



Canada Border
Services Agency

Agence des services
frontaliers du Canada

COR2 2019 IN

OTTAWA, April 3, 2020

STATEMENT OF REASONS

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

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

DECISION

Pursuant to subsection 38(1) of the *Special Import Measures Act* (SIMA), the Canada Border Services Agency (CBSA) made preliminary determinations on March 20, 2020 respecting the dumping and subsidizing of certain corrosion-resistant steel sheet originating in or exported from Turkey, the United Arab Emirates, and Vietnam.

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

Canada

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SUMMARY OF EVENTS

[1] On 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 submitted on the same day. The CBSA considered the written 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 submitted on the same day. The CBSA considered the written representations made by the GOV in its analysis.

[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 alleged dumping and subsidizing of COR from the named countries have caused 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. Where an exporter's estimated margin of dumping and/or estimated amount of subsidy is insignificant, provisional anti-dumping and/or countervailing duties will not be applied.

PERIOD OF INVESTIGATION

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

PROFITABILITY ANALYSIS PERIOD

[13] The Profitability Analysis Period (PAP) for the dumping investigation is July 1, 2018, to June 30, 2019.

INTERESTED PARTIES

Complainant

[14] 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.

[15] 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.

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

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

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

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

Continuous Colour Coated Limited (CCCL)¹
1430 Martin Grove Road
Rexdale, Ontario M9W 4Y1

Trade Union

[18] The complaint identified the following trade union as representing persons employed in the production of COR in Canada²:

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

¹ Formerly known as Material Sciences Corp

² EXH 30 (NC) – COR2 Complaint; paragraph 47

Importers

[19] 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

[20] At the initiation of the investigations, the CBSA identified 55 potential exporters/producers from the named countries of the subject goods from information provided by the complainant and CBSA import documentation. All of the potential exporters were asked to respond to the CBSA's Dumping and Subsidy RFIs. Exporters located in Vietnam were also asked to respond to the Section 20 RFI.

[21] Fourteen exporter/producers provided a response to the Dumping RFI: seven from Turkey (Atakaş Çelik Sanayi ve Ticaret A.Ş.³; Bekap Metal İnş.San.ve Tic.A.Ş.⁴; Borçelik Çelik Sanayi Ticaret A.Ş.⁵; Tatmetal Celik Sanayi Ve Ticaret A.Ş.⁶; Tosyali Toyo Celik A.S.⁷; Toscelik Profil ve Sac Endustrisi A.Ş.⁸; and Yıldız Demir Celik Sanayi A.S.⁹); two from UAE (Al Ghurair Iron and Steel¹⁰; and United Iron and Steel¹¹); and five from Vietnam (China Steel and Nippon Steel Vietnam Joint Stock Company; Hoa Sen Group Joint Stock Company; Nam Kim Steel Joint Stock Company; Southern Steel Sheet Co., Ltd; and Ton Dong A Corporation). See "Dumping Investigation" for detailed information regarding these companies.

[22] Five exporters/producers from Vietnam responded to the Section 20 RFI: China Steel and Nippon Steel Vietnam Joint Stock Company¹²; Hoa Sen Group Joint Stock Company¹³; Nam Kim Steel Joint Stock Company¹⁴; Southern Steel Sheet Co., Ltd¹⁵, and Ton Dong A Corporation¹⁶.

³ EXH 127 (PRO) & 128 (NC) – Response to RFI – Subsidy and Dumping

⁴ EXH 179 (PRO) & 180 (NC) – Response to RFI – Subsidy and Dumping

⁵ EXH 125 (PRO) & 126 (NC) – Response to RFI – Subsidy and Dumping

⁶ EXH 213 (PRO) & 214 (NC) – Response to RFI – Dumping

⁷ EXH 159 (PRO) & 160 (NC) – Response to RFI – Dumping

⁸ EXH 183 (PRO) & 184 (NC) – Response to RFI – Dumping

⁹ EXH 195 (PRO) & 196 (NC) – Response to RFI – Dumping

¹⁰ EXH 111 (PRO) & 112 (NC) – Response to RFI – Dumping

¹¹ EXH 111 (PRO) & 112 (NC) – Response to RFI – Dumping

¹² EXH 153 (PRO) & 154 (NC) – Response to RFI – Section 20

¹³ EXH 119 (PRO) & 120 (NC) – Response to RFI – Section 20

¹⁴ EXH 171 (PRO) & 172 (NC) – Response to RFI – Section 20

¹⁵ EXH 223 (PRO) & 224 (NC) – Response to RFI – Section 20

¹⁶ EXH 115 (PRO) & 116 (NC) – Response to RFI – Section 20

[23] Thirteen exporters/ producers provided a response to the Subsidy RFI: six from Turkey (Atakaş Çelik Sanayi ve Ticaret A.Ş.; Bekap Metal İnş.San.ve Tic.A.Ş.; Borçelik Çelik Sanayi Ticaret A.Ş.; Tatmetal Celik Sanayi Ve Ticaret A.Ş.; Tosyali Toyo Celik A.S.; and Toscelik Profil ve Sac Endustrisi A.Ş.); two from UAE (Al Ghurair Iron and Steel; and United Iron and Steel); and five from Vietnam (China Steel and Nippon Steel Vietnam Joint Stock Company; Hoa Sen Group Joint Stock Company, Nam Kim Steel Joint Stock Company; Southern Steel Sheet Co., Ltd; and Ton Dong A Corporation). See the “Subsidy Investigation” section for detailed information regarding these companies.

Governments

[24] 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.

[25] At the initiation of the investigation, the CBSA sent a Government Subsidy RFI to the GOT, GOU and 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.

[26] All of the governments of the named countries provided a response to the government Subsidy RFI. In addition, the GOT responded to the PMS RFI¹⁷ and the GOV responded to the Government Section 20 RFI¹⁸.

¹⁷ EXH 165 (PRO) & 166 (NC) – Response to RFI – PMS – GOT

¹⁸ EXH 147 (PRO) & 148 (NC) – Response to RFI – Section 20

PRODUCT INFORMATION

Definition

[27] For the purpose of this investigation, subject goods are defined as:¹⁹

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.*

¹⁹ EXH 30 (NC) – COR2 Complaint; paragraph 10

Additional Product Information²⁰

[28] 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.

[29] 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.

[30] 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.

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

[32] 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.

[33] 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

²⁰ EXH 30 (NC) – COR2 Complaint; pages 16-19

[34] 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.²¹

For greater clarity, the product definition does not cover²²:

- 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 Process²³

[35] 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.

[36] 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.

²¹ EXH 30 (NC) – COR2 Complaint; paragraph 19

²² EXH 30 (NC) – COR2 Complaint; paragraphs 17-18

²³ EXH 30 (NC) – COR2 Complaint; paragraphs 21-24

[37] 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 Use²⁴

[38] 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.

Classification of Imports

[39] The allegedly dumped and subsidized goods are normally classified under the following tariff classification numbers²⁵:

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	

[40] 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

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

[42] 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.

²⁴ EXH 30 (NC) – COR2 Complaint; paragraph 26

²⁵ Tariff Classification number: 7212.50.00.14 was also used for statistical purposes for the year 2016.

[43] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that domestically produced COR are like goods to the subject goods and constitute only one class of goods, as previously determined by the CITT in a previous COR finding.²⁶

[44] 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.*”²⁷

THE CANADIAN INDUSTRY

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

[46] The complainant and the supporting producer, Stelco, account for nearly all of the domestic production of like goods.

IMPORTS INTO CANADA

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

[48] The following table presents the CBSA’s analysis of imports of COR for the purposes of the preliminary determinations:

²⁶ Corrosion-Resistant Steel Sheet, 8 March 2019, NQ-2018-004, Statement of Reasons (CITT); paragraphs 24-25

²⁷ Canadian International Trade Tribunal; Corrosion-Resistant Steel Sheet Dumping and Subsidizing Determination and Reasons (January 22, 2020), PI-2019-002; paragraphs 19-20

Imports of COR
(% of Volume)

Country	POI (July 1, 2018 to June 30, 2019)
Turkey	23.4%
United Arab Emirates	4.2%
Vietnam	18.2%
All Other Countries	54.2%
Total Imports	100.0%

REPRESENTATIONS

[49] During the preliminary phase of the investigation, counsel for the complainant and for the supporting Canadian producer Stelco, made representations concerning the complainant's allegations of a particular market situation in Turkey, Section 20 in Vietnam, and subsidy in the named countries.²⁸ Representations were also made with respect to various exhibits on the administrative record, including certain RFI responses. These representations concerned the completeness of information provided, government involvement with certain companies and sectors, the relationships between certain parties, the alleged particular market situation in Turkey, the Section 20 inquiry with respect to Vietnam, and the subsidy programs in the named countries. Counsel for the complainant also addressed the accuracy and completeness of the reported cost of production information and other missing or unclear information provided in the RFI responses.

[50] The CBSA has noted the arguments and evidence submitted in the representations and will take them into consideration in the course of verifying and analyzing information for the purposes of a final decision.

INVESTIGATIONS PROCESS

[51] 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.

²⁸ 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.

[52] 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-sales 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.

[53] 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.

[54] 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.

