



OTTAWA, October 30, 2020

STATEMENT OF REASONS

**Concerning the final decisions with respect to
the dumping and subsidizing investigations of**

**CERTAIN CORROSION-RESISTANT STEEL SHEET ORIGINATING IN OR
EXPORTED FROM TURKEY, THE UNITED ARAB EMIRATES, AND VIETNAM**

DECISIONS

On October 16, 2020, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, the Canada Border Services Agency terminated the dumping investigation in respect of certain corrosion-resistant steel sheet originating in or exported from Turkey by Borçelik Sanayi Ticaret A.Ş, and originating in or exported from the United Arab Emirates by Al Ghurair Iron & Steel; and pursuant to paragraph 41(1)(a) of the *Special Import Measures Act* the Canada Border Services Agency terminated the subsidy investigation in respect of certain corrosion-resistant steel sheet originating in or exported from Turkey by Atakaş Çelik Sanayi ve Ticaret A.Ş, Borçelik Sanayi Ticaret A.Ş and Tatmetal Çelik Sanayi Ve Ticaret A.Ş., and originating in or exported from the United Arab Emirates and Vietnam by all exporters. On the same date, pursuant to paragraph 41(1)(b) of the *Special Import Measures Act*, the Canada Border Services Agency made a final determination respecting the dumping of certain corrosion-resistant steel sheet originating in or exported from Turkey, the United Arab Emirates, and Vietnam and the and subsidizing of certain corrosion-resistant steel sheet originating in or exported from Turkey.

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

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SUMMARY OF EVENTS

[1] On September 20, 2019, the Canada Border Services Agency (CBSA) received a written complaint from ArcelorMittal Dofasco G.P. of Hamilton, Ontario (hereafter, “the complainant” or “AMD”), alleging that imports of certain corrosion-resistant steel sheet (COR) originating in or exported from Turkey, the United Arab Emirates (UAE), and Vietnam (hereafter “the named countries”) are being injuriously dumped and subsidized. The complainant alleged that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[2] On October 11, 2019, 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 embassies of Turkey, the UAE, and Vietnam that a properly documented complaint had been received. The governments of Turkey, the UAE, and Vietnam were also provided with the non-confidential version of the subsidy complaint and were invited for consultations pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*, prior to the initiation of the subsidy investigation.

[3] On November 1, 2019, consultations were held between the Government of Canada and the Government of Turkey (GOT) via telephone conference. During the consultations, the GOT made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. A written copy of the GOT’s remarks regarding the complaint was also submitted on the same day. The CBSA considered the representations made by the GOT in its analysis.

[4] On November 5, 2019, consultations were held between the Government of Canada and the Government of Vietnam (GOV). During the consultations, the GOV made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. A written copy of the GOV’s remarks regarding the complaint was also submitted on the same day. The CBSA considered the representations made by the GOV in its analysis. No other government consultations took place prior to the initiation of the subsidy investigation.

[5] The complainant provided evidence to support the allegations that COR from the named countries have been dumped and subsidized. The evidence also 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] On November 8, 2019, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of COR from the named countries.

[7] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (CITT) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the like goods.

[8] On January 7, 2020, pursuant to subsection 37.1(1) of SIMA, the CITT made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of COR from the named countries have caused or are threatening to cause injury to the domestic industry.

[9] On January 30, 2020 the CBSA notified interested parties that the preliminary stage of the investigation will be extended pursuant to subsection 39(1) of SIMA.

[10] On March 20, 2020, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing of COR from Turkey, the UAE, and Vietnam.

[11] On March 20, 2020, 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 determinations apply, and that are released during the period commencing on the day the preliminary determinations were made and ending on the earlier of the day on which the CBSA causes the investigation in respect of any goods to be terminated pursuant to subsection 41(1) of SIMA or the day the CITT makes an order or finding pursuant to subsection 43(1) of SIMA.

[12] On June 18, 2020, the CBSA revised the schedule in relation to the investigations in order to alleviate pressures faced by interested parties brought on by the COVID-19 pandemic which moved the final determination date to October 16, 2020. This is in keeping with the Order Respecting Time Limits Under the *Special Import Measures Act* (COVID-19) (the Order) made on September 30, 2020, pursuant to subsections 7(1) and (5) of the Time Limits and Other Periods Act (COVID-19). The Order is deemed to have come into force on March 13, 2020, and formally extends a number of legislative time limits established by SIMA, including decisions under subsection 41(1), in light of the impact of the COVID-19 pandemic on interested parties.

[13] On July 13, 2020 the CITT revised their schedule in relation to their inquiry; due to the CBSA's revised schedule. As such, the date for the finding issued from the CITT was moved to November 16, 2020.

[14] On September 3, 2020 the CBSA revised the schedule in relation to the investigations, which moved the dates in which case arguments and reply submissions were due to September 9, 2020 and September 16, 2020 respectively.

[15] On September 15, 2020 the CBSA revised the schedule in relation to the investigations, which moved the reply submission due date from September 16, 2020 to September 18, 2020 due to requests from counsel on behalf of exporters from Turkey and Vietnam as well as counsel representing the complainant and the Canadian producer.¹

¹ EXH 685 (NC) - Extension request from Grey, Clark, Shih & Associates on behalf of all participating clients, EXH 686 (NC) - Extension request from Dentons Canada LLP on behalf of Atakas Celik San. Ve Tic. A.S., EXH 687 (NC) – Extension request from Conlin Bedard LLP on behalf of of Stelco Inc. and ArcelorMittal Dofasco G.P

[16] Based on the available evidence, the CBSA is satisfied that COR originating in or exported from Turkey, the UAE, and Vietnam, for which the dumping investigation has not been terminated under paragraph 41(1)(a) of SIMA, have been dumped and COR originating in or exported from Turkey has been subsidized. Therefore, on October 16, 2020, the CBSA made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(b) of SIMA in respect of those goods. Further, based on the available evidence, the CBSA is satisfied that COR originating in or exported from Turkey by Borçelik Sanayi Ticaret A.Ş., and originating in or exported from the UAE by Al Ghurair Iron & Steel has not been dumped and COR originating in or exported from Turkey by Atakaş Çelik Sanayi ve Ticaret A.Ş., Borçelik Sanayi Ticaret A.Ş. and Tatmetal Çelik Sanayi Ve Ticaret A.Ş., and originating in or exported from the UAE and Vietnam by all exporters were either not subsidized or subsidized by insignificant amounts. Therefore, on October 16, 2020 the CBSA terminated the dumping and subsidy investigations pursuant to paragraph 41(1)(a), in respect of those goods.

[17] The CITT's inquiry into the question of injury to the domestic industry is continuing, and it will issue its decision by November 16, 2020. Provisional duties will continue to be imposed on the subject goods until the CITT renders its decision. However, provisional anti-dumping and countervailing duties will not be imposed on imports of goods for which the dumping and/or subsidy investigation have been terminated. Any provisional duty paid or security posted will be returned.

PERIOD OF INVESTIGATION

[18] The Period of Investigation (POI) for these investigations is July 1, 2018, to June 30, 2019.

PROFITABILITY ANALYSIS PERIOD

[19] The Profitability Analysis Period (PAP) for these investigations is July 1, 2018, to June 30, 2019.

INTERESTED PARTIES

Complainant

[20] The complainant is AMD, which was founded as the Dominion Steel Casting Company in 1912 in Hamilton, Ontario. In 2006 Dofasco was acquired by Arcelor S.A. Later that year, Arcelor S.A merged with Mittal Steel.

[21] AMD is a manufacturer of COR which it produces at its facility in Hamilton, Ontario. The company is the largest of the three known producers of COR in Canada and accounts for a major proportion of the total domestic production of like goods.

[22] The contact information of the complainant is as follows:

ArcelorMittal Dofasco G.P.
1330 Burlington St E,
Hamilton, Ontario L8N 3J5

[23] The other manufacturers of like goods in Canada are:

Stelco Inc. (Stelco)
386 Wilcox Street
Hamilton, Ontario L8L 8K5

Continuous Colour Coated Limited (CCCL)²
1430 Martin Grove Road
Rexdale, Ontario M9W 4Y1

Trade Union

[24] The complaint identified the following trade union as representing persons employed in the production of COR in Canada³:

United Steel Workers
234 Eglinton Avenue East, 8th floor
Toronto, Ontario M4P 1K7

[25] The trade union did not make any submissions during the investigation.

Importers

[26] At the initiation of the investigations, the CBSA identified 64 potential importers of the subject goods based on both information provided by the complainant and CBSA import documentation. The CBSA sent an Importer Request for Information (RFI) to all potential importers of the goods. The CBSA received 12 responses to the Importer RFI.

Exporters

[27] At the initiation of the investigation, the CBSA identified 55 potential exporters/producers of the subject goods based on CBSA import documentation and information submitted in the complaint. All of the potential exporters were sent the CBSA's Dumping and Subsidy RFI. The CBSA conducted, as part of its dumping investigation, a section 20 inquiry to determine whether the conditions set forth in paragraph 20(1)(a) of SIMA exist in the flat-rolled steel industry sector in Vietnam. As such, exporters and producers located in Vietnam were also sent a separate Section 20 RFI.

² Formerly known as Material Sciences Corp

³ EXH 30 (NC) – COR2 Complaint; paragraph 47

[28] Twenty-one companies provided a response to the Dumping RFI. Respondents included producers and exporters. In addition, five companies in Vietnam provided responses to the Section 20 RFI, and 20 companies responded to the Subsidy RFI.

[29] Of the aforementioned companies that responded to the Dumping and Subsidy RFI, three exporters/producers from Turkey provided incomplete information. Deficiencies were communicated to these companies, however, complete information was not subsequently provided to the CBSA. As such, their responses were not used for purposes of the final determination.

[30] Information on the results of the investigation pertaining to the companies who provided a response to the Dumping RFI and Subsidy RFI, and were considered to be exporters of the subject goods for SIMA purposes, are summarized under the “Dumping Investigation” and “Subsidy Investigation” portion of this document.

[31] CBSA officers performed desk-audit verifications in Ottawa of all substantially complete exporter responses.

Government

[32] For the purposes of these investigations, “Government of Turkey (GOT)”, “Government of United Arab Emirates (GOU)”, and “Government of Vietnam (GOV)” refer 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.

[33] At the initiation of the investigation, the CBSA sent a Government Subsidy RFI to the GOT, the GOU and the GOV. In addition, the GOT was sent a Particular Market Situation (PMS) RFI and the GOV was sent the CBSA’s Government Section 20 RFI.

[34] All of the governments of the named countries provided a response to the Government Subsidy RFI. In addition, the GOT responded to the PMS RFI⁴ and the GOV responded to the Government Section 20 RFI⁵.

⁴ EXH 165 (PRO) & 166 (NC) – Response to RFI – PMS – GOT

⁵ EXH 147 (PRO) & 148 (NC) – Response to RFI – Section 20

PRODUCT INFORMATION

Definition

[35] For the purpose of this investigation, subject goods are defined as:⁶

Corrosion-resistant flat-rolled steel sheet products of carbon steel including products alloyed with the following elements:

- *Boron (B) not more than 0.01%,*
- *Niobium (Nb) not more than 0.100%,*
- *Titanium (Ti) not more than 0.08%, or*
- *Vanadium (V) not more than 0.300%*

in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 inch (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, with or without passivation and/or anti-fingerprint treatments, originating in or exported from the Republic of Turkey, the United Arab Emirates, and Socialist Republic of Vietnam, and excluding:

- *corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;*
- *steel products for use in the manufacture of aeronautic products;*
- *steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”);*
- *stainless flat-rolled steel products;*
- *corrosion-resistant steel sheet products that have been pre-painted, including with lacquers or varnishes, or permanently coated in plastic;*
- *galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated;*
- *perforated steel,*
- *and tool steel.*

Additional Product Information⁷

[36] The product definition includes corrosion-resistant steel sheet where the substrate is coated with a corrosion-resistant material such as zinc, aluminum, and other alloys. The coating may be applied by a variety of processes including hot-dip galvanizing or electro-galvanizing.

⁶ EXH 30 (NC) – COR2 Complaint; paragraph 10

⁷ EXH 30 (NC) – COR2 Complaint; pages 16-19

[37] The product definition includes galvanized steel. Galvanized steel is produced by passing the steel through an annealing furnace after it completes the hot-dip galvanizing process and while the zinc is still liquid. This causes the iron and zinc layers to diffuse into each other, creating a zinc-alloy layer at the surface.

[38] Passivation refers to a material becoming “passive”, that is, less affected or corroded by the environment of future use. Passivation involves creation of an outer layer of shield material that is applied as a micro-coating, created by chemical reaction with the base material, or allowed to build from spontaneous oxidation in the air. As a technique, passivation is the use of a light coat of a protective material, to create a shell against corrosion.

[39] Corrosion-resistant steel with anti-fingerprint coatings (whether as part of a passivation treatment or separate) are also included within the product definition.

[40] Corrosion-resistant steel sheet is usually produced from cold-rolled carbon steel sheet (CRS) and sometimes from hot-rolled carbon steel sheet (HRS). However, additions of certain elements such as titanium, vanadium, niobium or boron, during the steel-making process enable the steel to be classified as alloy steel. Therefore, corrosion-resistant steel produced from either carbon steel or alloy steel is included in the definition of the subject goods.

[41] The subject goods (and like goods produced by the domestic industry) are manufactured to meet certain American Society for Testing and Materials (ASTM), Society of Automotive Engineering (SAE) or equivalent specifications, including, but not limited to:

ASTM A653/653M
ASTM A792/A792M
SAE J403
SAE J1392
SAE J2329
SAE J1562

[42] The product definition includes “seconds”. Seconds are goods that do not meet some aspect of the original specification. This could include dimensions, grade, or coating. It could also include a coil that has been damaged. Seconds are sold at a discount. Seconds may meet ASTM, SAE or other specifications or may be re-certified to meet a standard. For example, a coil that is damaged along the edge may be a “second”. However, if the damaged edge is slit and the damage is removed the coil could be classified as a primary coil produced to the new width. Seconds are graded and sold on a scale of five.⁸

⁸ EXH 30 (NC) – COR2 Complaint; paragraph 19

[43] For greater clarity, the product definition does not cover⁹:

Corrosion-resistant steel for use in automobiles and automobile parts, hereafter referred to as “Automotive”. Automotive end users include Original Equipment Manufacturers (“OEMs”) and auto part producers. Such excluded goods may fall under Customs Tariff item 9959.00.00.

Pre-painted steel and steel permanently coated in plastic. Pre-painted steel is steel on which paint has been applied by coil coating at the manufacturing facility. The paint may be applied to one or both sides. The paint may be applied as a liquid, paste, powder, varnish or lacquer. Paints may include, but are not limited to, primers, finishing coats, polyesters polymers, plastisol paints, polyurethanes, polyvinylidene fluorides, and epoxy. Steel permanently coated in plastic is steel to which plastics, including films or laminates, are permanently attached.

Production Process¹⁰

[44] The subject goods are usually produced from CRS and sometimes from HRS sheet. The steel sheet to be coated is commonly referred to as steel substrate. Hot-dip galvanizing and electro-galvanizing are the two processes that can be used to coat the substrate steel sheet with zinc, aluminum, or other alloys. AMD uses hot-dip galvanizing.

[45] In the hot-dip galvanizing process, the first step is to clean the surfaces to improve the adhesion of the coating. After cleaning, the substrate enters a continuous annealing furnace. The furnace heats the substrate to the temperature necessary to develop the desired metallurgical properties of the final product. The substrate is then placed in a molten coating bath and, as it emerges from the bath, an air, nitrogen or steam wipe is used to control the thickness of the coating. The galvanized steel sheet is then cooled in a cooling tower.

[46] In the electro-galvanizing process charged steel passes through a plating bath and opposite electrical charges cause the zinc solution to coat the steel. Cold-rolled steel coils are batch annealed in multi-stack furnaces or in off-line continuous annealing process, often skin passing on a temper mill, before being electro-galvanized with a thin coating of zinc on a continuous processing line.

Product Use¹¹

[47] Common applications for COR falling within the product definition include, but are not limited to, production of farm buildings, grain bins, culverts, garden sheds, roofing material, siding, floor decks, roof decks, wall studs, drywall corner beads, doors, door frames, ducting (and other heating and cooling applications), flashing, hardware products and appliance components.

⁹ EXH 30 (NC) – COR2 Complaint; paragraphs 17-18

¹⁰ EXH 30 (NC) – COR2 Complaint; paragraphs 21-24

¹¹ EXH 30 (NC) – COR2 Complaint; paragraph 26

Classification of Imports

[48] The dumped and subsidized goods are normally classified under the following tariff classification numbers¹²:

7210.30.00.00	7210.69.00.10	7225.91.00.00
7210.49.00.10	7210.69.00.20	7225.92.00.00
7210.49.00.20	7212.20.00.00	7226.99.00.10
7210.49.00.30	7212.30.00.00	
7210.61.00.00	7212.50.00.00	

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

LIKE GOODS AND CLASS OF GOODS

[50] 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 any identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[51] In considering the issue of like goods, the CITT typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

[52] After considering questions of use, physical characteristics and all other relevant factors, the CBSA initiated its investigation under the premise that domestically produced COR are like goods to the subject goods. Further, the CBSA was of the opinion that the subject goods and like goods constitute only one class of goods.

[53] In its preliminary injury inquiry for this investigation, the CITT further reviewed the matter of like goods and classes of goods. On January 22, 2020, the CITT issued its preliminary injury inquiry determination and reasons indicating that “*the Tribunal is not persuaded that there are adequate grounds to distinguish the Tribunal’s previous decision in COR1 concerning the definition and characterization of like goods. Nor is there good reason to depart from the principle articulated in previous decisions that like goods must be co-extensive with the scope of the subject goods as defined by the CBSA in the product definition. Accordingly, the Tribunal will conduct its analysis on the basis that domestically produced COR in Canada that are of the same description as the subject goods are “like goods” in relation to the subject goods, and that there is a single class of goods.*”¹³

¹² Tariff Classification number: 7212.50.00.14 was also used for statistical purposes for the year 2016.

¹³ Canadian International Trade Tribunal; Corrosion-Resistant Steel Sheet Dumping and Subsidizing Determination and Reasons (January 22, 2020), PI-2019-002; paragraphs 19-20

THE CANADIAN INDUSTRY

[54] In addition to the complainant, AMD, there are two other producers of COR in Canada, CCCL and Stelco.

[55] AMD and the supporting producer, Stelco, account for nearly all of the domestic production of like goods.

[56] The CBSA received written representations from both ADM and Stelco concerning the investigation as well as comments that were provided on the preliminary determination.¹⁴

IMPORTS INTO CANADA

[57] During the final phase of the investigation, the CBSA refined the volume and value of imports based on information from CBSA import entry documentation and other information received from exporters and importers.

[58] The following table presents the CBSA's analysis of imports of COR for the purposes of the final determination:

Imports of COR into Canada
(Dumping POI: July 1, 2018 to June 30, 2019)

Source	% of Total Import Volume
Turkey	23.5%
United Arab Emirates	4.2%
Vietnam	17.9%
All Other Countries	54.4%
Total Imports	100.0%

INVESTIGATION PROCESS

[59] Regarding the dumping investigation, information was requested from all known and potential exporters, producers, vendors and importers, concerning shipments of COR released into Canada during the POI.

[60] Regarding the section 20 inquiry, information was requested from all known and potential exporters and producers of COR in Vietnam and from the GOV. The CBSA also sent surrogate RFIs to all known producers of COR in South Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) to gather information to determine normal values under paragraph 20(1)(c) of SIMA. Furthermore, importers were requested to provide information respecting re-ales in Canada of like goods imported from a third country in order to gather information to determine normal values under paragraph 20(1)(d) of SIMA.

¹⁴ EXH 418 (PRO) & 419 (NC) - Preliminary Determination Comments on Behalf of Stelco Inc and EXH 420 (PRO) & 421 (NC) - Preliminary Determination Letter on behalf of ArcelorMittal Dofasco G.P.

[61] Regarding the PMS allegation, information was requested from the GOT. As well, the RFI sent to all potential exporters/producers of subject goods in Turkey included questions related to PMS.

[62] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from all known and potential exporters and producers in the named countries. The exporters/producers were requested to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as state-owned enterprises (SOEs). Information was also 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 COR; and whether any resulting subsidy was specific in nature. In addition, information was requested from the governments of those countries, concerning financial contributions made to exporters or producers of COR released into Canada during the subsidy POI. The respective governments were also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[63] The governments and the exporters/producers were notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFI, failure to permit verification of any information or failure to provide documentation requested during verification may result in the margins of dumping, the amounts of subsidy and the assessment of anti-dumping and/or countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favorable to their firm than if complete, verifiable information was made available.

[64] Under Article 15 of the World Trade Organization (WTO) Anti-dumping Agreement, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As Vietnam is listed as a least developed country, other low income country or lower middle income country or territory on the Development Assistance Committee List of Official Development Assistance Recipients,¹⁵ the CBSA recognizes this country as a developing country for purposes of actions taken pursuant to SIMA.

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

¹⁵ http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf

[66] Several parties requested an extension to respond to their respective RFIs. The CBSA reviewed all requests and all exporters and governments that requested an extension were granted an extension that still provided the CBSA adequate time to review their responses for purposes of the preliminary determination of the investigations.

[67] After reviewing the RFI responses, supplemental RFIs (SRFIs) and deficiency letters were sent to several responding parties to clarify information provided in the responses and request additional information, where necessary.

[68] Details pertaining to the information submitted by the exporters in response to the Dumping and Subsidy RFI as well as the results of the CBSA's dumping investigation, including the section 20 inquiry and PMS, are provided in the *Dumping and Subsidy Investigation* section of this document.

[69] As part of the final phase of the investigations, case briefs and reply submissions were provided by counsels representing the complainant, the domestic producer, exporters/producers from Turkey, UAE and Vietnam as well as the GOU and GOV. Details of the representations are provided in Appendix 2.

DUMPING INVESTIGATION

NORMAL VALUE

[70] Normal values are generally determined based on the domestic selling prices of like goods in the country of export, in accordance with section 15 of SIMA, or based on either the methodology of 19(a) 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, in accordance with paragraph 19(b) of SIMA.

[71] If, in the opinion of the President, domestic sales of like goods in the country of export do not permit a proper comparison with the sales of the goods to the importer in Canada because a PMS prevails, the sale of such goods, in accordance with paragraph 16(2)(c) of SIMA, will not be taken into account in determining the normal value under section 15. The CBSA will then look to one of the methodologies of section 19. A PMS can be found to exist in respect of any goods of a particular exporter or of a particular country.

[72] In the case of a prescribed country such as Vietnam, if, in the opinion of the President of the CBSA, 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, the normal values are generally determined on the basis of section 20 of SIMA using either the selling prices or the full costs of like goods in a "surrogate" country, or using re-sales in Canada of goods imported from a "surrogate" country.

[73] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, normal values are determined pursuant to a ministerial specification in accordance with subsection 29(1) of SIMA.

EXPORT PRICE

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

[75] Where there are sales between associated persons or a compensatory arrangement exists, the export price may be determined based on the importer's resale price of the imported goods in Canada to non-associated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada, and an amount representative of the average industry profit in Canada, pursuant to paragraphs 25(1)(c) and 25(1)(d) of SIMA. In any cases not provided for under paragraphs 25(1)(c) and 25(1)(d) of SIMA, the export price is determined in such a manner as the Minister specifies, pursuant to paragraph 25(1)(e).

[76] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, export prices are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

MARGIN OF DUMPING

[77] The margin of dumping by exporter is equal to the amount by which the total normal value exceeds the total export price of the goods, expressed as a percentage of the total export price. All the subject goods shipped to Canada during the POI are included in the margins of dumping of the goods. Where the total normal value of the goods does not exceed the total export price of the goods, the margin of dumping is zero.

Particular Market Situation

[78] The CBSA may form the opinion that a PMS exists, which does not permit a proper comparison with the sale of the goods to the importer in Canada, if one or more of the following factors have had a significant impact on the domestic sales of like goods in the country of export:

- government regulations such as price floors, price ceilings, production quotas, import and export controls;
- taxation policies;
- government support programs (financial or otherwise);
- the presence and activities of state-owned or state-controlled enterprises in the domestic market as suppliers or purchasers of the like goods (also including other state-owned or state-controlled enterprises such as financial institutions);
- the acquisition of production inputs or processing services that do not reflect market-based costs because they are acquired from suppliers which are state-owned or state-controlled or that are affected by government influence or control;
- significant volatility in economic conditions in the home market of the exporter;

- evidence of distorted input costs; and
- any other circumstances which may or may not be the result of government intervention, in which normal market conditions or patterns of supply and demand do not prevail.

RESULTS OF THE DUMPING INVESTIGATION

[79] The following summarizes the results of the dumping investigation for the exporters in Turkey, UAE and Vietnam which provided a response to the RFIs:

Turkey

Particular Market Situation

[80] The CBSA investigated allegations that a PMS exists with respect to Turkey's COR market. A PMS may be found to exist where factors such as government regulations, significant macroeconomic volatility, or distorted input costs have a significant impact on the domestic sales of like goods in the country of export.

[81] Paragraph 16(2)(c) is a provision of SIMA that may be applied when the President is of the opinion that domestic sales of like goods in the country of export do not permit a proper comparison with the sales of the goods to the importer in Canada because a PMS prevails.

[82] Pursuant to subsection 16(2.1), the President may form the opinion that PMS can exist in respect of any goods of a particular exporter or of a particular country.

[83] In such cases, the CBSA would not determine normal values using the methodology of section 15 of SIMA, which relies on domestic prices. Accordingly, and where such information is available, the CBSA would look to use one of the methodologies of section 19 to determine normal values.

[84] Where the President is of the opinion that a PMS also distorts the cost of inputs that are significant in the production of the goods, the President will use information in accordance with subsection 11.2(2) of SIMR, that best represents the actual cost of the input to permit a proper comparison.

[85] The complainant and the supporting Canadian producer made the allegation that a PMS may exist in Turkey due to the combined effect of a multitude of factors, including:

- government economic policy plans affecting domestic selling prices;
- government support programs;
- Turkey's excess inflation;
- the effect of the US section 232 measures on Turkish steel;
- the acquisition of production inputs from state-owned or state-controlled enterprises at non-market costs; and
- low-priced imports of the major input material.

[86] They also submitted that the PMS exists at a country level and therefore affects all exporters of subject goods in Turkey.

Responses to the CBSA's Requests for Information

[87] At the initiation of the dumping investigation, the CBSA sent a PMS RFI to the GOT. The Dumping RFI sent to exporters in Turkey also included questions relating to PMS. Responses to the RFIs were received from the GOT¹⁶ and from a number of exporters accounting for the majority of subject goods. The CBSA also received case briefs and, in some cases, reply submissions, from the complainant and the supporting Canadian producer, the GOT, exporters in Turkey, as well as from a major supplier of the principle production input, concerning the allegations that a PMS exists in the COR market in Turkey.

Level of Competition in the Turkish COR and Hot Rolled Steel (HRS) Markets

[88] In the course of the investigation, the CBSA analysed the COR market and the hot rolled steel (HRS) markets in Turkey - HRS being the principle input used in the production of the subject goods exported to Canada and like goods sold in Turkey. The CBSA estimated the apparent domestic market for COR and HRS and assessed the level of competition in these markets, on the basis of commonly used indicators, such as the Herfindahl-Hirschman Index. It was established that the COR market was a competitive market with low concentration, while the HRS market was assessed as being moderately concentrated (i.e. as an oligopoly), which may be expected for the upstream steel industry, because it is very capital intensive with low product differentiation. The CBSA further assessed whether there were other indicators of control by individual producers, evidence of shared market dominance, or undue barriers to entry due to government regulations (i.e. such as quotas or restrictive duties). The evidence suggest a reasonably competitive and open market.

Government Economic Policy Plans Affecting Domestic Selling Prices

[89] Further to allegations that government economic policy plans may be affecting domestic selling prices, the CBSA reviewed several Turkish economic policies. The analysis revealed two relevant themes that were common in each policy; i) encouraging exports and ii) encouraging domestic production of inputs used in exported productions and lowering their cost. These policy papers include action plans and it appears that these targets are providing context for several of the support measures that were investigated in the context of the subsidy investigation. Considering the nature of the specific government actions detailed in these policies, the extent to which these measures may have potentially contributed to a PMS is believed to be related to the extent of the total amount of subsidy attributable to the production and sale of like goods, including any passed-through subsidy.

¹⁶ EXH 165 (PRO) and 166 (NC) - Response regarding Particular Market Situation from Government of Turkey

Government Support Programs

[90] Considering that the amounts of subsidy determined by the CBSA for co-operative exporters in the parallel subsidy investigation are insignificant, the government actions resulting from these policies, or government support more generally, are not considered to be contributing to a PMS in any significant manner.

The Acquisition Of Production Inputs From State-Owned Or State-Controlled Enterprises At Non-Market Costs

[91] With respect to the matter of the acquisition of inputs from state-owned or state-controlled suppliers, the CBSA found that Turkey's largest steel producer, Erdemir, is state-owned or controlled. The evidence, however, suggests that Erdemir is selling at market prices and that its domestic sales of HRS are contributing to the company's strong financial position. For the purposes of the price comparison, there was sufficient information on the record to allow for a proper comparison between the prices of HRS supplied domestically by Erdemir with the prices of HRS supplied domestically by other domestic hot-rolled steel producers which are not state-owned or state-controlled. Information on the record did not justify the use of a tier-two benchmark.

[92] It should be clarified that the position that Erdemir is state-owned or state-controlled is not inconsistent with the CBSA's position, at the final determination in the subsidy investigation, that Erdemir is not a public body. These two positions are not based on the same criteria. Indeed, "public body" is a term defined under the jurisprudence of the WTO's ASCM in the Appellate Body Report in DS379, which found that the term "public body" covers only those entities that possesses, exercise or are vested with governmental authority. For the purposes of the subsidy investigation, the CBSA is taking the position that Erdemir is not a public body because there is no evidence that the GOT is exercising its control in a meaningful way. In the PMS context, for the purposes of the dumping investigation, the CBSA has established that Erdemir is state-owned or state-controlled.

Significant Volatility In Economic Conditions In The Home Market Of The Exporter

[93] The CBSA's analysis then addressed the volatility in the economic conditions, namely the rapid currency depreciation, high inflation, and high interest rates during the POI, which were alleged by the complainant, and confirmed by the CBSA. The CBSA acknowledges that the extent of the devaluation has the potential to be destabilizing. Specifically, it provides incentive to export as a form of hedging, represents barriers to imports, and can bring instability and unpredictability to the marketplace, especially considering the extent of production input that are imported. On the other hand, measures can be taken to minimize the impact. For instance, prices, including domestic prices can be denominated in a foreign currency, while producers can also use derivative instruments to hedge against currency or interest rate movements. As part of this analysis, the CBSA also reviewed government measures dealing with the currency crisis to assess their impact on the producers of COR, which was found to be minimal.

[94] The CBSA also compared COR and HRS prices in Turkey with prices in Southern Europe, which it considers as an appropriate benchmark. Southern Europe was selected as an appropriate benchmark because geographically, part of Turkey is included in Southern Europe; Southern Europe is a major source of imports and exports for steel; Southern Europe was mentioned by a major input supplier as one of the principal markets used as benchmark when monitoring or setting its own domestic prices; and the European currency, its inflation and interest rates were stable during the POI.

