silicon Metal (January 1, 2012 – December 31, 2012)

Imports into Canada	% of Total Import Volume
China	72%
All Other Countries	28%
Total Imports	100%

COMMENTS RECEIVED PRIOR TO INITIATION

[39] The GOC provided written comments with respect to the complaint on April 17, 2013, before the initiation on April 22, 2013. In those comments, the GOC argued that the investigations concerning certain silicon metal should not be initiated.⁹

[40] The CBSA was not able to consider these representations for the initiation of these investigations as they were received just prior to the initiation. However, the CBSA will comment below on the views expressed by the GOC in its representations.

a) Frivolous Complaint

[41] The GOC submitted that the complaint on the alleged subsidization of silicon metal submitted by Quebec Silicon Limited Partnership and QSIP Canada ULC was a frivolous complaint, unsubstantiated by evidence.

CBSA Response

[42] Based on its analysis of the complaint, the CBSA determined that the complaint was properly documented and the information contained therein was sufficient to meet the requirements of SIMA for the initiation of the investigation.

[43] Based on information provided in the complaint, other available information, and the CBSA's import documentation, the CBSA was of the opinion that there was evidence that certain silicon metal originating in or exported from China has been dumped and subsidized, and there was a reasonable indication that such dumping and subsidizing had caused and was 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.

⁹ CBSA exhibits: 8nc, Comments on Silicon Metal Complaint - Government of China, April 17, 2013.

b) Public Complaint Inadequate

[44] The GOC further argued that the public complaint was not in conformity with Article 12.4.1 of the ASCM or with section 85 of SIMA because the non-confidential summaries of the confidential information were inadequate and did not provide information on the substance of the confidential information submitted.

CBSA Response

[45] On March 22, 2013, the CBSA notified the 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. Although the GOC was invited for consultations in accordance with Article 13.1 of the ASCM prior to the initiation of the investigations, the GOC did not request any such consultations.

[46] When the GOC notified the CBSA that certain non-confidential information referred to in the non-confidential version of the complaint was missing, the CBSA reviewed the non-confidential version of the complaint and forwarded further information to the GOC. The new information provided by the CBSA included several attachments that had been unintentionally omitted from the original document package.

c) Standard of Review by the Investigating Authorities and Failure to Provide Evidence to Justify the Initiation of an Investigation

[47] The GOC submitted that the World Trade Organisation (WTO) panel decision on China's investigation on Grain Oriented Flat-Rolled Electrical Steel from the United States (WT/DS414/R dated June 15, 2012 - Public)¹⁰ has set the standard of review required of investigating authorities in accordance with the provisions of the *Agreement on Subsidies and Countervailing Measure* (ASCM) in the determination of subsidies. The GOC argued that the CBSA's practices of determining what constitutes a subsidy, specificity, and the "countervailability" of subsidies did not comply with its WTO obligations. Further, the GOC claimed that the CBSA did not comply with the standard of review of evidence required in a complaint to justify the initiation of a countervailing investigation, as set out in WTO jurisprudence.

[48] The GOC also submitted that the complainant did not establish the existence of the alleged subsidies and did not provide sufficient evidence to justify the initiation of a subsidy investigation in conformity with Article 11.2 of the ASCM or under subsection 31(1) of SIMA. The GOC further argued that Article 11.2 of the ASCM requires that "an application shall include sufficient evidence of the existence of a subsidy", which includes sufficient evidence of the existence of a financial contribution, a benefit and specificity.

¹⁰WT/DS414/R dated June 15, 2012. WTO panel decision on China's investigation on *Grain Oriented Flat-Rolled Electrical Steel from the United States*.

CBSA Response

[49] The CBSA met the threshold for initiating a subsidy investigation, as required by subsection 31(1) of SIMA. The subsidy investigation was initiated following receipt of a properly documented complaint. This complaint contained the elements required by the definition of the term “properly documented complaint” in subsection 2(1) and the provisions of subsection 31(1) of SIMA.

[50] The information presented by the Complainant, together with supplementary data available to the CBSA and Canada’s import documentation, substantiated the Complainant’s allegations that certain silicon metal from China had been dumped and subsidized. The information provided also disclosed a reasonable indication that the alleged dumping and subsidizing of silicon metal from China had caused injury and was threatening to cause injury to the Canadian industry producing the like goods.

[51] In the case of certain silicon metal from China, the CBSA determined that the Complainant provided the information about Chinese subsidies that was reasonably available to them, given that the amount of evidence that was reasonably available to the Complainant was limited by the transparency and accessibility practices of the government under investigation. The CBSA also undertook its own research, reviewed the accuracy and adequacy of this evidence and determined that there was evidence that certain silicon metal from China has been subsidized. Therefore, the CBSA decided to initiate a subsidy investigation with respect to these goods.

INVESTIGATION PROCESS

[52] Information pursuant to the dumping investigation was requested from known and potential exporters, vendors and importers, concerning shipments of subject silicon metal sold to or imported into Canada during the Dumping POI of January 1, 2012, to December 31, 2012.

[53] Information related to the subsidy investigation was requested from known and potential exporters in China and from the GOC concerning financial contributions made to exporters or producers of subject silicon metal sold to or imported into Canada during the Subsidy POI of January 1, 2012, to December 31, 2012.

[54] After reviewing the exporters’ and importers’ responses to the RFIs, the CBSA sent supplemental RFIs to certain responding companies in order to clarify the information that had been submitted.

[55] Preliminary decisions are based on the information available to the President at the time of the preliminary determinations. Any information provided in supplemental RFI responses will be taken into consideration during the final phase of the investigations. During the final phase of the investigations, additional information will be obtained and cooperating parties will continue to be verified on-site, the results of which will be incorporated into the CBSA’s final determinations, which must be made by October 15, 2013.

DUMPING INVESTIGATION

[56] The CBSA received responses to the exporter Dumping RFI from the following companies:

- Rio Tinto Procurement (Singapore) Pte Ltd.
- Sui Ning Bao Qing Silicon Co., Ltd.
- Changsha Benevo International Co., Ltd.
- Xiamen ITG Group Corp., Ltd.
- Xiamen K Metal Co., Ltd./ Hua'an Linan Silicon Industry Co., Ltd.
- Mangshi Sinice Silicon Industry Company Limited

Normal Values

[57] Normal values are generally based on the domestic selling prices of like goods in the country of export, pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits, pursuant to paragraph 19(b) of SIMA.