[55] 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 CBSA adequate time to review their responses for purposes of the preliminary determination of the investigations.

[56] 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.

[57] Preliminary determinations are based on the information available to the CBSA at the time of the preliminary determinations. During the final phase of the investigation, additional information may be obtained and selected responding parties may be verified on-site, the results of which will be incorporated into the CBSA's final decision, which must be made by June 18, 2020.

DUMPING INVESTIGATION

[58] The following presents the preliminary results of the investigation into the dumping of COR originating in or exported from the named countries.

Normal Value

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

[60] In the case of prescribed countries such as Vietnam, if, 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, the normal values are generally estimated on the basis of section 20 of SIMA using either the selling prices or costs of like goods in a "surrogate" country.

Export Price

[61] The export price of goods sold to importers in Canada is generally estimated in accordance with the methodology of 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.

[62] Where there are sales between associated persons and/or a compensatory arrangement exists, the export price is estimated based on the importer's resale price of the imported goods in Canada to unrelated 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 included in the resale price 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 as provided for in paragraphs 25(1)(c) and 25(1)(d) of SIMA.

Margin of Dumping

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

[64] Further information regarding each exporter is detailed below.

Particular Market Situation

[65] 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.

[66] 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.

[67] In such cases, the CBSA would not estimate 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 using the constructed normal value methodology of paragraph 19(b).

[68] 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.

[69] The CBSA is investigating allegations that a PMS exists with respect to Turkey's corrosion resistant steel sheet 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.

[70] Subsequent to the initiation of the investigation, the complainant made additional representations concerning the existence of a "particular market situation" in the corrosion resistant steel sheet market in Turkey. These representations reiterated some of the points included in the complaint and provided additional supporting documentation.²⁹

²⁹ 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.

[71] The CBSA has considered the representations provided by the complainant. In the final phase of the investigation, the CBSA will continue to review and analyze the information available and will seek to gather additional information necessary in order to form an opinion as to whether a PMS, pursuant to paragraph 16(2)(c) of SIMA, exists in Turkey.

PRELIMINARY RESULTS OF THE DUMPING INVESTIGATION

[72] The following presents the preliminary results of the investigation into the dumping of COR originating in or exported from the named countries.

[73] The governments and the exporters/producers 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 verification may result in the margin of dumping and the assessment of anti-dumping 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.

Turkey

[74] Although the CBSA received Dumping RFI responses from seven Turkish exporters, all responses were insufficient for the purposes of the preliminary determination. Requests to provide required information have been sent out to all parties. The letters noted deficiencies and advised the exporters to provide a revised RFI response to ensure that the CBSA has sufficient time to review, analyze and verify the information provided. For the purposes of the preliminary determination, sufficient information has not been furnished by the seven respondents to enable the CBSA to estimate normal values and export prices as provided in sections 15 to 28 of SIMA. As such, the information provided by the respondents has not been used for the purposes of the preliminary determination.

[75] In establishing the methodology for estimating normal values and export prices for all exporters from Turkey, the CBSA considered 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 and customs import documentation.

[76] The CBSA decided that the information submitted on the CBSA customs entry documentation was the best information on which to estimate the export price of the goods as it reflects actual import data.

[77] The CBSA decided that the normal value it estimated at initiation, using a constructed cost approach to reflect the methodology under paragraph 19(b) of SIMA, would be used to establish the methodology for estimating margins of dumping for goods from Turkey as it reflects the best information available to the CBSA since these estimates reflect the general market costs and prices of COR in that country.

[78] The CBSA examined the difference between the normal value it estimated at initiation and the estimated export prices for each individual transaction. The transactions were 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.

[79] The CBSA considered that the highest amount by which the normal value estimated at initiation exceeded the estimated export price on an individual transaction of an exporter of goods from Turkey (expressed as a percentage of the export price), was an appropriate basis for estimating the margin of dumping. This methodology limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation.

[80] Based on the above methodology, the estimated margins of dumping for all exporters of subject goods from Turkey is 39.7%, expressed as a percentage of the export price.

United Arab Emirates

[81] Although the CBSA received Dumping RFI responses from two exporters in the UAE, the responses were insufficient for the purposes of the preliminary determination. Requests to provide required information have been sent out to all parties. The letters noted deficiencies and advised the exporters to provide a revised RFI response to ensure that the CBSA has sufficient time to review, analyze and verify the information provided. For the purposes of the preliminary determination, sufficient information has not been furnished by the two respondents to enable the CBSA to estimate normal values and export prices as provided in sections 15 to 28 of SIMA. As such, the information provided by the respondents has not been used for the purposes of the preliminary determination.

[82] In establishing the methodology for estimating normal values and export prices for all exporters from the UAE, the CBSA considered 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 and customs import documentation.

[83] The CBSA decided that the information submitted on the CBSA customs entry documentation was the best information on which to estimate the export price of the goods as it reflects actual import data.

[84] The CBSA decided that the normal value it estimated at initiation, using a constructed cost approach to reflect the methodology under paragraph 19(b) of SIMA, would be used to establish the methodology for estimating margins of dumping for goods from the UAE as it reflects the best information available to the CBSA since these estimates would reflect the general market costs and prices of COR in that country.

[85] The CBSA examined the difference between the normal value it estimated at initiation and the estimated export prices for each individual transaction. The transactions were 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.

[86] The CBSA considered that the highest amount by which the normal value estimated at initiation exceeded the estimated export price on an individual transaction of an exporter of goods from the UAE (expressed as a percentage of the export price), was an appropriate basis for estimating the margin of dumping. This methodology limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation.

[87] Based on the above methodology, the estimated margins of dumping for all exporters of subject goods from the UAE is 49.0%, expressed as a percentage of the export price.

Vietnam

Section 20 Inquiry

[88] 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.³⁰

[89] The provisions of section 20 are applied on a sector basis rather than on the country as a whole. 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.

[90] 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.

³⁰ Vietnam is a prescribed country under section 17.1 of the *Special Import Measures Regulations*.

[91] 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.³¹

[92] 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*. 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.

[93] 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 matter.

[94] 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.³²

[95] The CBSA has noted the arguments and evidence submitted in the representations and will take them into consideration in the course of verifying and analyzing information for the purposes of a final decision.

Responses To The Section 20 Inquiry

[96] 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.

[97] As part of the section 20 inquiry, surrogate RFIs were sent to all known producers of COR in South Korea and 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.

³¹ EXH 30 (NC) – COR2 Complaint; pages 26-30

³² 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.

[98] 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-subject countries; however, the information provided by this importer represented a very small volume of imports. As such, the CBS determined that this information could not be used for the purposes of estimating normal values pursuant to section 20 of SIMA.

Preliminary Results Of The Section 20 Inquiry

[99] The following is the CBSA's analysis of the relevant factors that are present in the flat-rolled steel sector, which include COR, in Vietnam.

GOVERNMENT INDUSTRIAL POLICIES

[100] As part of its section 20 analysis, the CBSA examined:

- The Master Plan on the Development of Vietnam's Steel Industry (2007-2015);
- The Master Plan for the Development of Steel Manufacturing and Distribution System (2015-2025); and
- Industrial Development Strategy.

The Steel Master Plan 2007-2015

[101] The *Master Plan on the Development of Vietnam's Steel Industry* (Steel Master Plan 2007-2015) (Decree No. 145/2007/QD-TTg)³³ served as the guiding document for the development of the Vietnamese steel industry for the 2007-2015 period and was replaced by the *Steel Master Plan 2015-2025*. Although the *Steel Master Plan 2007-2015* has expired, the objectives, policies, and implementation directives detailed in the two consecutive plans consistently indicate the GOV's continuous involvement in the administration and control of the steel industry.

[102] The principal objectives of the Steel Master Plan, as set out in Article 1 of the plan, are as follows:

- i. To develop Vietnam's steel industry in compliance with the national master plan on socio-economic and industrial development, local socio-economic development planning and Vietnam's integration roadmap.
- ii. To build and develop Vietnam's steel industry into an important industry, ensuring stable and sustainable development, minimizing imbalance between the manufacture of pig iron and ingot steel and the manufacture of finished steel products, between long steel products and flat steel products.

³³ EXH 452 (NC) – Section 20 Report – Attachment 4

- iii. To build Vietnam's steel industry with advanced and rational technologies, using domestic resources in a thrifty and efficient manner, ensuring harmony with eco-environmental protection in localities where the industry is developed.
- iv. To attach importance to, and encourage domestic economic sectors and branches to cooperate with foreign parties to invest in the construction of a number of mining-metallurgy complexes, combine mills and large factories which manufacture flat steel products.

[103] The Steel Master Plan provides direction concerning how to increase the production of pig iron, spongy iron, steel billet and finished steel products to reach the targets specified in the plan. This includes, among other things, direct investments to manufacturing facilities, as well as direction to diversify domestic steel manufacturing in order to produce hot-rolled steel, cold-rolled steel and metallic coated steel. By promoting investments to produce high quality steel and alloy steel, the GOV aims to reduce their dependency on imported goods.³⁴

[104] The CBSA finds that the presence of the GOV policies discussed above demonstrate that the GOV had an active role in managing the development of the steel industry in Vietnam. As pig iron, spongy iron, steel billet products are the main raw material inputs in the production of hot-rolled steel sheet and cold-rolled steel coil, increasing the production of those inputs provides an advantage to hot-rolled steel and cold-rolled steel producers which may lead to distorted prices of COR in the flat-rolled steel sector. The CBSA also finds that these actions influence the domestic steel market and disrupt competitive market conditions in the flat-rolled steel sector.