[95] Prices and trends in both markets were similar and strongly correlated. The CBSA also established that actual prices in Turkey were not significantly affected by the currency depreciation and inflationary pressure, which is supported by a strong correlation with domestic prices in the Southern Europe market unaffected by such volatile economic conditions. It was also established that the vast majority of producers reported using a variety of currency derivatives to hedge significant future transactions and cash flows, including currency forward contracts, swaps and options in addition to derivative financial instruments to manage their exposure to currency and interest rate fluctuations. Partly as a result of their hedging activities, the CBSA did not find that financial results of these Turkish steel producers were particularly affected by the volatility in currency, inflation and interest rates to the point of being considered anomalous or distortive.

Low-Priced Imports Of The Major Input Material

[96] Further, the CBSA also assessed the complainant's allegations that Turkey's import market for HRS is dominated by unfairly priced imports, especially from Russia and Brazil. The CBSA's analysis established that the evidence on the record did not support such claims. Similarly, the evidence on the record did not support allegations that Turkish conversion cost was indicative of distorted input costs or otherwise indicative of a PMS.

[97] As a result, based on the information on the administrative record, the CBSA has not formed the opinion that a PMS exists in the COR market in Turkey that affects the domestic sales such that they do not permit a proper comparison with the sales to the importers in Canada.

Normal Values, Export Prices and Margins of Dumping

Atakaş Çelik Sanayi ve Ticaret A.Ş

[98] Atakaş Çelik Sanayi ve Ticaret A.Ş (Atakaş) is a producer and exporter of subject goods located in Iskenderun, Turkey.

[99] Atakaş provided a response to the Dumping RFI¹⁷, deficiency letter and two SRFIs that were sent to address deficiencies, gather additional information and seek clarification.¹⁸

¹⁷ EXH 128 (NC) - Response to RFI from Atakas Celik San. Ve Tic A.S.

¹⁸ EXH 359 (NC) - Response to Deficiency Letter from Atakaş Çelik Sanayi ve Ticaret A.Ş.; EXH 591 (NC) - Response to SRFI #1 - dumping and subsidy from Atakas Celik Sanayi ve Ticaret A.S.; EXH 641 (NC) - Response to SRFI #2 from Atakas Celik Sanayi ve Ticaret A.S.

[100] The CBSA's review and verification of Atakaş's submission uncovered inconsistencies and discrepancies in certain submitted information pertaining to export sales of subject goods, the cost of subject goods and the cost of like goods. As a result, Atakaş's submission was considered to be unreliable and was not taken into account for the purposes of the final determination.

[101] As a results, for purposes of the final determination, the margin of dumping for Atakaş is based on the "All Other Exporters - Turkey" normal value and export price methodologies which are described later in this document.

[102] Based on the below methodology, the margin of dumping for all other exporters of the subject goods originating in or exported from Turkey is 26.1%, expressed as a percentage of the export price.

Borçelik Çelik Sanayi Ticaret A.Ş

[103] Borçelik Çelik Sanayi Ticaret A.Ş (Borçelik) is a producer and exporter of subject goods located in Gemlik Bursa, Turkey. During the POI, all the subject goods produced by Borçelik were shipped to Canada by Borçelik. Borçelik exported subject goods to three unrelated suppliers in Canada, and is considered the exporter for SIMA purposes.

[104] Borçelik provided a response to the CBSA's Dumping RFI¹⁹ and three SRFIs that were sent to gather additional information and seek clarification.²⁰ Additionally, Borçelik responded to clarification questions regarding the third SRFI.²¹

[105] Two related input suppliers had also responded to the RFI²², a Deficiency Letter²³ and SRFIs.²⁴

[106] As per the CBSA's review and verification of Borçelik's information, all of the issues raised during the course of the investigation were addressed. Borçelik's submission was considered to be substantially complete and reliable for purposes of the final determination.

[107] Borçelik had a sufficient number of domestic sales of like goods during the PAP. Where applicable, normal values were either determined in accordance with section 15 of SIMA, based on domestic selling prices of like goods or in accordance with paragraph 19(b) of SIMA, based on the aggregate of the cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

¹⁹ EXH 125 (PRO) & 126 (NC) – Response to RFI - Subsidy and Dumping from Borçelik

²⁰ EXH 329 (PRO) & 330 (NC) – Response to SRFI #1 from Borçelik; EXH 568 (PRO) & 569 (NC) – Response to the SRFI #2 from Borçelik; EXH 630 (PRO) & 631 (NC) – Response to SRFI #3 from Borçelik

²¹ 638 (PRO) & 639 (NC) – Response to the clarification question regarding dumping SRFI #3 from Borçelik

²² EXH 208 (PRO) & 209 (NC) – Response to RFI – ArcelorMittal Flat Carbon Europe S.A. (AMFCE)

²³ EXH 398 (PRO) & (399) – Response to Deficiency Letter from AMFCE

²⁴ EXH 587 (PRO) & (588) – Response to SRFI #1 from AMFCE, EXH 626 (PRO) & 627 (NC) – Response to SRFI#2 from AMFCE

[108] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using Borçelik's profitable domestic sales of goods that were of the same general category as the subject goods exported to Canada during the POI.

[109] For the subject goods exported from Borçelik to Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[110] For the final decision, the total normal value compared to the total export price results in a zero margin of dumping.

Tatmetal Çelik Sanayi Ve Ticaret A.Ş.

[111] Tatmetal Çelik Sanayi Ve Ticaret A.Ş. (Tatmetal) is a producer and exporter of the subject goods located in Ereğli, Turkey.

[112] Tatmetal provided a response to the Dumping RFI²⁵ and three SRFIs²⁶ that were sent to Tatmetal to address inconsistencies in certain costing information and deficient responses to required information. As per the CBSA's review and verification of Tatmetal's information, all of the issues raised during the course of the investigation were addressed. Tatmetal's submission was considered to be substantially complete and reliable for purposes of the final determination.

[113] Although Tatmetal had domestic sales of like goods during the PAP, normal values could not be determined in accordance with section 15 of SIMA as there were not such a number of sales of like goods that complied with all the terms and conditions referred to in sections 15 and 16 of SIMA as to permit a proper comparison with the sales of the goods to the importer in Canada. As such, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits

[114] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using Tatmetal's profitable domestic sales of goods that were of the same general category as the subject goods shipped to Canada during the POI.

[115] For the subject goods exported from Tatmetal to Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[116] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 9.7% for Tatmetal, expressed as a percentage of export price.

²⁵ EXH 213 (PRO) & 214 (NC) – Response to RFI – Dumping Tatmetal.

²⁶ EXH 364 (PRO) & 365 (NC) – Response to SRFI #1 -Dumping Tatmetal; EXH 556 (PRO) & 557 (NC) – Response to SRFI #2 -Dumping Tatmetal; EXH 650 (PRO) & 651 (NC) – Response to SRFI #3 -Dumping Tatmetal

All Other Exporters – Turkey

[117] For exporters of COR originating in or exported from the Turkey that did not provide a response to the Dumping RFI or did not furnish sufficient and reliable information, normal values and export prices were determined pursuant to a ministerial specification under subsection 29(1) of SIMA, which is based on a comparative analysis of facts available.

[118] In establishing the methodology for determining the normal value and export price under the ministerial specification, the CBSA analysed all of the information on the administrative record including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, information submitted by exporters of COR from the named countries and CBSA customs entry documentation.

[119] The CBSA decided that the normal values and export prices determined for the exporters in Turkey whose submissions were substantially complete and reliable for the final determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for determining normal values for all other exporters in Turkey since it reflects the exporters' trading practices during the POI. Two exporters provided substantially complete and reliable submissions. The CBSA examined the difference between the normal value and export price for each individual transaction from these exporters in Turkey. The transactions were also examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[120] The CBSA considered that the highest amount by which the normal value exceeded the export price (expressed as a percentage of the export price) on an individual transaction was an appropriate basis for determining normal values.

[121] This methodology limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[122] Therefore, the normal values were determined under a ministerial specification pursuant to subsection 29(1) of SIMA, based on the export price, plus an amount equal to 26.1%.

[123] The export prices were based on CBSA customs entry documents of certain COR from Turkey. The CBSA considers this the best available information on which to base the export prices of goods for all other exporters as it reflects actual import data.

[124] Based on the above methodologies, the margin of dumping for all other exporters of subject goods originating in or exported from Turkey is 26.1%, expressed as a percentage of the export price.

United Arab Emirates

Al Ghurair Iron and Steel Company LLC

[125] Al Ghourair Iron and Steel Company LLC (AGIS), is a producer and exporter of subject goods located in Abu Dhabi, the UAE. AGIS also sold some subject goods and some like goods through a related company, Al Ghurair Private Company LLC (AGPC). AGIS is considered to be the exporter for SIMA purposes.

[126] AGIS and AGPC provided a response to the CBSA's Dumping RFI²⁷ and two deficiency letters that were sent to AGIS and AGPC as the CBSA required a full response from each company to make clear their separate functions.²⁸ AGIS and AGPC also provided a response to two SRFIs.²⁹

[127] As per the CBSA's review and verification of AGIS and AGPC's information, all of the issues raised during the course of the investigation were addressed. As a result, AGIS and AGPC's submission was substantially complete and reliable for the purposes of the final determination.

[128] AGIS had a sufficient number of domestic sales of like goods during the PAP. Consequently, normal values were determined in accordance with section 15 of SIMA based on domestic selling prices of like goods to unrelated customers. Where normal values could not be determined pursuant to section 15 of SIMA, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits.

[129] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using AGIS's profitable domestic sales of goods that were of the same general category as the subject goods exported to Canada during the POI.

[130] For the subject goods exported from AGIS to Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[131] For the final decision, the total normal value compared with the total export price results in a zero margin of dumping.

²⁷ EXH 111 (PRO) & 112 (NC) – Response to Dumping RFI – AGIS and AGPC

²⁸ EXH 286 (PRO) & 287 (NC) – Response to Dumping Deficiency Letter #1 – AGIS and AGPC, EXH 404 (PRO) & 405 (NC) – Response to Dumping Deficiency Letter #2 – AGIS and AGPC

²⁹ EXH 543 (PRO) & 544 (NC) – Response to SRFI#1 – AGIS and AGPC, EXH 624 (PRO) & 625 (NC) – Response to SRFI#2 – AGIS and AGPC

United Iron and Steel LLC

[132] United Iron and Steel LLC (UIS), is a producer and exporter of subject goods located in Abu Dhabi, the UAE.

[133] UIS provided a response to the CBSA's Dumping RFI³⁰ and two deficiency letters that were sent to UIS as the CBSA uncovered inconsistencies and discrepancies in certain submitted information pertaining to their domestic sales and production costs.³¹ UIS also responded to one SRFI³² containing clarification and verification questions, as well as one set of clarification questions regarding the SRFI.³³

[134] As per the CBSA's review and verification of UIS's information, all of the issues raised during the course of the investigation were addressed. As a result, UIS's submission was substantially complete and reliable for the purposes of the final determination.

[135] UIS had a sufficient number of domestic sales of like goods during the PAP. Consequently, normal values were determined in accordance with section 15 of SIMA based on domestic selling prices of like goods. Where normal values could not be determined pursuant to section 15 of SIMA, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits.

[136] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using UIS's profitable domestic sales of goods that were of the same general category as the subject goods exported to Canada during the POI.

[137] For the subject goods exported from UIS to Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[138] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 11.2% for UIS, expressed as a percentage of export price.

All Other Exporters – UAE

[139] Based on the information on the record, 100% of the subject goods originating in or exported to Canada from the UAE during the POI, were from AGIS and UIS. Therefore, no "all other exporters" margin of dumping has been determined as AGIS and UIS are the only exporters.

³⁰ EXH 220 (PRO) & 221 (NC) – Response to Dumping RFI – UIS, EXH 224 (PRO) & 225 (NC) – Refined Response to Dumping RFI – UIS

³¹ EXH 292 (PRO) & 293 (NC) – Response to Dumping Deficiency Letter #1 – UIS, EXH 396 (PRO) & 397 (NC) – Response to Dumping Deficiency Letter #2 – UIS

³² EXH 537 (PRO) & 538 (NC) – Response to SRFI – UIS, EXH 592 (PRO) & 593 (NC) – Additional Response to SRFI - UIS

³³ EXH 611 (PRO) & 612 (NC) – Response to clarifying questions with respect to the SRFI - UIS

Vietnam

SECTION 20 INQUIRY

[140] 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 under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the CBSA, 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.

[141] The provisions of section 20 are applied on a sector basis rather than on the country as a whole. The sector reviewed will normally only include the industry producing and exporting the goods under investigation. The CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation absent sufficient information to the contrary. The CBSA 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.³⁴

[142] A section 20 inquiry refers to the process whereby the CBSA collects information from various sources in order to form an opinion as to whether the conditions described under subsection 20(1) of SIMA exist with respect to the sector under investigation.

[143] The CBSA is required to examine whether the government of that country substantially determines domestic prices. 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 CBSA to have reason to believe that the resulting domestic prices are not substantially the same as they would be in a competitive market.

[144] The complainant alleged that the conditions described in section 20 prevail in the flat-rolled steel sector in Vietnam, which includes COR. That is, the complainant alleges that this industry sector in Vietnam does not operate under competitive market conditions and consequently, prices of COR established in the Vietnamese domestic markets are not reliable for determining normal values.³⁵

[145] The complainant provided information to support these allegations concerning the flat-rolled steel sector. The complainant cited specific GOV policies such as the *Steel Master Plan 2007-2015*, the *Steel Master Plan 2015-2025* and *Industrial Development Strategy through 2025*. Similarly, the complaint included evidence of price stabilization and state-ownership in the steel industry and the flat-rolled steel sector. The complainant also provided information on subsidization in Vietnam's steel industry.

³⁴ Vietnam is a prescribed country under section 17.1 of the *Special Import Measures Regulations*.

³⁵ EXH 30 (NC) – COR2 Complaint; pages 26-30

[146] At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the complainant and from its own research, to support the initiation of a section 20 inquiry to examine the extent of the GOV's involvement in pricing in the flat-rolled steel sector, which includes COR. The information indicated that Vietnamese prices in this sector have been influenced by various government industrial policies. Consequently, the CBSA sent section 20 RFIs to the GOV and all known producers and exporters of COR in Vietnam to obtain information on the extent to which the GOV is involved with the determination of domestic prices in the flat-rolled steel industry sector.

[147] Subsequent to the initiation of the investigation, the complainant made additional representations concerning the existence of section 20 conditions in Vietnam. These representations reiterated some of the points included in the complaint and provided additional supporting documentation.³⁶

Responses to Section 20 Inquiry

[148] The CBSA received five complete responses from exporters/ producers to the section 20 RFI. In addition, the CBSA received a complete response to the government section 20 RFI from the GOV.

[149] As part of the section 20 inquiry, surrogate RFIs were sent to all known producers of COR in South Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei). These countries were selected as they are major exporters of COR to Canada. No vendors located in surrogate countries responded to the RFI.

[150] As part of the section 20 inquiry, the RFIs sent to importers requested information on re-sales in Canada of COR imported from sources other than China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), India and South Korea. The CBSA received five responses to the Importer RFI. However, only one importer provided information on re-sales in Canada of like goods from non-named countries.

[151] Also, as part of the section 20 inquiry, the RFIs sent to importers requested information on re-sales in Canada of COR imported from countries other than Vietnam. The CBSA received a response from two importers. Only one importer provided information on re-sales in Canada of like goods from non-named countries; however, the information provided by this importer represented a very small volume of imports. As such, the CBSA determined that this information could not be used for the purposes of estimating normal values pursuant to section 20 of SIMA.

³⁶ EXH 418 (PRO) & 419 (NC) - Preliminary Determination Comments on Behalf of Stelco Inc and EXH 420 (PRO) & 421 (NC) - Preliminary Determination Letter on behalf of ArcelorMittal Dofasco G.P.

Analysis of Applicability of Section 20

[152] In examining whether domestic prices may be substantially determined by the government of Vietnam, the following were the main factors that the CBSA considered for the initiation of the section 20 inquiry and the section 20 opinion formed at the preliminary determination:

- the GOV's industrial policies;
- the GOV's ownership of suppliers/producers;
- price stabilization;
- imports controls; and
- subsidization of the steel industry.

[153] At the initiation and the preliminary determination, the CBSA did not have information indicating that the domestic prices in the flat-rolled steel sector are directly affected by the GOV. However, information on the record indicated that the GOV's macro-economic policies and actions have influenced the Vietnamese steel industry, that the GOV may also influence the steel industry through state-control of upstream enterprises, that various import and price controls imposed by the GOV on the steel industry may influence the supply price of certain input steel materials and that the GOV provides subsidies to the steel industry, which includes the flat-rolled steel sector. As a result, at the preliminary determination, the CBSA formed the opinion that the GOV substantially determined domestic prices of flat-rolled steel through these indirect mechanisms.

[154] SRFIs were sent to the exporters/producers and the GOV during the final phase of the investigation. The information collected is summarized below.

- Hot-rolled coil, the primary input material to produce cold-rolled coil, the substrate material for COR, accounts for approximately 80% of the total cost of production of COR. The GOV has confirmed that in Vietnam, there is only one hot-rolled coil producer, Formosa Ha Tinh Steel Corporation (Formosa Vietnam), which is 100% owned by foreign companies, Formosa Plastics Group of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and JFE of Japan.³⁷
- The CBSA was able to confirm that COR producers only purchased a small fraction of their total hot-rolled coil consumption from Formosa Vietnam during the period of investigation. The remainder of the hot-rolled coils were imported from various foreign countries.
- Only two cold-rolled coil producers have some level of SOE investment and represent a small percentage of the total cold-rolled coil production in Vietnam.³⁸

³⁷ EXH 408 (PRO) & EXH 409 (NC) - Response to the Supplementary Request for Information - Section 20 from The Government of Vietnam, Page 8.

³⁸ EXH 721 (PRO) & EXH 722 (NC) - Case Brief filed on behalf of CSVN, Page 4

- Information on the record indicates that only two COR producers in Vietnam are state-owned and their total market share of COR accounted for a small percentage of total COR production capacity in Vietnam.³⁹
- *Law on planning* 21/2017/QH14⁴⁰, promulgated on November 24, 2017, entered into effect on January 1, 2019. Based on the explanation by the GOV, manufacturing industries, including the steel industry, will no longer be the subject of the GOV's national planning; therefore the steel master plan (Decision No. 694/QD-BCT)⁴¹ ceased to have effect on January 1, 2019. The steel master plan is the main government macro-economic policy that the CBSA relied on to demonstrate the GOV's influence on the flat-rolled steel sector of the Vietnamese steel industry.
- Information regarding the GOV's direct involvement in the flat-rolled steel sector was explicitly documented in *Licenses for Automatic Import of Some Steel Products* (12/2015/TT-BCT)⁴², a circular issued by the Ministry of Industry and Trade on June 12, 2015, where enterprises were required to obtain licenses for importing COR. However, the circular was annulled by circular 14/2017/TT-BCT⁴³ dated August 28, 2017 and accordingly, this licensing requirement was removed by the GOV and licenses have not been required since September 1, 2017.
- The CBSA conducted a comparison of domestic hot-dip galvanized steel (HDG) prices from four Vietnamese COR producers with average prices in India as they are both low-income, developing countries as per the UN. A second comparison was made with the average prices in the EU, India and Russia - both comparisons indicated that the domestic prices of COR in Vietnam were in line with average prices from the EU, India and Russia as reported by Fastmarkets.

[155] Given these facts, the evidence does not support a conclusion that the GOV substantially determines domestic prices in the flat-rolled steel sector in Vietnam.

Summary of the Results of the Section 20 Inquiry

[156] Based on the information on the record, the CBSA did not form the opinion that the GOV's involvement has substantially determined prices in the flat-rolled steel sector in Vietnam. Therefore, the CBSA has not formed the opinion that the conditions of section 20 prevailed in the flat-rolled steel sector in Vietnam during the POI.

³⁹ EXH 147 (PRO) & EXH 148 (NC) - Response to the Request for Information - Section 20 from The Government of Vietnam, Attachment GOV-SB19

⁴⁰ EXH 147 (PRO) & EXH 148 (NC) - Response to the Request for Information - Section 20 from The Government of Vietnam, Page 17

⁴¹ EXH 147 (PRO) & EXH 148 (NC) - Response to the Request for Information - Section 20 from The Government of Vietnam, Attachment GOV-SB11

⁴² EXH 147 (PRO) & EXH 148 (NC) - Response to the Request for Information - Section 20 from The GOV, Attachment GOV-SA5

⁴³ EXH 147 (PRO) & EXH 148 (NC) - Response to the Request for Information - Section 20 from The GOV, Attachment GOV-SA4

Normal Values, Export Prices and Margins of Dumping

China Steel and Nippon Steel Vietnam Joint Stock Company (CSVC)

[157] CSVC is a producer and exporter of subject goods located in Ho Chi Minh City, Vietnam.

[158] CSVC provided a response to the Dumping RFI⁴⁴ and two SRFIs that were sent to gather additional information and seek clarification.⁴⁵ They also provided comments on the preliminary determination.⁴⁶ As per the CBSA's review and verification of CSVC's information, all of the issues during the course of the investigation were addressed. As a result, CSVC's submission was substantially complete and reliable for the purposes of the final determination.

[159] CSVC had domestic sales of like goods during the PAP. Normal values were either determined in accordance with section 15 of SIMA, based on domestic selling prices of like goods or in accordance with paragraph 19(b) of SIMA, based on the aggregate of the cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[160] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using CSVC's profitable domestic sales of goods that were of the same general category as the subject goods shipped to Canada during the POI.

[161] For the subject goods shipped from CSVC to Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[162] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 4.7% for CSVC, expressed as a percentage of export price.

Hoa Sen Group Joint Stock Company

[163] Hoa Sen Group Joint Stock Company (HSG) is a producer and exporter of subject goods located in Binh Duong Province, Vietnam.

⁴⁴ EXH 206 (PRO) & 207 (NC) – Response to Dumping RFI – CSVC.

⁴⁵ EXH 406 (PRO) & 407 (NC) – Response to S RFI #1 – CSVC and EXH 547 (PRO) & 548 (NC) – Response to SRFI #2 – CSVC

⁴⁶ EXH 500 & 501 (NC) - Comments Regarding Preliminary Determination Comments of Stelco Inc, (EXH 418) Received from CSVC, China Steel Corporation and Dragon Steel Corporation

[164] HSG provided responses to the CBSA's Dumping RFI,⁴⁷ Section 20 RFI⁴⁸ and deficiency letter that was sent to HSG as the CBSA uncovered inconsistencies and discrepancies in sales and costing information pertaining to subject goods and domestically sold CORs.⁴⁹ HSG also responded to two SRFIs.⁵⁰

[165] In addition, HSG's associated companies also provided their respective responses⁵¹ to this investigation.

[166] As per the CBSA's review and verification of the information from HSG and their associated companies, all of the issues raised during the course of the investigation were addressed. As a result, HSG's submission was substantially complete and reliable for the purposes of the final determination.

[167] HSG had domestic sales of like goods during the PAP. Where applicable, normal values were either determined in accordance with section 15 of SIMA, based on domestic selling prices of like goods, or in accordance with paragraph 19(b) of SIMA, based on the aggregate of cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[168] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using HSG's profitable domestic sales of goods that were of the same general category as the subject goods exported to Canada during the POI.

[169] For the subject goods exported from HSG to Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

⁴⁷ EXH 163 (PRO) & 164 (NC) – Response to RFI - Dumping from HSG

⁴⁸ EXH 119 (PRO) & 120 (NC) – Response to RFI - Section 20 from HSG

⁴⁹ EXH 352 (PRO) & 353 (NC) – Response to Deficiency Letter - Dumping from HSG and EXH 380 (PRO) & 381 (NC) – Supplemental Appendices - Dumping Submitted by HSG

⁵⁰ EXH 585 (PRO) & 586 (NC) – Response to SRFI #1 - dumping from HSG and EXH 634 (PRO) & 635 (NC) – Response to SRFI #2 - dumping from HSG

⁵¹ EXH 145 (PRO) & 146 (NC) – Response to RFI - Dumping from Hoa Sen Nhon Hoi-Binh One Member Limited Liabilities Company (HSNH); EXH 185 (PRO) & 186 (NC) – Response to RFI - Dumping from Hoa Sen Building Materials One Member Limited Liabilities Company (HSBM); EXH 191 (PRO) & 192 (NC) – Response to RFI - Dumping from Hoa Sen Nghe An One Member Limited Liabilities Company; EXH 204 (PRO) & 205 (NC) – Response to RFI - Dumping from Hoa Sen Ha Nam One Member Limited Liabilities Company; EXH 325 (PRO) & 326 (NC) – Response to Supplemental Questions for Suppliers (Dumping) from Hoa Sen Steel Sheet One Member Limited Liabilities Company ("HSSS") in relation to HSG; EXH 372 (PRO) & 373 (NC) – Response to SRFI #1 - Dumping from HSBM; EXH 374 (PRO) & 375 (NC) – Response to SRFI #1 - Dumping from HSNH; EXH 376 (PRO) & 377 (NC) – Response to SRFI #1 - Dumping from Hoa Sen Nghe An One Member Limited Liabilities Company; EXH 378 (PRO) & 379 (NC) – Response to SRFI #1 - Dumping from Hoa Sen Ha Nam One Member Limited Liabilities Company; EXH 384 (PRO) & 385 (NC) – Response to RFI - Part D - Dumping from HSSS; EXH 432 (PRO) & 433 (NC) – Response to RFI - Part D - Dumping from Hoa Sen Phu My One Member Limited Liabilities Company ("HSPM"); EXH 434 (PRO) & 435 (NC) – Response to RFI - Part D - Dumping from Hoa Sen Holdings Group Limited Liabilities Company – HSH and EXH 581 (PRO) & 582 (NC) – Response to SRFI #1 dumping from HSSS

[170] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 11.0% for HSG, expressed as a percentage of export price.

Nam Kim Steel Joint Stock Company

[171] Nam Kim Steel Joint Stock Company (Nam Kim) is a producer and exporter of the subject goods located in Thu Dau Mot City, Vietnam.

[172] Nam Kim provided a response to the Dumping RFI⁵² and four SRFIs that were sent to gather additional information and seek clarification.⁵³ As per the CBSA's review and verification of Nam Kim's information, all of the issues raised during the course of the investigation were addressed. Nam Kim's submission was considered to be substantially complete and reliable for purposes of final determination.

[173] Nam Kim had domestic sales of like goods during the PAP. Normal values were either determined in accordance with section 15 of SIMA, based on domestic selling prices of like goods, or in accordance with paragraph 19(b) of SIMA, based on the aggregate of cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[174] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using Nam Kim's profitable domestic sales of goods that were of the same general category as the subject goods shipped to Canada during the POI.

[175] For the subject goods shipped from Nam Kim to Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[176] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 2.3% for Nam Kim, expressed as a percentage of export price.

Southern Steel Sheet Co., Ltd

[177] Southern Steel Sheet Co., Ltd (SSSC) is a producer and exporter of subject goods located in Dong Nai Province, Vietnam.

⁵² EXH 101 (PRO) & 102 (NC) – Response to Dumping RFI – Nam Kim

⁵³ EXH 235 (PRO) & 236 (NC) – Response to Dumping SRFI #1 – Nam Kim, EXH 356 (PRO) & 357 (NC) – Response to Dumping SRFI #2 – Nam Kim, EXH 454 (PRO) & 455 (NC) – Response to Dumping SRFI #3 – Nam Kim, EXH 566 (PRO) & 567 (NC) – Response to Dumping SRFI #4 and Subsidy SRFI #3 – Nam Kim

[178] SSSC provided responses to the CBSA's Dumping RFI and section 20 RFI.⁵⁴ They also provided responses to the two deficiencies letters that were sent to address that there was not a RFI response to purchases of significant factor inputs from related companies, as well as to address inconsistencies in the sales and costing information pertaining to subject goods and domestically sold CORs.⁵⁵ They also provided a response to an SRFI.⁵⁶

[179] The CBSA's review of the submissions continued to find inconsistencies and discrepancies in the sales and costing information pertaining to subject goods and domestically sold COR. In addition, neither of the related suppliers of significant factor inputs provided a response to this investigation. As such, the CBSA could not use Southern Steel's submission to determine normal values under section 15 or section 19.

[180] Accordingly, for purposes of the final determination, normal values were determined for Southern Steel pursuant to a Ministerial Specification as described under *All Other Exporters – Vietnam*.

[181] Southern Steel sold subject goods to two unassociated Canadian importers and one associated Canadian importer.

[182] For the subject goods exported from Southern steel to two unassociated Canadian importers, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods. For the subject goods exported to the associated importer, export prices were determined pursuant to a Ministerial Specification as described under *All Other Exporters – Vietnam*.

[183] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 71.1% for Southern Steel, expressed as a percentage of export price.

Ton Dong A Corporation

[184] Ton Dong A Corporation (TDA) is a producer and exporter of the subject goods located in Di An Town, Vietnam. During the POI, all the subject goods produced by TDA were shipped to Canada by TDA. TDA has a related company, JFE Shoji Trade America Inc. (JFE Shoji America), who acted as a non-resident importer for some transactions. During the POI, TDA's export sales to Canada were made to both the related non-resident importer and to unrelated importers in Canada.

⁵⁴ EXH 229 (PRO) & 230 (NC) – Response to request for information (RFI) - Dumping from SSSC and EXH 233 (PRO) & 234 (NC) – Response to (RFI) - Section 20 from SSSC

⁵⁵ EXH 341 (PRO) & 342 (NC) – Response to Deficiency Letter - Dumping from SSSC; EXH 564 (PRO) & 565 (NC) – Response to the SRFI #1 - dumping from SSSC and EXH 636 (PRO) & 637 (NC) – Response to deficiency letter #2 - dumping from SSSC

⁵⁶ EXH 636 (PRO) & 637 (NC) – Response to deficiency letter #2 - dumping from SSSC

[185] TDA provided a response to the Dumping RFI,⁵⁷ and three SRFIs that were sent to TDA to gather additional information and seek clarification.⁵⁸ As per the CBSA's review and verification of Exporter's information, all of the issues raised during the course of the investigation were addressed. TDA's submission was considered to be substantially complete and reliable for the purposes of the final determination.

[186] JFE Shoji America provided a response to the Importer RFI,⁵⁹ two deficiency letters⁶⁰ and a SRFI⁶¹ that were sent to gather required information and seek clarification. As a result, the CBSA was able to use the Importer RFI response of JFE Shoji America to determine the export price for the shipments where they acted as the non-resident importer.

[187] TDA had domestic sales of like goods during the PAP. Normal values were either determined in accordance with section 15 of SIMA, based on domestic selling prices of like goods or in accordance with paragraph 19(b) of SIMA, based on the aggregate of cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[188] In this regard, the amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of SIMR by using TDA's profitable domestic sales of goods that were of the same general category as the subject goods shipped to Canada during the POI.