Export Prices

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

Margin of Dumping

[59] All subject goods imported into Canada during the Dumping POI are included in the estimation of the margin of dumping of the goods. The estimated margin of dumping is equal to the amount by which the total estimated normal value exceeds the total estimated export price of the goods, expressed as a percentage of the total estimated export price. Where the total estimated normal value of the goods does not exceed the total estimated export price of the goods, the margin of dumping is zero.

[60] The estimated margin of dumping for China is presented in a summary table in Appendix 1 and in a summary table at the end of this section.

Section 20 Inquiry

[61] Section 20 of SIMA may be applied to determine the normal value of goods in a dumping investigation in cases where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA,¹¹ it is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Where section 20 is applicable, the normal values of goods are not determined using domestic prices or costs in that country.

[62] 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 in the absence of 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.

[63] 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.

[64] In the current case, 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. The Complainant provided information to support these allegations concerning the ferroalloy sector in China, which includes silicon metal.

[65] As stated during the initiation of the investigation, the CBSA believes that silicon metal is best classified as part of the ferroalloy sector. For example, publications such as CRU¹² and Metal Bulletin¹³ include silicon metal in their pricing and reporting with respect to the ferroalloy sector. Further, a number of policy-type documents¹⁴ 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.

[66] At the initiation of the investigation, the CBSA had sufficient evidence, both supplied by the Complainant and obtained from its own research, to support the initiation of a section 20 inquiry to examine the extent of GOC involvement in pricing in the ferroalloy sector, which includes silicon metal. The information indicated that Chinese prices in this sector have been influenced by various GOC industrial policies. Consequently, the CBSA sent Section 20 RFIs to the GOC and all known ferroalloy producers and exporters in China to obtain information on the matter.

¹¹ China is a prescribed country under section 17.1 of the Special Import Measures Regulations.

¹² CBSA Exhibits: 1pro, s1pro)

¹³ CBSA Exhibits: 9nc, s9nc)

¹⁴ CBSA Exhibits: 9nc, s9nc)

Preliminary Results of the Section 20 Inquiry

[67] As was previously noted, at the initiation of the investigations, the CBSA forwarded Section 20 RFIs to the GOC, as well as to 219 potential exporters and producers of the goods under investigation.

[68] To date, no response to the Section 20 RFI has been received from the GOC.

[69] The CBSA has, however, received responses from two producers of silicon metal in China: Mangshi Sinice Silicon Industry Company Limited¹⁵ (MSSI) and Zhejiang Hoshine Silicon Industry Co., Ltd.¹⁶ (Zhejiang Hoshine). Although these responses did include a number of pertinent documents, none of the Chinese policy documents provided were translated into English.

[70] As a result, the CBSA reverted primarily to information obtained from its own research¹⁷ or provided in the Complaint¹⁸ to perform its preliminary analysis respecting the presence of section 20 conditions in the ferroalloy sector in China, which includes silicon metal.

GOC Policies and Regulations Directed at Production Levels and Participants

[71] It is noted that in past investigations, the CBSA has determined that section 20 conditions exist based in part on the existence of GOC industrial policies that influence domestic industry, including pricing.

[72] To gain an understanding of China's policies and practices in this regard, the CBSA has reviewed China's 12th Five-Year plans,¹⁹ wherein references are made to the elimination of backward technologies and equipment, as well as to the overall improvement in the utilization of energy resources for enterprises.²⁰ The plan also mentions that overall volume expansion in smelting industries should be strictly controlled,²¹ and the relocation of urban non-ferrous metal enterprises should be carried out in an orderly fashion.²² With respect to non-ferrous metals specifically, the plan also refers to supporting cutting-edge smelting technologies, energy conservation, and recycling energy and waste products.²³

¹⁵ CBSA Exhibit 68pro - Response to Section 20 RFI - Mangshi Sinice Silicon Industry Company Limited.

¹⁶ CBSA Exhibit 77pro - Response to Section 20 RFI - Zhejiang Hoshine Silicon Industry Co., Ltd.

¹⁷ CBSA Exhibit 9nc - CBSA S.20 Research Documents for Initiation.

¹⁸ *Supra* note 2 at Confidential Attachment 42.

¹⁹ *Ibid* at Non-confidential Attachment 26.

²⁰ *Ibid* at Non-confidential Attachment 26, page 7, Section 3.

²¹ *Ibid* at Non-confidential Attachment 26, page 6, Section 1.

²² *Ibid* at Non-confidential Attachment 26, page 7, Section 2.

²³ *Ibid* at Non-confidential Attachment 26, page 8, number 05-Non-ferrous Metals.

[73] Through its preliminary research, the CBSA identified additional industrial and geographically specific 12th Five-Year plans (2011-2015) that the CBSA has, for purposes of the preliminary determination, identified as having a significant impact on the silicon metal market in China. These plans include:

- 12th Five-Year Development Plan for the Non-Ferrous Metals Industry, which includes the sub-plan, The 12th Five-Year Development Plan for the Aluminum Industry²⁴;
- 12th Five-Year Development Plan for the New Materials Industry²⁵;
- 12th Five-Year Development Plan for the Oil & Chemicals Sector²⁶;
- 12th Five-Year Plan for the Raw Materials Industry²⁷;
- 12th Five-Year Plan for Further Promoting the Economy of the Western Regions²⁸;
- The 12th Five-Year Plans for the following provinces and provincial-level cities: Chongqing, Guizhou, Yunnan, Shaanxi, Gansu, Qinghai, and Heilongjiang.²⁹

[74] According to the United States Geological Survey 2011 Minerals Yearbook, an annual publication that contains statistical data and describes technical trends in world commodities, one of the aims of China's 12th Five-Year Plans is to eliminate backward production capacity, which includes silicon metal capacity. To achieve this, the GOC committed to phasing out silicon metal production in electric arc furnaces with a 6,300 kilovoltampere (KVA) capacity by the end of 2012.³⁰

[75] This information is supported in the response provided by MSSSI, which states that the Yunnan government announced the GOC's guidelines for the silicon metal industry as "Build big and shut down small". In those guidelines, MSSSI noted that by the end of 2015, all furnaces under 25 MVA (Megavolt amperes) should be shut-down or modified. MSSSI also noted that the GOC has announced the fifth list of access conditions for silicon factories which not only outline size requirements of furnaces, but also requirements related to quality, safety, and environmental management.³¹

[76] The CBSA obtained information listing specific ferroalloy enterprises, including silicon metal producers, required to eliminate production capacity, as published by the Ministry of Industry and Information Technology of the GOC (MIIT) for both 2010³² and 2011³³. Each MIIT list identifies the number of enterprises targeted, the province they are located in, the enterprise name, the specific piece of production equipment to be eliminated, and the capacity affected.