The Steel Master Plan 2015-2025

[105] The *Master Plan for the Development of Steel Manufacturing and Distribution System 2015-2025* (Steel Master Plan 2015-2025) (Decision No. 694/QD-BCT dated 2013-01-31) provides a development direction and national framework for the Vietnamese steel industry during the period from 2015 through 2020, with a vision to 2025.³⁵

[106] The *Steel Master Plan 2015-2025* presents substantial revisions to the previous *Steel Master Plan 2007-2015* that set out the direction for the steel industry until 2015. The principal objective of the *Steel Master Plan 2015-2025*, as set out in Article 1 of the plan, is as follows:

Developing Vietnamese steel industry to meet demand of steel products for national economy and ensure stability for domestic consumption market and export. Developing the steel industry which is sustainable and environmentally-friendly.

³⁴ EXH 452 (NC) – Section 20 Report – Attachment 4

³⁵ EXH 452 (NC) – Section 20 Report – Attachment 5

[107] In addition to the broader goals outlined above, the *Steel Master Plan 2015-2025* also sets out specific development objectives with respect to the manufacture of pig iron, sponge steel (raw steel), finished steel products, and the export of steel products. With respect to the manufacture of finished steel products, the *Steel Master Plan 2015-2025* provides targeted production levels for specified time periods. This macro-economic policy aims to increase production volume and export growth rate of the steel industry and decrease dependence on imported steel products.

[108] Target capacities for various steel products are clearly specified in the *Steel Master Plan 2015-2025*. The production of hot-rolled steel, a major material to produce COR, is scheduled to jump to 23,850 MT annually in 2025, which is 5.3 times as high as the capacity level in 2015.³⁶

[109] To achieve the target production growth specified in the *Steel Master Plan 2015-2025*, the plan includes, among other things, implementation policies to direct investments to manufacturing facilities, as well as direction to diversify domestic steel manufacturing in order to produce hot-rolled steel, cold-rolled steel, and galvanized steel. One of the investment implementation policies for various steel products directly specifies the GOV's intention to encourage investing in projects of manufacturing hot-rolled steel sheet and cold-rolled steel coil, the main input materials of COR:

“Raising capacity of pig iron and steel plants (at least 70% of design capacity). Focusing on investment in development of a number of projects with large scale and capacity in the areas of iron ore raw materials and convenient transportation etc. .. to manufacture a number of key products such as pig iron and sponge iron, steel billets, hot rolled steel sheet, cold rolled steel coil and building steel.”³⁷

[110] As discussed above, the *Steel Master Plan 2015-2025* established control of construction and investment projects in the steel industry. Although the GOV's management of the steel industry and its planning of steel projects may not be systematic or in sync with real economic demands, by managing and controlling the production levels of steel, the GOV is influencing the prices of various steel goods in the industry.³⁸

³⁶ EXH 452 (NC) – Section 20 Report – Attachment 5

³⁷ EXH 452 (NC) – Section 20 Report – Attachment 5

³⁸ EXH 452 (NC) – Section 20 Report – Attachment 6

[111] It is also worth noting that the *Steel Master Plan 2015-2025* clearly states that various levels of Vietnamese governments or government bodies have direct influence and control over the prices of steel products, which likely include hot-rolled steel, cold-rolled steel and COR:

*“People’s Committee of centrally-affiliated cities and provinces shall: Direct the market management force in the area to coordinate with the authorities to strengthen the inspection and control prices of steel products; prevent speculation, fake and ensure price stability steel in the area.”*³⁹

[112] Based on the evidence in the document, the GOV not only intervenes to manage the supply of steel products, which in turn influences domestic prices, but also directly controls prices of various products in the steel sector, which would have a direct impact on the domestic price of COR.

[113] The CBSA finds that the existence of the *Steel Master Plan 2015-2025* demonstrates the GOV’s intention to remain active in managing the domestic steel sector. Further, the directives contained in these plans demonstrate the GOV’s intention and ability to control prices directly or indirectly of various upstream and downstream steel products and therefore, alter the composition and competitiveness of the flat-rolled steel sector. Such influence would alter the natural forces of supply and demand and would substantially influence the price of goods in this sector, which includes COR.

Industrial Development Strategy

[114] The *Industrial Development Strategy through 2025, vision toward 2035* (Industrial Development Strategy) (Decision No. 879/QĐ-TTg) approved by the Prime Minister on June 9, 2014, aims to raise the average annual growth rate of industrial added value from 6.5% in 2015 to 7.0% by 2020, raise the rate of industrial exports to the total exports from 85% to 88% by 2025 and over 90% after 2025, and raise the industrial sector’s ICOR (Incremental Capital Output Ratio) from 3.5% to 4.0% by 2025.⁴⁰

[115] Based on the direction of the *Industrial Development Strategy*, Vietnam will prioritize the development of its various industrial sectors including the steel processing and manufacturing sector and invest in the development of steel manufacturing for mechanical engineering such as steel sheets, shaped steel, and alloy steel.⁴¹

³⁹ EXH 452 (NC) – Section 20 Report – Attachment 5

⁴⁰ EXH 30 (NC) – COR2 Complaint – Attachment 118

⁴¹ EXH 30 (NC) – COR2 Complaint– Attachment 118

[116] In addition to the ability to promote and direct investment in certain steel sectors, the GOV has the authority to approve or cancel steel projects. Based on news reports of Viet Nam News, the Ministry of Industry and Trade (MIT) was planning to abandon 12 ineffective projects from its latest steel master plan.⁴² These 12 projects have been removed as they have been deemed inefficient and lack investors. Prior to the issuance of this plan, during the 14th National Assembly, in May 2016, the minister of MIT noted that the “Government had directed relevant ministries to inspect these projects and suggest solutions, including revoking the state’s capital and reclaiming assets [...]”.⁴³

[117] With regards to existing practices, a steel project cannot be ratified absent inclusion in the *Steel Master Plan*.⁴⁴ The Vietnamese Steel Association (VSA) has recently declared to the MIT “that the State would no longer manage the steel industry with any master plan if the Planning Law was voted through and put into force in 2018”.⁴⁵ This assertion from the VSA shows that the GOV currently manages the steel industry, and that the master plan is the mechanism employed to do so. Moreover, in a recent article, they indicate that the GOV will enhance disbursement for many projects with public investment to finish the projects, leading to higher demand for steel products.⁴⁶

[118] Such information related to the GOV exerting control over construction and investment projects in the steel industry leads to the belief that the GOV has substantial leverage on steel production.

GOVERNMENT OWNERSHIP OF SUPPLIERS/PRODUCERS

[119] The public document *Vietnam 2035- Toward Prosperity, Creativity, Equity, and Democracy*⁴⁷, jointly written by the World Bank Group and the Ministry of Planning and Investment of Vietnam, provides extensive research and economic data which gives evidence that Vietnam has maintained a virtual monopoly in several major segments of the economy.

[120] It is stated in this document that the “[...] public sector’s presence in production and its control over factor markets remain pervasive. The state still retains a majority stake in more than 3,000 SOEs, which account for about a third of GDP and close to 40 percent of total investment. The state sector also remains a virtual monopoly (or oligopoly) in critical sectors [...]”⁴⁸

⁴² EXH 30 (NC) – COR2 Complaint – Attachment 114

⁴³ EXH 30 (NC) – COR2 Complaint – Attachment 114

⁴⁴ EXH 452 (NC) – Section 20 Report – Attachment 7

⁴⁵ EXH 452 (NC) – Section 20 Report – Attachment 7

⁴⁶ EXH 452 (NC) – Section 20 Report – Attachment 8

⁴⁷ EXH 452 (NC) – Section 20 Report – Attachment 9

⁴⁸ EXH 452 (NC) – Section 20 Report – Attachment 9

[121] State-ownership in the steel sector almost reaches 20%. This is a considerable portion of the steel industry and its related sectors and, therefore, the GOV maintains significant control of investment in the steel industry.⁴⁹

[122] By holding such control in key sectors, for instance, gas, electricity, coal, water, and mining and quarrying, the GOV has a control over costs of major inputs involved in the production of COR. In other words, the GOV can indirectly distort domestic prices through a variety of mechanisms which involve the supply and price of inputs (goods and services) used in the production of the subject goods.

[123] As such, state-owned or controlled upstream and downstream steel producers are driven by GOV mandates and do not necessarily operate under market forces. Vietnamese steel producers can potentially supply raw material inputs to COR producers at distorted market price. There is a likelihood that COR is sold also at prices different than they would be in a competitive market as a result of distorted raw material input prices.