[189] Due to the relationship between TDA and JFE Shoji America, a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the export prices determined under section 24 of SIMA, based on the lesser of the exporter's selling prices and the importer's purchase prices, with the export prices determined under section 25 of SIMA. The amount for profit used for the section 25 export prices was determined in accordance with paragraph 22(a) of the SIMR, based on the profit information relating to vendors that operated at a profit that are at the same or substantially the same trade level as the importer. The test revealed that the export prices determined in accordance with section 24 of SIMA were unreliable and, therefore, export prices for sales to JFE Shoji America were determined in accordance with section 25 of SIMA.

[190] For all other subject goods exported by TDA to unrelated importers in Canada during the POI, export prices were determined in accordance with section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[191] For the final determination, the total normal value compared with the total export price results in a margin of dumping of 16.2% for TDA, expressed as a percentage of export price.

⁵⁷ EXH 167 (PRO) & 168 (NC) – Response to Dumping RFI – TDA

⁵⁸ EXH 306 (PRO) & 307 (NC) – Response to Dumping SRFI #1 – TDA, EXH 382 (PRO) & 383 (NC) – Response to Dumping SRFI #2 – TDA, EXH 572 (PRO) & 573 (NC) – Response to Dumping SRFI #3 and Subsidy SRFI #2 – TDA

⁵⁹ EXH 117 (PRO) & 118 (NC) – Response to Importer RFI – JFE Shoji Trade America

⁶⁰ EXH 281 (PRO) & 282 (NC) – Response to Deficiency Letter – JFE Shoji Trade America, EXH 386 (PRO) & 387 (NC) – Response to Deficiency Letter #2 – JFE Shoji Trade America

⁶¹ EXH 541 (PRO) & 542 (NC) – Response to Importer SRFI #1 – JFE Shoji Trade America

All Other Exporters - Vietnam

[192] For exporters of COR originating in or exported from Vietnam that did not provide a response to the Dumping RFI or did not furnish sufficient and reliable information, normal values and export prices were determined pursuant to a ministerial specification under subsection 29(1) of SIMA, which is based on a comparative analysis of facts available.

[193] In establishing the methodology for determining the normal value and export price under the ministerial specification, the CBSA analyzed all the information on the administrative record including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, information submitted by exporters of COR from the named countries and CBSA customs entry documentation.

[194] The CBSA decided that the normal values and export prices determined for the exporters in Vietnam whose submissions were substantially complete and reliable for the final determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for determining normal values for all other exporters in Vietnam since it reflects the exporters' trading practices during the POI. Four exporters provided substantially complete and reliable submissions. The CBSA examined the difference between the normal value and export price for each individual transaction from these exporters in Vietnam. The transactions were also examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[195] The CBSA considered that the highest amount by which the normal value exceeded the export price (expressed as a percentage of the export price) on an individual transaction was an appropriate basis for determining normal values.

[196] This methodology limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[197] Therefore, the normal values were determined under a ministerial specification pursuant to subsection 29(1) of SIMA, based on the export price, plus an amount equal to 71.1% of that export price.

[198] The export prices were based on the CBSA customs entry documents of certain COR from Vietnam. The CBSA considers this the best available information on which to base the export prices of goods for all other exporters as it reflects actual import data.

[199] Based on the above methodologies, the margin of dumping for all other exporters of subject goods originating in or exported from Vietnam is 71.1%, expressed as a percentage of the export price.

SUMMARY OF RESULTS - DUMPING

[200] A summary of the results of the dumping investigation respecting all subject goods released into Canada during the POI is as follows:

Margins of Dumping by Exporter
Period of Investigation (July 1, 2018 to June 30, 2019)

Exporter	Margin of Dumping (as % of Export Price)*
Turkey	
Atakaş Çelik Sanayi ve Ticaret A.Ş	26.1%
Borçelik Çelik Sanayi Ticaret A.Ş	0.0%
Tatmetal Çelik Sanayi Ve Ticaret A.Ş.	9.7%
All Other Exporters – Turkey	26.1%
The United Arab Emirates**	
Al Ghurair Iron & Steel LLC	0.0%
United Iron and Steel Company LLC	11.2%
Vietnam	
China Steel and Nippon Steel Vietnam Joint Stock Company	4.7%
Hoa Sen Group Joint Stock Company	11.0%
Nam Kim Steel Joint Stock Company	2.3%
Southern Steel Sheet Co., Ltd.	71.1%
Ton Dong A Corporation	16.2%
All Other Exporters – Vietnam	71.1%

*Some percent totals appear as 0% due to no dumping.

**Al Ghurair Iron & Steel LLC and United Iron and Steel Company LLC account for 100% of certain COR exported from the UAE and released into Canada. Therefore, no “all other exporters” margin of dumping were determined for purposes of the final determinations.

[201] In order to make a final determination of dumping, the CBSA must be satisfied that:

- the subject goods have been dumped; and
- that the margin of dumping is not insignificant.

[202] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of any goods of an exporter if it is satisfied that the goods have not been dumped or the margin of dumping of the goods of that exporter is insignificant, meaning a margin of dumping that is less than 2% of the export price of the goods. Therefore, the CBSA is required to terminate the dumping investigation in respect of certain COR exported to Canada from Turkey by Borçelik Çelik Sanayi Ticaret A.Ş and from the UAE by Al Ghurair Iron & Steel LLC.

[203] The remaining goods under investigation have been dumped and the margins of dumping determined for those goods, are greater than the threshold of 2% and are therefore not considered insignificant. As a result, the legislative requirement is satisfied for making a final determination of dumping respecting certain COR from Turkey, the UAE and Vietnam.

[204] A summary of the results of the dumping investigation respecting the subject goods released into Canada during the POI are presented in Appendix 1.

SUBSIDY INVESTIGATION

[205] 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.

[206] 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.

[207] 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.

[208] A “prohibited subsidy” is either an export subsidy or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export. 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. These terms are all defined in section 2 of SIMA.

[209] 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:

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

[210] 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.

[211] Financial contributions provided by state-owned enterprises (SOEs) may also be considered to be provided by the government for purposes of this investigation. A 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.

Results of the Subsidy Investigation

[212] The following presents the results of the investigation into the subsidizing of COR originating in or exported from Turkey, the UAE and Vietnam.

[213] At the initiation of the investigation, the CBSA sent Subsidy RFIs to the governments of the named countries, as well as to all known exporters and vendors of COR. The exporters/vendors were requested to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as state owned enterprises (SOEs). 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 COR; and whether any resulting subsidy was specific in nature. Information was also requested from the governments of the named countries, concerning financial contributions made to exporters of COR released into Canada during the POI. The respective governments were also notified that the full and complete responses to questions on programs administered by all levels of government are obtained from the appropriate governmental authorities.

[214] The governments and the exporters were also notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFI, failure to permit verification of any information or failure to provide documentation requested during the verification visits may result in the amount of subsidy and the assessment of countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favorable to their firm than if complete, verifiable information was made available.

[215] The CBSA received responses to the Subsidy RFI from five exporters in Turkey, two exporters in the UAE and five exporters in Vietnam. Additionally, all of the governments involved in the subsidy investigation Turkey, the UAE and Vietnam provided a response to the Government Subsidy RFI.

[216] The results for each exporter and government that provided a response to the Subsidy RFIs, are summarized as follows.

[217] A description of identified programs and incentives is included as Appendix 3.

Turkey

Government of Turkey

[218] The GOT provided a substantially complete response to the Government Subsidy RFI⁶² and two SRFIs⁶³. They also provided comments on the preliminary determination.⁶⁴

[219] For purposes of the final decisions, individual amounts of subsidy have been calculated for the exporters who provided complete responses to the Subsidy RFI, since sufficient information has been furnished by the GOT and the exporters to enable the necessary calculations.

Atakaş Çelik Sanayi ve Ticaret A.Ş

[220] Atakaş is a producer and exporter of subject goods located in Iskenderun, Turkey.

[221] Atakaş provided substantially complete responses to the Subsidy RFI,⁶⁵ deficiency letter⁶⁶ and two SRFIs.⁶⁷ For the final decision, Atakaş was found to have benefitted from the following subsidy programs during the POI:

- Program 1: Turk Eximbank – Rediscount Credits Program;
- Program 24: Deduction from Taxable Income for Export Revenue;
- Program 27: Investment Incentive Program; and
- Program 35: Social Security Premium Incentive.

[222] The above subsidy programs were considered to be specific and therefore actionable. This determination was made from the analysis of the information provided by Atakaş and the GOT. For purposes of the final decision the amount of subsidy for Atakaş is 0.4%, expressed as a percentage of the export price.

⁶² EXH 199 (PRO) & 200 (NC) - Response to the request for information (RFI) - Subsidy from Government of Turkey

⁶³ EXH 344 (PRO) & 345 (NC) - Response to supplemental request for information (SFRI) #1 from the Government of Turkey; EXH 555 (NC) & 555 (NC) - Response to supplemental request for information (SFRI) #2 from the Government of Turkey

⁶⁴ EXH 491 (NC) - Case Brief Filed on Behalf of the Government of Turkey Regarding the Statement of Reasons

⁶⁵ EXH 128 (NC) - Response to request for information (RFI) from Atakas Celik San. Ve Tic A.S.

⁶⁶ EXH 361 (NC) - Response to Deficiency Letter #2 - Subsidy from Atakaş Çelik Sanayi ve Ticaret A.Ş.

⁶⁷ EXH 591 (NC) - Response to supplemental request for information (SRFI) #1 - dumping and subsidy from Atakas Celik Sanayi ve Ticaret A.S.; EXH 641 (NC) - Response to supplemental request for information (SRFI) #2 from Atakas Celik Sanayi ve Ticaret A.S.

Borçelik Çelik Sanayi Ticaret A.Ş

[223] Borçelik is a producer and exporter of subject goods located in Gemlik Bursa, Turkey.

[224] Borçelik provided substantially complete responses to the Subsidy RFI⁶⁸ and four SRFIs.⁶⁹ For the final determination, Borçelik was found to have benefitted from the following subsidy programs during the POI:

- Program 1: Turk Eximbank – Rediscount Credit Program;
- Program 24: Deduction from Taxable Income for Export Revenue;
- Program 34: TUBITAK Industrial R&D Projects Grant; and
- Program 36: TUBITAK International Industrial R&D Projects Grant Program.

[225] The above subsidy programs were considered to be specific and therefore actionable. This determination was made from the analysis of the information provided by Borçelik and the GOT. For purposes of the final decision the amount of subsidy for Borçelik is 0.6%, expressed as a percentage of the export price.

Tatmetal Çelik Sanayi Ve Ticaret A.Ş.

[226] Tatmetal is a producer and exporter of subject goods located in Ereğli, Turkey.

[227] Tatmetal provided substantially complete responses to the Subsidy RFI⁷⁰ and two SRFIs.⁷¹ For the final determination, Tatmetal was found to have benefitted from the following subsidy programs during the POI:

- Program 1: Turk Eximbank – Rediscount Credit Program
- Program 6: Turk Eximbank – Investment Credit for Export

[228] The above subsidy programs were considered to be specific and therefore actionable. This determination was made from the analysis of the information provided by Tatmetal and the GOT. For purposes of the final decision the amount of subsidy for Tatmetal is 0.5%, expressed as a percentage of the export price.

⁶⁸ EXH 125 (PRO) & 126 (NC) - Response to request for information (RFI) - Subsidy and Dumping from Borçelik

⁶⁹ EXH 346 (PRO) & 347 (NC) - Response to supplemental request for information (SRFI) #1 from Borçelik; EXH 461 (PRO) & 462 (NC) - Response to supplemental request for information (SRFI) # 2 from Borçelik; EXH 570 (PRO) & 571 (NC) - Response to supplemental request for information (SRFI) # 3 from Borçelik; EXH 609 (PRO) & 610 (NC) - Response to supplemental request for information (SRFI) # 4 from Borçelik.

⁷⁰ EXH 215 (PRO) & 216 (NC) - Response to request for information (RFI) – Subsidy from Tatmetal

⁷¹ EXH 413 (PRO) & 414 (NC) -Response to supplemental request for information (SRFI) #1 - Subsidy Tatmetal; EXH 583 (PRO) & 584 (NC) -Response to the supplemental request for information (SRFI) #2 –subsidy Tatmetal.

All Other Exporters – Turkey

[229] For all other exporters of subject goods originating in or exported from Turkey that did not provide sufficient information or did not provide information in a timely fashion, the CBSA determined an amount of subsidy, pursuant to a Ministerial specification under subsection 30.4(2) of SIMA, on the basis of the following methodology:

1. the highest amount of subsidy for each of the seven programs, as found at the final determination, for the producers/exporters located in Turkey for whom the CBSA has sufficient information to determine an amount of subsidy, plus;
2. the average amount of subsidy for the seven programs listed in (1), applied to each of the remaining 15⁷² potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[230] Using the above methodology, the amount of subsidy for all other exporters is 3.6%, expressed as the percentage of the export price.

United Arab Emirates

Government of the United Arab Emirates

[231] The GOU provided a response to the Government Subsidy RFI⁷³ and one SRFI.⁷⁴

[232] For purposes of the final decisions, individual amounts of subsidy have been calculated for the exporters who provided complete responses to the subsidy RFI, since sufficient information has been furnished by the GOU and the exporters to enable the necessary calculations.

Al Ghurair Iron and Steel Company LLC

[233] AGIS is a producer and exporter of subject goods located in Abu Dhabi, UAE.

[234] AGIS provided a response to the Subsidy RFI,⁷⁵ deficiency letter and one Subsidy SRFI.⁷⁶ Based on the information on the administrative record, AGIS was found not to have benefitted from any subsidy program during the POI.

⁷² Out of the 37 programs under investigation, seven consist of actionable programs used by one of the three respondents listed above, six are Free Zones programs where none of the producers/exporters of subject goods are located, and nine are considered as non-actionable for the final determination, leaving 15 remaining potentially actionable programs.

⁷³ EXH 177 (PRO) & 178 (NC) - Response to the Government Subsidy RFI - Government of the UAE

⁷⁴ EXH 549 (PRO) & 550 (NC) - Response to supplemental RFI#1 from the Government of the UAE

⁷⁵ EXH 113 (PRO) & 114 (NC) - Response to Subsidy RFI - AGIS and AGPC

⁷⁶ EXH 312 (PRO) & 313 (NC) – Response to Subsidy Deficiency Letter – AGIS and AGPC and EXH 545 (PRO) & 546 (NC) – Response to Subsidy SRFI#1 – AGIS and AGPC

United Iron and Steel LLC

[235] UIS is a producer and exporter of subject goods located in Abu Dhabi, UAE.

[236] UIS provided a response to the Subsidy RFI,⁷⁷ deficiency letter and one SRFI.⁷⁸ Based on the information on the administrative record, UIS was found not to have benefitted from any subsidy program during the POI.

No Other Exporters – United Arab Emirates

[237] Based on the information on the record, 100% of the subject goods originating in or exported to Canada from the UAE during the POI, were from AGIS and UIS. Therefore, no “all other exporters” amount of subsidy has been determined as AGIS and UIS are the only exporters.

[238] As no exporters of subject goods from the UAE have received an amount of subsidy during the POI, the CBSA has terminated the subsidy investigation in respect of the subject goods from the UAE.

Vietnam

Government of Vietnam

[239] The GOV provided a substantially complete response to the Government Subsidy RFI.⁷⁹ They also provided comments on the preliminary determination.⁸⁰

[240] For purposes of the final decisions, individual amounts of subsidy have been calculated for the exporters who provided complete responses to the subsidy RFI, since sufficient information has been furnished by the GOV and the exporters to enable the necessary calculations.

China Steel and Nippon Steel Vietnam Joint Stock Company

[241] CSVN is a producer and exporter of subject goods located in Ho Chi Minh City, Vietnam.

⁷⁷ EXH 222 (PRO) & 223 (NC) – Response to the Exporter Subsidy RFI – UIS and EXH 226 (PRO) & 227 (NC) – Refined Response to the Exporter Subsidy RFI - UIS

⁷⁸ EXH 288 (PRO) & 289 (NC) – Response to Subsidy Deficiency Letter – UIS and EXH 539 (PRO) & 540 (NC) – Response to Subsidy SRFI#1 - UIS

⁷⁹ EXH 149 (PRO) & 150 (NC) - Response to the RFI - Subsidy from Government of Vietnam

⁸⁰ EXH 473 (PRO) & 474 (NC) - Comments from the Government of Vietnam in Regards to the CBSA's Preliminary Determinations and EXH 502 (NC) - Response to Comments from the Government of Vietnam in Regards to the CBSA's Preliminary Determination

[242] CSVC provided substantially complete responses to the Subsidy RFI⁸¹ and two SRFIs.⁸² They also provided comments on the preliminary determination.⁸³ For the final decision, CSVC was found to have benefitted from the following subsidy program during the POI:

Program 8 – Investment Support

[243] The above subsidy program was considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by CSVC and the GOV. For purposes of the final decision the amount of subsidy for CSVC is 0.0%, expressed as a percentage of the export price. The amount appears as 0.0% due to a small amount and rounding.

Hoa Sen Group Joint Stock Company

[244] HSG is a producer and exporter of subject goods located in Binh Duong Province, Vietnam.

[245] HSG provided substantially complete responses⁸⁴ to the Subsidy RFI and three SRFIs. HSG's associated companies also provided their respective responses⁸⁵ to this investigation.

[246] For the final decision, HSG was found to have benefitted from the following subsidy programs during the POI:

Program 1: Exemptions of Import Duty

Program 3: Incentives on non-agricultural Land Use Tax

Program 4: Exemption/Reductions of Land Rent, Tax and Levy

Program 6: Enterprise Income Tax Preferences, Exemptions and Reductions

⁸¹ EXH 161 (PRO) & 162 (NC) – Response to RF) – CSVC

⁸² EXH 406 (PRO) & 407 (NC) – Response to SRFI #1 – CSVC and EXH 547 (PRO) & 548 (NC) – Response to SRFI #2 – CSVC

⁸³ EXH 500 & 501 (NC) - Comments Regarding Preliminary Determination Comments of Stelco Inc. (EXH 418) Received from CSVC, China Steel Corporation and Dragon Steel Corporation

⁸⁴ EXH 123 (PRO) & 124 (NC) – Response to RFI - Subsidy from HSG; EXH 394 (PRO) & 395 (NC) – Response to SRFI #1 - Subsidy from HSG; EXH 578 (PRO) & 579 (NC) – Response to SRFI #2 subsidy - from HSG and EXH 615 (PRO) & 616 (NC) – Response to SRFI #3 - subsidy from HSG

⁸⁵ EXH 121 (PRO) & 122 (NC) – Response to RFI - Subsidy from Hoa Sen Steel Sheet One Member Limited Liabilities Company; EXH 187 (PRO) & 188 (NC) – Response to the RFI - Subsidy from HSBM; EXH 189 (PRO) & 190 (NC) – Response to request for information (RFI) - Subsidy from Hoa Sen Nghe An One Member Limited Liabilities Company; EXH 193 (PRO) & 194 (NC) – Response to RFI - Subsidy from Hoa Sen Nhon Hoi-Binh One Member Limited Liabilities Company; EXH 202 (PRO) & 203 (NC) – Response to RFI - Subsidy from Hoa Sen Ha Nam One Member Limited Liabilites Company; EXH 388 (PRO) & 389 (NC) – Response to SRFI #1 - Subsidy from HSNH; EXH 390 (PRO) & 391 (NC) – Response to SRFI #1 - Subsidy from HSBM; EXH 392 (PRO) & 393 (NC) – Response to SRFI #1 - Subsidy from HSSS; EXH 400 (PRO) & 401 (NC) – Response to SRFI #1 - Subsidy from HSHN; EXH 402 (PRO) & 403 (NC) – Response to SRFI #1 - Subsidy from Hoa Sen Nghe An One Member Limited Liabilities Company; EXH 430 (PRO) & 431 (NC) – Response to RFI - Subsidy from HSPM and EXH 436 (PRO) & 437 (NC) – Response to RFI - Subsidy from Hoa Sen Holdings Group Limited Liabilities Company - HSH

[247] The above subsidy programs were considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by HSG, their associated companies and the GOV. For purposes of the final decision the amount of subsidy for HSG is 0.0%, expressed as a percentage of the export price. The amount appears as 0.0% due to a small amount and rounding.

Nam Kim Steel Joint Stock Company

[248] Nam Kim is a producer and exporter of subject goods located in Thu Dau Mot City, Vietnam.

[249] Nam Kim provided substantially complete responses to the Subsidy RFI⁸⁶ and three SRFIs.⁸⁷ For the final decision, Nam Kim was found to have benefitted from the following subsidy programs during the POI:

- Program 1: Exemptions of Import Duty; and
- Program 6: Enterprise Income Tax Preferences, Exemptions and Reductions

[250] The above subsidy programs were considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by Nam Kim and the GOV. For purposes of the final decision the amount of subsidy for Nam Kim is 0.0%, expressed as a percentage of the export price. The amount appears as 0.0% due to a small amount and rounding.

Southern Steel Sheet Co., Ltd

[251] Southern Steel Sheet Co., Ltd is a producer and exporter of subject goods located in Dong Nai Province, Vietnam.

[252] SSSC provided substantially complete responses to the Subsidy RFI and one SRFI.⁸⁸ For the final decision, SSSC was found to have benefitted from the following subsidy program during the POI:

- Program 6: Enterprise Income Tax Preferences, Exemptions and Reductions

[253] The above subsidy program was considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by SSSC and the GOV. For purposes of the final decision the amount of subsidy for SSSC is 0.1%, expressed as a percentage of the export price.

⁸⁶ EXH 101 (PRO) & 102 (NC) – Response to Subsidy RFI – Nam Kim

⁸⁷ EXH 279 (PRO) & 280 (NC) – Response to Subsidy SRFI #1 – Nam Kim, EXH 366 (PRO) & 367 (NC) – Response to Subsidy SRFI #2 – Nam Kim, EXH 566 (PRO) & 567 (NC) – Response to Subsidy SRFI #3 and Dumping SRFI #4 – Nam Kim

⁸⁸ EXH 231 (PRO) & 232 (NC) – Response to RFI - Subsidy from SSSC and EXH 562 (PRO) & 563 (NC) – Response to the SRFI #1 - subsidy from SSSC

Ton Dong A Corporation

[254] TDA is a producer and exporter of subject goods located in Di An Town, Vietnam.

[255] TDA provided substantially complete responses to the Subsidy RFI⁸⁹ and three SRFI⁹⁰. TDA's related company also provided its respective response to this investigation. The related company supplied significant factor inputs to TDA during the POI. For the final decision, TDA was found to have benefitted from the following subsidy programs during the POI:

- Program 1: Exemptions of Import Duty; and
- Program 6: Enterprise Income Tax Preferences, Exemptions and Reductions

[256] The above subsidy programs were considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by TDA, its related company and the GOV. For purposes of the final decision the amount of subsidy for TDA is 0.0%, expressed as a percentage of the export price. The amount appears as 0.0% due to a small amount and rounding.

All Other Exporters – Vietnam

[257] For all other exporters of subject goods originating in or exported from Vietnam that did not provide sufficient information or did not provide information in a timely fashion, the CBSA determined an amount of subsidy, pursuant to a Ministerial specification under subsection 30.4(2) of SIMA, on the basis of the following methodology:

1. the highest amount of subsidy for each of the five programs, as found at the final determination, for the producers/exporters located in Vietnam for whom the CBSA has sufficient information to determine an amount of subsidy, plus;
2. the average amount of subsidy for the five programs listed in (1), applied to each of the remaining three⁹¹ potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[258] Using the above methodology, the amount of subsidy for all other exporters is 0.2%, expressed as the percentage of the export price.

[259] As no exporter of subject goods from Vietnam has received a significant amount of subsidy during the POI, the CBSA has terminated the subsidy investigation in respect of the subject goods from Vietnam.

⁸⁹ EXH 175 (PRO) & 176 (NC) – Response to Subsidy RFI – TDA

⁹⁰ EXH 294 (PRO) & 295 (NC) – Response to Subsidy Supplemental RFI #1, EXH 572 (PRO) & 573 (NC) – Response to Subsidy SRFI #2 and Dumping SRFI #3 – TDA, EXH 602(PRO) & 603 (NC) – Response to Subsidy SRFI #3 – TDA

⁹¹ Out of the 10 programs under investigation, five consist of actionable programs used by one of the five respondents listed above and two are considered as non-actionable for the final determination, leaving three remaining potentially actionable programs.

SUMMARY OF RESULTS - SUBSIDIZING

[260] A summary of the results of the subsidy investigation respecting all subject goods released into Canada during the POI is as follows:

Amounts of Subsidy by Exporter Period of Investigation (July 1, 2018 to June 30, 2019)

Country of origin or export	Amounts of Subsidy** (as % of Export Price)
Atakaş Çelik Sanayi ve Ticaret A.Ş	0.4%
Borçelik Çelik Sanayi Ticaret A.Ş	0.6%
Tatmetal Çelik Sanayi Ve Ticaret A.Ş.	0.5%
All Other Exporters – Turkey	3.6%
Total – Turkey	3.6%
Al Ghurair Iron & Steel LLC	0.0%
United Iron and Steel Company LLC	0.0%
Total – United Arab Emirates***	0.0%
China Steel and Nippon Steel Vietnam Joint Stock Company	0.0%
Hoa Sen Group Joint Stock Company	0.0%
Nam Kim Steel Joint Stock Company	0.0%
Southern Steel Sheet Co., Ltd.	0.1%
Ton Dong A Corporation	0.0%
All Other Exporters – Vietnam	0.2%
Total – Vietnam	0.0%

**Some percent total appear as 0% due to small amounts and rounding.

***Al Ghurair Iron & Steel LLC and United Iron and Steel Company LLC accounts for 100% of certain COR exported from the United Arab Emirates and released into Canada. Therefore, no “all other exporters” amount of subsidy was determined for purposes of the final determinations.

[261] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of any goods of an exporter if the CBSA is satisfied that the goods have not been subsidized or the amount of subsidy on the goods of that exporter is insignificant.

[262] Pursuant to subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the export price of the goods, is defined as insignificant.

[263] 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 (ASCM) when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a product from a developing country should be terminated where 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.

[264] Neither the ASCM nor SIMA defines or provides any guidance regarding the determination of a “developing country” for purposes of Article 27.10 of the ASCM. As an administrative alternative, the CBSA refers to the Development Assistance Committee List of Official Development Assistance Recipients⁹² and regards a country as developing if it is listed as a least developed country, other low income country, lower middle income country or territory. As Vietnam is included in these lists, the CBSA extends developing country status to Vietnam for purposes of this investigation.

[265] As can be seen from the table above, the amount of subsidy determined in respect of COR exported to Canada from Turkey by Atakaş, Borçelik and Tatmetal and from the UAE by AGIS and UIS did not exceed 1% of their value on a per unit basis and was, therefore, determined to be insignificant. The amounts of subsidy exported to Canada from Vietnam by CSVC, HSG, Nam Kim, SSSC, and TDA did not exceed 2% of their value calculated on a per unit basis and were, therefore, determined to be insignificant. As a result, the CBSA terminated the subsidy investigation in respect of these goods pursuant to paragraph 41(1)(a) of SIMA.

[266] As all exporters of goods from the UAE and Vietnam have an insignificant amount of subsidy or no amount of subsidy, the termination in respect of subject goods from these exporters will effectively end the CBSA’s subsidy proceedings in respect of subject goods from the UAE and Vietnam.

[267] The remaining goods under investigation have been subsidized and the amounts of subsidy determined for those goods, for a developed country, are greater than the threshold of 1% and are therefore not considered insignificant. As a result, the legislative requirement is satisfied for making a final determination of subsidy respecting certain COR from Turkey.

DECISIONS

[268] On October 16, 2020, pursuant to paragraph 41(1)(a) of the *SIMA*, the CBSA terminated the dumping investigation in respect of COR originating in or exported from Turkey by Borçelik, and originating in or exported from the UAE by AGIS; and pursuant to paragraph 41(1)(a) of *SIMA* the CBSA terminated the subsidy investigation in respect of COR originating in or exported from Turkey by Atakaş, Borçelik and Tatmetal, and originating in or exported from the UAE and Vietnam by all exporters. On the same date, pursuant to paragraph 41(1)(b) of the *SIMA*, the Canada Border Services Agency made a final determination respecting the dumping of COR originating in or exported from Turkey, the UAE, and Vietnam and the subsidizing of COR originating in or exported from Turkey.

⁹² http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf

FUTURE ACTION

[269] The provisional period began on March 20, 2020, and will end on the date the CITT issues its finding. The CITT is expected to issue its decision by November 16, 2020. Provisional anti-dumping duty will continue to apply until this date on imports of the subject goods from Turkey, the UAE, and Vietnam, with the exception of goods exported from Turkey by Borçelik and from the UAE by AGIS and any provisional anti-dumping duty paid or security posted in respect of such goods will be returned. Provisional countervailing duty will also continue to apply until this date on imports of subject goods from Turkey, with the exception of goods exported from Turkey by Atakaş, Borçelik and Tatmetal. Any provisional countervailing duty paid or security posted in respect of such goods will be returned. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determination, which is available through the CBSA's website at: www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html.

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

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

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

[273] As previously noted, AGIS and UIS were the only exporters of the subject goods from the UAE during the POI. In the event of an injury finding by the CITT, new exporters may contact the CBSA to explore appropriate mechanisms for obtaining specific normal values and export prices before the exportation of goods. In the event that goods from an exporter, other than AGIS and UIS, are released from customs after a finding of injury by the CITT, anti-dumping duty will be assessed at a rate of 41.5% of the export price of the goods. This amount represents the highest amount by which the normal value exceeded the export price on an individual transaction for an exporter in the UAE during the POI.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[274] Under certain circumstances, anti-dumping and/or countervailing duty can be imposed retroactively on subject goods imported into Canada. When the CITT 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 investigations constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the CITT issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determinations could be subject to anti-dumping and/or countervailing duty.

[275] 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.

PUBLICATION

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

[277] A notice of the termination of the dumping investigation with respect to COR exported to Canada from Turkey by Borçelik and from the UAE by AGIS will be published in the Canada Gazette pursuant to paragraph 41(4)(a) of SIMA. Likewise, a notice of the termination of the subsidy investigation with respect to COR exported to Canada from Turkey by Atakaş, Borçelik and Tatmetal and exported to Canada from the UAE and Vietnam will be published in the Canada Gazette pursuant to paragraph 41(4)(a) of SIMA.

INFORMATION

[278] This *Statement of Reasons* will be posted on the CBSA's website at the address below. For further information, please contact the officers identified as follows:

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

Telephone: Lindsay Kyne 613-960-3099
Manshun Tong 613-954-1666

E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi

Doug Band
Director General
Trade and Anti-dumping Programs Directorate

ATTACHMENTS

Appendix 1: Summary of Margins of Dumping and Amounts of Subsidy
Appendix 2: Dumping and Subsidy Representations
Appendix 3: Description of Identified Programs and Incentives

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

Exporter	Margin of Dumping (as % of Export Price)*	Amount of Subsidy (as % of Export Price)**
Turkey		
Atakaş Çelik Sanayi ve Ticaret A.Ş	26.1%	0.4%
Borçelik Çelik Sanayi Ticaret A.Ş	0.0%	0.6%
Tatmetal Çelik Sanayi Ve Ticaret A.Ş.	9.7%	0.5%
All Other Exporters – Turkey	26.1%	3.6%
The United Arab Emirates***		
Al Ghurair Iron & Steel LLC	0.0%	0.0%
United Iron and Steel Company LLC	11.2%	0.0%
Vietnam		
China Steel and Nippon Steel Vietnam Joint Stock Company	4.7%	0.0%
Hoa Sen Group Joint Stock Company	11.0%	0.0%
Nam Kim Steel Joint Stock Company	2.3%	0.0%
Southern Steel Sheet Co., Ltd.	71.1%	0.1%
Ton Dong A Corporation	16.2%	0.0%
All Other Exporters – Vietnam	71.1%	0.2%

*Some percent totals appear as 0% due to no dumping.