²⁴ *Supra* note 13 at TAB 3, partially translated by Google Translate.

²⁵ *Ibid* at TAB 4, partially translated by Google Translate.

²⁶ *Ibid* at TAB 7, page 1.

²⁷ *Ibid* at TAB 17.

²⁸ *Ibid* at TAB 30.

²⁹ *Ibid* at TAB 29.

³⁰ *Ibid* at TAB 25.

³¹ Exhibit 69 (NC) - Response to Section 20 RFI - Mangshi Sinice Silicon Industry Company Limited, page 24.

³² *Supra* note 13 at TAB 24.

³³ *Ibid* at TAB 23.

[77] In addition, the CBSA's research has revealed a notice from the MIIT requesting all provinces to submit a plan for eliminating capacity in 2013.³⁴ This notice also requested provinces to submit the appropriate forms to report on the results of capacity reduction in 2012 and appears to reference inspections of capacity elimination carried out by authorities.³⁵ As well, information obtained by the CBSA indicates that the GOC likely controls production levels by limiting capacity expansions through policies related to land.³⁶

[78] Additionally, the CBSA noted that the GOC significantly influences the domestic pricing of silicon metal through export control measures. Some examples of export control measures include: a 15% export tax on exports of silicon metal;³⁷ the collection of VAT on exports of silicon metal;³⁸ the GOC setting minimum export prices for silicon metal;³⁹ the GOC imposing quotas on exports of silicon metal;⁴⁰ and possible export licensing restrictions for silicon metal exporters.⁴¹

Chinese Domestic Silicon Metal Price Analysis

[79] In its preliminary analysis, the CBSA reviewed the Chinese monthly domestic pricing for silicon metal that was provided in the complaint, as published by CRU.⁴² The CBSA then compared these prices with the monthly prices for silicon metal in the US market as published in Metal Bulletin, Platts Metals Week, Ryan's Notes, and CRU,⁴³ as well as with the average of these four published prices.

[80] Metal Bulletin, Platts Metals Week, Ryan's Notes, and CRU are reputable independent firms which publish statistical data, market trends, activity forecasts and market research on world commodities. In addition, information from these sources is provided in sufficient detail to allow a proper product comparison with the silicon metal imported into Canada. For these reasons, the CBSA is satisfied that pricing data from these publications is an appropriate basis to be used in its analysis for the President's preliminary determination.

³⁴ *Ibid* at TAB 26.

³⁵ *Ibid* at TAB 28.

³⁶ *Ibid* at TAB 9.

³⁷ *Supra* note 2 at page 39, para 117.

³⁸ *Ibid* at page 40, para 118.

³⁹ *Ibid*.

⁴⁰ *Supra* note 13 at TAB 7, page 1.

⁴¹ *Ibid* at TAB 15.

⁴² *Supra* note 2 at Confidential Attachment 31.

⁴³ *Ibid* at Confidential Attachments 31 & 50; CBSA Exhibit 9nc; CBSA Exhibit 30pro

[81] The CBSA's review indicates that throughout 2012, the domestic price for silicon metal in China was significantly below the price in the US domestic market, with Chinese domestic prices being an average 37 percent below US average prices for 2012.⁴⁴ Additionally, the Chinese domestic prices were 24% below prices in other major world markets during 2012.⁴⁵ Moreover, Chinese domestic prices were substantially lower than export prices, while both were below the cost of production in 2012.⁴⁶

[82] Overall the pricing data provided by the complainant and obtained by the CBSA indicate that domestic prices for silicon metal in China do not appear to be consistent with prices in other competitive markets. Further, given that Chinese silicon metal is sold domestically at prices significantly below the cost of production, which does not include GS&A or an amount for profit, the CBSA, for purposes of the preliminary determination, finds that domestic pricing does not reflect pricing subject to competitive market conditions.

Summary of the Preliminary Results of the Section 20 Inquiry

[83] The information received during the preliminary phase of the investigation affirms the CBSA's opinion on the conditions of section 20 formulated at the initiation of the investigation. The complainant's evidence, together with the CBSA research on the record respecting the GOC's export control measures, policies affecting capacity and production, and the silicon pricing analysis conducted at initiation, all support this recommendation. Moreover, no new substantial information was provided either by the GOC or exporters to dispute information contained on the record.

[84] Based on the preceding, the President is of the opinion that:

- the conditions of section 20 exist in this sector;
- domestic prices are substantially determined by the GOC; and
- there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[85] During the final stage of the dumping investigation, the CBSA will continue the section 20 inquiry to further verify and analyze relevant information. The President may reaffirm his opinion that the conditions of section 20 exist in the ferroalloy sector in China, which includes silicon metal, as part of the final phase of the investigation, or conclude that the determination of normal values may be made using domestic selling prices and/or costs in China.

Preliminary Estimates of Normal Value – Section 20

[86] For purposes of this preliminary determination, normal values could not be estimated on the basis of domestic selling prices in China or on the full cost of goods plus profit, because the President formed the opinion that the conditions of paragraph 20(1)(a) of SIMA exist in the ferroalloy sector, which includes silicon metal, in China.

⁴⁴ *Supra* note 2 at Confidential Attachment 31.

⁴⁵ *Ibid* at page 48, para 144.

⁴⁶ *Ibid* at page 48, paras 142 and 143.

[87] Where section 20 conditions exist, the CBSA may determine normal values 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, due to confidentiality concerns with respect to the submitted information, the surrogate country data provided by the single responding producer could not be used for estimating normal values for purposes of the preliminary determination.