[124] More recently, the GOV adopted an SOE restructuring scheme aligned with the equitization (i.e. partial privatization) of SOEs. Even though the number of SOEs has decreased from 12,000 in 1990 to 3,048 in 2014, this number is substantial and SOEs accounted for large shares in the fixed assets and profits in the national economy.⁵⁰ That demonstrates that the SOEs continue to play key roles in capital-intensive industries and the GOV still has a considerable influence on the investment activities and the control of companies in their country.

[125] In a discussion paper⁵¹ prepared by the Research Institute of Economy, Trade & Industry, it is noted that there are worrying signs about the quality of equitization in Vietnam:

The state continues to hold very high proportions of capital in equitized enterprises, which casts doubts on the effectiveness of equitization in transforming SOEs. While the state held 46.1% of the total shares of equitized enterprises as of the end of 2004, this share is reported to have increased to 92% by 2017. This has happened as the state continues to hold large stakes, particularly in large SOEs in strategic sectors, even after equitization.⁵²

⁴⁹ EXH 452 (NC) – Section 20 Report – Attachment 9; page 120

⁵⁰ EXH 452 (NC) – Section 20 Report – Attachment 10; pages 7-8

⁵¹ EXH 452 (NC) – Section 20 Report – Attachment 10; pages 7-8

⁵² EXH 452 (NC) – Section 20 Report – Attachment 10; page 8

[126] Based on the news report by the Saigon Times on September 20, 2018, the Steering Committee for Enterprise Reform and Development reported to the government that the equitization process of SOEs is much slower than the plan approved by the Prime Minister as many new regulations on equitization and capital divestment are stricter and aimed to maximize the benefits of the State.⁵³

[127] Viet Nam Steel Corporation (VNSteel) is a large-scale state-owned steel producer in Vietnam with a rolled steel production capacity over 2.5 million tons per year and a workforce of over 17,000 people.⁵⁴ VNSteel is described as having a dominant 50% market share and a nationwide distribution network, and being associated with most of the largest steel players in the Vietnamese market. VNSteel owns a fully integrated and complex production chain using both iron ores and scrap for the production of billet and then finished steel products⁵⁵. As reported in 2017, the state-ownership of the GOV accounts for 93.9% of the total ownership at VNSteel⁵⁶ and all board members of management are appointed, dismissed, rewarded and punished by the Prime Minister.⁵⁷

[128] Evidence of the GOV's potential influence on steel prices through VNSteel was reported by a Vietnamese securities brokerage firm.⁵⁸

[129] VNSteel has a 30% share of Vietnam's cold-rolled steel market.⁵⁹ As cold-rolled steel is a substrate for COR, VN Steel may be able to influence the price of the raw material substrate, and therefore, the price of COR.

[130] Information on the record also indicates that there are several cold-rolled steel producers that are SOEs which provided cold-rolled steel to COR producers in Vietnam during the POI. In addition, a COR producer in Vietnam participating in the dumping investigation is a SOE.

[131] In addition, the GOV may indirectly control many of the economy's most productive assets, creating market imbalances from state interference. According to an Organisation for Economic Co-operation and Development (OECD) Steel Committee report⁶⁰ from 2012, there is possible government intervention and control over either upstream steel materials or downstream steel finished products through SOEs or government bodies. As some information regarding the GOV's direct involvement in the flat-rolled steel sector may be dated, the CBSA will endeavour to obtain more current information during the final phase of the investigation.

⁵³ EXH 452 (NC) – Section 20 Report – Attachment 11

⁵⁴ EXH 452 (NC) – Section 20 Report – Attachment 12

⁵⁵ EXH 452 (NC) – Section 20 Report – Attachment 13; pages 1 & 4

⁵⁶ EXH 452 (NC) – Section 20 Report – Attachment 14; page 9

⁵⁷ EXH 452 (NC) – Section 20 Report – Attachment 12

⁵⁸ EXH 452 (NC) – Section 20 Report – Attachment 13; pages 3-5

⁵⁹ EXH 30 (NC) – COR2 Complaint – Attachment 123

⁶⁰ EXH 452 (NC) – Section 20 Report – Attachment 15; pages 1, 3 & 7

PRICE STABILIZATION

[132] In the response to the section 20 RFI, the GOV states that there are certain goods/services, whose prices may be controlled by the State by means of four pricing control methods: (1) price stabilization, (2) price determination, (3) price negotiation, and (4) price analysis.⁶¹

[133] The Ministry of Finance adopted Law No. 11/2012/QH13 Law on Prices on June 20, 2012.⁶² In general, the Law on Prices prescribes rights and obligations of organizations and individuals in the price domain, and the price management and regulation by the GOV.

[134] The Law on Prices contains several vague terms used to describe the applicability when price stabilization measures could be applied. Under the chapter III *Operation on Regulating Prices of the State*, the law prescribes that raw materials, fuel, materials and main service for production and circulation are subject to price stabilization. Although the terms of raw materials and other materials are not clearly defined in the document, it could be reasonably assumed that raw materials used for steel production could be subject to price control if the GOV exerts complete discretionary authority.

[135] The GOV also issued a decree No. 177/2013/ND-CP⁶³ on November 14, 2013 guiding the implementation of the Law on Prices. The document indicates that construction steel is subject to price declaration although it is unclear which steel products fall into the category and what kind of mechanism the GOV uses to manage the price declaration.

[136] The complainant also alleged that the GOV may apply price controls when prices fluctuate on specific goods including steel.⁶⁴

[137] Although this information is somewhat dated, the information above points to possible government intervention and its ability to control price on various steel products, which may include COR or raw materials for the production of the subject goods. The CBSA acknowledges that there is limited information concerning actual instances of GOV's direct price control in the flat-rolled steel sector and will endeavour to obtain information concerning the GOV's role in price setting and control during the final phase of the investigation.

⁶¹ EXH 148 (NC) – Response to RFI – Section 20; question B5

⁶² EXH 452 (NC) – Section 20 Report – Attachment 16

⁶³ EXH 452 (NC) – Section 20 Report – Attachment 17

⁶⁴ EXH 452 (NC) – Section 20 Report – Attachment 18

Import Controls

[138] In a presentation to the OECD Steel Committee in July 2013, the Vietnamese government openly shared strategies to foster the growth of its steel industry and expand steel trade. Among these strategies, the GOV outlined its plan to reduce the importation of different steel products, and provided specific targets for future reductions.⁶⁵

[139] Similarly, the GOV approved in December 2011, Strategy on Exports and Imports for 2011-2020, with visions to 2030 (Decision 2471/QD-TTg). The decision states the GOV's target to "gradually reduce the trade deficit by keeping the excess of import over export below 10% of the export turnover in 2015 so as to guarantee the trade balance by 2020".⁶⁶ The directive demonstrates the GOV's intention and ability to alter the natural forces of supply and demand and would substantially influence the price of goods in this sector - reducing import volumes will lead to impacts in domestic supply and pricing.

[140] A research paper published by Tohoku University in May 2016 shows that the volume of imported surface-treated steel sheet and cold-rolled steel sheet remained at a low level while the domestic consumption and exports of those products rose significantly through the last few years.

[141] On March 14, 2016, the MIT made a temporary decision to impose a tariff of 23.3% and 14.2% on imported steel billet and coated steel to protect Vietnamese steel companies from the harm caused by low priced imports.⁶⁷ In July 2016, the MIT formally confirmed the measures to support the steel industry by maintaining 23.3% tariff duty on steel billet while increase the tariff to 15.4% on long steel products from a number of countries including China, the United States, Canada, Germany, France, Japan and South Korea. The decision took effect from August 2, 2016, and would last for four years.⁶⁸

[142] In the response to the section 20 RFI, the GOV confirms that the Circular 12/2015/TT-BCT⁶⁹ issued by MIT on June 12, 2015 regulated the issuance of licenses for automatic import of steel products, including COR. The circular was annulled on September 1, 2017. It was reported that the import certification and licensing rules "*set strict technical standards and procedures for both producing and importing several types of steel ranging from flat and long carbon steel products to alloy and stainless steel goods*".⁷⁰

⁶⁵ EXH 452 (NC) – Section 20 Report – Attachment 4

⁶⁶ EXH 452 (NC) – Section 20 Report – Attachment 19

⁶⁷ EXH 452 (NC) – Section 20 Report – Attachment 21

⁶⁸ EXH 452 (NC) – Section 20 Report – Attachment 22

⁶⁹ EXH 452 (NC) – Section 20 Report – Attachment 23

⁷⁰ EXH 452 (NC) – Section 20 Report – Attachment 24

[143] As a result of the GOV's steel import controls which imposed higher tariffs on steel billet and required import licenses for steel products, the GOV limited the availability and attractiveness of imported steel products. The CBSA finds that it is reasonable to conclude that these measures directly impact the domestic prices of these steel products including COR.

Subsidization of the Steel Industry

[144] The complaint alleges that subsidies granted by the GOV distort domestic selling prices of COR in Vietnam.

[145] According to the complaint, the GOV maintains extensive ownership and controls on one of the largest Vietnamese steel producers, its subsidiaries as well as other critical sectors (gas, electricity, coal, water, etc.) which are major inputs segments involved in the production of COR.