**Some percent totals appear as 0% due to small amounts and rounding.

***Al Ghurair Iron & Steel LLC and United Iron and Steel Company LLC account for 100% of certain COR exported from the UAE and released into Canada. Therefore, no “all other exporters” margin of dumping and amount of subsidy were determined for purposes of the final decisions.

Note: The margins of dumping and amounts of subsidy reported in this table were determined by the CBSA for the purposes of the final decisions. These margins and amounts may not reflect the amount of anti-dumping or countervailing duty to be levied on future importations of dumped or subsidized goods. In the event of an injury finding by CITT, normal values and amounts of subsidy for future shipments to Canada have been provided to the exporters who provided sufficient information in their response to the CBSA RFI, as appropriate. These normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods and amounts of subsidy should be obtained from the exporters. Imports from any other exporters will be subject to an anti-dumping duty rate and a countervailing duty rate, as applicable, in accordance with a ministerial specification and in an amount equal to the margin of dumping or the amount of subsidy found for “all other exporters” at the final determination.

Section 10 of SIMA directs that where the whole (or a portion of the) margin of dumping is attributable to an export subsidy, that portion of the margin of dumping shall not be leviable, collectable and payable as anti-dumping duty.

Please consult the [SIMA Self-Assessment Guide](#) for more detailed information explaining how to determine the amount of SIMA duties owing.

Normally, normal values will not be applied retroactively. However, normal values may be applied retroactively in cases where the parties have not advised the CBSA in a timely manner of substantial changes that affect values for SIMA purposes. Therefore, where substantial changes occur in prices, market conditions, costs associated with production and sales of the goods, the onus is on the concerned parties to advise the CBSA.

APPENDIX 2 – DUMPING AND SUBSIDY REPRESENTATIONS

Case briefs were received on behalf of:

- ArcelorMittal Dofasco G.P. (AMD)⁹³
- Al Ghurair Iron & Steel LLC (AGIS)⁹⁴
- Atakaş Çelik Sanayi ve Ticaret A.Ş.(Atakas)⁹⁵
- Borçelik Çelik Sanayi Ticaret A.Ş (Borçelik)⁹⁶
- China Steel and Nippon Steel Vietnam Joint Stock Company (CSVC)⁹⁷
- Government of Vietnam (GOV)⁹⁸
- Hoa Sen Group Joint Stock Company (HSG)⁹⁹
- the Ministry of Economy of the UAE (GOU)¹⁰⁰
- Nam Kim Steel Joint Stock Company (Nam Kim)¹⁰¹
- Southern Steel Sheet Co., Ltd. (SSSC)¹⁰²
- Stelco Inc. (Stelco)¹⁰³
- Tatmetal Çelik Sanayi Ve Ticaret A.Ş. (Tatmetal)¹⁰⁴
- Ton Dong A Corporation (TDA)¹⁰⁵
- United Iron and Steel Company LLC (UIS)¹⁰⁶

⁹³ EXH 675 (PRO) & 676 (NC) - ArcelorMittal Dofasco G.P – Case Brief

⁹⁴ EXH 659 (PRO) & 660 (NC) - Al Ghurair Iron and Steel LLC – Case Brief

⁹⁵ EXH 661 (NC) - Atakas Celik Sanayai ve Ticaret A.S. – Case Brief

⁹⁶ EXH 657 (PRO) & 658 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş – Case Brief

⁹⁷ EXH 664 (PRO) & 665 (NC) - China Steel and Nippon Steel Vietnam Joint Stock Company – Case Brief

⁹⁸ EXH 655 (PRO) & 656 (NC) - the Government of Vietnam – Case Brief

⁹⁹ EXH 668 (PRO) & 669 (NC) - Hoa Sen Group Joint Stock Company – Case Brief

¹⁰⁰ EXH 679 (NC) - the Ministry of Economy of the United Arab Emirates – Case Brief

¹⁰¹ EXH 662 (PRO) & 663 (NC) - Nam Kim Steel Joint Stock Company – Case Brief

¹⁰² EXH 670 (PRO) & 671 (NC) - Southern Steel Sheet Co., Ltd. – Case Brief

¹⁰³ EXH 677 (PRO) & 678 (NC) – Stelco Inc. – Case Brief

¹⁰⁴ EXH 683 (PRO) & 684 (NC) - Tatmetal Celik San. ve Tic. A.S – Case Brief

¹⁰⁵ EXH 672 (PRO) & 673 (NC) - Ton Dong A Corporation – Case Brief

¹⁰⁶ EXH 666 (PRO) & 667 (NC) - United Iron and Steel Company LLC. – Case Brief

The Canada Border Services Agency (CBSA) received reply submissions on behalf of:

- ArcelorMittal Dofasco G.P. (AMD)¹⁰⁷
- Al Ghurair Iron & Steel LLC (AGIS)¹⁰⁸
- Atakaş Çelik Sanayi ve Ticaret A.Ş. (Atakas)¹⁰⁹
- Borçelik Çelik Sanayi Ticaret A.Ş. (Borçelik)¹¹⁰
- China Steel and Nippon Steel Vietnam Joint Stock Company (CSVC), Dragon Steel Corp. (DSC) and China Steel Corp. (CSC)¹¹¹
- Formosa Ha Tinh Corporation (Formosa)¹¹²
- Government of Vietnam (GOV)¹¹³
- Government of the United Arab Emirates (GOU)¹¹⁴
- Hoa Sen Group Joint Stock Company (HSG)¹¹⁵
- JFE Shoji Trade America Inc. (JFE Shoji America)¹¹⁶
- JFE Shoji Trade Vietnam, JFE Shoji Trade Corporation and JFE Steel Corporation¹¹⁷
- Nam Kim Steel Joint Stock Company (Nam Kim)¹¹⁸
- Posco Vietnam and Hangzhou Cogeneration (Hong Kong) Company Limited (Posco & Hangzhou)¹¹⁹
- Southern Steel Sheet Co., Ltd. (SSSC)¹²⁰
- Stelco Inc. (Stelco)¹²¹
- Ton Dong A Corporation (TDA)¹²²
- United Iron and Steel Company LLC (UIS)¹²³

¹⁰⁷ EXH 719 (PRO) & 720 (NC) - ArcelorMittal Dofasco G.P – Reply Submission

¹⁰⁸ EXH 699 (PRO) & 700 (NC) - Al Ghurair Iron and Steel LLC – Reply Submission

¹⁰⁹ EXH 692 (PRO) & 693 (NC) - Atakas Celik Sanayi Ve Tic A.S.- Reply Submission

¹¹⁰ EXH 711 (PRO) & 712 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş. – Reply Submission

¹¹¹ EXH 721 (PRO) & 722 (NC) - China Steel & Nippon Steep Vietnam Joint Stock Company (CSVC), Dragon Steel Corp. (DSC) and China Steel Corp. (CSC) – Reply Submission

¹¹² EXH 713 (PRO) & 714 (NC) - Formosa Ha Tinh Corporation – Reply Submission

¹¹³ EXH 717 (PRO) & 718 (NC) - the Government of Vietnam – Reply Submission

¹¹⁴ EXH 696 (NC) - the Government of the United Arab Emirates (UAE) – Reply Submission

¹¹⁵ EXH 703 (PRO) & 704 (NC) - Hoa Sen Group Joint Stock Company – Reply Submission

¹¹⁶ EXH 691 (NC) - JFE Shoji Trade America Inc. – Reply Submission

¹¹⁷ EXH 701 (PRO) & 702 (NC) - JFE Shoji Trade Vietnam, JFE Shoji Trade Corporation and JFE Steel Corporation – Reply Submission

¹¹⁸ EXH 705 (PRO) & 706 (NC) - Nam Kim Steel Joint Stock Company – Reply Submission

¹¹⁹ EXH 694 (PRO) & 695 (NC) - Posco Vietnam and Hangzhou Cogeneration (Hong Kong) Company Limited – Reply Submission

¹²⁰ EXH 707 (PRO) & 708 (NC) - Southern Steel Sheet Co., Ltd. – Reply Submission

¹²¹ EXH 697 (PRO) & 698 (NC) – Stelco Inc. – Reply Submission

¹²² EXH 709 (PRO) & 710 (NC) - Ton Dong A Corporation – Reply Submission

¹²³ EXH 715 (PRO) & 716 (NC) - United Iron & Steel Company LLC – Reply Submission

The CBSA received letters in regards to the investigations and as well as its schedule from AGIS, Atakas, Borçelik and UIS¹²⁴ to which the CBSA responded.¹²⁵

Certain details provided in case briefs and reply submissions were designated as confidential information by the submitting counsel. This has restricted the ability of the CBSA to discuss all issues raised in these submissions. The material issues raised by the parties are summarized as follows:

DUMPING REPRESENTATIONS

TURKEY

Particular Market Situation for Turkey

Case Briefs

Counsel for the complainant, in its case brief¹²⁶, reiterated its allegations that there is sufficient evidence on the record to support a determination that a PMS exists in the Turkish corrosion-resistant steel sector such that domestic sales of COR in Turkey do not permit a proper comparison with export sales to in Canada. In its case brief, the complainant reiterated the number of factors it claims contributed to the PMS in Turkey and restated that recent World Trade Organization (WTO) Guidance on PMS, such as in *Australia – A4 Copy Paper*, applied to this case. These alleged factors, which were also discussed in the complaint, include:

- Government support programs, including Erdemir’s supply of substrate at less than market value;
- excess inflation and currency depreciation (the complainant also referred to specific exporter data as alleged evidence of distortion due to the lira);
- the GOT’s intervention in monetary policy;
- regulations that restrained price fluctuations due to market conditions;
- the United States’ Section 232 Measure;
- an inadequate price difference with cold-rolled steel; and
- low-priced substrate imports.

¹²⁴ EXH 508 (NC) – Comments submitted by counsel for AGIS regarding CBSA’s preliminary determinations, EXH 509 (NC) – Comments submitted by counsel for UIS regarding CBSA’s preliminary determinations, EXH 632 (PRO) - Letter to CBSA from Borçelik Çelik Sanayi Ticaret A.Ş., EXH 682 (NC) - Comments submitted by counsel for Atakas in response to CBSA's correspondence of September 8, 2020

¹²⁵ EXH 514 (NC) - Response from CBSA to comments submitted by counsel for AGIS regarding CBSA's preliminary determinations, EXH 515 (NC) - Response from CBSA to comments submitted by counsel for UIS regarding CBSA's preliminary determinations, EXH 629 (NC) - CBSA response letter to Borçelik, EXH 680 (NC) - Comments submitted by counsel for Atakas regarding CBSA's notice of extension for filing and response from CBSA, EXH 681 (NC) - Comments submitted by counsel for Borçelik regarding CBSA's notice of extension for filing and response from CBSA, EXH 723 (NC) - Response to the request to submit sur-reply submitted by counsel for Borçelik from CBSA, EXH 724 (NC) - Response to the request to submit sur-reply submitted by counsel for Atakas from CBSA

¹²⁶ EXH 675 (PRO) & 676 (NC) - Case brief filed on behalf of ArcelorMittal Dofasco G.P

The complainant also argued that the impact of the factors had differing effects on the price of COR sold in the domestic Turkish market compared to the price of COR exported to the Canadian market, due to the fact that while the Turkish domestic price was determined by Turkish market conditions, including the PMS, the export price to Canada was based on market dynamics in Canada.

The supporting Canadian producer¹²⁷, Stelco Inc., also made the allegation that a PMS may exist in Turkey and also submitted the PMS exists at a country level and therefore affects all exporters of subject goods in Turkey.

The Canadian producers also argued that the CBSA is not bound by the record in separate investigations and reinvestigations as it must make its PMS determination based on the record in this investigation. AMD and Stelco also reiterated that the CBSA's conclusion at the preliminary determination that the Turkish hot-rolled steel market is influenced by Erdemir is sound and should be affirmed at final determination within the context of the CBSA's PMS determination. In particular, Stelco argues that Atakas' argument that the issue of whether Erdemir is a public body is *res judicata* as a matter of Canadian law and the SIMA, is without merit, in part because this investigation regards a different product, different period of time, and different parties.

Reply Submissions

Counsel for Atakas¹²⁸ and Borçelik¹²⁹ submitted their case briefs and reply submissions where they rejected the arguments made by the Canadian producers that a PMS existed in Turkey, particularly one that would have the effect of rendering domestic sales unfit to permit a proper comparison.

Arguments were presented that the CBSA already recently ruled that there was not sufficient evidence of a PMS in the Turkish steel industry, in *Carbon Steel Welded Pipe (CSWP)* from Turkey (*i.e.* CSWP3 2018 IN). References were also made to jurisprudence set in *Australia – Antidumping Measures of A4 Copy Paper*, with respect to a requirement that a PMS results in domestic sales being unfit to permit a proper comparison.

¹²⁷ EXH 677 (PRO) & 678 (NC) - Stelco Inc. - Case brief

¹²⁸ EXH 661 (NC) - Atakas - Case brief; and EXH 682 (PRO) & 693 (NC) - Atakas - Reply submission

¹²⁹ EXH 657 (PRO) & 658 (NC) - Borçelik - Case brief; and EXH 711 (PRO) & 712 (NC) - Borçelik - Reply submission

With respect to the acquisition of input from state-owned or state-controlled suppliers, Atakas and Borçelik, along with Erdemir¹³⁰ and the GOT,¹³¹ argued that Erdemir is not a state-owned or state-controlled enterprise or a public body, and that it has not supplied input at non-market prices. As such, the CBSA should not consider purchases of input from Erdemir as a basis for a PMS finding. It was noted that the CBSA recently indicated, in CSWP, that there was insufficient evidence that Erdemir was a state-owned or state-controlled enterprise, and that producers were not benefiting from production inputs or processing services that do not reflect market-based costs. Similarly, it was argued that in the 2014 subsidy investigation regarding *Certain Oil Country Tubular Goods from Turkey* (OCTG - 4218-40), the CBSA concluded that Erdemir was not a public body. These parties also argued that the CBSA's preliminary position in the subsidy investigation, that Erdemir was a public body, was inconsistent with the WTO Panel in *United States - Countervailing Measures on Certain Pipe and Tube Products from Turkey* (DS523), which stated that the United States failed to establish that OYAK is under the meaningful control of the GOT. Erdemir also argued that that it was inappropriate to utilize a tier-two benchmark to compare with its own prices, as there is no evidence that the actual transaction prices are significantly distorted as a result of the government's involvement in the market. As such, the CBSA should have compared Erdemir's prices with the prices of other domestic sources.

CBSA's Response

For the purposes of this investigation, for the reasons explained in the *Statement of Reasons*, the CBSA has not formed an opinion that a PMS existed in the COR market in Turkey during the POI, which does not permit a proper comparison with the sales of the goods to the importer in Canada. The CBSA's position is based on the information on the record for this investigation, which relates specifically to the COR market, including its principal substrate, during the period of July 1, 2018 to June 30, 2019.

With respect to the acquisition of input from state-owned or state-controlled suppliers, the CBSA's position is that Erdemir is state-owned or state-controlled. It should be clarified, however, that the position that Erdemir is state-owned or state-controlled is not inconsistent with the CBSA's position, at the final determination in the subsidy investigation, that Erdemir is not a public body. These two positions are not based on the same criteria. Indeed, "public body" is a term defined under the jurisprudence of the World Trade Organization's Agreement on Subsidy and Countervailing Measures (SCM) in the Appellate Body Report, *US – Countervailing Measures (China)*, which found that the term "public body" in the context of Article 1.1.(a)(1) of the SCM Agreement covers only those entities that possess, exercise or are vested with governmental authority.¹³² For the purposes of the subsidy investigation, the CBSA is taking the position that Erdemir is not a public body. In the PMS context, for the purposes of the dumping investigation, the CBSA has established that Erdemir is state-owned or state-controlled.

¹³⁰ EXH 492 (PRO) & 493 (NC) – Erdemir - Comments

¹³¹ EXH 491 (NC) - the Government of Turkey - Case Brief regarding the Statement of Reasons

¹³² WTO, Appellate Body Report, *United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011, par. 317.

Nevertheless, the CBSA concluded that Erdemir supplied hot-rolled steel to the subject goods producers at market prices. For the purposes of the price comparison, there was sufficient information on the record to allow for a proper comparison between the prices of HRS supplied domestically by Erdemir with the prices of HRS supplied domestically by other domestic hot-rolled steel producers which are not state-owned or state-controlled. Information on the record did not justify the use of a tier-two benchmark, as argued by Erdemir.

Particular Market Situation for Specific Exporters in Turkey

Case Briefs

Counsel for Borçelik submitted that several factors point to an absence of a PMS in relation to Borçelik. They have stated that as a result of the condition in S.15 and paragraph 16(2)(b) of SIMA the vast majority of normal values will be determined under subsection 19(b). Additionally, if Erdemir were to be considered a public body, due to the percentage of goods produced with hot-rolled coil (HRC) sourced from Erdemir, the difference between Erdemir's selling price of HRC to Borçelik, and the fair market value of HRC pursuant to section 36 of the SIMR, is barely measurable. They submitted that due to this barely measurable volume produced with HRC from Erdemir, this cannot be said to have had a measurable impact on either domestic or export selling prices. Additionally, there is no evidence that supports that the proper comparison of the domestic selling price versus the export sales would be improper. Furthermore, they submitted that the complainant's allegation of Borçelik's acquisition cost of HRC imported from prolific exporters not accurately reflecting those exporters' costs, thus resulting in the application of 11.2(2) of the SIMR, is rejected through the WTO Panel's decision in DS473. Additionally, they have stated that there is not any evidence on the record of the HRC production costs of Erdemir, or any Russian or Ukrainian producer that would permit the comparison between Borçelik's acquisition cost and the input producer's cost that results in the determination that Borçelik's raw material cost not reasonably reflecting the cost they actually incurred. Furthermore, Borçelik submits that the application of 11.2(2) is contrary to Article 2.2.1.1 of ADA.¹³³

Counsel for Stelco submitted that there exists a PMS in Turkey. Additionally, they submitted that Borçelik's use of foreign currency forward contracts require an adjustment to be made to reflect contracts in a fair market, where this impacts domestic sales/ costs, impacting the proper comparison of goods.¹³⁴

Reply Submissions

Counsel for Borçelik submitted that Stelco's statement of the differences between the unit selling prices and unit costs in Borçelik's Appendices 3 indicating a PMS, disregard paragraph 16(2)(b) of SIMA. Further, this argument would result in a PMS finding every time a sale did not pass the profitability analysis under 16(2)(b) and sales below cost are addressed in paragraph 16(2)(b) of SIMA.¹³⁵

¹³³ EXH 658 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş – Case Brief

¹³⁴ EXH 678 (NC) – Stelco Inc. – Case Brief

¹³⁵ EXH 712 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş. – Reply Submission

Counsel for Stelco submitted that the argument that the proper comparison must be determined based on an individual exporter's and domestic export prices, would only be the case if PMS is determined individually, rather than how PMS can be demonstrated at the country and the exporter level.¹³⁶

CBSA's Response

The CBSA investigated allegations that a PMS exists with respect to Borçelik. The CBSA did not find positive evidence on the record to support a PMS in regards to Borçelik.

Completeness and Reliability of Submissions

Case Briefs

Counsel for the complainant, and the supporting Canadian producer, submitted in their case briefs that a number of exporters' Dumping RFI and SRFI responses are incomplete, inaccurate, deficient, and inconsistent. Therefore, their responses are unreliable and ineligible for use in the calculations of normal values and export prices.

Counsel for Stelco submitted that Borçelik's request to the CBSA to confirm the sufficiency of their response is not an appropriate request, stating that deficiencies can be identified at any point in time even after the close of record. Furthermore, full explanations were not provided for export price information.¹³⁷

Counsel for Borçelik submitted that CBSA has the verified data necessary to determine the normal values under section 15 and section 19(b); that all sales details and expenses are included in Appendix 1 and 3; their unit export expenses are appropriately allocated; that their like goods model classification was explained in detail; and that Borçelik's matching was based on AMD's information. Additionally, that their costs were provided on an order basis.

Borçelik has also submitted that the submissions in regards to the related suppliers are only relevant to subsection 11.2(1) of the SIMR. Borçelik has stated that neither of these exporters are located in Turkey, and as such their input costs do not represent costs of production in the country of origin of the subject goods in this investigation and the input costs in a third country for purposes of construction normal values would be contrary to the WTO Panel D2473.¹³⁸

¹³⁶ EXH 698 (NC) – Stelco Inc. – Reply Submission

¹³⁷ EXH 678 (NC) – Stelco Inc. – Case Brief

¹³⁸ EXH 712 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş. – Reply Submission

Counsel for Atakaş submitted in their case briefs that they provided extensive details on the export prices and domestic sales of like goods in their response to the Dumping RFI.¹³⁹ Counsel for Atakaş further submitted that they provided detailed responses to each deficiency letter and SRFI which provided the CBSA with ample information to assign normal values based on Atakaş's actual information and based on the methodology in section 15 or 19 of SIMA.¹⁴⁰ Counsel for Atakaş also submitted that their cost allocation in Appendix 4 was correct and verifiable, and must be considered alongside all other evidence in calculating the cost of production.¹⁴¹

CBSA's Response

The CBSA has reviewed the responses from the exporters and suppliers to the RFIs and to the Supplemental RFIs. The CBSA has also conducted desk audits of the exporters' and suppliers' submissions. In instances where an exporter's submission was considered substantially complete for the purposes of the final determination, the CBSA determined normal values, export prices and a margin of dumping on the basis of the exporter's submission. For exporters who did not respond to the RFI or who did not provide sufficient information or whose submissions were considered unreliable, the CBSA determined normal values based on a ministerial specification pursuant to subsection 29(1) of SIMA.

Subsection 11.2(1) of the SIMR

Case Briefs

Counsel for Borçelik submitted that subsection 11.2(1) of the SIMR violated Article 2.2.1.1 of the ADA because it invites and sanctions the use of costs other than those actually incurred by an exporter. Furthermore, they submitted that due to the percentage of goods it exported to Canada from associated persons or the percentage cost of raw material inputs from associated persons, they reject that inputs acquired from associated persons were a significant factor in the production of goods and therefore subsection 11.2(1) does not apply the normal values under subsection 19(b). Likewise, counsel for Borçelik submitted that in the domestic market, raw materials acquired from associated persons are not a significant factor in the overall cost of production.¹⁴²

¹³⁹ EXH 504 (NC) - Behalf of Atakaş Çelik San. Ve. Tic. A.S - Case Brief, para 10-12.

¹⁴⁰ EXH 661 (NC) - Atakaş Çelik Sanayai ve Ticaret A.S. - Case Brief, para 8, 32.

¹⁴¹ EXH 504 (NC) - Atakaş Çelik San. Ve. Tic. A.S. - Case Brief, para 20-23; EXH 661 (NC) - Atakaş Çelik Sanayai ve Ticaret A.S. - Case Brief, para 23-24, 28.

¹⁴² EXH 658 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş – Case Brief

Reply Submissions

Counsel for Stelco submitted that WTO dispute resolution decisions are only binding between the parties to the dispute and the CBSA is obliged to apply Canadian law, therefore if the final determination is that HRC pricing in Turkey is distorted, then the CBSA should make adjustments pursuant to SIMR section 11.2(2) as appropriate. Additionally, they submitted that 11.2(2) is not solely as a result of HRC from prolific exporters, additionally there are various deficiencies affecting input costs. They stated that the sourced inputs of goods exported to Canada does not support that a proper comparison exists with regards to domestic goods. Likewise, they submitted that Article 2.2.1.1. does not speak of the actually incurred costs, rather the costs associated with the production and sale of the product under consideration.¹⁴³

CBSA's Response

The CBSA has reviewed the information and has considered the factors of section 11.2 of the SIMR in its calculations of normal values under section 15 and paragraph 19(b) of SIMA.

Procedural Fairness

Case Briefs

In their case briefs, Atakaş submitted that the preliminary determination SOR and the exporter letter failed to specify what information was incomplete.¹⁴⁴ Atakaş argued in their case brief from June 12, 2020, that the CBSA had ample opportunity to provide a SRFI but had not done so. Atakaş argued that, as such, the CBSA must take the information provided by Atakaş to determine normal values and to do otherwise would be unreasonable and be a denial of Atakaş's right to procedural fairness.¹⁴⁵

CBSA's Response

The CBSA had issued SRFIs to Atakaş on June 19, 2020 and August 14, 2020. Submissions provided by Atakaş were reviewed by the CBSA and found not to be substantially complete and reliable for the final determination.

¹⁴³ EXH 698 (NC) – Stelco Inc. – Reply Submission

¹⁴⁴ EXH 504 (NC) - Behalf of Atakaş Çelik San. Ve. Tic. A.S - Case Brief, para 33.

¹⁴⁵ Ibid., para 36-37.

Non-Issuance of Final Determinations by June 18, 2020

Case Briefs

In their supplemental case briefs submitted on September 2, 2020, Atakaş submitted that the President of the CBSA was bound to issue a final determination on or before June 18, 2020.¹⁴⁶ They also argued that the application of provisional measures past this date was in violation with Canada's obligation under the WTO Anti-Dumping Agreement.¹⁴⁷ Atakaş submitted that while *Time Limits and Other Periods Act (COVID-19)* may allow the Minister of Finance to issue an order for retroactive extension of timelines, without such order, the President of the CBSA does not have the authority to issue a final determination and should terminate the investigations.¹⁴⁸

Reply Submissions

In AMD's reply submission, AMD submitted that once the ministerial order and the CBSA complies with its conditions, the CBSA will have the jurisdiction to make a final determination on the extended timeline.¹⁴⁹

CBSA's Response

On June 18, 2020, the CBSA had revised the schedule with respect to investigations in order to alleviate pressures brought on by the COVID-19 pandemic to interested parties.

Other Dumping Issues – Turkey

Case Briefs

Counsel for Borçelik stated export prices were to be calculated in accordance with section 24. They have submitted that this comparison results in a negative overall weighted average margin of dumping, based on the assumption paragraph 16(2)(c) of SIMA and subsections 11.2(1) and 11.2(2) of the SIMR are not applicable. Additionally, they have stated that the argument of PMS based on a commission study should be given little weight due to its inaccuracy and unjustifiable redactions which impairs Borçelik from being able to respond fully.¹⁵⁰

¹⁴⁶ EXH 661 ((NC)) - Atakaş Celik Sanayai ve Ticaret A.S. - Case Brief, para 13.

¹⁴⁷ Ibid., para 14.

¹⁴⁸ Ibid., para. 15-17.

¹⁴⁹ EXH 720 (NC) - ArcelorMittal Dofasco G.P – Reply Submission, para. 23-24.

¹⁵⁰ EXH 657 (PRO) & 658 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş – Case Brief

Reply Submissions

Counsel for Stelco submitted that Borçelik’s statement that their calculations, which resulted in a negative overall weighted average margin of dumping, should be given no weight, and that these did not appear to have been filed with the CBSA. Further, Stelco submitted that Borçelik didn’t state which product models it alleges are sufficient for comparable home market sales, and that the deficiencies around the export price information were not addressed. In regards to the report above, Stelco also submitted that in many cases, copyright materials are filed as wholly confidential, and as much of the material as possible was made public. They also stated that Borçelik did not identify any of the alleged inaccuracies, and that Borçelik had counsel with access to the document. Furthermore, they stated that the report is reliable and prepared by professionals and as such the CBSA should rely on the report.¹⁵¹

CBSA’s Response

The CBSA has reviewed the information and considered the costing information of the exporter to be sufficient. The CBSA has considered the factors of section 15 and paragraph 19(b) of SIMA in its calculations of normal values.

THE UNITED ARAB EMIRATES

Representations made during the investigation

Case Briefs

Counsel for AGIS/AGPC and UIS both made representations during the investigation requesting a status update pertaining to the schedule of the investigation and potential on-site verifications.¹⁵² Counsel for AGIS/AGPC also made representations requesting that the CBSA confirm when provisional duties will cease to be collected by CBSA, and noting that “pursuant to article 7.4 of the Anti-Dumping Agreement and article 17.4 of the Agreement on Subsidies and Countervailing Measures, the application of provisional measures cannot exceed four months after July 21, 2020.”¹⁵³

¹⁵¹ EXH 698 (NC) – Stelco Inc. – Reply Submission

¹⁵² EXH 470 (NC) & EXH (475) – Letter from AGIS and EXH 471 (NC) & EXH 476 – Letter from UIS

¹⁵³ EXH 514 (NC) & EXH 521 (NC) – Comments submitted from AGIS and EXH 515 (NC) & 522 (NC) – Comments submitted from UIS

CBSA's Response

Due to the novel COVID19 pandemic, the CBSA responded to counsel for AGIS/AGPC and UIS with a revised schedule for the investigation.¹⁵⁴ The CBSA also provided that provisional duties will apply until the day on which the President causes the investigation to be terminated with respect to the goods or the day on which the Tribunal makes an order or finding with respect to the goods.¹⁵⁵

Model-Specific Costs

Case Briefs

AMD submitted in their case brief that the costing information submitted by AGIS and its related company AGPC is not sufficient as some costs may not be reflective of the variations in COR models, and some expenses may need revising.¹⁵⁶

AMD submitted that the CBSA should reject the submission from UIS on account of unreasonable and unverifiable costing, and that the reported information does not reflect the full cost of the goods and does not reflect the variations in COR models.

AGIS/AGPC submitted in their case brief¹⁵⁷ that their reported costs are sufficient for purposes of calculating costs of production and normal values. AGIS/AGPC cited Article II of the World Trade Organization's (WTO) Anti-Dumping Agreement (ADA), stating that the CBSA is to calculate costs on the basis of records kept by the exporter provided that these records accord with generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.

UIS submitted that their costing system should be accepted, also citing Article II of the ADA.¹⁵⁸

Reply Submissions

AMD submitted in their reply submission¹⁵⁹ that they reject the exporters' citation of Article II of the ADA, and suggest that both exporters' submissions be rejected by the CBSA and normal values be determined pursuant to a Ministerial Specification.

¹⁵⁴ EXH 514 (NC) – CBSA Response to Letter from AGIS/AGPC, EXH 515 (NC) – CBSA Response to Letter from UIS

¹⁵⁵ EXH 551 (NC) – Response to AGIS/AGPC letter, EXH 552 (NC) – Response to UIS Letter

¹⁵⁶ EXH 676 (NC) - ArcelorMittal Dofasco G.P – Case Brief

¹⁵⁷ EXH 659 (PRO) & 660 (NC) - Al Ghurair Iron and Steel LLC – Case Brief

¹⁵⁸ EXH 667 (NC) - United Iron and Steel Company LLC. – Case Brief

¹⁵⁹ EXH 720 (NC) - ArcelorMittal Dofasco G.P – Reply Submission

AGIS/AGPC reaffirmed in their reply submission¹⁶⁰ that their costs are well supported in their submission and provided a clearer understanding of the cost structure, and citing Article II of the ADA, state that their costing information should be used by the CBSA in its calculations of costs of production and normal values.