[88] Where normal values cannot be determined under paragraph 20(1)(c), SIMA provides an alternative methodology to calculate normal values under paragraph 20(1)(d), using re-sales in Canada of like goods imported from a third country. The CBSA determined that this provision could also not be used given that the importers did not provide any information respecting goods imported into Canada and resold in the condition in which they were imported.

[89] Accordingly, the CBSA estimated normal values for purposes of the preliminary determination using the same section 20 based methodology as used at initiation.

[90] At that time, the CBSA used the production costs of the Thai producer, G.S. Energy Co. Ltd., as well as the average GS&A and profit amounts of this producer and that of three other companies: Globe Metallurgical Inc. (United States); VBC Ferro Alloys Ltd. (India); and Facor Alloys Ltd (India).

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

Preliminary Estimates of Export Price

[92] For purposes of the preliminary determination, export prices for parties operating at arm's length were estimated using the reported data provided in the Exporter and Importer RFI responses, and from the CBSA's review of import documentation. In some cases, the export price was the actual export price reported by the exporter who provided the actual amount of export tax paid among other deductions. For those cases where no deductions other than freight and insurance were available, or no additional information was available from the documents other than a final selling price, the prices were reduced by 15% to account for the export tax imposed on silicon metal exports by the GOC during the POI.

[93] In cases where the price reported on the documentation was a transfer price between associated parties, the export price has been estimated based on the transactions that occurred between parties operating at arm's length.

Preliminary Results of the Dumping Investigation

[94] As will be explained below, the CBSA did not receive sufficient and timely information from any party during the preliminary phase of the investigation that would enable an estimate of margin of dumping to be made based on the company's own information.

[95] Therefore, for purposes of the preliminary determination, the CBSA estimated the margin of dumping for all exporters by deducting the estimated total export price found during the preliminary phase of the investigation from the estimated total section 20 based normal value.

[96] Using the above methodology, the CBSA has estimated a margin of dumping of 35%, expressed as a percentage of the export price, for purposes of the preliminary determination. This estimated margin of dumping applies to all subject goods imported during the POI, resulting in 100% of the goods from China being dumped.

Preliminary Dumping Results by Exporter

Rio Tinto Procurement (Singapore) Pte Ltd

[97] Rio Tinto Procurement (Singapore) Pte Ltd (RTPS) submitted a response to the exporter Dumping RFI to the CBSA on May 29, 2013, as a vendor of subject goods, RTPS did not provide responses to the CBSA's Section 20 and Subsidy RFIs.

[98] RTPS was established in 2009 in order to provide centralized procurement services to companies within the Rio Tinto Group. In fulfilling its role within the group, RTPS purchases subject goods from unrelated Chinese suppliers and re-sells those goods to an associated importer in Canada, Rio Tinto Alcan Inc (RTA).

[99] RTA submitted a response to the Importer RFI on May 13, 2013.⁴⁷ In its response, RTA stated that it is a purchaser and end-user of subject silicon metal, which is used solely as an input in producing aluminum alloy in Canada. RTA further indicated that the subject goods are purchased from RTPS, which it identified as being an associated procurement intermediary vendor rather than an exporter. RTA added that it is not related to any of the exporters/suppliers of the goods, and did not, therefore, provide a complete response to Section B of the Importer RFI, as is requested of importers who purchase subject goods from exporters with which they are associated. Section B of the Importer RFI requests information pertaining to domestic sales of subject goods by an importer in Canada to purchasers with which the importer is not associated.

[100] Further to a comprehensive review of the responses from both RTPS and RTA, and in consideration of relevant jurisprudence and policy guidelines on this issue, the CBSA has concluded that, for the purposes of the preliminary determinations, RTPS is considered to be the exporter of the subject goods. RTPS was the owner of the goods at the time they were sent to Canada; RTPS was always the principal in the export transactions that were triggered by the purchase orders it received from RTA; and it was the only party dealing directly with the Canadian importer.

⁴⁷ CBSA Exhibits: 33nc, 34pro.

[101] Given that RTA did not submit a timely response to Section B of the Importer RFI, information respecting the company's sales of aluminum alloy in Canada could not be analysed at this stage. For the preliminary determination, the CBSA was therefore unable to establish whether the transfer price between RTPS and RTA was a reliable export price, or whether export price should be determined on the basis of RTA's sale price of aluminum alloy in Canada, as provided in section 25 of SIMA.

[102] Therefore, for purposes of the preliminary determination, the CBSA was not able to estimate export price using the information provided by RTA or RTPS and, as such, the margin of dumping could not be estimated based on the information provided by RTA or RTPS. As a result, the CBSA estimated a margin of dumping by deducting the estimated total export price found during the preliminary phase of the investigation, from the estimated total section 20 based normal value. Using this methodology, the CBSA has, for purposes of the preliminary determination, estimated a margin of dumping of 35% for RTPS, expressed as a percentage of the export price.

[103] The CBSA is currently proceeding with its review of the supplemental information provided by RTPS and RTA. An analysis and possible on-site verification of the information submitted will be conducted during the final phase of the investigation.

Sui Ning Bao Qing Silicon Co., Ltd.

[104] Sui Ning Bao Qing Silicon Co., Ltd. (Sui Ning) is a privately-owned silicon metal producer located in Hunan, China, established in 2004. Sui Ning provided a response to the Dumping RFI in the week following the CBSA's due date for submission, wherein the company indicated that it had no exports of any product during the POI. All sales were to domestic vendors and end-users.⁴⁸

[105] The CBSA considers, for purposes of the preliminary determination, that Sui Ning is not the exporter of any subject goods that were shipped to Canada during the POI, and has, therefore, not estimated normal values for this company.

[106] The CBSA is currently proceeding with its review of supplemental information obtained in this investigation, and, further to the results of the section 20 inquiry, may take the cost data supplied by Sui Ning into account in the final phase of the investigation.

Changsha Benevo International Co., Ltd.

[107] Changsha Benevo International Co., Ltd. (Changsha Benevo) is a privately-owned corporation in Changsha, Hunan Province that is engaged in the purchase and sale of silicon metal. It was incorporated in 2010.

⁴⁸ CBSA Exhibits: 60pro, 61nc.