[146] The complainant claims that this allows the GOV to set prices of raw materials and inputs to COR producers at non-market prices. Moreover, companies can potentially produce and market steel according to GOV objectives and policies instead of market conditions. Similarly with the presence of SOEs that produce material inputs for COR, the complainant states that there is a strong likelihood that prices of COR are also distorted in the flat-rolled steel sector as a result of distorted raw material input prices.

[147] The complaint provided information on the subsidization of the Vietnamese steel industry and argued that this subsidization influences the price of steel products, including COR.⁷¹ In making this allegation, the complainant relied on information published in previous CBSA subsidy investigations⁷² and Vietnamese legislative documents (Laws, Decrees and Articles).⁷³

[148] The CBSA acknowledges that subsidies may reduce the price of steel inputs in the domestic COR industry. Further, subsidies may be passed on to customers by offering reduced prices.

[149] In summary, the CBSA does find that the subsidies may allow Vietnamese steel enterprises, including COR producers, to market steel and COR products at prices determined by factors other than the market conditions, resulting in prices lower than they would be without government subsidization. During the final phase of the investigation, the CBSA will endeavour to collect additional subsidy information from producers and the GOV with respect to the flat-rolled steel and steel sector.

⁷¹ EXH 30 (NC) – COR2 Complaint; page 164

⁷² EXH 30 (NC) – COR2 Complaint; pages 168-170

⁷³ EXH 30 (NC) – COR2 Complaint; pages 170-18

Summary of Government Control Analysis

[150] Based on the information on the record to date, including the scope of the GOV's macro-economic policies and measures detailed above, there is a factual basis that the GOV is influencing the Vietnamese steel industry, which encompasses the flat-rolled steel sector, including COR, the goods under investigation. The use of such policies and measures can change the demand and supply balance in the domestic market and could materially alter the domestic prices of steel products such as steel slab, plate, hot-rolled steel, cold-rolled steel as well as COR.

[151] The major macro-economic policies and measures of the GOV include the *Steel Master Plan 2015-2025*, the *Steel Master Plan 2007-2015* and the *Industrial Development Strategy*. These have resulted in an environment where steel enterprises could face conflicts between the GOV objectives and commercial objectives of steel enterprises, including COR producers. More specifically, the policies are affecting the type of products to be produced, production volumes and ultimately prices.

[152] In addition to the objectives and plans set by the Master plans, the GOV also influences the flat-rolled steel sector through state-ownership in steel production. The GOV may also influence this sector through state-control of upstream enterprises involved in the supply of COR inputs. Further, evidence of price stabilization and imports controls imposed by the GOV, combined with the alleged subsidization of the steel industry and the flat-rolled steel sector, further demonstrate the GOV's intent and ability to exert control over the flat-rolled steel sector.

[153] The CBSA has previously issued opinions respecting the issue of whether domestic prices in a segment of the steel sector are substantially determined by the GOV. The CBSA has also previously formed the opinion that Section 20 conditions exist within the flat-rolled steel sector in Vietnam as part of the final determination respecting the dumping of cold-rolled steel from Vietnam.

[154] In conclusion, the cumulative impact of these GOV actions, measures and control clearly indicate that prices of COR in Vietnam are being influenced by the GOV. In this regard, there is sufficient evidence on the record for the preliminary determination indicating that the domestic prices in the flat-rolled steel sector, including COR, are substantially affected by the GOV.

Domestic Price Analysis

[155] In order to determine normal values pursuant to section 20 of SIMA, in addition to the requirement in paragraph 20(1)(a) of SIMA that the CBSA must be of the opinion that the government of a prescribed country substantially determines domestic prices, the CBSA must be of the opinion that there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[156] The complainant was unable to source domestic selling price information for COR in Vietnam. The CBSA conducted its own research and experienced the same difficulties obtaining information in the public domain regarding COR pricing in Vietnam.

[157] As previously mentioned, the CBSA received substantially complete submissions to the Dumping RFI for three exporters in Vietnam. The CBSA used the information submitted to analyze the hot-rolled coil and cold-rolled coil purchase prices in Vietnam. These prices were then compared to world average prices of hot-rolled coil and cold-rolled coil.

[158] The results of the comparison described above indicate that the prices of domestically produced hot-rolled coil was 18.7% lower than the world average price; imported hot-rolled coil was 17.5% lower than the world average price; and domestically produced cold-rolled coil was 18.4% lower than the world average price.

[159] In this regard, for the preliminary determination, the domestic price analysis of hot-rolled coil and cold-rolled coil suggests that there is sufficient reason to believe that the prices in the flat-rolled steel sector in Vietnam are not substantially the same as they would be if they were determined in a competitive market.

Summary of the Preliminary Results of the Section 20 Inquiry

[160] The CBSA considered the information submitted and the arguments made by the exporters/producers and the GOV in their submissions. Although limited information is available to indicate that the GOV directly controls prices of COR in its domestic market, the CBSA finds that there is evidence to support the fact that the GOV is significantly invested in the steel sector. Furthermore, the involvement and measures adopted by the GOV in respect of various steel products provides cost advantages to exporters/producers of COR in both the Vietnamese and international markets.

[161] The wide range and material nature of the GOV measures in the steel industry have resulted in significant influence on the flat-rolled steel sector in Vietnam, which includes COR. Based on the preceding, the CBSA is of the opinion that:

- domestic prices are substantially determined by the GOV; and
- there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[162] During the final stage of the dumping investigation, the CBSA will continue the section 20 inquiry and further verify and analyze relevant information. The CBSA may reaffirm its opinion that the conditions of section 20 of SIMA exist in the flat-rolled steel sector, which includes COR, as part of the final phase of the investigation, or conclude that the determination of normal values may be made using domestic selling prices and costs in Vietnam.

Vietnam Producers/ Exporters

[163] Five producers/exporters of subject goods from Vietnam provided their responses to the CBSA's Dumping RFI and Section 20 RFI.

[164] As discussed above, for the purposes of the preliminary determination, the CBSA has formed the opinion that the conditions described in section 20 of SIMA exist in the flat-rolled steel sector in Vietnam, which includes COR.

[165] Normal values pursuant to paragraph 20(1)(c) or 20(1)(d) of SIMA are normally based on the domestic selling price or cost of production of the goods plus a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits of the like goods sold by producers in any country designated by the President and adjusted for price comparability; or on the basis of the selling price in Canada of like goods imported from any country designated by the President and adjusted for price comparability. However, at this time no such information is available to the CBSA.

[166] As there is no surrogate information available, the normal values for subject goods from Vietnam were estimated on the basis of facts available.

[167] In establishing the methodology for estimating normal values, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry and the CBSA's estimates at the initiation of the investigation.

[168] The CBSA decided that the normal values it estimated at initiation, based on the methodology of subparagraph 20(1)(c)(ii) of SIMA, using surrogate information from South Korea, would be used to establish the methodology for estimating normal values for goods from Vietnam as it reflects the best information available to the CBSA.

[169] The export price of goods sold to importers in Canada is generally estimated in accordance with the methodology of 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.

[170] Where there are sales between associated persons and/or a compensatory arrangement exists, the export price is estimated based on the importer's resale price of the imported goods in Canada to unrelated 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 included in the resale price 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 as provided for in paragraphs 25(1)(c) and 25(1)(d) of SIMA.

China Steel and Nippon Steel Vietnam Joint Stock Company

[171] China Steel and Nippon Steel Vietnam Joint Stock Company (CSVC) is an exporter/producer of subject goods located in Ho Chi Minh, Vietnam.

[172] CSVC provided a substantially complete response to the Dumping RFI.⁷⁴ During the POI, CSVC sold subject goods to Canada directly and through one trader. The subject goods were exported directly from Vietnam to Canada.

[173] As explained above, normal values for exporters in Vietnam were estimated using the methodology of subparagraph 20(1)(c)(ii) of SIMA. Therefore, normal values for CSVC were estimated on the basis of the aggregate of a) the cost of production of the goods, b) a reasonable amount for administrative, selling and all other costs, and c) a reasonable amount for profits, as estimated for South Korea at the Initiation stage of the investigation.

[174] For subject goods exported by CSVC to Canada during the POI, export prices were estimated using the methodology of section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[175] Further analysis and refinement of data will be conducted during the final phase of the investigation.

[176] For the preliminary determination, the total estimated normal value compared to the total estimated export price resulted in an estimated margin of dumping of 36.3% for CSVC, expressed as a percentage of the export price.

Hoa Sen Group Joint Stock Company

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

⁷⁴ EXH 206 (PRO) & 207 (NC) – Response to RFI – Dumping

[178] HSG⁷⁵ and five of their associated companies^{76,77,78,79 and 80} provided responses to the exporter Dumping RFI. A review of their responses revealed that the information submitted for HSG was deficient. Consequently, a deficiency letter was issued to HSG. The letter noted deficiencies and advised HSG to provide the missing information as soon as possible to ensure that the CBSA has sufficient time to review, analyze and verify the information provided. For the purposes of the preliminary determination, sufficient information was not furnished by the respondent.

[179] As such, the margin of dumping for HSG was estimated following the same method used for the all other exporters rate from Vietnam. For the preliminary determination, the estimated margin of dumping for HSG is 91.8%, expressed as a percentage of export price.