UIS reaffirmed in their reply submission¹⁶¹ that their costs are well supported in their submission and provided a clearer understanding of the cost structure, and citing Article II of the ADA, state that their costing information should be used by the CBSA in its calculations of costs of production and normal values.

CBSA Response

The CBSA considered Article II of the ADA in its consideration of information on the record for both exporters. With respect to both exporters, the CBSA has conducted its review and verification of the information provided and is satisfied that the costs submitted by both exporters represent the full costs of production, which reconcile with the respective exporters' financial statements.

Related Parties

Case Briefs

AMD submitted that they have concerns with the relationship between AGIS and AGPC, and that the CBSA should consider domestic sales as not in the ordinary course of trade for purposes of section 15 of SIMA.

AGIS/AGPC argued that the information on the record clearly demonstrates that AGIS should be the exporter for SIMA purposes.

Reply Submissions

AMD submitted that the CBSA should consider AGPC as the exporter for SIMA purposes, and should calculate normal values pursuant to section 29 of SIMA, or alternatively, pursuant to paragraph 19(b) of SIMA.¹⁶²

AGIS and AGPC reaffirmed that AGIS should be considered the exporter for SIMA purposes.¹⁶³

¹⁶⁰ EXH 700 (NC) - Al Ghurair Iron and Steel LLC – Reply Submission

¹⁶¹ EXH 716 (NC) - United Iron & Steel Company LLC – Reply Submission

¹⁶² EXH 720 (NC) - ArcelorMittal Dofasco G.P – Reply Submission

¹⁶³ EXH 700 (NC) - Al Ghurair Iron and Steel LLC – Reply Submission

CBSA's Response

The CBSA has examined the information on the record and determined that AGIS is the principle in all transactions, is located in the country of export, knowingly places the goods for transport to Canada, that it bears all costs of production, selling, and logistical operations. The CBSA considers AGIS to be the exporter for SIMA purposes.

VIETNAM

Completeness and Reliability of Submissions

Case Briefs

Counsel for the complainant and the supporting Canadian producer, submitted in their case briefs¹⁶⁴ that a number of exporters' Dumping RFI and SRFI responses are incomplete, inaccurate, deficient, and inconsistent. Therefore, their responses are unreliable and ineligible for use in the calculations of normal values and export prices.

Reply Submissions

Counsel for the complainant and the supporting Canadian producer submitted their reply submissions¹⁶⁵ where they reiterated the comments in their case briefs with respect to completeness and reliability of submissions.

Counsel for CSVC, DSC and CSC¹⁶⁶ and FHS¹⁶⁷ submitted in their reply submissions that they have responded fully, in detail and to the best of their abilities to the CBSA's RFI and SRFIs.

Counsel for JFE Shoji Trade America, JFE Shoji Trade Vietnam, JFE Shoji Trade Corporation, and JFE Steel Corporation submitted in their reply submissions¹⁶⁸ that they have responded in detail to the CBSA's RFI and SRFIs and provided sufficient information where required. Counsel for Nam Kim submitted in its reply submission¹⁶⁹ that it made extensive efforts to have their input material suppliers provide responses to the CBSA's RFI despite the fact that Nam Kim does not own or control any of these suppliers.

¹⁶⁴ EXH 675 (PRO) & 676 (NC) - ArcelorMittal Dofasco G.P – Case Brief

¹⁶⁵ EXH 719 (PRO) & 720 (NC) - ArcelorMittal Dofasco G.P – Reply Submission and EXH 697 (PRO) & 698 (NC) – Stelco Inc. – Reply Submission

¹⁶⁶ EXH 721 (PRO) & 722 (NC) - China Steel & Nippon Steep Vietnam Joint Stock Company (CSVC), Dragon Steel Corp. (DSC) and China Steel Corp. (CSC) – Reply Submission

¹⁶⁷ EXH 713 (PRO) & 714 (NC) - Formosa Ha Tinh Corporation – Reply Submission

¹⁶⁸ EXH 701 (PRO) & 702 (NC) - JFE Shoji Trade Vietnam, JFE Shoji Trade Corporation and JFE Steel Corporation – Reply Submission

¹⁶⁹ EXH 705 (PRO) & 706 (NC) - Nam Kim Steel Joint Stock Company – Reply Submission

Counsel for TDA addressed in its reply submission¹⁷⁰ the representations made by Stelco in its case brief and submitted that Stelco’s claim of TDA’s deficiencies is unwarranted and not consistent with the record.

Counsel for HSG argued in its case brief¹⁷¹ and reply submission¹⁷² that HSG and their subsidiaries had responded to the RFIs, the SRFIs and provided the requested information to the CBSA to their best abilities.

Counsel for SSSC argued in its case brief¹⁷³ and reply submission¹⁷⁴ that SSSC has been fully co-operative in responding to all of CBSA’s RFIs, SRFI and deficiency letters to their best abilities, SSSC did request the information from related suppliers of significant inputs.

CBSA’s Response

The CBSA has reviewed the responses from the exporters and suppliers to the RFIs and to the Supplemental RFIs. The CBSA has also conducted desk audits of the exporters’ and suppliers’ submissions. In instances where an exporter’s submission was considered substantially complete for the purposes of the final determination, the CBSA determined normal values, export prices and a margin of dumping on the basis of the exporter’s submission. For exporters who did not respond to the RFI or who did not provide sufficient information or whose submissions were considered unreliable, the CBSA determined normal values based on a ministerial specification pursuant to subsection 29(1) of SIMA.

Application of Section 20 of SIMA with Respect to the Flat-Rolled Steel Sector in Vietnam

Case Briefs

Counsel for the complainant and the supporting Canadian producer argues in their case briefs that the GOV determines the price of COR substrate and that section 20 conditions exist with respect to corrosion-resistant steel in Vietnam.¹⁷⁵

Counsel for the complainant states that through plans and strategies such as the Steel Master Plans, “Strategy on Exports and Imports for 2011-2020” and the “Industrial Development Strategy through 2025”, the GOV has the ability to influence and affect the price of corrosion-resistant steel in Vietnam.¹⁷⁶

¹⁷⁰ EXH 709 (PRO) & 710 (NC) - Ton Dong A Corporation – Reply Submission

¹⁷¹ EXH 668 (PRO) & 669 (NC) - Hoa Sen Group Joint Stock Company – Case Brief

¹⁷² EXH 703 (PRO) & 704 (NC) - Hoa Sen Group Joint Stock Company – Reply Submission

¹⁷³ EXH 670 (PRO) & 671 (NC) - Southern Steel Sheet Co., Ltd. – Case Brief

¹⁷⁴ EXH 707 (PRO) & 708 (NC) - Southern Steel Sheet Co., Ltd. – Reply Submission

¹⁷⁵ EXH 675 (PRO) & 676 (NC) - ArcelorMittal Dofasco G.P – Case Brief, para. 190 and 194.

¹⁷⁶ EXH 675 (PRO) & 676 (NC) - ArcelorMittal Dofasco G.P – Case Brief, para.192.

Counsel for Nam Kim, TDA, HSG and SSSC submitted in their case briefs that the evidence in the record filed by the Government of Vietnam and exporters in Vietnam supports the market economy status of the flat-rolled steel industry in Vietnam, hence Section 20 should not apply.

The GOV submitted that the GOV provided complete responses to the CBSA's subsidy and section 20 RFIs.¹⁷⁷

The GOV submitted that there is no basis for the CBSA to apply Section 20 to the corrosion-resistant steel sheet industry in Vietnam.¹⁷⁸ The flat-rolled steel industry in Vietnam is dominated by privately-owned firms¹⁷⁹ and there are no price controls on flat-rolled steel in Vietnam.¹⁸⁰

Reply Submissions

The GOV submits in its reply submission that the CBSA has no basis to apply section 20 and that it disagrees with the argument put forward in the complainant's case brief in regards to the application of section 20 to the Vietnamese flat-rolled steel industry, and disagrees with the allegations that the GOV has influence over steel and COR inputs.¹⁸¹

The GOV argues in its reply submission that the Steel Master Plans and "Strategy on Exports and Imports for 2011-2020" were not legislative documents with legal force or effect, but presented a vision for development of the steel industry. They were not binding on enterprises engaged in or planning to invest in the steel industry.¹⁸² The GOV also submits that "Industrial Development Strategy through 2025" does not relate to COR.¹⁸³ Furthermore, less than 5% of Vietnam's capacity for COR production had any indirect government investment.¹⁸⁴

CBSA's Response

The CBSA exercised its investigative function and conducted a section 20 inquiry to examine the extent to which the conditions of section 20 exist in the flat-rolled steel sector. The CBSA considered information on the record provided by the complainant, producers of COR in Vietnam, the Government of Vietnam and obtained through its own research.

In assessing whether the conditions described in section 20 of SIMA existed in the flat-rolled steel sector in Vietnam during the POI, the CBSA considered whether domestic prices of COR in Vietnam are substantially determined by the GOV and whether there is sufficient reason to believe that they are not substantially the same as they would be in a competitive market. These are the conditions are set forth in paragraph 20(1)(a) of SIMA.

¹⁷⁷ EXH 656 (NC) - the Government of Vietnam – Case Brief, para. 1.

¹⁷⁸ Ibid. para. 4.

¹⁷⁹ Ibid. para. 6.

¹⁸⁰ Ibid. para. 9.

¹⁸¹ EXH 718 (NC) - the Government of Vietnam – Reply Submission, para. 95-96.

¹⁸² Ibid. para. 49.

¹⁸³ Ibid. para. 76.

¹⁸⁴ Ibid. para. 56.

The CBSA did not form the opinion that the GOV's involvement has substantially determined prices in the flat-rolled steel sector in Vietnam and therefore the CBSA has not formed the opinion that the conditions of section 20 prevailed in the flat-rolled sector in Vietnam during the POI.

Further details can be found in the Section 20 Inquiry section of this document.

SUBSIDY REPRESENTATIONS

TURKEY

Completeness and Reliability of Submissions

Case Briefs

Counsel for the complainant and the supporting Canadian producer, submitted in their case briefs that a number of exporters' Subsidy RFI and SRFI responses are incomplete, inaccurate, deficient, and inconsistent.

CBSA's Response

Based on the information on the record and in accordance with SIMA and SIMR, the CBSA has taken the representations on these issues into account when determining the amounts of subsidy.

For each of the exporters that provided sufficient information in response to the subsidy RFI, an individual amount of subsidy was determined based on their submissions.

For exporters who did not respond to the RFI or who did not provide sufficient information, the CBSA determined amounts of subsidy based on a ministerial specification pursuant to subsection 30.4(2) of SIMA, based on the methodology explained in the "*All Other Exporters*" section above.

Program 32: Provision of Input (e.g. Hot-rolled Steel, Cold-rolled Steel, coking coal) at Less than Adequate Remuneration

Case Briefs

The GOT submitted in their case brief that OYAK is treated as a private commercial entity that does not receive any funding from the GOT.¹⁸⁵ The GOT argued that in the subsidy investigation on OCTG from Turkey (OCTG2), the CBSA had previously concluded that OYAK, Erdemir and Isdemir were not public bodies.¹⁸⁶ The GOT further argued that in *United States – Countervailing Measures On Certain Pipe And Tube Products From Turkey* (DS523), the WTO Panel stated that the United States had failed to establish that the GOT exercised meaningful control over OYAK.¹⁸⁷

OYAK Mining and Metallurgy Group also submitted in their case brief that the CBSA's Preliminary Determination (PD) was in contradiction with OCTG2 and DS523.¹⁸⁸ They further argued as there have been no changes since the 2014 OCTG2 investigation or the 2012 DS523, OYAK does not meet the definition of a government under SIMA, and the CBSA has not provided substantive evidence to indicate that government functions are fulfilled by OYAK.¹⁸⁹

Atakaş's case brief from June 12, 2020 argued that Erdemir was not part of the GOT and that the CBSA's PD SOR did not indicate an act for which Erdemir had acted on behalf of the GOT.¹⁹⁰ They further noted that the PD was in direct contrast with OCTG2 and DS523.¹⁹¹ Atakaş argued that notwithstanding for new evidence, the OCTG2 conclusion that OYAK and Erdemir are not controlled by the GOT, still stands and that DS523 remains the highest authority on this matter.¹⁹² They submit that as this program is not a subsidy, Atakaş's amount of subsidy is insignificant and the subsidy investigation into COR exported to Canada from Atakaş should be terminated.¹⁹³

AMD submitted in their case brief that Erdemir and the GOT did not present evidence that advanced their arguments.¹⁹⁴ They also submitted that the CBSA was not bound to the prior decisions in OCTG2 or previous WTO decisions, and should focus on the evidence available on the record.¹⁹⁵

¹⁸⁵ EXH 491 (NC) - the Government of Turkey - Case Brief Regarding the Statement of Reasons, para. 4.

¹⁸⁶ Ibid., para. 7.

¹⁸⁷ Ibid., para. 10-11.

¹⁸⁸ EXH 493 (NC) - Ereğli Demir Ve Çelik Fabrikaları T.A.Ş. ("Erdemir") - Comments Regarding the CBSA's Statement of Reasons Received from, pages 1, 4

¹⁸⁹ Ibid.

¹⁹⁰ EXH 504 (NC) - Atakaş Çelik San. Ve. Tic. A.Ş. - Case Brief, para. 44.

¹⁹¹ Ibid., para. 35.

¹⁹² Ibid., para. 62-63, 72.

¹⁹³ Ibid., para. 77-78.

¹⁹⁴ EXH 676 (NC) - ArcelorMittal Dofasco G.P - Case Brief, para. 131.

¹⁹⁵ Ibid., para. 132-134.

Reply Submissions

Atakaş submitted that as Canadian law has adopted WTO law relating to the definition of public bodies, the DS523 is directly within the context of Canadian law, and is thereby relevant though not binding.¹⁹⁶ Atakaş further argued that AMD were incorrect in arguing that the WTO Panel had not established that Erdemir was a public body¹⁹⁷ and AMD had not presented new evidence that determines Erdemir is a public body.¹⁹⁸

AMD submitted in their reply submission that Atakaş' argument on the applicability of the doctrine of *res judicata* cannot be applied for the purpose of determining whether Erdemir is a public body, as the product and parties in this investigation are different.¹⁹⁹ AMD further notes that DS523 is not binding on Canada, and the CBSA must conduct its own investigation.²⁰⁰

CBSA's Response

The information on the record indicates that despite evidence that the GOT has a degree of control, or potential control, over Erdemir, the record contains insufficient evidence that such potential control has been exercised by the GOT in a meaningful way, and that Erdemir is, in fact, exercising governmental functions. For this reason, the CBSA has reversed its preliminary position that Erdemir is a public body. As such, the CBSA has not determined that the GOT has provided steel input at less than adequate remuneration. The CBSA further notes that this position is consistent with its position in all past relevant SIMA proceedings.

Other Subsidy Programs in Turkey

Case Briefs

Tatmetal argued in its case brief that the CBSA failed to make considerations that resulted in overstating the amounts of subsidy for programs 1 and 6. Similarly, Tatmetal presented their own methodology for the subsidy calculation of Program 32.²⁰¹

Counsel for the complainant submitted in its case brief that the CBSA should verify that Tatmetal did receive additional countervailable subsidies under other programs. In particular, the CBSA should verify whether Tatmetal benefit from Program 24.²⁰²

Counsel for Borçelik submitted that the amount of subsidy is lower than the estimated amount at PD and as such the subsidy investigation should be terminated in regards to Borçelik.²⁰³

¹⁹⁶ EXH 693 (NC) - Atakaş Celik Sanayi Ve Tic A.S. - Reply submission, para. 23-24.

¹⁹⁷ Ibid., para. 26-27.

¹⁹⁸ Ibid., para. 30

¹⁹⁹ EXH 719 (NC) - ArcelorMittal Dofasco G.P - Reply submission, para. 32-36.

²⁰⁰ Ibid., para. 37.

²⁰¹ EXH 684 (NC)- Tatmetal Celik San. ve Tic. A.S. - Case Brief

²⁰² EXH 674 (NC)- ArcelorMittal Dofasco G.P - Case Brief, para. 128-129.

²⁰³ EXH 658 (NC) - Borçelik Çelik Sanayi Ticaret A.Ş – Case Brief

Counsel for Stelco submitted that Borçelik's two steel centers located in Turkey's Oranized Industrial Zone (OIZ) may have eligible benefits. Likewise, Borçelik may have received grants or incentives for the plant built in Gemilk, and Borçelik's response in respect of tax deductions is deficient. Stelco also submitted that the CBSA should consider the indirect benefit of the Post Shipment Rediscount Credit program.²⁰⁴

Reply Submissions

Counsel for Borçelik submitted that their responses to the Subsidy RFI and SRFI are complete and consistent with the GOT, and that all programs were reported.

Counsel for Stelco submitted that that the amount of subsidy Borçelik calculated should not be given any weight, and that they were not filed with CBSA and it is the CBSA that determines the amount of benefit received based on the information collect during the investigation. They have also submitted that the past jurisprudence of the WTO is not binding on the CBSA, and that in another case the panel did substantiate the conclusion that Erdemir was a public body.²⁰⁵

CBSA's Response

Based on the information on the record and in accordance with SIMA and the SIMR, the CBSA has taken the representations on these issues into account when determining amount of subsidy.

Further details can be found in the *Subsidy Investigation* section as well as Appendix 3.

THE UNITED ARAB EMIRATES

Subsidy Programs in the UAE

Case Briefs

AMD submitted in their case brief²⁰⁶ that the CBSA should investigate whether exporters received any benefit on account of being located in Mussafah.

AMD submitted in their case brief that import duties and VAT unpaid on imported goods are countervailable.

AGIS and UIS argued in their case briefs that they did not receive any countervailable subsidies on account of being located in Mussafah. They also argued that the neither are exempt from paying VAT on imported goods and that the import duties exemption is generally available, therefore not specific.²⁰⁷

²⁰⁴ EXH 678 (NC) – Stelco Inc. – Case Brief

²⁰⁵ EXH 698 (NC) – Stelco Inc. – Reply Submission

²⁰⁶ EXH 676 (NC) - ArcelorMittal Dofasco G.P – Case Brief

²⁰⁷ EXH 667 (NC) - United Iron and Steel Company LLC. – Case Brief

The GOU argued that neither exporter received any countervailable subsidies on account of being located in Mussafah, nor did they benefit from any other subsidy program.²⁰⁸

Reply Submissions

AGIS, UIS, and the GOU reaffirmed their positions in their reply submissions²⁰⁹ that neither exporter benefited from any countervailable subsidy during the POI.

CBSA's Response

The CBSA did not find any positive evidence of either exporter receiving any benefit on account of being located in Mussafah.

VIETNAM

Completeness and Reliability of Submissions

Case Briefs

Counsel for the complainant and the supporting Canadian producer submitted in their case briefs that a number of exporters' Subsidy RFI and SRFI responses are incomplete, inaccurate, deficient, and inconsistent.

Reply Submissions

Counsel for the complainant and the supporting Canadian producer submitted their reply submissions where they reiterated the comments in their case briefs with respect to completeness and reliability of submissions.

Counsel for HSG argued in its reply submission that the information submitted by HSG is accurate.

CBSA's Response

Based on the information on the record and in accordance with SIMA and SIMR, the CBSA has taken the representations on these issues into account when determining the amounts of subsidy.

For each of the exporters that provided sufficient information in response to the subsidy RFI, an individual amount of subsidy was determined based on their submissions.

²⁰⁸ EXH 679 (NC) - the Ministry of Economy of the United Arab Emirates – Case Brief

²⁰⁹ EXH 700 (NC) - Al Ghurair Iron and Steel LLC – Reply Submission; EXH 716 (NC) - United Iron & Steel Company LLC – Reply Submission; EXH 696 (NC) - the Government of the United Arab Emirates (UAE) – Reply Submission

For exporters who did not respond to the RFI or who did not provide sufficient information, the CBSA determined amounts of subsidy based on a ministerial specification pursuant to subsection 30.4(2) of SIMA, based on the methodology explained in the “All Other Exporters - Vietnam” section above.

Subsidy Programs in Vietnam

Case Briefs

Counsel for the supporting Canadian producer, Stelco, submitted in its case brief that TDA’s response to CBSA’s subsidy RFI indicates that there are several programs where the exporter may be receiving subsidies.

Counsel for HSG argued in its case brief that nothing on the record warrants a change to the CBSA’s *de minimis* subsidy preliminary finding for HSG.

Reply Submissions

Counsel for Nam Kim addressed, in its reply submission, the representations made by AMD in its case brief with respect to Program 1.

CBSA’s Response

Based on the information on the record and in accordance with SIMA and the SIMR, the CBSA has taken the representations on these issues into account when determining amount of subsidy.

Further details can be found in the *Subsidy Investigation* section as well as Appendix 3.

APPENDIX 3 – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES

This Appendix consists of descriptions of the subsidy programs which the responding companies benefited from during the course of the Period of Investigation (POI), other potentially actionable subsidy programs identified by the Canada Border Services Agency (CBSA) and programs that were not used by the exporters in the POI. Questions concerning these programs were included in the Subsidy RFIs sent to the governments of the named countries and to all known exporters/producers of subject goods.

Evidence provided by the complainant and obtained by the Canada Border Services Agency (CBSA) suggests that the GOT and GOV have provided support to exporters/producers of subject goods in the following manner.

TURKEY

Subsidy Programs Used by Responding Exporters

Based on the information available, for purposes of the final determination, the CBSA has found that these programs were used by the responding exporters in Turkey. Based on the information available, these programs constitute a financial contribution provided by the GOT and confer benefits to companies and are specific.

Program 1: Turk Eximbank – Rediscount Credit Program

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association, and the “*Implementation Principles for Rediscount Program*”.²¹⁰ The Central Bank of Republic of Turkey (CBRT)’s Export Credit Rediscount Operation Instructions also includes terms and conditions regarding the credit process in addition to the Implementation Principles.

The program, which requires an export commitment, provides rediscount loans to exporters, with a maturity of 360 days or less.

Under SIMA, as a general rule, an entity will constitute “government” when it possesses, exercises, or is vested with governmental authority. The following are factors that could indicate that this is the case in a particular entity:

- Express delegation or vesting of authority to an entity by statute or other legal instrument
- Evidence that an entity is, in fact, exercising governmental functions
- Evidence that a government exercises meaningful control over an entity

The CBSA determined that the Turk Eximbank satisfies the above criteria of a public body. As such, financial contributions provided by the Turk Eximbank (or on its behalf) with respect to the Eximbank programs are considered as financial contributions provided by the GOT. The CBSA’s position is based on the following factors:

²¹⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 38 and exhibits 20 & 21

- The bank is wholly-owned by the GOT and is under the responsibility of the Prime Ministry. The bank was created by the government decree (No.87/11914) in 1987 following the order of Law No. 3332²¹¹;
- the bank acts as the government's major export incentive instrument in Turkey's export strategy and maintains close co-operation with the related entities of the government. Its objectives are legislated²¹²;
- the Bank's policies and operations have been formulated to work within the framework of the export-led growth strategies pursued by the Turkish government²¹³;
- the Responsibilities and Powers of the Supreme Advisory and Credit Guidance Committee, which is comprised of GOT officials²¹⁴;
- the Turkish Treasury makes capital contributions to Turk Eximbank as the sole shareholder of the Bank. Its main sources of funds are direct funding from the Treasury through capital injections as well as through borrowing from commercial banks and international financial markets²¹⁵; and
- losses incurred by Turk Eximbank as a result of political risks are covered by the Turkish Treasury²¹⁶.

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA.

Pursuant to section 28 of the *Special Import Measures Regulations (SIMR)*, the benefit to the recipient should be based on a commercial benchmark that reflects the recipient's ability to obtain comparable financial services in the commercial market. Benefit exists if the bank requires the recipient to repay a lesser amount than would otherwise be payable under a comparable commercial loan. Specifically, the benefit is equal to the difference between:

- a) the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency, in which the payments for the preferential loan are expressed and on the same credit terms, (other than the interest rate) as are applicable to the preferential loan, plus any additional costs (other than the interests) that would have been incurred by the recipient with respect to a non-guaranteed commercial loan the recipient could have obtained,
- b) and the amount of interest payable on the preferential loan.

²¹¹ EXH 362 (NC) – CBSA Research Exhibits 1; G/SCM/N/315/TUR/Suppl.1 • G/SCM/N/343/TUR - New And Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures- Turkey, September 16, 2019; and EXH 200 (NC), Response to RFI – Subsidy – GOT; exhibit 20

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; EXH 20 & EXH 362 (NC) CBSA Research Exhibits 1-; G/SCM/N/315/TUR; New And Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures- Turkey, August 31, 2017; page7

In order to determine appropriate benchmarks for the loans by the respondents, the CBSA used interest rates from privately owned banks and government banks operating on commercial basis for short term loans (within 360 days), weighted by the value of each loan obtained by the responding exporters during the POI (or where interest accrued during the POI).

The information available also indicates that this program is considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

Program 3: Turk Eximbank – Post-shipment Rediscount Credits (PSRC)

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association, and the “Implementation Principles for Post-Shipment Rediscount Credit Program”.²¹⁷ The CBRT’s Export Credit Rediscount Operation Instructions also includes terms and conditions regarding the credit process in addition to the Implementation Principles.

PSRC is a post-shipment finance facility, aiming at increasing the competitiveness of Turkish exporters in international markets.

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA. Pursuant to section 28 of the *SIMR*, the benefit to the recipient is determined in the same manner as described for Program 1 above.

The information available also indicates that this program is considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

While one of the respondents used this program during the POI, the information available indicates that the amount of benefit was not applicable to subject goods because the program was only used for goods shipped to other destinations.

Program 4: Turk Eximbank – Pre-export Credits (PEC)

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association, and the “Implementation Principles for Pre-Export Credit Program”.²¹⁸

Pre-export Credits are export credit facilities to exporters which are provided in foreign currency or in Turkish lira (TL). The purpose of PEC Program is to provide financial support to exporters, manufacturer-exporters and export-oriented manufacturers in return of the export commitment of Turkish origin goods. The credited company is obliged to fulfill its export commitment within the credit period.²¹⁹

²¹⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 57 and exhibits 20 & 27

²¹⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 67 and exhibits 20 & 26

²¹⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 66-67

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA. Pursuant to section 28 of the *SIMR*, the benefit to the recipient is determined in the same manner as described for Program 1 above.

The information available also indicates that this program is considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

While one of the respondents used this program during the POI, the information available indicates that the amount of benefit was not applicable to subject goods because the program was only used for goods shipped to other destinations.

Program 6: Turk Eximbank –Investment Credit for Export

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association, and the “Implementation Principles for Investment Credit for Export Program ”.²²⁰

Investment Credit for Export (ICE) Program aims at financing machine, equipment and accessory expenditures which need a middle or long term financing because of their sustainability or long-term usage properties on the basis of the amount excluding VAT. The maturity for this program is up to 10 years.²²¹ Manufacturers and manufacturer-exporter firms which are established in Turkey and which produce export-oriented Turkish products are eligible to apply for this credit program.²²²

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA. Pursuant to section 28 of the *SIMR*, the benefit to the recipient is based on a commercial benchmark that reflects the recipient’s ability to obtain comparable financial services in the commercial market. Benefit exists if the bank requires the recipient to repay a lesser amount than would otherwise be payable under a comparable commercial loan.

For benchmark, the CBSA attempted to use interest rates from privately owned banks and government banks operating on commercial basis for long term loans of similar maturity, in the same currency, weighted by the value of each loans, obtained by the cooperating exporters during the POI (or where interest accrued during the POI). The best information available for a benchmark rate in the same currency was the weighted average interest rates for state owned banks’ USD commercial loans, as provided by the GOT.²²³

The information available also indicates that this program is considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

²²⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 84 and exhibits 20 & 28

²²¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 84

²²² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 85

²²³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 19-20

Program 24: Deduction from Taxable Income for Export Revenue

According to Article 40, Clause 1 of Income Tax Law No. 193 dated January 6, 1961, which was amended by the Law No. 4108 dated June 2, 1995, all taxpayers may have an additional deduction of a lump sum amount from their gross income resulting from exports, construction, maintenance, assembly and transportation activities abroad. This amount may not exceed 0.5% of the proceeds they earned in foreign exchange from such activities. The program is administered by Ministry of Treasury and Finance.²²⁴

The only criterion is receipt of foreign currency revenue. The deduction is claimed as part of the exporter's tax filings and is shown in their annual tax return. No application or approval process required.

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected.

Section 32 of the SIMR deals with income tax credits, refunds and exemptions contingent on the export of goods. The subsidy in such cases is to be determined as the amount of the income tax which is credited, refunded or exempted, according to the taxation laws in the territory of the government (i.e. local, state or national) providing the tax relief. The amount of the subsidy on a per unit basis is determined by dividing the tax saving by the total number of units exported during the taxation period under review. The tax rate in Turkey is 22%.

The information available also indicates that this program is considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

Program 27: Investment Incentive Program

In its response to the Subsidy RFI, the GOT addressed this program 16: OIZ – Additional Support Granted Under the Investment Incentives Program under Program 27. The CBSA determined that program 16 and program 27 should be merged as a single program.

The GOT refers to the Program as the “Investment Encouragement Program” (IEP). IEP is designed and implemented by the Ministry of Industry and Technology (MIT) and is currently based on the provisions of the Council of Ministers’ Decree No. 2012/3305, which has been in force since June 15, 2012.²²⁵

²²⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 208

²²⁵ EXH 200 (NC) – Response to RFI – Subsidy GOT; page 228

Pursuant to the current Decree No. 2012/3005, IEP consists of four separate incentive schemes: Regional Investment Incentive Scheme (RIIS), Large Scale Investment Incentive Scheme (LSIIS), Strategic Investment Incentive Scheme (SIIS) and General Investment Incentive Scheme (GIIS). A company should have an investment incentive certificate issued by MIT to have a support under IEP.²²⁶

There are nine aspects of support measures under either one of the schemes:²²⁷

- 1) Customs Duty Exemption: Investment machinery and equipment imported within the scope of the incentive certificate are exempted from customs duty set in the Import Regime Decree. The customs duties are exempted for the companies, which have an incentive certificate, during import operations under the control of the Ministry of Trade.
- 2) VAT Exemption: Investment machinery and equipment imported and/or locally provided within the scope of the incentive certificate are exempted from VAT. The companies, which have an incentive certificate, do not pay VAT for the machinery and equipment under the control of Ministry of Treasury and Finance.
- 3) Interest Rate Support: This support is available for investment loans, borrowed to finance the investment, with a maturity of at least one year for Regional Investments (Region 3, 4, 5 and 6), Strategic Investments, R&D and Environment Investments. The GOT covers a portion of the interest/profit share of the loans that do not exceed 70% of the fixed investment amount registered on the certificate for a specific period which would not exceed five years. The amount of interest rate support and the support rate is limited for each region differently.
- 4) Social Security Premium Support (Employer's Share): For any additional employment created by an investment with an incentive certificate under Regional, Large Scale and Strategic Investment Incentive Schemes, the amount corresponding to the employer's share of the social security premium on legal minimum wage, paid by the investor, is covered by the Social Security Institution. In order for an investor to benefit from this support, the project should be concluded and a completion visa should be granted.
- 5) Tax Reduction: Reduced income or corporate tax rates are applied for the companies until the total deduction reaches the "contribution amount". There are two different rates for the implementation of this support; "contribution rate" and "discount rate". The discount rate is used to find the reduced income/corporate tax rate of the company. The contribution rate is used to find the total deduction. Multiplication of contribution rate with total investment amount gives the contribution amount. The Ministry of Treasury and Finance applies reduced income/corporate tax rate for the company until total deduction reaches the contribution amount.
- 6) Land Allocation: State-owned lands are allocated for investments with incentive certificate under large scale, strategic and regional incentive schemes in accordance with the rules and principles defined by the Ministry of Treasury and Finance, depending on the availability of such land in the provinces where investments are made.