[108] Changsha Benevo also submitted a response to the Dumping RFI in the week following the CBSA's due date.⁴⁹ For purposes of the preliminary determination, the CBSA does not consider Changsha Benevo to be the exporter of any subject goods that were shipped to Canada during the POI. As a result the CBSA has not estimated normal values for this company.

[109] The CBSA is currently proceeding with its review of supplemental information provided by Changsha Benevo, and, further to the results of the section 20 inquiry, will determine whether this data will be taken into account in the final phase of the investigation.

Xiamen ITG Group Corp., Ltd.

[110] Xiamen ITG Group Corp., Ltd. (Xiamen ITG) is a limited liability trading company operating in Xiamen, China, which submitted a response to the Dumping RFI in the week following the CBSA's due date.⁵⁰ The CBSA considers Xiamen ITG to be the exporter for SIMA purposes for some subject goods shipped to Canada during the POI. In its capacity as an exporter of subject goods, Xiamen ITG sourced all its exports from producers who did not provide responses to the Dumping RFI. As a result, the CBSA was unable to estimate normal values on the basis of the information provided by this company.

[111] The CBSA, therefore, estimated a margin of dumping by deducting the estimated total export price found during the preliminary phase of the investigation, from the estimated total section 20 based normal value. Using this methodology, the CBSA has, for purposes of the preliminary determination, estimated a margin of dumping of 35% for Xiamen ITG, expressed as a percentage of the export price.

[112] The CBSA is currently proceeding with its review of supplemental information provided by Xiamen ITG, and, further to the results of the section 20 inquiry, will determine whether this data will be taken into account in the final phase of the investigation.

Xiamen K Metal Co., Ltd./ Hua'an Linan Silicon Industry Co., Ltd

[113] Xiamen K Metal Co., Ltd (K Metal), a trading company located in Xiamen, China, and its related producer, Hua'an Linan Silicon Industry Co., Ltd (Hua'an Linan) submitted a joint dumping response in the week following the deadline for submission.⁵¹ Another related company, Liping Linan Silicon Industry Co., Ltd., also produced subject goods that were shipped to Canada during the POI, but no information was submitted regarding the latter company.

[114] The CBSA does not consider K Metal/Hua'an Linan to be the exporter for SIMA purposes in respect of the subject goods shipped to Canada during the POI. As a result the CBSA has not estimated normal values for this company.

⁴⁹ CBSA Exhibits: 62pro, 63nc.

⁵⁰ CBSA Exhibits: 58pro, 59nc.

⁵¹ CBSA Exhibits: 64nc, 65pro.

[115] The CBSA is currently proceeding with its review of supplemental information provided by K Metal/Hua'an Linan and, further to the results of the section 20 inquiry, will determine whether this data will be taken into account in the final phase of the investigation.

Mangshi Sinice Silicon Industry Company Limited

[116] Mangshi Sinice Silicon Industry Company Limited (MSSI) is a silicon metal producer and exporter located in Yunnan Province, wholly owned by the multinational Grupo FerroAtlántica based in Spain. MSSI provided a response to the Dumping RFI in the week following the deadline for submission.⁵² In its submission, MSSI reported that it sold directly to unrelated importers in Canada during the POI.

[117] Many responses provided in the submission required significant clarification. Therefore, a supplemental Dumping RFI has been sent to MSSI asking for the necessary information and clarification, but the response could not be analyzed in time for the preliminary determination.

[118] As a result, the CBSA was unable to estimate normal values on the basis of the information provided by MSSI. The estimated margin of dumping was, therefore, calculated by deducting the estimated total export price found during the preliminary phase of the investigation, from the estimated total section 20 based normal value. Using this methodology, the CBSA has, for purposes of the preliminary determination, estimated a margin of dumping of 35% for MSSI, expressed as a percentage of the export price.

[119] The CBSA is currently proceeding with its review and possible on-site verification of supplemental data received, and, further to the results of the section 20 inquiry, may be taking this information into consideration in the final phase of the investigation.

SUMMARY OF RESULTS - DUMPING

[120] As noted above, the CBSA did not receive on-time and sufficient information from any exporter that could be used to estimate a margin of dumping based on the company's own information for purposes of the preliminary determination.

[121] Therefore, the CBSA estimated the margin of dumping at the preliminary determination by comparing the estimated total normal value with the estimated total export price, based on available information. As the total export price was less than the total normal value, this difference was the margin of dumping.

[122] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. If it was determined that a given exporter had dumped the subject goods on an overall or net basis, the total quantity of that exporter's exports (i.e., 100%) was considered to have been dumped. Similarly, if a given exporter's net aggregate dumping result was zero, then the total quantity of that exporter's exports was considered not to have been dumped.

⁵² CBSA Exhibits: 66pro, 67nc.

[123] Based on the preceding, 100% of silicon metal from China was dumped by an estimated weighted average margin of dumping of 35%, expressed as a percentage of the export price.

Country	Estimated Volume of Dumped Goods as Percentage of Country Imports	Estimated Margin of Dumping	Volume of Country Imports as Percentage of Total Imports	Estimated Volume of Dumped Goods as Percentage of Total Imports
China	100%	35%	72%	72%

[124] Pursuant to subsection 35(1) of SIMA, the President is required to terminate an investigation prior to the preliminary determination if he is satisfied that the margin of dumping of the goods of a country is insignificant or that the volume of dumped goods of a country is negligible. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% is defined as insignificant, whereas a volume of dumped goods from a country forming less than 3% of total imports is considered negligible.

[125] The estimated weighted-average margin of dumping of certain silicon metal from China is above 2% and is, therefore, not insignificant. As well, the volume of dumped goods from China is above 3%, and is, therefore, not negligible.

PRELIMINARY DETERMINATION OF DUMPING

[126] Based on the preliminary results of the investigation, on July 22, 2013 the President of the CBSA made a preliminary determination of dumping respecting certain silicon metal originating in or exported from China pursuant to subsection 38(1) of SIMA. The President also considered that the imposition of provisional duty is necessary to prevent injury from the dumped goods.

SUBSIDY INVESTIGATION

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

[128] 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.

[129] 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.

[130] 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 including a group of enterprises, an industry and a group of industries.