Nam Kim Steel Joint Stock Company

[180] Nam Kim Steel Joint Stock Company (Nam Kim) is an exporter/producer of subject goods located in Thu Dau Mot, Binh Duong Province, Vietnam.

[181] Nam Kim provided a substantially complete response to the Dumping RFI.⁸¹ They were sent an SRFI on January 13, 2020⁸² to gather additional information and seek clarification regarding their original response.

[182] As explained above, normal values for exporters in Vietnam were estimated using the methodology of subparagraph 20(1)(c)(ii) if SIMA. Therefore, normal values for Nam Kim were estimated based on the methodology detailed above, using South Korea as the surrogate country as determined at the Initiation stage of the investigation.

[183] For subject goods exported by Nam Kim to Canada during the POI, export prices were estimated using the methodology of section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[184] For the preliminary determination, the total estimated normal value compared to the total estimated export price resulted in an estimated margin of dumping of 46.0% for Nam Kim, expressed as a percentage of the export price.

⁷⁵ EXH 163 (PRO) & 164 (NC) – Response to RFI – Dumping

⁷⁶ EXH 145 (PRO) & 146 (NC) – Response to RFI – Dumping

⁷⁷ EXH 325 (PRO) & 326 (NC) – Response to RFI – Dumping

⁷⁸ EXH 185 (PRO) & 186 (NC) – Response to RFI – Dumping

⁷⁹ EXH 191 (PRO) & 192 (NC) – Response to RFI – Dumping

⁸⁰ EXH 204 (PRO) & 205 (NC) – Response to RFI – Dumping

⁸¹ EXH 129 (PRO) & 130 (NC) – Response to RFI – Dumping

⁸² EXH 201 (PRO) – SRFI #1

Ton Dong A Corporation

[185] Tong Dong A Corporation (TDA) is an exporter/producer of subject goods located in Di An Town, Binh Duong Province, Vietnam. During the POI, TDA sold subject goods to one related and six unrelated importers in Canada.

[186] TDA provided a substantially complete response to the Dumping RFI⁸³. They were sent an SRFI on January 22, 2020⁸⁴ to gather additional information and seek clarification regarding their original response.

[187] As explained above, normal values for exporters in Vietnam were estimated using the methodology of subparagraph 20(1)(c)(ii) of SIMA. Therefore, normal values for TDA were estimated based on the methodology detailed above, using South Korea as the surrogate country as determined at the Initiation stage of the investigation.

[188] For subject goods exported to unrelated importers, export prices were estimated using the methodology of section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods. For subject goods exported to the related importer, it was necessary to determine whether the section 24 export prices were reliable by performing a reliability test by comparing the export prices determined under section 24 of SIMA with the export prices determined under section 25 of SIMA. However, the CBSA was unable to perform the reliability test as sufficient information was not available from the related importer. For the purposes of the preliminary determination, export prices for subject goods exported to the related importer were also estimated using the methodology of section 24 of SIMA.

[189] For the preliminary determination, the total estimated normal value compared to the total estimated export price resulted in an estimated margin of dumping of 50.0% for TDA, expressed as a percentage of the export price.

Southern Steel Sheet Co., Ltd

[190] Southern Steel Sheet Co., Ltd (SSSC) is a producer and exporter of subject goods located in Bien Hoa City, Dong Nai Province, Vietnam. SSSC is a SOE in Vietnam and produces various steel products.

⁸³ EXH 129 (PRO) & 130 (NC) – Response to RFI – Dumping

⁸⁴ EXH 213 (PRO) – SRFI #1

[191] SSSC provided a response to the exporter Dumping RFI.⁸⁵ A review of their response revealed that the information submitted for SSSC is incomplete. Consequently, a deficiency letter was issued to SSSC. The letter noted deficiencies and advised SSSC to provide missing information as soon as possible to ensure that the CBSA has sufficient time to review, analyze and verify the information provided. For the purposes of the preliminary determination, sufficient information was not furnished by the respondent.

[192] As such, the margin of dumping for SSSC was estimated following the same method used for the all other exporters rate from Vietnam. For the preliminary determination, the estimated margin of dumping for SSSC is 91.8%, expressed as a percentage of the export price.

All Other Exporters - Vietnam

[193] For exporters of subject goods originating in or exported from Vietnam that did not provide a response to the Dumping RFI or where sufficient information was not available or was not provided, the normal values and export prices were estimated on the basis of facts available.

[194] The CBSA decided that the information submitted on the CBSA customs entry documentation was the best information on which to estimate the export price of the goods as it reflects actual import data.

[195] The CBSA decided that the normal values estimated for the exporters whose submissions were substantially complete for purposes of the preliminary determination, would be used to establish the methodology for estimating margins of dumping.

[196] The submissions for CSVC, Nam Kim and TDA were substantially complete for purposes of the preliminary determination. The CBSA examined the difference between the estimated normal value and the estimated export price for each individual transaction of these exporters, and considered that the highest amount (expressed as a percentage of the export price), was an appropriate basis for estimating margins of dumping. This methodology relies on information related to goods that originated in Vietnam and 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] As a result, based on the facts available, for exporters that did not provide a response to the Dumping RFI or did not furnish sufficient information, margins of dumping of subject goods originating in or exported from Vietnam were estimated based on the highest amount by which an estimated normal value exceeded the estimated export price (i.e., 91.8% of the export price), on an individual transaction for an exporter, during the POI. The transactions were 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.

⁸⁵ EXH 229 (PRO) & 230 (NC) – Response to RFI – Dumping

[198] Based on the above methodologies, for the preliminary determination, the estimated margin of dumping for all other exporters of the subject goods from Vietnam is 91.8%, expressed as a percentage of the export price.

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

Estimated Margins of Dumping

Country of origin or export	Estimated Margin of Dumping (as % of Export Price)	Estimated Imports of Subject Goods (as % of Volume)
All Exporters Turkey	39.7%	23.4%
All Exporters United Arab Emirates	49.0%	4.2%
Vietnam		18.2%
Steel and Nippon Steel Vietnam Joint Stock Company	36.3%	
Nam Kim Steel Joint Stock Company	46.0%	
Ton Dong A Corporation	50.0%	
All Other Exporters	91.8%	
All Other Countries		54.2%

[200] Under section 35 of SIMA, if at any time before making a preliminary determination the CBSA is satisfied that the actual and potential volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to goods of that country.

[201] Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[202] The volumes of subject goods from Turkey, the UAE and Vietnam are each above 3% of the total volume of goods released into Canada from all countries. Based on the definition above, the volumes of subject goods from these countries are therefore not negligible.

[203] If, in making a preliminary determination, the CBSA determines that the margin of dumping of the goods of a particular exporter is insignificant pursuant to section 38 of SIMA, the investigation will continue in respect of those goods but provisional duties will not be imposed on goods of the same description imported during the provisional period.

[204] Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. The margins of dumping, estimated for exporters in Turkey, the UAE and Vietnam, are greater than the threshold of 2% and are therefore not considered insignificant.

[205] A summary of the estimated margins of dumping and provisional duties by exporter are presented in **Appendix 1**.

SUBSIDY INVESTIGATION

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

[207] 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.

[208] 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.

[209] 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.

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

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

[211] 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.

[212] 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.

Preliminary Results of the Subsidy Investigation

[213] The following presents the preliminary results of the investigation into the subsidizing of certain COR steel sheets originating in or exported from the named countries

[214] For the purposes of the preliminary determination, the CBSA has received sufficient information from nine exporters/producers to estimate amounts of subsidy. The programs used by the responding exporters are listed in **Appendix 2**. Additionally, the GOT⁸⁶, GOU⁸⁷ and GOV⁸⁸ provided a substantially complete response to the CBSA’s government Subsidy RFI.

⁸⁶ EXH 199 (PRO) & 200 (NC) – Response to RFI – Subsidy – GOT

⁸⁷ EXH 177 (PRO) & 178 (NC) – Response to RFI – Subsidy – GOU

⁸⁸ EXH 149 (PRO) & 150 (NC) – Response to RFI – Subsidy – GOV

[215] The CBSA will continue to analyze the submitted information during the final phase of the investigation. The CBSA may also consider any other potential subsidy programs that have not yet been identified.

[216] Estimated amounts of subsidy relating to each of the exporters that provided a response to the RFI are presented in a summary table in **Appendix 1** while the estimated amount of subsidy for each country can be found in a summary table at the end of this section.

Preliminary Results of the Subsidy Investigation by Country

Turkey

[217] The GOT provided substantially complete responses to the CBSA's government Subsidy RFI.

[218] For the purposes of the preliminary determination, the CBSA has received sufficient information from three exporters/producers in Turkey to estimate amounts of subsidy, specifically Atakas Çelik Sanayi ve Ticaret A.Ş., Borçelik Çelik Sanayi Ticaret A.Ş., and Tatmetal Celik Sanayi Ve Ticaret A.Ş.

Atakaş Çelik Sanayi ve Ticaret A.Ş

[219] Atakas Çelik Sanayi ve Ticaret A.Ş (Atakas) is a producer and exporter of subject goods to Canada. In conjunction with the information provided by Atakas⁸⁹ and the GOT, sufficient information was received to estimate an amount of subsidy for the purposes of the preliminary determination.