²²⁶ EXH 200 (NC) – Response to RFI – Subsidy GOT; pages 228-229

²²⁷ EXH 200 (NC) – Response to RFI – Subsidy GOT; pages 229-231

7) VAT Refund: VAT collected on the building & construction expenses made for Strategic Investments is rebated provided that the fixed investment amount is over 500 million TL.

8) Social Security Premium Support for Employee's Share (Only for Region 6): This scheme allows for the Ministry to cover the employee's share of the social security premium paid by the investor to the Social Security Institution in the amount corresponding to the legal minimum wage, for additional personnel recruited for new investments in Region 6. This support is available for Regional, Large Scale and Strategic investments in Region 6 only and for 10 years.

9) Income Tax Withholding Support (Only for Region 6): For additional employment created by the investments to be realized within the scope of the incentive certificates issued for Region 6, the income tax that is calculated on the basis of the portion of the employees' wages that corresponds to the minimum wage is not levied. This support is available for the investments in Region 6 only for 10 years.

According to the Article 18 of the Decree No. 2012/3305, investments with incentive certificates within the scope of large scale investments or regional incentive implementations may benefit from tax discount and social security premium employer share support over the rates and periods valid in one region below the region they exist, if the investment is realized in an OIZ (Program 16).²²⁸

According to the GOT, unless they are operating in region 6, the producers of subject merchandise could only benefit from General Investment Incentive Scheme.²²⁹ The CBSA notes that producers operating in region 5 are also eligible if they are in an OIZ.²³⁰ Steel is a sector supported under the Regional scheme.

For Regional Investment Scheme, the sectors that may benefit from regional support and the minimum investments are identified in Annex 2/A of the Decree No. 2012/3305. Steel is identified as such a sector. Furthermore, investments should meet the minimum investment amount criteria for respective regions. Under Strategic Investment Incentive (SII) Scheme of IEP, the investments fulfilling the criteria stipulated in Article 8 of the Decree No. 2012/3305 could benefit from the program. The scopes of investments which could benefit from Large – Scale Investment Incentive Scheme are defined in Annex 3 of the Decree No. 2012/3305. (Annex 3 of the Decree No. 2012/3305).²³¹ Annex – 4 to the Decree No. 2012/3305 describes the investments which are not supported as well as the investments which are supported under certain conditions.²³²

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected.

²²⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 231

²²⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 232

²³⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 53

²³¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 232 and exhibit 53

²³² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 236 and exhibit 53

Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program. Pursuant to paragraph 27(a) of the SIMR, given that the grant (grant equivalent) is to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or import of subsidized goods, the benefit should be allocated over the total quantity of subsidized goods to which the grant is attributable. Pursuant to paragraph 27(b), where the grant was, or is, to be used for the purchase or construction of a fixed asset, the grant is allocated over the estimated total quantity of subsidized goods for the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was, or will be, used for the anticipated useful life of the fixed asset.

This program is restricted to specified sectors, and in some instances, it favors enterprises to enterprises operating in an OIZ or other special zone. Therefore, this program has been determined to be specific, pursuant to paragraph 2(7.2)(a) of SIMA.

Program 34: TUBITAK Industrial R&D Projects Grant

The legal basis for the program is The Scientific and Technological Research Council of Turkey (TUBITAK)'s Implementation Principles.²³³ The program is provided as grants. The granting authority is TUBITAK.

According to the GOT, the projects are evaluated based on three criteria: i) the project's R&D content and technological-innovative aspects; ii) the project plan and the company infrastructure; iii) economic and social benefits expected from the outcomes.²³⁴

Under SIMA, as a general rule, an entity will constitute "government" when it possesses, exercises, or is vested with governmental authority. The following are factors that could indicate that this is the case in a particular entity:

- Express delegation or vesting of authority to an entity by statute or other legal instrument
- Evidence that an entity is, in fact, exercising governmental functions
- Evidence that a government exercises meaningful control over an entity

²³³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 299 and exhibit 70 (not translated)

²³⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 301

According to TUBITAK’s website, the “President of TUBITAK is nominated by the Science Board from distinguished scientists, recognized in the fields of natural sciences and engineering, and is appointed by the President of Turkey upon the recommendation of the Prime Minister. The President of TUBITAK chairs the Science Board and manages the Council pursuant to the decisions reached by the Science Board.”²³⁵ It also states that TUBITAK is responsible for promoting, developing, organizing, conducting and coordinating research and development in line with national targets and priorities. TUBITAK acts as an advisory agency to the Turkish Government on science and research issues, and is the secretariat of the Supreme Council for Science and Technology (SCST), the highest Science and Technology policy making body in Turkey. On the basis of the above, the CBSA is of the opinion that TUBITAK is a government body.

Pursuant to paragraph 2(1.6)(a) of SIMA, there is a financial contribution where practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities. The benefit is determined under paragraph 27(a) of the SIMR, where the amount of the grant shall be distributed over the total quantity of subsidized goods to which the grant is attributable.

Pursuant to section 2(7.1) of SIMA, the subsidy is specific because the criteria and conditions governing eligibility for, and the amount of subsidy do not appear to be objective, and may be applied in a manner that favors a limited number of enterprises. As mentioned above, TUBITAK is responsible for promoting, developing, organizing, conducting and coordinating research and development in line with national targets and priorities. In fact, there are several references to TUBITAK in key government policy documents which were reviewed by the CBSA, such as the GOT’s Development Plans, GITES, the 2023 Turkey Export Strategy and Action Plan, the Strategy Document And Action Plan on Turkey Iron-Steel And Nonferrous Metals Sector and the Mid-Term Programme 2018-2020.²³⁶ On this basis, the CBSA finds that the evidence on the record suggests that the GOT exercises the discretionary nature of the program to favor certain sectors. It is noted that about 40% of requests for funding under the programs are rejected, which emphasizes the discretionary nature of the approval process.²³⁷ Further the majority of the grants were distributed to manufacturing companies. As such, the CBSA has determined that the program is specific, pursuant to section 2(7.1) of SIMA.

Program 35: Social Security Premium Incentive (Employer’s Share)

The GOT refers to this program as the “Social Security Premium Incentive Under Law 6486”. This program aims to increase production and employment levels in some provinces of Turkey by reducing costs of insurance premiums to the employers and intends to reduce the unregistered employment. The program is established by the Law No. 6486, which added a provision to the Law 5510 on May 21, 2013.²³⁸ The Social Security Institution (Institution) is responsible for administering the program.²³⁹

²³⁵ EXH 362 (NC) – CBSA Research; Exhibits 1- Extracts from TUBITAK’s website

²³⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibits 15-19

²³⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 76

²³⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 306

²³⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 309

According to paragraph (i) of Article 81 of the Law 5510; 5% of the employer's social security premium share (11% in total) is financed by the Treasury if employers submit service documents and pay the residual part of the premiums within the statutory periods. The residual part of the premiums are the employee's share (9%), and the rest of the employer's share (6%). This incentive is an across the board application regardless of sector or region. With the additional paragraph (appended provision) of Article 81, the remaining 6% of employers' social security premiums are also covered by the Treasury if these employers are operating in the provinces that are determined by the Council of Ministers. Therefore, employers operating in these provinces do not pay employers' share of the long term social security insurance premiums (11% in total) for specified periods depending on regions.²⁴⁰

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected. According to subsection 27.1(2) of the SIMR, any amount otherwise owing and due to a government that is exempted or deducted and any amount owing to a government that is forgiven or not collected by the government shall be treated as a grant under section 27.

With respect to specificity, the CSBA determined that the benefit relating to "the remaining 6% of employers' social security premiums that are also covered by the Treasury if these employers are operating in the provinces that are determined by the Council of Ministers" is specific pursuant to section 2(7.2)(a) of SIMA because it is limited to enterprises located in certain areas.

Program 36: TUBITAK International Industrial R&D Projects Grant Program

According to the GOT, the legal basis for this program is the Scientific and Technological Research Council of Turkey (TUBITAK)'s Implementation Principles.²⁴¹ The granting authority is TUBITAK.

The objective of the program is to create market focused R&D Projects between European countries and to increase cooperation between Europe wide firms, universities and research institutions, by using cooperation networks such as EUREKA.²⁴² The program is provided as grants.

According to the GOT, the projects are evaluated based on three criteria: i) the project's R&D content and technological-innovative aspects; ii) the project plan and the company infrastructure; and iii) economic and social benefits expected from the outcomes.²⁴³

Pursuant to paragraph 2(1.6)(a) of SIMA, there is a financial contribution where practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities. The benefit is determined under paragraph 27(a) of the SIMR, where the amount of the grant shall be distributed over the total quantity of subsidized goods to which the grant is attributable.

²⁴⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 307

²⁴¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 314 and exhibit 82

²⁴² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 314

²⁴³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page .315

Pursuant to section 2(7.1) of SIMA, the subsidy is specific because the criteria and conditions governing eligibility for, and the amount of subsidy do not appear to be objective, and may be applied in a manner that favors a limited number of enterprises. As mentioned above, TUBITAK is responsible for promoting, developing, organizing, conducting and coordinating research and development in line with national targets and priorities. In fact, there are several references to TUBITAK in key government policy documents which were reviewed by the CBSA, such as the GOT's Development Plans, GITES, the 2023 Turkey Export Strategy and Action Plan, the Strategy Document And Action Plan on Turkey Iron-Steel And Nonferrous Metals Sector and the Mid-Term Programme 2018-2020. On this basis, the evidence on the record suggests that the GOT exercises the discretionary nature of the program to favor certain sectors. Further, key documents regarding this program, provided in response to the Government RFI, such as the implementation principle in addition to the approval and contractual documents, were not translated. As such, the CBSA has determined that the program is specific, pursuant to section 2(7.1) of SIMA.

Other Potentially Actionable Subsidy Programs Identified by the CBSA that were Not Used by the Responding Exporters

Based on the information available, for purposes of the final determination, the CBSA has found that these programs were not used by the responding exporters in Turkey. Based on the information available, these programs may constitute financial contributions provided by the GOT and confer benefits to companies and appear to be specific.

**Program 2: Turk Eximbank – Pre-shipment Export Credits (PSEC) including:
Pre-shipment Turkish Lira Export Credits (PSEC –TL)
Pre-shipment Foreign-Currency Export Credits (PSEC-FX)**

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association, and the “Implementation Principles for Pre-Shipment Export Credits Program” (with 2013.05.20 revision).²⁴⁴

Pre-shipment Export Credits (PSEC) are short-term export credit facilities to exporters which are provided in foreign currency or Turkish lira (TL). The facilities aim at increasing the competitiveness of Turkish exporters in foreign markets.²⁴⁵

According to the GOT, none of the subject product exporters received benefit from PSEC Program during POI. None of the responding exporters reported use of this program during the POI. Thus, information on the record suggests that this program has not been used by producers/exporters of subject goods.

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA. Pursuant to section 28 of the *SIMR*, the benefit to the recipient is determined in the same manner as described for Program 1 above.

²⁴⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 48

²⁴⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 47

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 5: Turk Eximbank – Export-Oriented Working Capital Credit

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association, and the “Implementation Principles for Export-Oriented Working Capital Credit Program”.²⁴⁶

Export-Oriented Working Capital Credit was established with the aim of financing raw materials, intermediate goods, machinery and equipment purchases and other financial needs of companies. Purchasing of raw materials and intermediate goods are financed based on completed procurement within the framework of invoices. The maturity for this program is currently three years.²⁴⁷ It is believed that at least one of the exporters of subject goods used this program during the POI.²⁴⁸

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA.

Pursuant to section 28 of the *SIMR*, the benefit to the recipient should be based on a commercial benchmark that reflects the recipient’s ability to obtain comparable financial services in the commercial market. Benefit exists if the bank requires the recipient to repay a lesser amount than would otherwise be payable under a comparable commercial loan.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 7: Turk Eximbank – Specific Export Credit

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association. Disbursements under this program are made in accordance with the implementation principles of Export Oriented Working Capital Program and Investment for Credit Program.²⁴⁹

²⁴⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 76

²⁴⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 76

²⁴⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT, exhibit 27

²⁴⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 93

Specific Export Credit is a medium-term pre-shipment financing facility provided to contractors that have overseas activities, exporters, exporter-manufacturers' foreign currency generating projects which cannot be financed via existing Turk Eximbank credits. It is believed that at least one of the exporters of subject goods used this program during the POI.²⁵⁰

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA.

Pursuant to section 28 of the *SIMR*, the benefit to the recipient should be based on a commercial benchmark that reflects the recipient's ability to obtain comparable financial services in the commercial market. Benefit exists if the bank requires the recipient to repay a lesser amount than would otherwise be payable under a comparable commercial loan.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 9: Turk Eximbank – Ad-hoc Foreign Exchange Scheme for Rediscount Export Credit by the Central Bank of Turkey

The legal basis for this program is the Circular regarding the Turkish lira repayment option, dated 2018-05-25.²⁵¹ The program is administered by CBRT.

According to the GOT, this program is referred to as the “Turkish Lira Repayment Option”. The “Turkish Lira Repayment Option”, which was valid from May 25, 2018 to July 31, 2018, was introduced by CBRT as a temporary measure. Under the program, Turkish lira repayment option has been provided to ease borrowers' repayment obligations with respect to the extraordinary volatility in the foreign exchange market during that period.²⁵²

In order to make use of Turkish lira repayment option, the borrower (companies which used Rediscount Program – Program 1) must have obtained the rediscount credit before May 25, 2018 and the credit must have a maturity date no later than July 31, 2018. This program potentially adds to the benefit received under Program 1 - Rediscount Program.

²⁵⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT, exhibit 29

²⁵¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 120

²⁵² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 119

Turkish lira repayment option provides borrowers with a choice to make their repayments at specified exchange rates. In case the exchange rate on the date of credit extension is higher than these rates, the exchange rate on the date of credit extension will be applicable in credit repayment.²⁵³ Information on the record suggest that at least one of the exporters of subject goods used this program during the POI.²⁵⁴

The financial contribution with respect to this program is tied to the loan received under Program 1 - Rediscount Program. A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA. Further, the purchase or the sale of foreign currencies by the GOT is a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA.

While the benefit related to the preferential terms of the loan itself, as determined under Section 28 of the SIMR, is discussed under Program 1 - Rediscount Program above, the potential benefit under the Turkish Lira Repayment Option is equal to the difference in the cost of the credit that is attributable to the difference in the exchange rate that would have applied absent this program (i.e. the fair market value of the foreign currency), and the preferential terms applied by the GOT. The benefit is determined under Section 36 of the SIMR, which relates to the provisions of goods or services by a Government, as the difference between the fair market value of the currency sold to the exporter (what the exporter would have paid for the currency if not for the Turkish Lira Repayment Option), and the actual amount paid.

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. A "prohibited subsidy" is either an export subsidy or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export. An "export subsidy" is a subsidy or portion of a subsidy contingent, in whole or in part, on export performance.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 11: OIZ: Provision of energy (e.g. natural gas, electricity) or utilities (e.g. water) at less than fair market value/ preferential rates

Pursuant to paragraph 2(1.6)(c) of SIMA, there is a financial contribution by a government where the government provides goods or services, other than general governmental infrastructure.

²⁵³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 120 and Exhibit 31 - Circular Regarding TL Repayment Option.pdf

²⁵⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page, exhibit 31

Under section 36 of the SIMR, such provision of goods or services may result in a benefit if the goods or services were provided at a price that is less than the fair market value of the goods or services, which relates to the adequacy of the remuneration.

Natural Gas:

The complainant alleged that companies located in OIZs save 0.5% on the cost of natural gas for uses other than electricity.²⁵⁵ The allegations are based on the published prices of Boru Hatları ile Petrol Taşıma Anonim Şirketini [in English - Petroleum Pipeline Corporation] (BOTAS), the government entity²⁵⁶ that is the primary supplier of natural gas in Turkey, which indicates that prices to OIZs are 0.5% lower than for companies located outside an OIZ.²⁵⁷ The complainant also provided evidence that BOTAS was a public body. The complaint alleged that BOTAS is a “state economic enterprise”, established in accordance with the provisions of Decree Law No. 233 on State Economic Enterprises, and is 100% owned by the Turkish government. Its investment and financial decisions are subject to approval by the government, which also appoints the CEO and Board of Directors.²⁵⁸

The natural gas market in Turkey has been regulated according to the provisions of Natural Gas Market Law No. 4646.²⁵⁹ The Law covers the import, transmission, distribution, storage, marketing, trade and export of natural gas and the rights and obligations of all real and legal persons relating to these activities. The GOT explained that per the law, prices in the natural gas market in Turkey are to be based on free market principles and all wholesale companies and importers undertake natural gas transactions as market players.²⁶⁰

The GOT also indicated that the retail price also includes a distribution charge over the wholesale price, and that this charge is regulated by the Energy Market Regulatory Authority (EMRA). Distribution charges are set for a 5-year period for each distribution region separately according to regional operating expenditures and capital expenditures components.²⁶¹ At this time, there is no evidence on the record suggesting any preferential distribution charges.

The GOT provided BOTAS’ wholesale prices for each month of the POI, which confirmed that prices for process consumption (i.e. not for energy generation) are consistently 0.5% lower for OIZs.²⁶² Information on the record suggest that at least one of the exporters of subject goods purchased natural gas from BOTAS during the POI.²⁶³

²⁵⁵ EXH 30 (NC) – COR2 Complaint; paragraph 453

²⁵⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; The State ownership of BOTAS was confirmed by the GOT in exhibit 6 of its Subsidy RFI Response

²⁵⁷ EXH 30 (NC) – COR2 Complaint – Attachment 47, page 42 & 66

²⁵⁸ EXH 30 (NC) – COR2 Complaint – Attachment 47, page 42

²⁵⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 137 and exhibit 35

²⁶⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 25

²⁶¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 26

²⁶² EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 10

²⁶³ EXH 200 (NC) – Response to RFI – Subsidy – GOT, exhibit 31

Pursuant to paragraph 2(1.6)(c) of SIMA, there is a financial contribution where the government provides goods or services, other than general governmental infrastructures. The potential benefit, pursuant to section 36 of the SIMR, is equal to the difference between the fair market value of the goods or services in the territory of the government providing the subsidy (i.e. the benchmark price), and the price at which the goods or services were provided by the government.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Electricity:

The complainant alleged that producers in IOZ may receive a 10%-20% discount on electricity. The legal basis for the alleged preferential rates is the Article 13 of Electricity Market Law No. 6446.²⁶⁴

Pursuant to paragraph 2(1.6)(c) of SIMA, there is a financial contribution where the government provides goods or services, other than general governmental infrastructures. The potential benefit, pursuant to section 36 of the SIMR, is equal to the difference between the fair market value of the goods or services in the territory of the government providing the subsidy (i.e. the benchmark price), and the price at which the goods or services were provided by the government.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Water:

The complainant alleged that the GOT listed low water cost as an advantage of operating in a OIZ.

Pursuant to Article 97 of Law No. 2464 on Municipality Revenues and Article 18-f of Municipality Law No. 5393, the water tariffs are determined by the related Municipal Council of the related municipality of the related province or country.²⁶⁵

²⁶⁴ Exhibit 30 (NC) – COR2 Complaint; paragraph 453

²⁶⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 27

Pursuant to paragraph 2(1.6)(c) of SIMA, there is a financial contribution where the government provides goods or services, other than general governmental infrastructures. The potential benefit, pursuant to section 36 of the SIMR, is equal to the difference between the fair market value of the goods or services in the territory of the government providing the subsidy (i.e. the benchmark price), and the price at which the goods or services were provided by the government.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 12: OIZ: VAT exemption or reduction on land acquisition

According to the complainant, a GOT's investment guide published on the internet lists the exemption of VAT on land acquisition as an advantage of operating in an OIZ.²⁶⁶

According to article 17/4(k) of Value Added Tax Law No:3065, land and workplace deliveries of enterprises which are established for the purpose of founding OIZ or Small Industrial Area, are exempt from VAT.²⁶⁷ The exemption is for enterprises which are established for the purpose of founding OIZ. The Ministry of Treasury and Finance is responsible for administering the program.²⁶⁸

According to the GOT, for the purpose of establishing an OIZ, commercial enterprises, such as enterprising committees, cooperatives or other names, are established. These organizations are established to carry out all or some of the services such as the land procurement that the OIZ is to be established on, completion of infrastructure, and construction of the workplaces. In the establishment of an OIZ, land and workplace deliveries are within the scope of the VAT exemption.²⁶⁹

Pursuant to paragraph 2(1.6)(c) of SIMA, there is a financial contribution where the government provides goods or services, other than general governmental infrastructures. The potential benefit, pursuant to section 36 of the SIMR, is equal to the difference between the fair market value of the goods or services in the territory of the government providing the subsidy (i.e. the benchmark price), and the price at which the goods or services were provided by the government.

²⁶⁶ EXH 30 (NC) – COR2 Complaint – Attachment 139

²⁶⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 145 and exhibit 40

²⁶⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 146

²⁶⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 144

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 13: OIZ: Real Estate Duty Exemption or Reduction

According to the complainant, a GOT's investment guide published on the internet lists the exemption of real estate duty for five years starting from the date of completion of the plant construction, as an advantage of operating in an OIZ.²⁷⁰

In its response to the Subsidy RFI, the GOT indicated that its answer was provided under Program 26 – Exemption from Property Tax. However, it is unclear whether these two programs are the same.

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected. According to subsection 27.1(2) of the SIMR, any amount otherwise owing and due to a government that is exempted or deducted and any amount owing to a government that is forgiven or not collected by the government shall be treated as a grant under section 27.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 14: OIZ: Municipal Tax Exemption or Reduction (e.g. for construction and usage of the plant, on solid waste, etc)

The GOT refers to program as “OIZ – Exemption from Building and Construction Charges”.²⁷¹

According to the GOT, “*Building constructions in municipal borders and urban areas (including extensions and amendments) are subject to building and construction charges at the time construction or amendment license is granted by related municipality. The purpose of the program is encouraging companies to operate in OIZs. The buildings and facilities constructed in OIZs are exempted from building permit fee and occupancy permit fee charged by the municipalities.*”²⁷²

²⁷⁰ EXH 30 (NC) – COR2 Complaint – Attachment 139

²⁷¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 150

²⁷² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 150-151

The program is regulated under Article 80 of the Law No. 2464 on Municipal Revenues, which states that “*Organized Industrial Zones and the constructions and facilities built in small-scaled business sites are exempt from building construction duties and occupancy permit charges*”.²⁷³ The Ministry of Industry and Technology, Directorate General for Industrial Zones, as well as the Ministry of Treasury and Finance are reportedly responsible for the administration of the program.²⁷⁴

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected.

Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program. Pursuant to section 27, where a grant was related to the purchase or construction of a fixed asset, the amount of benefit should be distributed over the estimated total quantity of goods produced / to be produced over the estimated useful life of the asset.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 15: OIZ – Exemption from amalgamation and allotment transaction charges

According to the GOT, this program, which aims at encouraging companies to operate in OIZs, is regulated under Article 59 (n) of the Law No. 492 on the Law on Fees, which stated that “*amalgamation and allotment operations of the real estates located in organized industrial zones, free zones, industrial zones, technological development zones and industrial sites, transactions that requires annotation due to the allocation of the land and transfer and allotment transactions of the buildings built on this land and type change transactions in the mentioned zones*”.²⁷⁵

According to the GOT, land registry and cadastre transactions are subject to land registry and cadastre charges. The charges regarding amalgamation and allotment transactions are collected at the time of amalgamation or allotment transaction by the local office of land registry where the transaction takes place. Allotment, partition or amalgamation transactions pertaining to the immovable properties located in OIZs are exempted from amalgamation and allotment transactions charges. The Ministry of Industry and Technology, Directorate General for Industrial Zones is responsible for the administration of the program.²⁷⁶

²⁷³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 151. and exhibit 41

²⁷⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 152

²⁷⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 157 and exhibit 42

²⁷⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 158-159

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected.

Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program. Pursuant to section 27, where a grant was related to the purchase or construction of a fixed asset, the amount of benefit should be distributed over the estimated total quantity of goods produced / to be produced over the estimated useful life of the asset.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 26: Exemption from Property Tax

The GOT refers to this program as “Property tax exemption under the Law No. 1319”. The program provides property tax exemption for the buildings which are in the organized industrial zones, free zones, industrial zones, technology development zones and industrial sites.²⁷⁷

The relevant legal basis for the tax exemption is paragraph (m) of Article 4 of Property Tax Law No. 1319.²⁷⁸ The subparagraph (m) of Article 4 (permanent exemptions) of Law No. 1319 has been amended by the Article 10 of Law No. 7033 from the date of 1 July 2017 and it is still in force. Municipalities and the Ministry of Finance are responsible for administering the program.²⁷⁹

Local municipalities administer this program. Companies wishing to benefit from this program must notify the related municipality when they first build or acquire a building in an OIZ. The municipality then refrains from assessing the relevant building for property tax.

The property tax rate is 0.2% for these buildings. Owners of buildings located in the types of areas covered by this law (e.g. OIZs) are eligible for the exemption under this program. Owners, not renters, who are responsible for paying property taxes can benefit from the building tax exemption under this program.²⁸⁰

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected.

²⁷⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page. 220

²⁷⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 221 and exhibit 52

²⁷⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 223

²⁸⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 221-222

Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program. Pursuant to paragraph 27(a) of the SIMR, given that the grant (grant equivalent) is to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or import of subsidized goods, the benefit should be allocated over the total quantity of subsidized goods to which the grant is attributable.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 28: Project-based Government Support for Investment Program (Super Investment Incentive Scheme)

The GOT refer to this program as “Project Based Investment Incentive System”. The legal basis of the program is Article 80 of the Law No. 6745 and Decree No. 2016/9495²⁸¹.

The Ministry of Industry and Technology (MIT) is responsible for administering the program.²⁸²

Incentives under this program may include:²⁸³

Tax incentives:

- Customs duty exemption
- VAT exemption
- VAT refunds
- Corporate tax deductions or exemptions

Employment incentives:

- Social security premium support (employer’s share)
- Income tax withholding support
- Qualified personnel employment support

Financial incentives:

- Interest support
- Grant support
- Capital contribution support
- Energy support

²⁸¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 239 and exhibit 57

²⁸² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 241

²⁸³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 239

Incentives related to land allocation:

- Substructure support
- Land allocation

Other incentives:

- Facilitation of legal and administrative procedures
- Purchasing guarantee

Companies which would like to obtain a project-based investment encouragement certificate, apply to the MIT with the details of the investment. MIT evaluates the applications and determines the projects that will be supported. MIT evaluates the applications with regard to current and future needs of the country and potential technological transformation will be provided with the investment.²⁸⁴

The CBSA reviewed the application documentation that must be provided by applicants.²⁸⁵ The application requests that the applicant submits an impact analysis. The document lists 14 criteria to address in the impact analysis, which will form the key decision criteria for the MIT in its evaluation of the applications. Key criteria taken into consideration by the granting authority include the contribution of the product produced via the project to reduce import dependency and the contribution of the project to the competitiveness and export potential of the country. The CBSA noted that these criteria are consistent with the common policies and actions cited in the GOT's 10th and 11th Development Plans, GITES, the 2023 Turkey Export Strategy and Action Plan, the Strategy Document And Action Plan on Turkey Iron-Steel And Nonferrous Metals Sector and the Mid Term Programme 2018-2020. The policies have a common thread in regards to meeting the input supply needs of the manufacturing industry more effectively in export-oriented production, especially for product groups where import dependency is intense. Encouraging exports of higher-added-value steel products is specifically targeted, while encouraging the increase use of domestic intermediate materials in their production.²⁸⁶

Evidence on the record suggest that none of the exporters of subject goods used this program during the POI.

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected. Further the “other incentives” and “incentives related to land allocation” is a financial contribution pursuant to paragraph 2(1.6)(c).

²⁸⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 242

²⁸⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 57; 2016 9495 EK-1_EN.DOCX

²⁸⁶ EXH 166 (NC) – Response to RFI – PMS – GOT; exhibits 6-10 for the policy documents.

Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program. Pursuant to paragraph 27(a) of the SIMR, given that the grant (grant equivalent) is to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or import of subsidized goods, the benefit should be allocated over the total quantity of subsidized goods to which the grant is attributable. Pursuant to paragraph 27(b), where the grant was, or is, to be used for the purchase or construction of a fixed asset, the grant is allocated over the estimated total quantity of subsidized goods for the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was, or will be, used for the anticipated useful life of the fixed asset.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 29: TURQUALITY Brand Promotion Incentive Program

The GOT refers to this program as the “Overseas Branding of Turkish Products, Promotion of Turkish Product Image and Supporting ®Turquality”.²⁸⁷ The “Turquality” program is regulated by Communiqué No. 2006/4 of the Money-Credit and Coordination Council.²⁸⁸ The Ministry of Trade is the national authority responsible for the administration of the program.²⁸⁹

The expenses that may be supported under this program are international trademark registration, certification and quality marks, salaries of fashion/industrial designers and product development engineers, consultancy, promotional activities and rent, decoration and construction of branches and franchises of the supported firms. Companies who are found eligible to be supported by this program, can apply for the support of certain expenses, as listed above. Companies who are accepted under the “Turquality” program are supported for five years.²⁹⁰

Evidence on the record suggest that none of the responding exporters benefited from this program, during the POI.

Pursuant to paragraph 2(1.6)(a), a financial contribution is provided where practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities.

²⁸⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 246

²⁸⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 247 and exhibit 58

²⁸⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 248

²⁹⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 247

Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program. Pursuant to paragraph 27(a) of the SIMR, given that the grant is to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or import of subsidized goods, the benefit should be allocated over the total quantity of subsidized goods to which the grant is attributable.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Program 30: Support to Offset Costs Related to Trade-Remedy Investigations

According to the GOT, it is the Turkish Steel Exporters' Association (TSEA), which is a non-profit business and trade association, that provides assistance to its members through its own budget.²⁹¹ According to TSEA, exporters' associations are non-profit business and trade associations and uses its budget, which basically consists of membership fees to solve the problems that its members face at home and abroad, provides contact between members and foreign importers in order to ease the export processes, to serve up to date domestic and global market news, reports and analysis. Thus, once a trade policy investigation is initiated against Turkish exports, TSEA may contribute to such expenditures. However, the TSEA claims that this is not a support program since TSEA transfers the money to the exporters that it has already collected as membership fees.²⁹²

According to TSEA, it evaluates each request based on the provisions of "Procedures and Principles Regarding the Supports Provided to Companies for Advocacy and Legal Counselling Services Purchased in Trade Remedy Investigations and Generalized System of Preferences Practices", which have been in force since 2015 (Procedures and Principles).²⁹³

Under the program, 50% of consultancy fees, not exceeding 100,000 USD may be contributed by the Exporters' Association. According to TSEA, the applicant company is required to be a member of the exporters' association and to realize at least 500,000 USD export within two calendar years prior to the initiation of the investigation.