[131] Notwithstanding that a subsidy is not specific in law, under subsection 2(7.3) of SIMA a subsidy may also be considered specific having regard as to whether:

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

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

[133] Financial contributions provided by State-Owned Enterprises (SOEs) may also be considered to be provided by the GOC for purposes of this investigation. 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.

[134] At initiation, the CBSA identified 89 potential subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) Incentives;
2. Grants;
3. Preferential Loan Programs and Loan Guarantees;
4. Preferential Tax Programs;
5. Relief from Duties 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.⁵³

[135] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. This document is available through the CBSA website at the following address: www.cbsa-asfc.gc.ca/sima-lmsi.

Preliminary Phase of the Subsidy Investigation

[136] In conducting its investigation, the CBSA sent a Subsidy RFI to the GOC, as well as to the potential exporters of subject goods located in China. Information was requested in order to establish whether there had been financial contributions made by any level of government, including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain silicon metal; and whether any resulting subsidy was specific in nature.

[137] The GOC was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters. Similarly, the exporters were requested to forward a portion of the RFI to their input suppliers (primarily electricity, coal and quartz), where the latter were asked to respond to a series of supplemental questions regarding their potential roles as SOEs.

⁵³ “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.

[138] No response to the Subsidy RFI has been received from the GOC to this date, nor has the GOC provided any other information since the initiation of the investigation.

[139] The GOC provided written comments with respect to the complaint on April 17, 2013, before the initiation on April 22, 2013. In those comments, the GOC expressed its views on the Complainant's identified subsidy programs. However, the arguments put forward by the GOC against the CBSA's investigation of the named subsidy programs were not supported by proper documentation. Therefore, the CBSA is not in a position to use the comments submitted by the GOC prior to initiation

Preliminary Subsidy Results by Exporter

[140] The CBSA received responses to the exporter Dumping RFI from the following companies:

- Sui Ning Bao Qing Silicon Co., Ltd.
- Changsha Benevo International Co., Ltd.
- Xiamen ITG Group Corp., Ltd.
- Xiamen K Metal Co., Ltd./ Hua'an Linan Silicon Industry Co., Ltd.
- Mangshi Sinice Silicon Industry Company Limited

[141] A summary of the preliminary results is included below, whereas an outline of the findings for the named subsidy programs can be found in **Appendix 2**.

Sui Ning Bao Qing Silicon Co., Ltd

[142] A response to the Subsidy RFI was received from Sui Ning Bao Qing Silicon Co., Ltd (Sui Ning), a producer of subject goods, in the week following the due date.⁵⁴ In its response, Sui Ning indicated that it had not received benefits from the subsidy programs identified in **Appendix 2** during the POI, but had not provided full responses to all questions.

[143] As stated previously, the CBSA considers, for purposes of the preliminary determination, that Sui Ning is not the exporter of any subject goods that were shipped to Canada during the POI, and has, therefore, not estimated an amount of subsidy for this company.

[144] At the same time, the CBSA is currently proceeding with its review of supplemental subsidy information obtained in this investigation, and will determine whether the data supplied by Sui Ning will be used in determining amounts of subsidy in the final phase of the investigation.

⁵⁴ CBSA Exhibits: s60pro, s61nc.

Changsha Benevo International Co., Ltd.

[145] As stated earlier, Changsha Benevo International Co., Ltd. (Changsha Benevo) is a trading company that sold subject goods, which were subsequently exported to Canada by another firm.

[146] A response to the Subsidy RFI was received from Changsha Benevo in the week following the deadline date.⁵⁵ In its response, Changsha Benevo indicated that it had not received benefits from the subsidy programs identified in **Appendix 2** during the POI, but had not provided full responses to all questions.

[147] The CBSA considers that, for purposes of the preliminary determination, Changsha Benevo is not the exporter of any subject goods that were shipped to Canada during the POI, and has, therefore, not estimated an amount of subsidy for this company.

[148] As in the case of Sui Ning, the CBSA is currently reviewing all supplemental subsidy information obtained in this investigation, and will determine whether the data supplied by Changsha Benevo will be used in determining amounts of subsidy in the final phase of the investigation.

Xiamen ITG Group Corp., Ltd.

[149] Xiamen ITG Group Corp., Ltd. (Xiamen ITG) which operates as a trading company and is considered to be the exporter for some of its sales to Canada, submitted a response to the Subsidy RFI in the week following the due date.⁵⁶

[150] The company reported that it had received benefits during the POI under two programs. However, insufficient information was submitted to determine the manner in which the benefits deriving from these programs should be allocated, and subsidy responses were not provided by Xiamen ITG's producers. As a result, for the purposes of the preliminary determination, the CBSA was unable to estimate an amount of subsidy on the basis of the information provided by Xiamen ITG.

[151] The CBSA is currently proceeding with its review of supplemental subsidy information provided by Xiamen ITG, and will take this data into account in the final phase of the investigation.

Xiamen K Metal Co., Ltd./ Hua'an Linan Silicon Industry Co., Ltd

[152] Xiamen K Metal Co., Ltd./Hua'an Linan Silicon Industry Co., Ltd (K Metal/Hua'an Linan) submitted a joint response to the Subsidy RFI in the week following the deadline for submission.⁵⁷ In its subsidy response, K Metal/Hua'an Linan did not report receiving any subsidies; however, full responses were not provided to all questions in the RFI.

⁵⁵ CBSA Exhibits: s62pro, s63nc.

⁵⁶ CBSA Exhibits: s58pro, s59nc

⁵⁷ CBSA Exhibits: s64pro, s65nc.

[153] The CBSA does not consider K Metal/Hua'an Linan to be the exporter for purposes of the preliminary determination in respect of the subject goods shipped to Canada during the POI. As a result the CBSA has not estimated an amount of subsidy for this company.

[154] The CBSA is currently reviewing all supplemental subsidy information obtained in this investigation, and will determine whether the data supplied by K Metal/Hua'an Linan will be used in determining amounts of subsidy in the final phase of the investigation.

Mangshi Sinice Silicon Industry Company Limited

[155] As stated previously, Mangshi Sinice Silicon Industry Company Limited (MSSI) provided a response to the Subsidy RFI in the week following the deadline for submission.⁵⁸ In its response, MSSI indicated that it did not receive benefits from the subsidy programs listed in **Appendix 2**; however, the financial statements of 2012 were not provided and many responses in the submission were not made clear.