[220] For purposes of the preliminary determination, it is estimated that Atakas benefitted from the following six subsidy programs during the POI:

- Program 1: Turk Eximbank – Rediscount Credits Program
- Program 4: Turk Eximbank – Pre export Credits Program
- Program 24: Deduction from Taxable Income for Export Revenue
- Program 27: Investment Incentive Program
- Program 32: Provision of Input (e.g. Hot-rolled Steel or Cold-rolled Steel, Coal) at Less than Adequate Remuneration
- Program 35: Social Security Premium Incentive

[221] For purposes of the preliminary determination, the above subsidy programs were considered to be specific and therefore actionable. This decision was based on an analysis of the information provided by Atakas and the GOT.

⁸⁹ EXH 360 (PRO) & 361 (NC) – Response to RFI – Subsidy

[222] The estimated amount of subsidy for Atakas is 1.70%, expressed as a percentage of the export price.

[223] Based on the information available, Atakaş also used three additional subsidy programs during the POI, although it is estimated that the company did not receive countervailable benefits on the basis of these programs, either because no benefit was provided under the program, because the program is generally available, or because the benefit is not applicable to subject goods. These programs are:

- Program 10: Credit Guarantee Fund (KGF) Scheme for Turk Eximbank Programs
- Program 23: Inward Processing Regime
- Program 25: Exemption from Banking and Insurance Transactions Tax (BITT) on Foreign Exchange Transactions

[224] The CBSA will continue to collect and verify information from Atakaş.

Borçelik Çelik Sanayi Ticaret A.Ş

[225] Borçelik Çelik Sanayi Ticaret A.Ş (Borçelik) is a producer and exporter of subject goods to Canada. In conjunction with the information provided by Borçelik⁹⁰ and the GOT, sufficient information was received to estimate an amount of subsidy for the purposes of the preliminary determination.

[226] For purposes of the preliminary determination, it is estimated that Borçelik 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 32: Provision of Input (e.g. Hot-rolled Steel or Cold-rolled Steel, Coal) at Less than Adequate Remuneration
- Program 34: TUBITAK Industrial R&D Projects Grant

[227] For purposes of the preliminary determination, the above subsidy programs were considered to be specific and therefore actionable. This decision was based on an analysis of the information provided by Borçelik and the GOT.

[228] The estimated amount of subsidy for Borçelik is 0.87%, expressed as a percentage of the export price.

⁹⁰ EXH 125 (PRO) & 126 (NC) – Response to RFI – Subsidy

[229] Based on the information available, Borçelik also used 12 additional subsidy programs during the POI, although it is estimated that the company did not receive countervailable benefits on the basis of these programs, either because no benefit was provided under the program, because the program is generally available, or because the benefit is not applicable to subject goods. These programs are:

- Program 3: Turk Eximbank – Post-shipment Rediscount Credits
- Program 10: Credit Guarantee Fund (KGF) Scheme for Turk Eximbank Programs
- Program 23: Inward Processing Regime
- Program 25: Exemption from Banking and Insurance Transactions Tax (BITT) on Foreign Exchange Transactions
- Program 33: Incentives for R&D Operations and Investments
- Program 35: Social Security Premium Incentive (Employer’s Share)
- Additional program reported: Minimum Wage Support
- Additional program reported: Social Security Premium Support for Hiring New Employees Who Previously Unemployed
- Additional program reported: Income Tax Withholding Support Under Law 7103
- Additional program reported: Social Security Premium Support Under Law 4857
- Additional program reported: Intern Salary Support
- Additional program reported: Eximbank and Turkish Central Bank Factoring

[230] The CBSA will continue to collect and verify information from Borçelik.

Tatmetal Celik Sanayi Ve Ticaret A.Ş

[231] Tatmetal Celik Sanayi Ve Ticaret A.Ş (Tatmetal) is a producer and exporter of subject goods to Canada. In conjunction with the information provided by Tatmetal⁹¹ and the GOT, sufficient information was received to estimate an amount of subsidy for the purposes of the preliminary determination.

[232] For purposes of the preliminary determination, it is estimated that Tatmetal benefitted from the following subsidy programs during the POI:

- Program 1: Turk Eximbank – Rediscount Credits Program
- Program 6: Turk Eximbank –Investment Credit for Export
- Program 32: Provision of Input (e.g. Hot-rolled Steel or Cold-rolled Steel, Coal) at Less than Adequate Remuneration

[233] For purposes of the preliminary determination, the above subsidy programs were considered to be specific and therefore actionable. This decision was based on an analysis of the information provided by Tatmetal and the GOT.

⁹¹ EXH 215 (PRO) & 216 (NC) – Response to RFI – Subsidy

[234] The estimated amount of subsidy for Tatmetal is 1.15%, expressed as a percentage of the export price.

[235] Based on the information available, Tatmetal also used four additional subsidy programs during the POI, although it is estimated that the company did not receive countervailable benefits on the basis of these programs, either because no benefit was provided under the program or because the program is generally available. These programs are:

- Program 8. Turk Eximbank – Export Credit Insurance
- Program 10: Credit Guarantee Fund (KGF) Scheme for Turk Eximbank Programs
- Program 23: Inward Processing Regime
- Program 25. Exemption from Banking and Insurance Transactions Tax (BITT) on Foreign Exchange Transactions

[236] The CBSA will continue to collect and verify information from Tatmetal.

Bekap Metal İnş.San.ve Tic.A.Ş

[237] Bekap Metal İnş.San.ve Tic.A.Ş (Bekap) provided a response to the exporter Subsidy RFI.⁹² A review of their response revealed that the information submitted for Bekap is incomplete. Consequently, a deficiency letter was issued to Bekap. The letter noted deficiencies and advised Bekap to provide missing information as soon as possible to ensure that the CBSA has sufficient time to review, analyze and verify the information provided. For the purposes of the preliminary determination, sufficient information was not furnished by the respondent.

[238] As such, for purposes of the preliminary determination, the amount of subsidy for Bekap was estimated according to the all other exporters rate for Turkey. Therefore, the estimated amount of subsidy for Bekap was is 7.72 %, expressed as a percentage of the export price.

Tosyali Toyo Celik A.S

[239] Tosyali Toyo Celik A.S. (Tosyali Toyo) provided a response to the exporter Subsidy RFI⁹³. A review of their response revealed that the information submitted for Tosyali Toyo is incomplete. For the purposes of the preliminary determination, sufficient information was not furnished by the respondent.

[240] As such, for purposes of the preliminary determination, the amount of subsidy for Tosyali Toyo was estimated according to the all other exporters rate for Turkey. Therefore, the estimated amount of subsidy for Tosyali Toyo is 7.72%, expressed as a percentage of the export price.

⁹² EXH 179 (PRO) & 180 (NC) – Response to RFI – Subsidy and Dumping

⁹³ EXH 169 (PRO) & 170 (NC) – Response to RFI – Subsidy

Toscelik Profil ve Sac Endustrisi A.S.

[241] Toscelik Profil ve Sac Endustrisi A.S. (Toscelik) provided a response to the exporter Subsidy RFI⁹⁴. A review of their response revealed that the information submitted for Toscelik is incomplete. For the purposes of the preliminary determination, sufficient information was not furnished by the respondent.

[242] As such, for purposes of the preliminary determination, the amount of subsidy for Toscelik was estimated according to the all other exporters rate for Turkey. Therefore, the estimated amount of subsidy for Toscelik is 7.72%, expressed as a percentage of the export price.

All Other Exporters - Turkey

[243] For all other exporters of subject goods from Turkey, the CBSA estimated an amount of subsidy on the basis of the following methodology:

- 1) the highest amount of subsidy for each of the eight programs, as found at the preliminary determination, for the producers/exporters located in Turkey for whom the CBSA has sufficient information to estimate an amount of subsidy, plus;
- 2) the average amount of subsidy for the seven programs listed in (1) (i.e 0.32%), applied to each of the remaining 16 potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the preliminary determination.

[244] Using the above methodology, for the preliminary determination, the estimated amount of subsidy for all other exporters in Turkey is 7.72%, expressed as a percentage of the export price.

United Arab Emirates

[245] The GOU provided substantially complete responses to the CBSA's Government Subsidy RFI.

[246] Al Ghurair Iron & Steel LLC and United Iron and Steel both provided substantially complete responses to the Subsidy RFI. As such, the information provided by the exporters and the GOU was used to estimate an amount of subsidy.

⁹⁴ EXH 181 (PRO) & 182 (NC) – Response to RFI – Subsidy

Al Ghurair Iron & Steel LLC

[247] Al Ghurair Iron & Steel LLC (AGIS) is a producer and exporter of subject goods to Canada. AGIS provided a substantially complete response to the Subsidy RFI.⁹⁵

[248] For purposes of the preliminary determination, AGIS was found to have not benefitted from any subsidy programs during the POI.

[249] The estimated amount of subsidy for AGIS is 0.00%, expressed as a percentage of the export price.

United Iron and Steel Company LLC

[250] United Iron and Steel Company LLC (USIC) is a producer and exporter of subject goods to Canada. USIC provided a substantially complete response to the Subsidy RFI.⁹⁶

[251] For purposes of the preliminary determination, USIC was found not to have benefitted from any subsidy program during the POI.