According to TSEA, none of the exporters having subject merchandise exports to Canada during the POI applied for, accrued, or received benefits under this program during the POI.²⁹⁴

²⁹¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 253

²⁹² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 254

²⁹³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 254-255 and exhibit 61

²⁹⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 256

The CBSA notes that pursuant to paragraph 2(1)(b) of SIMA, the definition of “government” includes “any person, agency 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, municipal or other local or regional government”. As a general rule, an entity will constitute “government” when it possesses, exercises, or is vested with governmental authority.²⁹⁵

The CBSA reviewed Law 5910²⁹⁶, and made the following observations:

- The TSEA is a sub-organization of the Turkish Exporters Assembly.
- Article 1 - The objective of this Law is to regulate the procedures and principles related with the foundation, operation, duties, bodies, expenses and auditing of the exporters associations and the Turkish Exporters Assembly and the rights and obligations of its members in order to contribute to the economy by increasing export through organizing the exporters and improving cooperation.
- Article 3(3) sets the duties of the exporters’ associations.
- According to Article 1 of the Procedures and Principles,²⁹⁷ the Support to Offset Costs Related to Trade-Remedy Investigations is provided within the context of clause (a) of third paragraph of Article 3 of Law No. 5910 on Foundation and Duties of the Turkish Exporters Assembly and the Exporters’ Associations.
- Article 4 (1) - Exporters are obliged to be a member of the related association and affect the payments specified in the law.
- Article 4 (2) - Members are obliged to comply with the decisions of the association, act in conformity with the objectives of the association, to submit any information and document required by the authorized bodies on time and in full and entitled to resign from membership at will.
- Article 11(3) regards the duties of the Turkish Exporters Assembly. Generally speaking, the Turkish Exporters Assembly is under the authority of the Undersecretariat of Foreign Trade. For example, sub-clause (i) the Turkish Exporters Assembly is to perform the other foreign trade related duties to be assigned by the Undersecretariat.
- Article 18 sets the mandatory contribution to the exporters’ association and to the Turkish Exporters Assembly.

In regards to the above, the CBSA’s position is that the TSEA is vested with government authority and carrying out a government function. As such, the TSEA is considered as a government body.

Pursuant to paragraph 2(1.6)(a), a financial contribution is provided where practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities.

²⁹⁵ SIMA Handbook, Section 6.3.3.3

²⁹⁶ EXH 30 (NC) – COR2 Complaint; exhibit 47. pp. 602-624

²⁹⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 61 - Implementation Procedures And Principles On Financial Support for the Attorney/ Legal Consultancy Fees Paid by Companies as Part of Investigations of Trade Policy Measures and Practices of Generalized System of Preferences

The benefit under this program is equal to the amount of legal fees reimbursed or covered by the TSEA. Pursuant to paragraph 27(a) of the SIMR, the subsidy is to be distributed over the estimated total quantity of subsidized goods to which the grant is attributable. In the case of this program, the grant would be distributed over the quantity of goods subject to the trade remedy investigation in question.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

Identified Programs Found Not to be Subsidies

Program 8: Turk Eximbank – Export Credit Insurance including: Short-term Export Credit Insurance

The legal basis for this program is the Turk Eximbank Law, Principles and Articles of Association and “Implementation Principles for Short-Term Export Credit Insurance”.²⁹⁸

The Short Term Export Credit Insurance Program (STECI) provides Turkish exporters with one-year blanket insurance cover for exports purchased on short-term credits. The percentage of cover is up to 90% for losses due to the political and commercial risks for the shipments to be paid up to 360 days.²⁹⁹

Within the framework of this program, the rates of premium differ for all shipments according to the risk classification of buyer’s country, payment terms and credit periods and the type of the buyer (private/public).³⁰⁰

The provision of export credit insurance is considered as the provision of goods or services, other than general governmental infrastructure and therefore considered a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA. Section 36 of the SIMR deals with the calculation of the amount of subsidy which arises from the provision of goods or services by government. In the absence of a comparable insurance service being provided on a commercial basis and in agreement with paragraph (j) of Annex I of the SCM Agreement, the CBSA will generally consider that an export insurance program provides benefit if the premiums charged for access to the program are inadequate to cover the long term operating costs and losses of the program.³⁰¹

²⁹⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 102

²⁹⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 101

³⁰⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 107

³⁰¹ 6.5.12 of SIMA Handbook

The CBSA reviewed Turk Eximbank's 2014 to 2018 Annual Reports and other information available on the administrative record.³⁰² The CBSA's analysis found that the revenue from premiums covers the long term operating costs of the program and that this program is not a subsidy in respect of the subject goods.

It was determined that no countervailable benefit was provided under this program as in agreement with paragraph (j) of Annex I of the SCM Agreement. Therefore, this program does not constitute a subsidy for the purposes for the final determination. For the purposes of the final determination, the CBSA excluded this program from the "all other rate".

Program 10: Credit Guarantee Fund (KGF) Scheme for Turk Eximbank Programs

Name changed to: Credit Guarantee Fund (KGF) Equity Backed Guarantees and Treasury Backed Guarantees

This program is referred to as the "Credit Guarantee Fund (KGF) Equity Backed Guarantees and Treasury Backed Guarantees" per the GOT.

Turk Eximbank credit programs require the beneficiary to submit a letter of guarantee. The program provides collateral for different credit programs extended by Turk Eximbank. With respect to Treasury-backed guarantees, KGF can provide guarantees up to 100% for the loan requests from Eximbank or TL/foreign currency denominated loans from banks for businesses engaged in exports or foreign currency-earning activities.³⁰³ It is the CBSA's understanding that KGF generally guarantees up to 80% of the credit, with the exception of Eximbank credit which are guaranteed by 100%.³⁰⁴

Under SIMA, as a general rule, an entity will constitute "government" when it possesses, exercises, or is vested with governmental authority.³⁰⁵ The following are factors that could indicate that this is the case in a particular entity:

- Express delegation or vesting of authority to an entity by statute or other legal instrument;
- Evidence that an entity is, in fact, exercising governmental functions; and
- Evidence that a government exercises meaningful control over an entity.

The KGF is a joint-stock company incorporated under the Turkish Commercial Code. Its website lists KGF's government entity shareholders and shareholders that have public institution status. It also states that KGF is the only institution in Turkey that provides guarantees to "ease SME and non-SME access to finance."³⁰⁶

³⁰² EXH 200 (NC) – Response to RFI – Subsidy – GOT; Exhibit 33; TE Annual Report 2018; Exhibit 345 GOT's response to Subsidy SRFI 1, Exhibit 9 and Exhibit 362 (NC) CBSA Research Exhibits 1- Australia SEF 495; p. 106

³⁰³ EXH 362 (NC) – CBSA Research; Exhibits 1- KGF website Information Center

³⁰⁴ EXH 362 (NC) – CBSA Research; Exhibits 1- International Journal of Business and Social Science; Vol. 3 No. 10 [Special Issue – May 2012] - Evaluating the Credit Guarantee Fund (Kgf) of Turkey as a Partial Guarantee Program in the Light of International Practices; H. Tunahan and A.S. Dizkirici

³⁰⁵ SIMA Handbook, Section 6.3.3.3

³⁰⁶ EXH 362 (NC) – CBSA Research; Exhibits 1- KGF website Information Center / FAQs

The KGF website also states that guarantee institutions are supported by states since the services they provide are for the public good. Hence, KGF is exempt from stamp duty, corporate tax, and certain other fees and charges. Furthermore, information on the record also suggests that significant funds are being provided by the GOT for the KGF.³⁰⁷

The CBSA noted that the GOT's economic policy documents specifically refer to the KGF as a policy tool. For example, the Medium Term Programme (2018-2020) states that “[t]he Credit Guarantee Fund (CGF) will be restructured to prioritize the financing investments, exports, new ventures and R&D projects”.³⁰⁸ Similarly the 11th Development Plan says that “[t]he efficiency of the existing credit guarantee system will be increased and the use of the Credit Guarantee Fund in projects that will increase competitiveness and efficiency in prioritized sectors will be concentrated. Fifty percent of the Credit Guarantee Fund will be allocated to investment and to the export loans in the manufacturing industry sectors. [...]. The support of the Development and Investment Bank to industrial investments, particularly the prioritized sectors, will be strengthened.”³⁰⁹

Having regards to the above, the CBSA determined that the KGC satisfies the above criteria of a public body. The KGC is an entity that was established by the GOT (i.e. under Cabinet Decree No. 93/4496 dated 14 July 1993) and has a controlling number of government entity shareholders (as high as 70% according to a research paper³¹⁰). Some of the KGF's capital is provided by the GOT. The KGF appears to be exercising government functions and is used as policy tools in government economic policy and plans.

As such, financial contributions provided by the KGF are considered as financial contributions provided by the GOT.

A loan guarantee is considered a financial contribution pursuant to paragraph 2(1.6)(a) as a practice of the government that involves a contingent transfer of funds.

Pursuant to section 31.1 of the SIMR, the amount of subsidy on loan guarantees is calculated by taking the present value of the difference between (a) the amount of interest and any administrative fees the person on whose behalf the guarantee is provided would have paid in respect of the loan if not for the guarantee, and (b) the amount of interest and any administrative fee the person on whose behalf the guarantee is provided will actually pay in respect of the loan secured by the guarantee.

³⁰⁷ EXH 362 (NC) – CBSA Research; Exhibits 1- KGF website Information Center / FAQs

³⁰⁸ EXH 166 (NC) – Response to RFI – PMS – GOT; Exhibit 10 – Medium Term Programme 2018-2020

³⁰⁹ EXH 166 (NC) – Response to RFI – PMS – GOT; Exhibit 6 – 11th Development Plan, Paras. 299-300

³¹⁰ EXH 30 (NC) – COR2 Complaint; Attachment 47; page 88

The CBSA estimated that this program does not result in any benefit that is not already fully determined in the calculation of the amount of benefit under any of the Eximbank loan programs already under investigation. The CBSA would be unable to segregate the proportion of the preferential terms of a given loan that is due specifically to the KGF guarantee. As such, the CBSA did not determine any amount of subsidy for this program, although potential benefit due to this program would already be reflected in the amounts of benefits estimated for the other Eximbank loan programs. The CBSA assessed whether the KGC provided guarantees on any other loans provided to the producers/exporters of subject goods. According to information on the record, none of the exporters having subject merchandise exports to Canada during the POI received loans with treasury-backed guarantees, other than Turk Eximbank loans.³¹¹

It was determined that no countervailable benefit was provided under this program. Therefore, this program does not constitute a subsidy for the purposes for the final determination. For the purposes of the final determination, the CBSA excluded this program from the “all other rate”.

Program 17: Free Zones Law – Corporate income tax exemption or reductions

Program 18: Free Zones Law – Stamp duties and fees exemptions or reductions

Program 19: Free Zones Law – Customs duties exemptions or reductions

Program 20: Free Zones Law – VAT and special consumption tax exemptions or reductions

Program 21: Free Zones Law – Real Estate Tax Exemptions or reductions

Program 22: Free Zones Law – Income Tax on Employee’s Salary Exemptions or reductions

According to the GOT, all producers/ exporters of subject goods operate in an OIZ.³¹² The GOT also reported that none of the producers/ exporters of subject goods operate in a Free Zone.³¹³

For the purposes of the final determination, the CBSA considered that the six programs related to Free Zones have not been used and were not available to any of the producers or exporters of subject goods. For the purposes of the final determination, the CBSA excluded these six programs from the “all others rate”.

Program 23: Inward Processing Regime – Excessive tax exemptions and drawback (Import Duty Rebates/Drawback Under Inward Processing Regime; Tariff and VAT Exemptions Under Inward Processing Certificate Program)

The legal basis for the program is the Resolution Concerning Inward Processing Regime (“The Resolution No. 2005/8391”).³¹⁴

³¹¹ EXG 345 (NC); Government of Turkey’s Response to SRFI #1, 4c

³¹² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 29 and exhibit 14

³¹³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 29 and exhibit 14

³¹⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 197 and Exhibit 47 (article 9 provides the general provisions)

The Inward Processing Regime (IPR) is a system allowing Turkish manufacturers and exporters to obtain raw materials, intermediate unfinished goods that are used in the production of the exported goods without paying customs duty including Value Added Tax (VAT). The GOT claims that Turkey has a system in place to confirm which inputs, and in what amounts are consumed in production of the exported products under the program.³¹⁵

Under the IPR, two types of certificates are granted, the D1 and D3 certificates. The D1 certificates allow manufacturer-exporters /exporters to obtain inputs that are used in the production of exported goods without paying any import duty and VAT. The D3 certificates can be used in some business activities realized in Turkey. In the implementation of D3 certificates, there is no need for export commitments. All of these business activities are defined as “domestic sales and deliveries deemed as exports”. Holder of the D3 certificates can import goods without paying import duty but in this case, as it is mentioned above, holder makes domestic sales instead of export.³¹⁶

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected.

Under paragraph 2(1)(a) of SIMA, a subsidy does not include the amount of any duty or internal tax imposed on any goods which is exempted or relieved because the goods are exported (including duties on inputs consumed in the production of the exported goods). It is only the excessive relief that consist of a subsidy. An excess amount may occur where, on the condition of export, relief is provided on goods that are not exported, or in instances where the goods are exported but the amount of the relief is greater than the amount that would normally be payable if the goods had been consumed domestically rather than being exported. A normal allowance for waste should be made when considering the excess. The amount of benefit from excessive relief of duties and taxes is determined pursuant to section 35 or 35.01 (for inputs) of the SIMR.

The CBSA may also determine that the entire exemption amount constitutes a benefit if the foreign government has not examined the inputs in order to confirm that such inputs are consumed in the production of the exported goods, in what amounts, and the taxes that are imposed on the inputs. If it is found that there is a system in place that confirms this information, the CBSA will examine the system to see if it is reasonable.

This program is contingent upon an export commitment. Therefore, any potential benefit under this program would be considered to be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

In past subsidy investigations, the CBSA³¹⁷ and Australia³¹⁸ have concluded that the the GOT had adequate controls in place to ensure all export commitments are met and for monitoring compliance with the IPR. It is believed that these conclusions regarded the D1 certificates.

³¹⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 197

³¹⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 198

³¹⁷ CBSA; Dry Wheat Pasta from Turkey, *Statement of Reasons*, Final Determination, July 11, 2018; CBSA; Certain Concrete Reinforcing Bar from Turkey, *Statement of Reasons*, Final Determination, December 23, 2014;

³¹⁸ EXH 362 (NC) – CBSA Research; Exhibits 1; Australia Anti-Dumping Commission, *Statement of Essential Facts No. 495 – Rebar from Turkey*, April 18, 2019

Any relief under D3 certificates would appear to be countervailable. According to responses from the GOT and from the respondents, only D1 certificates were issued to producers or exporters of subject goods during the POI.

Considering that only D1 certificates were used by the producers / exporters of subject goods during the POI, the CBSA considered that no countervailable benefits were granted under this program, in light of evidence that the GOT had adequate controls in place to ensure all export commitments are met and for monitoring compliance with the IPR. For the purposes of the final determination, the CBSA excluded this program from the “all other rate”.

Program 25: Exemption from Banking and Insurance Transactions Tax (BITT) on Foreign Exchange Transactions

Between May 2008 and May 15, 2019, the BITT rate set for all foreign exchange sales was 0%. To restrict speculative and high frequency foreign exchange movements, with Presidential Decree no 1106, BITT rate for foreign exchange sales was increased to 0.1% with certain exceptions.³¹⁹

The BITT rate is specified by Article 1 of the Annexed Decision of the Cabinet Decree No. 98/11591 dated August 28, 1998. The change in BITT rate is put into force with the Presidential Decree no 1106 published in the Official Gazette numbered 30377 dated May 15, 2019 and amended with the Presidential Decree no 1149 published in the Official Gazette numbered 30804 dated June 17, 2019.³²⁰ This regulation is administered by Ministry of Treasury and Finance.³²¹

With the May 15, 2019 amendment, the below stated transactions remained to be subject to 0% BITT:³²²

- Foreign exchange sales between banks and authorized institutions or among each other
- Foreign currency sales that are made to the Ministry of Treasury and Finance
- Foreign currency sales made to corporate borrowers having foreign currency loan payables, by the lender banks or the banks that act as intermediary to the utilization of the foreign currency loan

Afterwards, with the Presidential Decree no 1149, the below stated transactions have been added to the foreign exchange transactions which are subject to 0% BITT rate, from the date of June 18, 2019:³²³

- Foreign exchange sales to enterprises having industrial registry certificate
- Foreign Exchange sales to exporters

³¹⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 214

³²⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 213 & exhibit 51; and EXH 345 (NC) – Response to SRFI 1; exhibit 1

³²¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 216

³²² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 214

³²³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 214

As such, the GOT claimed that foreign exchange sales that are made to any enterprise having an industrial registry certificate are subject to 0% BITT rate without any exceptions. Industrial registry certificates can be obtained by any industrial establishment.³²⁴

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected.

Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program. Pursuant to paragraph 27(a) of the SIMR, given that the grant (grant equivalent) is to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or import of subsidized goods, the benefit should be allocated over the total quantity of subsidized goods to which the grant is attributable.

Regarding specificity, the GOT claims that the foreign exchange transactions of all enterprises having industrial registry certificate are excluded from BITT and that the applicable exemption is not contingent on export. Thus, under the GOT's argument, the BITT exception on foreign exchange transactions is generally available and not export contingent.

On the one hand, exemption from a foreign exchange transaction tax could be treated as a de facto specific subsidy in accordance with paragraph 2(7.3)(c) due to the fact that a certain subset of those who are eligible for the program would receive a larger amount of the benefit (i.e. exporters). This could be the case if the tax relief program provides a distortive benefit in comparison to sales made in the domestic market, as those sales would not require an exchange of currency.

On the other hand, the exemption appears to be restorative in nature, such that it removes a tax on export sales that would not be present for domestic sales as they would not require currency conversion. As such, the subsidy does not appear to be causing distortions to normal patterns of investment, production and pricing that result in harmful trade effects and it is not believed to be targeted to a specific group of enterprises through administrative discretion.

The CBSA has considered that any benefit resulting from the Exemption from Banking and Insurance Transactions Tax (BITT) on Foreign Exchange Transactions is not specific and therefore not countervailable. For the purposes of the final determination, the CBSA excluded this program from the "all other rate".

³²⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 215

Program 31: Export Freight Supports

The GOT referred to this program as the “VAT and Special Consumption Tax (SCT) exemption on the delivery of diesel fuel to the vehicles carrying exporting goods”.³²⁵ Under this program, trucks, haulers and semi-trailers with cooling unit, carrying goods that will be exported within the export regime are exempt from VAT and SCT for their fuel purchases when exiting from the customs border gates determined by the President of the Republic. Purchased diesel fuel amounts shall not exceed the standard fuel tank volumes of trucks and cooler units.³²⁶

The legal basis for the tax exemption is Article 14.3 of the Value Added Tax Law No. 3065 for the VAT exemption; and Article 7/A of the Special Consumption Tax Law No. 4760 for the SCT exemption.³²⁷ The Ministry of Treasury and Finance is administering this exemption.³²⁸

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected. Subsection 27.1(2) of the SIMR stipulates that such amount shall be treated as a grant under Section 27. The benefit is equal to the amount that would otherwise be owing and due that was exempted under this program.

This program is contingent upon an export commitment. Therefore, this program has been determined to be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

No evidence suggests that the service providers have passed through any benefits from this program.

For the purposes of the final determination, the CBSA determined that none of the producers/exporters of subject goods benefited from this program during the POI. For the purposes of the final determination, the CBSA excluded this program from the “all other rate”.

Program 32: Provision of Input (e.g. Hot-rolled Steel, Cold-rolled Steel, coking coal) at Less than Adequate Remuneration

Hot-rolled Steel (HRS), Cold-rolled Steel (CRS)

The complainant alleges that the GOT may be providing substrate (HRS or CRS) to Turkish COR producers through Ereğli Demir ve Çelik Fabrikaları T.A.Ş. (Erdemir) or its subsidiary for less than adequate remuneration.³²⁹

Information on the record confirmed that HRS was supplied by Erdemir for the production of subject and like goods.³³⁰

³²⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 261

³²⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 263

³²⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 262

³²⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 264 and exhibits 62 & 63

³²⁹ EXH 030 (NC) – COR2 Complaint; page 158

³³⁰ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Q.3.

Under SIMA, as a general rule, an entity will constitute “government” when it possesses, exercises, or is vested with governmental authority. The following are factors that could indicate that this is the case in a particular entity:

- Express delegation or vesting of authority to an entity by statute or other legal instrument
- Evidence that an entity is, in fact, exercising governmental functions
- Evidence that a government exercises meaningful control over an entity

Conversely, an entity that is carrying out an entirely commercial function (e.g. a steel producer) can potentially be considered as constituting government, if there is some evidence to show that the entity is in some way possessing, exercising or vested with governmental authority, such as through a statute or through the exercise of governmental function under government control.

Evidence of meaningful control by the GOT over OYAK and/or Erdemir

Erdemir is a joint-stock company whose shares are traded on the Istanbul Stock Exchange. Erdemir is the largest iron and steel works corporation in Turkey. According to data provided by the GOT, Erdemir, together with its subsidiary Isdemir, accounted for close to 53% of HRS production in Turkey, and about 30% of the apparent domestic market for HRS (not counting HRS produced for internal consumption).³³¹ Erdemir denoted the group structure of Erdemir and its subsidiaries as OYAK Mining and Metallurgy Group.

Evidence on the record confirms that OYAK (Military Personnel Assistance and Pension Fund) owns the majority of Erdemir’s share on the stock market through its wholly-owned subsidiary ATAER Holding A.Ş.. In this regard, ATAER Holding A.Ş. owns 49.29% of Erdemir’s share, while Erdemir owns 3.08% of its own shares, which effectively provides OYAK the majority controlling interest of Erdemir (i.e. at 52.37%).³³² Erdemir was privatized in 2006.³³³

³³¹ EXH 166 (NC) – Response to RFI – PMS – GOT; response to question 1; and Exhibit 200 (NC) – Response to RFI – Subsidy – GOT; response to question D2

³³² EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Q.2

³³³ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; response to question 12

According to information on the record, at least five of the current nine members of Erdemir's Board of Directors (BoD) are associated with OYAK. Further, the Turkish Privatization Administration (TPA), a government body, is also a member of the BoD.³³⁴ The TPA has a representative on the BoD as required by Erdemir's Article of Association, and a usufruct right over the "A Group Share".³³⁵ This right of the TPA was a precondition of privatization.³³⁶ The rights assigned to the "A Group Share" include "Resolutions regarding closedown, sales of or an encumbrance upon the integrated steel production facilities and mining facilities owned by the Company and/or its subsidiaries or a resolution on reduction in capacities of such facilities", as well as "Resolutions regarding closedown, sales, demerger or merger or liquidation of the Company and/or its subsidiaries owning the integrated steel production facilities and mining facilities. Such resolutions can only pass through affirmative votes of the usufructuary in representation of Group A shares."³³⁷ In other words, the TPA has veto power over these decisions.

On the basis of the above, it appears that the GOT does have a degree of control or authority over Erdemir, with respect to some potential corporate decisions. The GOT does have veto power over important strategic decisions such as reduction in capacity, closedown, mergers, etc. While the GOT noted that the TPA has never exercised its veto power³³⁸, the mere existence of such power could be sufficient to influence of strategic decisions of the company. With respect to the TPA's involvement in other decisions, it may not be very influential considering the weight of OYAK representatives on the Board. On the other hand, the GOT may also exercise meaningful control over Erdemir indirectly through OYAK.

OYAK is a Military Personnel Assistance and Pension Fund (Fund) which was founded as an institution of the Ministry of National Defense, pursuant to Law No. 205 of January 3, 1961.³³⁹ OYAK utilizes the contribution collected from its members in its investments. While realizing its investments, OYAK aims to contribute to the development of the Turkish economy and prioritizes the areas where this contribution shall be at the highest level".³⁴⁰

Pursuant to Article 20 of the Law No. 205, OYAK is to provide benefits to its members (i.e. military personnel), specifically, retirement benefits, disability benefits, death benefits and housing acquisition benefits.³⁴¹ OYAK is to be funded mainly by deductions from the wage of its members and the revenues generated from the management of the assets of the Fund.³⁴²

³³⁴ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; response to question 15

³³⁵ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Annex 5

³³⁶ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; response to question 17

³³⁷ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Annex 5, Articles of Association – article 22

³³⁸ EXH 166 (NC) – Response to RFI – PMS – GOT; response to question 5

³³⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205

³⁴⁰ Exhibit 362 (NC) CBSA Research Exhibits 1 - Website at <https://www.oyak.com.tr/member-services/>, accessed January 16, 2020.

³⁴¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205

³⁴² EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, article 18

Under the Law, OYAK shall be a corporate body with financial and administrative autonomy.³⁴³ The Law describes the Organs of OYAK (i.e. Representative Assembly, General Assembly, Board of Directors, Board of Audit and General Directorate), the selection of its members, their constitutions and duties.³⁴⁴

A review by the CBSA of the articles describing the governing bodies of OYAK suggests that the GOT has some direct representations in these governing bodies or has influence in the selection of the representatives. For example, the Minister of National Defense and the Minister of Finance are members of the General Assembly. The General Assembly is indeed presided by the Minister of National Defense, or in his absence, by the Minister of Finance.³⁴⁵ Some of the members of the Board of Audit are elected among candidates nominated by the Minister of National Defense and by the Prime Ministry of the Republic of Turkey. Members of the Board of Directors are nominated by the Minister of National Defense, or by an election committee composed of the Minister of National Defense, the Minister of Finance and other government officials.³⁴⁶

In *US – Carbon Steel (India)*, the WTO Appellate Body observed that "a government's power to appoint directors to the board of an entity and the issue of whether those directors are independent, would seem to be distinct factors" in assessing the governmental character of an entity.³⁴⁷ In this context, in *United States – Countervailing Measures On Certain Pipe And Tube Products From Turkey*³⁴⁸, the WTO Panel determined that the US DOC failed to provide evidence that suggests that military and government personnel within OYAK have made decisions under the direction of the GOT in pursuit of governmental economic policies.³⁴⁹ The CBSA reviewed the duties of the members of the governing bodies of OYAK, as stipulated by the Law, which did not provide evidence that military and government personnel within OYAK are making decisions under the direction of the GOT in pursuit of governmental policies.

The CBSA's review of OYAK's corporate website, several of its Press Releases and its Annual Report, suggested evidence of an aim to contribute to the economic policies of the GOT as well as to the national economy, namely to reduce the country's trade deficit and import dependency.³⁵⁰ These aims are in line with the government policies and actions cited in the numerous policy documents reviewed by CBSA.³⁵¹

³⁴³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, article 1

³⁴⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, articles 2-17

³⁴⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, article 4

³⁴⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, articles 7 & 8

³⁴⁷ EXH 362 (NC) – CBSA Research; Exhibits 1 - WT/DS436/AB/R; *US – Carbon Steel (India) – Report of the Appellate Body*; Paragraph 4.45

³⁴⁸ EXH 362 (NC) – CBSA Research; Exhibits 1 - DS523 - United States – Countervailing Measures On Certain Pipe And Tube Products From Turkey, Report of the Panel, December 18, 2018;

³⁴⁹ EXH 362 (NC) – CBSA Research; Exhibits 1 - DS523 - United States – Countervailing Measures On Certain Pipe And Tube Products From Turkey, Report of the Panel, December 18, 2018; paragraph 7.39

³⁵⁰ EXH 362 (NC) – CBSA Research Exhibits 1. Website at <https://www.oyak.com.tr/home-page/>, accessed January 16, 2020.

³⁵¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibits 15-19

For example, in a Press Release regarding OYAK's 58th Ordinary General Assembly Meeting, its Chairman of the Board of Directors was quoted as saying “*We are endeavoring for supporting our country's combat against current deficit, as well as the employment mobilization, and give our best to ensure OYAK's presence in the production fields that will reduce the foreign dependency.*”³⁵² The 2018 annual report of OYAK Mining Metallurgy Group, the group structure that includes Erdemir and its subsidiaries, also discusses how the Group “[...] *has added impetus to the development of the national economy by supplying raw materials to all industries, meeting the growing domestic demand by constantly improving its technology and capacity, enabling the establishment of new industries and supporting exports.*”³⁵³ On that basis, it could be argued that OYAK has, to some degree, a corporate strategy that is aligned with the GOT's official economic policy. Its specific aim at reducing the country's trade deficit and import dependency do appear to be aligned with the policies and actions cited in the GOT's 10th and 11th Development Plans, GITES, the 2023 Turkey Export Strategy and Action Plan, the Strategy Document And Action Plan on Turkey Iron-Steel And Nonferrous Metals Sector and the Mid Term Programme 2018-2020.³⁵⁴

In the preliminary phase of the investigation, the CBSA took the position that Erdemir was a public body in light of evidence that the GOT had a degree of control, or potential control, over Erdemir. However, for the purposes of the final determination, the CBSA believes that the record contains insufficient evidence that such control has been exercised by the GOT in a meaningful way, and that Erdemir is, in fact, exercising governmental functions. As such, Erdemir is not considered as a public body, and as such the CBSA has not determined that the GOT has provided steel input at less than adequate remuneration. The CBSA further notes that this position is consistent with its position in all past relevant SIMA proceedings. For the purposes of the final determination, the CBSA excluded this program from the “all other rate”.

Program 33: Incentives for R&D Operations and Investments

The legal basis for Incentives for Research & Development (“R&D”) Activities is based on the “Law on supporting Research and Development Activities” (Law No. 5746).³⁵⁵

Technology centres, R&D centres, and some pre-competition cooperation projects are able to benefit from the support measures under the Law No. 5746 by applying the Ministry of Industry and Technology (MoIT).³⁵⁶ The support measures provided under the Law No. 5746 are

- R&D Allowance;
- Income Tax Withholding Support;
- Insurance Premium Support; and
- Stamp Tax Exemption.³⁵⁷

³⁵² EXH 362 (NC) – CBSA Research Exhibits 1 – OYAK Press Release 3

³⁵³ EXH 030 (NC) – COR2 Complaint – Attachment 105

³⁵⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibits 15-19

³⁵⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 291 and exhibit 68

³⁵⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 291

³⁵⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 291

Pursuant to paragraph 2(1.6)(a), a financial contribution is provided when practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities; likewise pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected. The benefit to the service provider would be equivalent to the amount of tax exempted, or the direct amount transferred.