[156] A supplemental Subsidy RFI has been sent to MSSI asking for the necessary information and clarification, but the response could not be analyzed in time for the preliminary determination. Therefore, for the purposes of the preliminary determination, the CBSA did not estimate an amount of subsidy on the basis of the information provided by MSSI.

[157] The CBSA is currently proceeding with its review and possible on-site verification of supplemental data received, and will be taking this information into consideration in the final phase of the investigation.

Preliminary Results of Subsidy Investigation

[158] Since all responses to the Subsidy RFI were received beyond the due date for submission, were found to be missing varying amounts of required information, and in some instances were provided by companies which are not considered to be the exporter for SIMA purposes, no subsidy amounts were estimated for exporters based on their own information.

[159] As a result, for purposes of the preliminary determination, the CBSA estimated the amount of subsidy conferred on exporters of the subject goods in a similar manner as that employed at the initiation of the investigation. Amounts of subsidy for all exporters were calculated by comparing the average of the estimated full costs in Thailand, India and for the complainant's parent company, with the weighted average export price.

⁵⁸CBSA Exhibits: s66pro, s67nc

[160] This is considered an appropriate methodology, since such costs of production reflect what the costs in China would be if not distorted by subsidies provided by the GOC, while the export price of the Chinese goods to Canada is the best information available that reflects the subsidized costs of the Chinese exporter. As such, the difference between the export price of the goods and the average of the full costs as estimated for Thailand, India and Globe Consolidated reflects the amount of subsidy imbedded in the cost of the subject goods. The CBSA estimated the export price on the basis of its updated complete analysis of import entry documentation from unrelated suppliers.

[161] Following the above methodology, it was found that 100% of the subject goods imported from China were subsidized by a weighted average subsidy amount of 25%, expressed as a percentage of export price.

[162] Under subsection 35(1) 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 that country. Under subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the value of the goods is considered insignificant and a volume of subsidized goods of less than 3% of total imports is considered negligible, the same threshold for the volume of dumped goods.

[163] 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 or the volume of subsidized imports represents less than 4% of the total imports of the like product in the importing Member's market.

[164] 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.⁵⁹ As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. Therefore, the investigation will be terminated if the amount of subsidy does not exceed 2% of its value calculated on a per unit basis or if the volume of subsidized goods represents less than 4% of total imports of like goods.

⁵⁹ The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at October 2011, the document is available at: http://www.oecd.org/document/45/0,3746,en_2649_34447_2093101_1_1_1_1,00.html.

SUMMARY OF RESULTS – SUBSIDY

[165] The following table illustrates that the estimated amount of subsidy respecting China is not insignificant, nor is the volume of subsidized goods negligible.

Period of Investigation - January 1, 2012 to December 31, 2012

Country	Estimated Volume of Subsidized Goods as Percentage of Country Imports	Estimated Amount of Subsidy*	Volume of Country Imports as Percentage of Total Imports	Estimated Volume of Subsidized Goods as Percentage of Total Imports
China	100%	25%	72%	72%

*As percentage of the export price

PRELIMINARY DETERMINATION OF SUBSIDIZING

[166] Based on the information available to the President, on July 22, 2013, the President made a preliminary determination of subsidizing respecting certain silicon metal originating in or exported from the People's Republic of China, pursuant to subsection 38(1) of SIMA. The President also considered that the imposition of provisional duty is necessary to prevent injury from the subsidized goods.

REPRESENTATIONS

Request for Deadline Extension

[167] On May 29, 2013, counsel for Xiamen K Metal Co., Ltd.; Xiamen ITG Group Corp., Ltd.; Sui Ning Bao Qing Silicon Co., Ltd; and Changsha Benevo International Co., Ltd., requested an extension of the deadline to respond to the CBSA's Dumping and Subsidy RFIs until May 31, 2013. The reason for this request was counsel's need to coordinate multiple responses for several producers and trading companies, which required translations from Chinese to English. Counsel noted that the documentary requests made by the CBSA, while standard, were nonetheless significant.⁶⁰

CBSA Response:

[168] The CBSA responded on May 29, 2013, that it could not agree to counsel's request for an extension, noting that counsel's duties did not affect the clients' abilities to complete their own responses, and that a legal firm's coordination of responses did not constitute unforeseen circumstances or unusual burdens justifying an extension to the deadline.⁶¹

⁶⁰ CBSA Exhibit 56nc.

⁶¹ CBSA Exhibit 57nc.

Identification of the Exporter for SIMA Purposes

[169] In a letter dated May 23, 2013, Counsel for Rio Tinto Alcan (RTA) maintained that the CBSA did not have sufficient information to determine its related company Rio Tinto Procurement (Singapore) Pte Ltd (RTPS) to be the exporter and that the CBSA should therefore not be requesting RTA to provide a complete response to Section B of the Importer RFI. Counsel further argued that a review of both SIMA and the SIMA Handbook in the context submitted in RTA's RFI response strongly supports the view that RTPS is not an exporter for the purposes of SIMA, but is rather an intermediary vendor.⁶²

CBSA Response

[170] The CBSA notes that SIMA itself does not define or provide specific guidance in establishing "who is the exporter" for the purposes of determining normal value and export price. It appears that the majority of the arguments presented by Counsel respecting the identification of the exporter for SIMA purposes were based on an outdated version of the SIMA Handbook of CBSA's policy guidelines, which have since been significantly revised. These revisions were made primarily as a result of the CITT's decision in Appeal No. AP-2008-101, put forward by EMCO Electric International-Electrical Resource International vs. the President of the Canada Border Services Agency.

[171] Further to a comprehensive review of the responses from both RTPS and RTA, and in consideration of the latest jurisprudence and policy guidelines on this issue, the CBSA has concluded that, for the purposes of the preliminary determinations, RTPS is considered to be the exporter of the subject goods. As a result, the CBSA requested that RTA provide a full response to Part B of the Importer RFI.

PROVISIONAL DUTY

[172] Pursuant to subsection 8(1) of SIMA, provisional duties, payable by the importer in Canada, will be applied to dumped and subsidized silicon metal from China that is released during the provisional period commencing on the day the preliminary determinations are made, and ending on the earlier of the day on which the President causes the investigations to be terminated pursuant to subsection 41(1) or the day on which the Tribunal makes an order or finding. The imposition of provisional duties is needed to prevent the injury because, as per the Tribunal's preliminary determination, there is evidence that discloses a reasonable indication that the dumping and subsidizing of subject goods has caused injury to the silicon metal industry in Canada.

[173] Provisional countervailing duty is based on the estimated amount of subsidy and is expressed as a percentage of export price of the goods. Provisional anti-dumping duty is based on the estimated margin of dumping, also expressed as a percentage of the export price of the goods. **Appendix 1** contains the estimated margins of dumping, estimated amounts of subsidy, and the rates of provisional duties, payable on subject goods released from the CBSA on and after July 22, 2013.

⁶² CBSA Exhibits: 50pro, 70nc.

[174] Importers are required to pay provisional duties in cash or by certified cheque. Alternatively, they may post security equal to the amount payable. Importers should contact their CBSA regional customs office if they require further information on the payment of provisional duty or the posting of security. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the import documents, an administrative monetary penalty could be imposed. The imported goods are also subject to the *Customs Act*. As a result, failure to pay duties within the specified time will result in the application of the provisions of the *Customs Act* regarding interest.

FUTURE ACTION

The Canada Border Services Agency

[175] The CBSA will continue its investigations of the dumping and subsidizing and the President will make final decisions by October 21, 2013.

[176] If the President is satisfied that the goods were dumped and/or subsidized, and that the margin of dumping or amount of subsidy is not insignificant, final determinations will be made. Otherwise, the President will terminate the investigations and any provisional duties paid, or security posted, will be returned to importers.

The Canadian International Trade Tribunal

[177] The Tribunal has begun its inquiry into the question of injury to the Canadian industry. The Tribunal is expected to issue its finding by November 19, 2013.

[178] If the Tribunal finds that the dumping has not caused injury, or is not threatening to cause injury, the proceedings will be terminated and all provisional anti-dumping duties collected, or security posted, will be returned.

[179] If the Tribunal makes a finding that the dumping has caused injury, or is threatening to cause injury, anti-dumping duties in an amount equal to the margin of dumping will be levied, collected and paid on imports of subject silicon metal.

[180] If the Tribunal finds that the subsidizing has not caused injury, or is not threatening to cause injury, the proceedings will be terminated and all provisional duty collected, or security posted, will be returned.

[181] If the Tribunal makes a finding that the subsidizing has caused injury, or is threatening to cause injury, countervailing duties in the amount equal to the amount of subsidy on the imported goods will be levied, collected and paid on imports of certain silicon metal.

[182] For purposes of the preliminary determinations of dumping or subsidizing, the CBSA has responsibility for determining whether the actual and potential volume of dumped or subsidized goods is negligible. After preliminary determinations of dumping or 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 dumped or subsidized goods from a country is negligible.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

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

[184] 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. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

UNDERTAKINGS

[185] After a preliminary determination of dumping, exporters may give a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. Similarly, after a preliminary determination of subsidizing, the government of a country may give a written undertaking to eliminate the subsidy on the goods or to eliminate the injurious effect of the subsidy by limiting the amount of the subsidy or the quantity of goods exported to Canada. Exporters, with the consent of their government, may also undertake to revise their selling prices so that the injurious effect of the subsidy is eliminated.

[186] Acceptable undertakings must account for all, or substantially all, of the exports to Canada of the dumped and subsidized goods. In the event that an undertaking is accepted, the required payment of provisional duty on the goods would be suspended.

[187] In view of the time needed for consideration of undertakings, written undertaking proposals should be made as early as possible, and no later than 60 days after the preliminary determinations of dumping and subsidizing. Further details regarding undertakings can be found in the CBSA's Memorandum D14-1-9, available online at: www.cbsa-asfc.gc.ca/E/pub/cm/d14-1-9/d14-1-9-e.html.

[188] SIMA allows all interested parties to make representations concerning any undertaking proposals. The CBSA will maintain a list of interested parties and will notify them should an undertaking proposal be received. Persons wishing to be notified must provide their name, address, telephone, fax, or email address, to one of the officers listed below. Interested parties may also consult the CBSA website noted below for information on undertakings offered in this investigation. A notice will be posted on the CBSA website when an undertaking proposal is received. Interested parties have nine days from the date the undertaking offer is received to make representations.

PUBLICATION

[189] A notice of these preliminary determinations of dumping and subsidizing will be published in the *Canada Gazette* pursuant to paragraph 38(3)(a) of SIMA.

INFORMATION

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

Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa, Ontario, Canada
K1A 0L8

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

Fax: 613-948-4844

Email: SIMARegistry@cbsa-asfc.gc.ca

Website: www.cbsa-asfc.gc.ca/sima-lmsi



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

Attachments

APPENDIX 1 – SUMMARY OF ESTIMATED MARGIN OF DUMPING, ESTIMATED AMOUNT OF SUBSIDY, AND PROVISIONAL DUTIES PAYABLE

Exporter	Estimated Margin of Dumping*	Estimated Amount of Subsidy*	Total Provisional Duties Payable*
All Exporters of Subject Goods Originating in or Exported from China	35%	25%	60%

*As a percentage of export price.

APPENDIX 2 - POTENTIALLY ACTIONABLE SUBSIDY PROGRAMS

The following programs are included in the current investigation. Questions concerning these programs were included in the RFIs sent to the GOC and to all known exporters of the subject goods in China. Without a complete response to the Subsidy RFI from the GOC, the CBSA does not have detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not constitute actionable subsidy programs. In other words, the CBSA has to date, not determined if any of these programs should be removed from the investigation. The CBSA will continue to investigate these programs in the final phase of the 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 Loan Programs

- 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

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

Preliminary 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* constitute potentially actionable subsidies as 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* constitute potentially actionable subsidies as 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.

Goods/Services Provided by the Government at Less than Fair Market Value constitute potentially actionable subsidies as 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* are potentially specific pursuant to paragraph 2(7.2)(a) of SIMA due to the manner in which they are limited to particular enterprises within the jurisdiction of the granting authority or are potentially prohibited subsidies.

As well, *Grants and Goods/Services Provided by Government at Less than Fair Market Value* are potentially 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.