With respect to specificity, the complainant believes that the program is specific due to its discretionary nature. The CBSA acknowledges that despite some objective eligibility criteria, an application for benefits under this program is subject to assessment by a panel set up by the GOT. Therefore, the CBSA examined whether there was evidence that the discretion was applied in a manner that favors or was limited to a particular enterprise (i.e. an enterprise or industry or group of enterprises or industries). The CBSA examined the statistical data provided by the GOT which suggested that the number of R&D centers were spread across all sectors.³⁵⁸ The Iron and Non-ferrous Metal accounted for 2.3% of the total number of R&D centers.

The CBSA considered that the evidence suggested that the subsidy was generally available and therefore not specific. For the purposes of the final determination, the CBSA excluded this program from the “all other rate”.

Other Program not Previously Addressed

Program 37: Social Security Premium Support Programs

These additional programs were reported by an exporter in its response to the subsidy RFI.

Minimum Wage Support

According to the GOT, this program was introduced on January 14, 2016 with the provisional Article 68 of the Law No. 5510 which was included in by the Law No. 6661.³⁵⁹ The Social Security Institution is responsible for administering the program.³⁶⁰

This program was introduced following a substantial increase in the minimum wage by the year 2016. The objective of the program was to reduce the employment costs of the companies due to the sudden increase in minimum wage.³⁶¹ The program is provided as a deduction from the employers’ share in insurance premium.³⁶²

³⁵⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 89

³⁵⁹ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.15

³⁶⁰ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.17

³⁶¹ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.15

³⁶² EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.17

The GOT stated that this program was introduced to reduce employment costs regardless of sector and region of the company.³⁶³ The program's amount of benefit is determined by the criteria in Law No. 5510.³⁶⁴ To benefit from this program, companies which registered before January 1, 2016 must fulfill the requirements below:³⁶⁵

- Provide their 2016 monthly premiums and service documents within the statutory period.
- Declare their employees', who worked for their companies in 2016, earnings that are subject to premium in full.

Companies which registered after January 1, 2016 must fulfill the requirements below:³⁶⁶

- Provide their 2016 monthly premiums and service documents within the statutory period;
- pay their current month premiums within the statutory period;
- not to owe any premium, administrative fine and default fine and late fees to the (Social Security Institution) SSI. If the companies already have received a deferment, installment or restructuring of debt they will submit that to the local offices of the Institution;
- inform their employees they are insured; and
- the company can not underreport the employees earnings which are subject to premium.

Hiring New Employees Who Previously Unemployed

According to information on the record, there were three laws that governed this program. These three laws were as follows, Law 6111, Law 6645 and Law 7103. The purpose of these laws is to support all companies that hire new employees who were previously unemployed.

In regards to Law 6111 as per the GOT, Provisional Article 10 of Unemployment Insurance Law No. 4447 which was appended by Law No. 6111 was implemented to increase the employment of young people, women, and vocational proficiency certificate holders. The amount of insurance premium shares that is to be covered by the employers is covered from the Unemployment Insurance Fund.³⁶⁷ The amount of the assistance provided is determined by the criteria found in Provisional Article 10 of Unemployment Insurance Law no 4447.³⁶⁸ In order to benefit from this program the employer must be a private sector employer; employ the insured in addition to the average number of the insured personnel; submit monthly premium and service documents to SSI within the statutory periods; pay insurance premiums within the statutory periods; and not have been found to employ unregistered workers.³⁶⁹

³⁶³ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.15

³⁶⁴ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.15

³⁶⁵ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.15

³⁶⁶ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.15-16

³⁶⁷ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.18

³⁶⁸ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.20

³⁶⁹ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.18-19

In regards to Law 6645 as per the GOT, Provisional Article 15 of Unemployment Insurance Law No. 4447 which was appended by Law No. 6645, was implemented to promote the hiring of people who completed on-the-job training programs. This law was enacted to benefit employers that hire people who completed on-the-job training programs and are between 18 – 29.³⁷⁰ The amount of the assistance provided is determined by the criteria in Provisional Article 15 of Unemployment Insurance Law no. 4447.³⁷¹ In order to benefit from this program the employer must be a private sector employer; employ the insured in addition to the average number of the insured personnel; submit monthly premium and service documents to SSI within the statutory periods; pay the amount corresponding to the insured's share within the legal period; and also not be bound by a liability of a premium, administrative fine to the Social Security Institution or penalty for default or default interest in connection therewith for the insured employee.³⁷²

In regards to Law 7103 as per the GOT, Provisional Article 19 of Unemployment Insurance Law No. 4447, which was appended by Law No. 7103, was implemented to increase employment by providing premium support to employers who hire unemployed people.³⁷³ The amount of the assistance provided is determined by the criteria in Provisional Article 19 of Unemployment Insurance Law no. 4447.³⁷⁴ In order to benefit from this program the employer must not be in debt of any premium and administrative fine, delay fine and late fee of such payments to the Social Security Institution; must submit monthly premium and service documents to SSI within the statutory periods, must pay its share of insurance premiums within the statutory periods, and not have been found to employ unregistered workers or make false statements with regard to the insured workers.³⁷⁵

Income Tax Withholding Support Under Law 7103

As per the GOT, the benefit from this law is provided pursuant to Provisional Article 21 of Unemployment Insurance Law No. 4447, which was appended by Law No. 7103, to the employers who employ new employees within the scope of this Law's Provisional Articles of 19 and 20.³⁷⁶

According to the GOT, in order to benefit from this program under provision article 19 the employer must:

- not be in debt of a premium and an administrative fine, delay fine and late fee for the payments to the Social Security Institution;
- submit monthly premium and service documents to the SSI within the statutory periods;
- pay its share of insurance premiums within the statutory periods; and
- not have been found to employ unregistered workers or make false statements with regard to the insured workers.

³⁷⁰ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.21

³⁷¹ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.22

³⁷² EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, EXH 18

³⁷³ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.23

³⁷⁴ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.25

³⁷⁵ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.24

³⁷⁶ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.26

According to the GOT, in order to benefit from this program under provision article 20 the employer must fulfill all the same requirements as listed in article 19 as well as:

- be an employer in the manufacturing sector;
- have a master certificate in the manufacturing sector; and
- have the average number of 1 to 3, regarding the registered insured in the monthly premium and service documents provided to SSI.³⁷⁷

Per the GOT, due to the sizes of the respondent companies, they cannot have met the additional criteria in the Provisional Article 20. Therefore, the respondent companies may have benefited from this program only through Provisional Article 19. They also stated that the use of this program is not contingent upon export performance or upon the use of domestic over imported goods. It is not limited to any enterprise or group of enterprises located in a geographical region, or to any industry or sector, or to small and medium sized enterprises.³⁷⁸

Social Security Premium Support Under Law 4857

According to the GOT, this program was introduced to increase the employment of people with disabilities. Article 30 of Law 4857 states that employers in private businesses employing 50 or more employees are obligated to employ three percent of people with disabilities, in public businesses it is four percent for people with disabilities and two percent for ex-convicts. They must employ them in jobs appropriate for their professions and physical and psychological status. 100 percent of the employer's share of insurance premium for the employees with disabilities is financed by the Ministry of Treasury and Finance if the three percent quota is met.³⁷⁹

Pursuant to paragraph 2(1.6)(b), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected. Based on the above, CBSA confirmed that there was a financial contribution in the form of amounts otherwise owing to the government.

Regarding specificity, the GOT claims that the above programs are not contingent on export or any geographically region. Thus, under the GOT's argument, the programs above are generally available and not export contingent.

³⁷⁷ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.26-27

³⁷⁸ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.27

³⁷⁹ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.29

In regards to the program, *Income Tax Withholding Support Under Law 7103 program*, the CBSA found that financial contributions made under this program are not specific, given the broad nature of the manufacturing sector, which can include a range of industries (steel, petrochemical, lumber etc.). Similarly, the CBSA found that the applicable selection criteria for the other remaining programs, as listed above, strongly indicate that they are generally available to a number of different industries. As such, based on the information available, the CBSA found that any benefit resulting from those programs is not specific and therefore not actionable. For the purposes of the final determination, the CBSA excluded Program 37 from the “all other rate”.

Program 38: Intern Salary Support

This additional program was reported by an exporter in their response to the Request for Information.

Per the GOT, this law was introduced in December 2, 2016 by way of the Provisional Article 12 of Law 3308 which was appended by Law 6764. This was introduced to support employers by paying a portion of the salary paid by employers to apprentice candidates, apprentices and students that undertake vocational training, internship or supplementary training in workplaces.³⁸⁰ According to the GOT, the purpose of the program is to encourage internship and strengthen the relationship between education and employment. They stated that the main purpose of the program is not to provide support to companies but to encourage internship for vocational high school and university students. They submitted that the beneficiaries are students rather than companies.³⁸¹

The government benefit provided is two-thirds of the salary of those employees for workplaces that employ less than 20 workers and one-third of the salary for those employees for workplaces that employ 20 or more workers.³⁸²

This program is not supported via an application process.³⁸³ The contribution share of the wage from the state is paid from the Turkish Employment Agency from the Unemployment Insurance Fund. The remaining amount of the wage is paid by the employer.³⁸⁴

Pursuant to paragraph 2(1.6)(a) of SIMA, there is a financial contribution where practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities. The direct transfer of salary would therefore constitute as a financial contribution. With respect to specificity, information on the record does not demonstrate that they are not generally available. Based on the information available, CBSA has considered that any benefit resulting from the programs above is not specific and therefore not countervailable. For the purposes of the final determination, the CBSA excluded this program from the “all other rate”.

³⁸⁰ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.31

³⁸¹ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.32

³⁸² EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.31-32

³⁸³ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, p.33

³⁸⁴ EXH 555 (NC), Response to the supplemental request for information (SRFI) #2 from the GOT, EXH 23

UNITED ARAB EMIRATES

Program 1. Import Duty and VAT Exemption in Free Trade Zone

The complainant identified one subsidy program for the UAE. The complainant alleges that COR producers located in free-trade zones in the UAE are exempt from paying a 5% import duty and 5% VAT on the importation of machinery, equipment and other capital used in their production of COR. The allegation is based on online publications by the UAE government and by a consulting firm. The complainant also alleged that at least two of the four known COR producers in the UAE are located in a Free-Trade Zone (FTZ).³⁸⁵

The complainant maintains that this relief provides a beneficial financial contribution in the form of revenue foregone by government and that the benefit is specific because it is only available to enterprises located in such free-trade zones.³⁸⁶

Pursuant to paragraph 2(1.6)(b) of the *Special Import Measures Act* (SIMA), a financial contribution is provided where amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due are forgiven or not collected. Based on the above, CBSA confirmed that there was a financial contribution in the form of revenue foregone by the GOU.

To determine whether the financial contribution was specific, the CBSA examined the legal framework of the country's tax laws and qualification criteria for the exemption of import duty and VAT on the importation of equipment and material.

The GOU and two exporters provided the relevant legislation that provides the exemption. The legislation states that any business with an "Industrial License" is exempt from all import duties for equipment and materials. Both exporters also provided copies of their application forms as well as "Industrial License" certificates. In addition, the GOU also provided statistics on the total number of companies in the UAE that hold an "Industrial License", which range vastly among industries, from restaurants to industrial manufacturers.

Based on the information above, the CBSA was satisfied that although both exporters had received financial contribution in the form of revenue forgone by the government, it was not on account of being located in a FTZ. Furthermore, the large number of companies throughout the UAE spanning across many industries that also qualified for the same import duty exemption supports that the exemption of import duties is generally available.

It is noteworthy that the GOU imposed 5% VAT as of January 2018. Prior to this, VAT was neither collected by the GOU nor remitted by any person or business in the UAE.

³⁸⁵ EXH 30 (NC) - Corrosion-Resistant Steel Sheet 2 Complaint, paragraphs 491-493.

³⁸⁶ *Ibid.*

The CBSA considered that Article 48(1) of the VAT Regulations permit the usage of a reverse charge mechanism and accounts for VAT at the time of importation as if the taxable supply was made within the UAE. Article 54(1) of the VAT Regulations then permits recovery of VAT paid on imports as an input tax credit in its corporate tax return. In the CBSA's understanding, this is similar to how the HST and GST function in Canada. The CBSA therefore confirmed that both exporters paid VAT on imported equipment and materials as of 2018, and with regards to the reverse charge mechanism, the CBSA does not consider either exporter to have benefitted from a VAT exemption.

Program 2. Preferential Export Financing or Export Credit Insurance

Prior to the initiation of the investigation, the CBSA identified an additional potential program which exporters located in the UAE may have also benefited from in the form of export financing or export credit insurance from the GOU, in particular from the Etihad Credit Insurance (ECI). The ECI is a Public Joint Stock Company owned by the United Arab Emirates Federal Government and the Government of the Emirate of Abu Dhabi, the Government of the Emirate of Dubai, the Government of the Emirate of Ajman, the Government of the Emirate of Ras Al Khaimah and the Government of the Emirate of Fujairah.³⁸⁷ Its website says it is a *“specialized state institution to support the export and re-export of United Arab Emirates goods, works, services, and the foreign investments of United Arab Emirates companies, through the provision of a range of export credit, financing and investment insurance products.”* Services offered also include *“Post-shipment financing of exports through bills discounting with the commercial banks at concessional interest rates [emphasis added]; and Pre-shipment financing facilities for exporters through commercial banks against guarantees issued by ECI for working capital requirements, so as to meet and enhance the opportunity for their export sales”*.

Pursuant to paragraph 2(1.6)(c) of SIMA, a financial contribution is provided where the government provides goods or services, other than general governmental infrastructure, or purchases goods.

In its RFI response, the GOU provided that the Etihad Export Credit Insurance PJSC (ECI) was established by the UAE Cabinet Resolution No. 303/11W7 of 2015, and is *“...mandated to protect and help UAE companies to reduce the uncertainty of exporting to other countries. It provides production to exporters and re-exporters against non-payments due to commercial and political risks associated with the export and re-export of UAE goods and services. It provides protection for foreign investments and projects (outside UAE) due to associated political risks.”*³⁸⁸

³⁸⁷ EXH 003 (NC) – CBSA Supporting Documents, page 39

³⁸⁸ EXH 178 (NC) – Response to RFI – Subsidy GOU; page 39

Both exporters provided that they did not apply for, nor receive any export credit insurance through ECI during the POI. The GOU also confirmed that neither exporter applied for nor received any export credit insurance through ECI during the POI. In its review and desk audit of the exporters' information, including financial statements and accounting records, no positive evidence of companies applying for the program or receiving any benefits under the program were found. Therefore the CBSA considered that no countervailable benefits were granted under this program.

Program 3. Export Assistance Program

Prior to the initiation of the investigation, the CBSA identified an additional potential program which exporters located in the UAE may have also benefited from. This program, the "Export Assistance Program" was identified as being offered by the Dubai Export Development Corporation (Dubai Exports), believed to be the export promotion agency of the government of Dubai.³⁸⁹ Under the program, according to the agency's website, "*companies can apply for reimbursement on the eligible export promotion activities such as market visits and participation in exhibitions.*" Its website also refers to the program as "[...] *an invaluable means to access funding for their export operations.*"

Pursuant to paragraph 2(1.6)(c) of SIMA, a financial contribution is provided where the government provides goods or services, other than general governmental infrastructure, or purchases goods.

In its RFI response, the GOU acknowledged the existence of the programme, however it also provided that "*...the program has been put on hold since 2015, and as per the official statement of the UAE during the last WTO Trade Policy review undertaken in 2006, Dubai Exporters do not envisage to re-initiate this programs.*"³⁹⁰

In their RFI responses, both exporters provided that they did not apply for nor receive any export assistance under this program during the POI. The GOU also provided that neither exporter applied for nor received any export assistance under this program during the POI. In its review and desk audit of the exporters' information, including financial statements and accounting records, no positive evidence of companies applying for the program or receiving any benefits under the program were found. Therefore the CBSA considered that no countervailable benefits were granted under this program.

Program 4. Mussafah as a Special Economic Zone

In reviewing Program 1, the CBSA also identified that Mussafah may be considered as a Special Economic Zone (SEZ), and that manufacturers and or exporters of COR may have benefitted from being located in Mussafah.

³⁸⁹ EXH 003 (NC) – CBSA Supporting Documents, page 36.

³⁹⁰ EXH178 (NC) – Response to RFI – Subsidy – GOU; page 45.

The GOU provided that Mussafah is not an SEZ, and maintained that no benefit was conferred to either exporter, specifically in land usage fees, or in utility rates, or for income tax purposes. The GOU provided current average lease rates throughout the UAE. It also provided relevant commercial utility rates. Since there is no income tax payable in the UAE, neither exporter could have benefited from a preferential tax rate.

AGIS provided that *“the Higher Corporation for Specialized Economic Zones (ZonesCorp) is an Abu Dhabi owned industrial development organization of purpose built economic zones in the UAE. ZonesCorp owns and operates the Industrial City of Dubai (ICAD) where AGIS’s manufacturing facility is located. ICAD is a general industrial area that operates much as an industrial park would in Canada, situating similar businesses and industries in a geographic area to facilitate, among other things, proper land use planning and the provision of infrastructure and other services.”*³⁹¹

Pursuant to paragraph 2(1.6)(c) of SIMA, a financial contribution is provided where the government provides goods or services, other than general governmental infrastructure, or purchases goods.

The CBSA did not find any positive evidence of services offered to either exporter at preferential rates during the POI on account of being located in the ICAD.

Program 5. Preferential Loans from a Government Bank

The CBSA examined whether any preferential loans from a government bank benefited either exporter in the UAE. Exporters were found to hold loans from banks partially owned or fully owned by the GOU.

A loan is considered a direct transfer of funds and therefore considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA.

Pursuant to section 28 of the *Special Import Measures Regulations (SIMR)*, the benefit to the recipient should be based on a commercial benchmark that reflects the recipient’s ability to obtain comparable financial services in the commercial market. Benefit exists if the bank requires the recipient to repay a lesser amount than would otherwise be payable under a comparable commercial loan. Specifically, the benefit is equal to the difference between:

- a) the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency, in which the payments for the preferential loan are expressed and on the same credit terms (other than the interest rate), as are applicable to the preferential loan, plus any additional costs (other than the interests), that would have been incurred by the recipient with respect to a non-guaranteed commercial loan the recipient could have obtained, and
- b) the amount of interest payable on the preferential loan. For benchmark, the CBSA used interest rate from a similar loan from a privately owned bank in the same currency.

³⁹¹ EXH 546 (NC) – AGIS Response to SRFI#1, page 2.

The CBSA conducted an analysis of the interest rates, and determined that the rates were not preferential to confer a benefit. Therefore, no subsidy amount under this program was attributable to the subject goods of either exporter.

VIETNAM

Subsidy Programs Used by the Responding Exporters

Based on the information available, for purposes of the final determination, the CBSA has found that these programs were used by the responding exporters in Vietnam. Based on the information available, these programs constitute a financial contribution provided by the GOV and confer benefits to companies and are specific.

Program 1. Exemptions of import duty

The programs of import duty exemptions are made available pursuant to the Law No. 107/2016/QH13 dated April 6, 2016, on export and import duties (Law No. 107) and Decree No. 134/2016/ND CP dated September 1, 2016, on guidelines for the law on export and import duties (Decree No. 134). Law No. 107 replaced the Law on Export and Import Tax No. 45/2005/QH11 dated June 14, 2005, on detailing a number of articles of the law on export and import duties (Law No. 45). Decree 134 replaced Decree No. 87/2010/ND CP dated August 13, 2010, guiding the implementation of a number of articles of the Law on Export Tax and Import Tax (Decree No. 87). Duty exemption is stipulated in Article 16 of Law No. 45 and Law No. 107 and specified in Article 12 of Decree No. 87 and Article 5 to 29 of Decree No. 134. These programs were provided by the GOV.

This program is considered to be a financial contribution 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 confers a benefit to the recipient equal to the amounts of the reductions and exemptions.

The program is specific pursuant to subsection 2(7.2) of SIMA because it is limited to either enterprises in certain geographic areas or investment projects specified in Appendix 1 and Appendix 2 of Decree No. 118/2015/ND-CP³⁹² dated November 12, 2015, guiding the implementation of a number of articles of the law on investment.

Program 3. Incentives on Non-agricultural land use tax

Based on CBSA research, non-agricultural land use tax is regulated by Law No. 48/2010/QH12 dated June 17, 2010, on non-agricultural land use tax (Law No. 48); Decree 53/2011/ND-CP dated July 1, 2011, guiding the implementation of this Law No. 48; and Circular No. 153/2011/TT-BTC dated November 11, 2011, guiding on non-agricultural land use tax (Circular No. 153). Articles 9 and 10 of Law No. 48 provide for tax exemption and reduction for non-agricultural land use. This program was provided by the GOV.

³⁹² EXH 426 (NC) - Decree No. 118.

Appendix 1 of Decree No. 118/2015/ND-CP dated November 12, 2015, guiding the implementation of the Law on Investment (Decree No. 118), defines domains eligible for investment promotion and domains eligible for special investment preferences. Appendix 2 of Decree No. 118 defines areas with extreme socio-economic difficulties, areas with socio-economic difficulties eligible for investment preferences.

This program is a financial contribution 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 confers a benefit to the recipient equal to the amount of the reduction/exemption.

The program is specific pursuant to subsection 2(7.2) of SIMA because it is limited to industries located in the regions prescribed.

Program 4. Exemption/Reductions of Land Rent, Tax and Levy

Land used for production and business purposes is governed by Law No. 45/2013/QH13³⁹³ dated June 21, 2013, on Land (Law No. 45); Decree No. 46/2014/ND-CP³⁹⁴ dated May 15, 2014, on regulating the collection of land rents and water surface rents (Decree No. 46); Circular No. 77/2014/TT-BTC³⁹⁵ dated June 16, 2014, guiding Decree No. 46/2014/ND-CP; and Circular No. 333/2016/TT-BTC dated December 26, 2016, amending and supplementing a number of articles of Circular No. 77/2014/TT-BTC. Land rent exemption and reduction in land rent are provided in Articles 19 and 20 of Decree No. 46. These programs were provided by the GOV.

The program land-use levy exemption/reduction was terminated on July 1, 2014, as the effective date of the Law No. 45/2013/QH13 dated June 21, 2013, on Land (Law No. 45), replaced Law No. 13. Although, this program was terminated on July 1, 2014, companies that were eligible for the program could have benefited from the subsidy while it was in effect. Depending on the size of the benefits, the benefits could potentially be amortized over the following subsequent years.

This program is considered to be a financial contribution 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 confers a benefit to the recipient equal to the amounts of the reductions and exemptions.

The program is specific pursuant to subsection 2(7.2) of SIMA because it is limited to the List of domains entitled to investment incentives and the List of regions entitled to investment incentives as specified in Article 110 of the Law on Land 2013; Section II, Chapter II of Decree No. 46; and Appendix II of Decree 118/2015/ND-CP.

³⁹³ EXH 426 (NC) - New Law No. 45.

³⁹⁴ EXH 426 (NC) - Decree No. 46.

³⁹⁵ EXH 426 (NC) - Circular No. 77.

Program 6. Enterprise income tax preferences, exemptions and reductions

Corporate income tax and tax benefits are governed by Law No. 14/2008/QH12³⁹⁶ dated June 3, 2008, on Enterprise Income Tax 2008 (Law No. 14); Law No. 32/2013/QH13³⁹⁷ dated June 19, 2013, on amending and supplementing a number of articles of Law on Enterprise Income Tax 2008 (Income Tax 2008 Amending); Law No. 71/2014/QH13³⁹⁸ dated December 8, 2014, on amending and supplementing a number of articles of the laws on taxes (Law No. 71); Decree No. 218/2013/ND-CP dated December 26, 2013, on detailing and guiding the implementation of law on corporate income tax (Decree No. 218) and Decree No. 12/2015/ND-CP dated February 12, 2015, on elaboration of the law on amendments to tax laws (Decree No. 12). Income tax rate preference is provided in Article 15 of Decree No. 218 and tax exemptions and reductions is provided in Article 16 of Decree No. 218. This program was provided by the GOV.

Article 20.2 of Decree 218 allows the continuation of the application of corporate income tax preferences granted before the Decree's effective date as of February 15, 2014, if those preferences are more advantaged than those granted under Decree 218.

According to Article 15 of Law No. 67/2014/QH13 dated November 26, 2014, on the Law on Investment (Law No. 67), corporate income tax preferences apply to: (1) Economic zone, high-tech zone established by Decision of the Prime Minister in area with difficult socio-economic conditions; (2) Industrial, processing zone established by Decision of the Prime Minister in areas with special difficult socio-economic conditions specified in Attachment II to Decree No. 118/2015/ND-CP dated November 12, 2015, on guidelines for some articles of the law on Investment (Decree No. 118).

This program is a financial contribution 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 confers a benefit to the recipient equal to the amount of the reduction/exemption.

The program is specific pursuant to subsection 2(7.2) of SIMA because it is limited to investment projects within certain eligible geographic areas as specified in Article 15 of Law No. 67.

Program 8. Investment support

The complaint listed the two programs and referred to the US DOC's final determination in *Certain Steel Nails*.³⁹⁹

The programs are made available pursuant to *Decree 108/2006/ND-CP of the Government*, dated, September 22, 2006.⁴⁰⁰ Decree 108 details in which areas the government will support new investments.

³⁹⁶ EXH 426 (NC) - Law No. 14.

³⁹⁷ EXH 426 (NC) - Law No. 32.

³⁹⁸ EXH 426 (NC) - Law No. 71.

³⁹⁹ EXH 30 (NC) - COR2 Complaint; page 173

⁴⁰⁰ EXH 426 (NC) - Decree No. 108.

This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts confer a benefit to the recipient equal to the amount of the extra support received from the Government.

The program is specific pursuant to subsection 2(7.2) of SIMA because it is limited to a list of sectors entitled to investment incentives and a list of geographical areas entitled to investment incentives as specified in Appendix I and II and of the Law.

Other Potentially Actionable Subsidy Programs Identified By The CBSA That Were Not Used By The Responding Exporter

Based on the information available, for purposes of the final determination, the CBSA has found that these programs were not used by the responding exporters in Vietnam. Based on the information available, these programs may constitute financial contributions provided by the GOV and confer benefits to companies and appear to be specific.

Program 2. Refunds of import duty

The import duty refund programs are made available pursuant to the Law No. 107/2016/QH13 dated April 6, 2016, on export and import duties (Law No. 107) and Decree No. 134/2016/ND-CP dated September 1, 2016, on guidelines for the law on export and import duties (Decree No. 134). Law No. 107 replaced the Law on Export and Import Tax No. 45/2005/QH11 dated June 14, 2005, on detailing a number of articles of the law on export and import duties (Law No. 45). Decree 134 replaced Decree No. 87/2010/ND-CP dated August 13, 2010, guiding the implementation of a number of articles of the Law on Export Tax and Import Tax (Decree No. 87). Duty refund is stipulated in Article 19 of Law No. 45 and Law No. 107 and specified in Article 15 of Decree No. 87 and Article 33 to 37 of Decree No. 134. These programs were provided by the GOV.

This program is considered to be a financial contribution 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 confers a benefit to the recipient equal to the amount of the refund.

The program is specific pursuant to subsection 2(7.2) of SIMA because it is limited to enterprises located in certain geographic areas or contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

Program 7. Accelerated Depreciation of Fixed Assets

Accelerated depreciation of fixed assets is specified in Circular 45/2013/TT-BTC⁴⁰¹ dated April 25, 2013, on guiding the regime of management, use and depreciation of fixed assets (Circular 45). According to Article 1, Circular No. 45 applies to enterprises established and operating in Vietnam under regulations of law. Enterprises are permitted to choose their preferred method of depreciation, period of depreciation of fixed assets according to Circular No.

⁴⁰¹ EXH 426 (NC) - Circular No. 45.

45 and must notify the tax authority before implementation. This program was provided by the GOV.

Article 35 of Law No. 59/2005/QH11 dated November 29, 2005, on the Law on Investment (Law No. 59) provides for investment projects in investment incentive sectors and geographical areas and business projects with high economic efficiency to adopt accelerated depreciation of fixed assets.

This program is a financial contribution 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 confers a benefit to the recipient equal to the amount of the reduction/exemption.

The program is specific pursuant to subsection 2(7.2) of SIMA because it is limited to particular enterprises with fixed assets and specialized technological capabilities.

Program 9. Export Promotion Program

The National Trade program was established by Decision No. 279/2005/QD-TTg of November 3, 2005. The Decision constituted the framework for state-funded trade promotion activities from 2006 to 2010. The state funding of these activities was derived from the Export Promotion Fund, established pursuant to Prime Minister's Decision No. 195/1999/QD-TTg. The Decision 279 was amended and supplemented by Prime Minister's Decision No. 80/2009/QD-TTg of May 21, 2009.⁴⁰²

This program is considered to be a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, where a direct transfer of funds from the Government confers a benefit to the recipient equal to the amount of the grant.

The program is specific pursuant to subsection 2(7.2) of SIMA because Article 9 of Decision 279 specifies the types of trade promotion schemes that are eligible for support and Article 10 specifies the level of support that is available for each of the eligible schemes.

Identified Programs Found Not to be Subsidies

Program 5. Export and import support in forms of preferential loan, guarantee and factoring

Investment credit and export credit are made available pursuant to Decree No. 75/2011/ND-CP⁴⁰³ dated August 30, 2011, on state investment credit and export credit (Decree No. 75) and Decree No. 151/2006/ND-CP⁴⁰⁴ dated December 20, 2006, on state investment credit and export credit (Decree No. 151). These programs were provided by the GOV.

⁴⁰² EXH 426 (NC) - Decision No. 80.

⁴⁰³ EXH 426 (NC) - Decree No. 75.

⁴⁰⁴ EXH 426 (NC) - Decree No. 151.

Investment credit is stipulated in Chapter II and Appendix I of Decree No. 75 and in Chapter II and List of Eligible Projects for Investment Credit of Decree No. 151. Export credit is stipulated in Chapter III and Appendix II of Decree No. 75 and in Chapter III and List of Eligible projects for export credit of Decree No. 151. The regulation of guarantee operation was detailed in the Circular 28/2012/TT-NHNN⁴⁰⁵ issued by the State Bank of Vietnam.

This program is considered to be a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the Government and confers a benefit to the recipient equal to the amount of the grant.

It was determined that no financial contribution was received by the exporters with respect to the terms outlined in subsection 2(1.6) of SIMA during the POI. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

Program 10: Assistance to Enterprises Facing Difficulties due to Objective Reasons

The GOV reported this subsidy program in its New and Full Notifications pursuant to Article 25 of the WTO Agreement on Subsidies and Countervailing Measures, dated, March 13, 2013. This program was provided by the GOV.

According to the GOV response, this program targets companies facing difficulties that arise as the result of unforeseen reasons, such as: policy changes in terms of taxation and other dues to the state budget; relocation of enterprises upon request of competent authorities; loss due to natural disaster, etc.

Depending on the form of benefit, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the Government and confers a benefit to the recipient equal to the amount of the grant. This program may also be considered a financial contribution 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 confers a benefit to the recipient equal to the amount of the reduction/exemption.

It was determined that no financial contribution was received by the exporters with respect to the terms outlined in subsection 2(1.6) of SIMA during the POI. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

⁴⁰⁵ EXH 426 (NC) - Circular No. 28.