[252] The estimated amount of subsidy for USIC is 0.00%, expressed as a percentage of the export price.

Vietnam

[253] The GOV provided substantially complete responses to the CBSA's Government Subsidy RFI.

[254] For purposes of the preliminary determination, an individual amount of subsidy has been estimated for four exporters who provided substantially complete responses to the Subsidy RFI specifically CSVC, HSG, Nam Kim and TDA.

China Steel and Nippon Steel Vietnam Joint Stock Company

[255] CSVC provided a substantially complete response to the Subsidy RFI.⁹⁷

[256] For purposes of the preliminary determination, CSVC was found to have benefitted from the following subsidy program during the POI:

Program 8 – Investment Support

⁹⁵ EXH 113 (PRO) & 114 (NC) – Response to RFI – Subsidy

⁹⁶ EXH 222 (PRO) & 223 (NC) – Response to RFI – Subsidy

⁹⁷ EXH 161 (PRO) & 162 (NC) – Response to RFI – Subsidy

[257] For purposes of the preliminary determination, 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.

[258] The estimated amount of subsidy for CSVC is 0.00%, expressed as a percentage of the export price. The CBSA will continue to collect and verify information from CSVC.

Hoa Sen Group Joint Stock Company

[259] HSG ⁹⁸ and five of their associated companies ^{99,100,101,102 and 103} provided substantially complete responses to the Subsidy RFI.

[260] For purposes of the preliminary determination, HSG was found to have benefitted from the following four 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

[261] For purposes of the preliminary determination, the above subsidy programs are considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by HSG, five of their associated companies and the GOV.

[262] The estimated amount of subsidy for HSG is 0.002%, expressed as a percentage of the export price. The CBSA will continue to collect and verify information from HSG and their associated companies.

Nam Kim Steel Joint Stock Company

[263] Nam Kim provided a substantially complete response to the Subsidy RFI.¹⁰⁴

[264] For purposes of the preliminary determination, Nam Kim was found to have benefitted from the following subsidy program during the POI:

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

⁹⁸ EXH 123 (PRO) & 124 (NC) – Response to RFI – Subsidy

⁹⁹ EXH 121 (PRO) & 122 (NC) – Response to RFI – Subsidy

¹⁰⁰ EXH 187 (PRO) & 188 (NC) – Response to RFI – Subsidy

¹⁰¹ EXH 189 (PRO) & 190 (NC) – Response to RFI – Subsidy

¹⁰² EXH 193 (PRO) & 194 (NC) – Response to RFI – Subsidy

¹⁰³ EXH 202 (PRO) & 203 (NC) – Response to RFI – Subsidy

¹⁰⁴ EXH 101 (PRO) & 102 (NC) – Response to RFI – Subsidy

[265] For purposes of the preliminary determination, the above subsidy program was considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by Nam Kim.

[266] The estimated amount of subsidy for Nam Kim is 0.12%, expressed as a percentage of the export price.

[267] The CBSA will continue to collect and verify information from Nam Kim.

Ton Dong A Corporation

[268] TDA provided a substantially complete response to the Subsidy RFI.¹⁰⁵

[269] For purposes of the preliminary determination, TDA was found to have not benefitted from any subsidy programs during the POI.

[270] The estimated amount of subsidy for TDA is 0.00%, expressed as a percentage of the export price.

[271] The CBSA will continue to collect and verify information from TDA.

Southern Steel Sheet Co., Ltd

[272] SSSC provided a response to the exporter Subsidy RFI.¹⁰⁶ A review of their response revealed that the information submitted for SSSC is incomplete. Consequently, a deficiency letter was issued to SSSC. The letter noted deficiencies and advised SSSC to provide missing information as soon as possible to ensure that the CBSA has sufficient time to review, analyze and verify the information provided. For the purposes of the preliminary determination, sufficient information was not furnished by the respondent.

[273] As such, for purposes of the preliminary determination, the amount of subsidy was estimated for SSSC was determined according to the all other exporters rate for Vietnam. Therefore, the estimated amount of subsidy for SSSC was is 0.2%, expressed as a percentage of the export price.

¹⁰⁵ EXH 175 (PRO) & 176 (NC) – Response to RFI – Subsidy

¹⁰⁶ EXH 232 (PRO) & 231 (NC) – Response to RFI – Subsidy

All Others Exporters - Vietnam

[274] For all other exporters of subject goods from Vietnam, the CBSA estimated an amount of subsidy on the basis of the following methodology:

- 1) the highest amount of subsidy for each of the five programs, as found at the preliminary determination, for the producers/exporters located in Vietnam that provided a substantially complete response to the Subsidy RFI, plus;
- 2) the average amount of subsidy for the five programs listed in (1), applied to each of the remaining five potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the preliminary determination.

[275] Using the above methodology, for the preliminary determination, the estimated amount of subsidy for all other exporters in Vietnam is 0.20%, expressed as a percentage of the export price.

Estimated Amounts of Subsidy

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

Country of origin or export	Estimated Amounts of Subsidy (as % of Export Price)	Estimated Imports of Subject Goods (as % of Volume)
Turkey		23.4%
Atakaş Çelik Sanayi ve Ticaret A.Ş	1.70%	
Borçelik Çelik Sanayi Ticaret A.Ş	0.87%	
Tatmetal Celik Sanayi Ve Ticaret A.Ş.	1.15%	
All Other Exporters - Turkey	7.72%	
United Arab Emirates		4.2%
Al Ghurair Iron and Steel	0.00%	
United Iron and Steel	0.00%	
All Other Exporters - UAE	0.00%	
Vietnam		18.2%
China Steel and Nippon Steel Vietnam Joint Stock Company	0.00%	
Hoa Sen Group	0.002%	
Nam Kim Steel Joint Stock Company	0.12%	
Ton Dong A Corporation	0.00%	
All Other Exporters - Vietnam	0.20%	
All Other Countries		54.2%

[277] Under section 35 of SIMA, if, at any time before making a preliminary determination, the CBSA is satisfied that the actual and potential volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to goods of that country.

[278] Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[279] The volume of subject goods from each country is above 3% of the total volume of goods released into Canada from all countries. Based on the definition above, the volume of subject goods from each country is therefore not negligible.

[280] If, in making a preliminary determination, the CBSA determines that the amount of subsidy on the goods of an exporter is insignificant, less than 1%, pursuant to section 38 of SIMA, the investigation will continue in respect of those goods but provisional duties will not be imposed on goods of the same description imported during the provisional period. The amount of subsidy estimated for Borçelik, the exporters/producers from the UAE, and the exporters/producers from Vietnam did not exceed 1% of the export price and were, therefore, determined to be insignificant.

[281] The goods under investigation that have been subsidized, by an estimated amount of subsidy that exceeds 1% are therefore not insignificant, will have provisional countervailing duties imposed on the goods imported during the provisional period.

DECISIONS

[282] On March 20, 2020, pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing respecting COR originating in or exported from Turkey, the UAE, and Vietnam.

PROVISIONAL DUTY

[283] Subsection 8(1) of SIMA provides that where a preliminary determination has been made and where the CBSA considers that the imposition of provisional duty is necessary to prevent injury, retardation or threat of injury, the importer in Canada of dumped and/or subsidized goods shall pay, or post security for, provisional duty. If, in making the preliminary determination, a determination is made that the estimated margin of dumping and/or the estimated amount of subsidy on the goods of an exporter is insignificant, subsection 8(1.3) provides that provisional anti-dumping and/or countervailing duties will not be imposed on importations of the goods from that particular exporter.

[284] Pursuant to subsection 8(1) of SIMA, provisional duty payable by the importer in Canada will be applied to dumped and subsidized imports of COR that are released from the CBSA during the period commencing on the day the preliminary determinations are made and ending on the earlier of the day on which the CBSA causes the investigation in respect of any goods to be terminated, in accordance with subsection 41(1), or the day on which the CITT makes an order or finding. The CBSA considers that the imposition of provisional duty is needed to prevent injury. As noted in the CITT's preliminary determination, there is evidence that discloses a reasonable indication that the dumping and subsidizing of COR have caused injury or are threatening to cause injury to the domestic industry.

[285] Imports of COR from Turkey, the UAE and Vietnam released by the CBSA on or after March 20, 2020, will be subject to provisional duties equal to the estimated margin of dumping and estimated amount of subsidy, where applicable, expressed as a percentage of the export price of the goods per exporter. **Appendix 1** contains the estimated margins of dumping, estimated amounts of subsidy and the rates of provisional duty.

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

FUTURE ACTION

The Canada Border Services Agency

[287] The CBSA will continue its investigations of the dumping and subsidizing and will make final decisions by June 18, 2020.

[288] If the margins of dumping or amounts of subsidy are found to be insignificant, the CBSA will terminate the investigations in respect of those goods and any provisional duty paid or security posted will be refunded to importers, as appropriate. If the CBSA is satisfied that the goods were dumped and/or subsidized, final determinations will be made.

The Canadian International Trade Tribunal

[289] The CITT has begun its inquiry into the question of injury to the Canadian industry. The CITT is expected to issue its finding by July 17, 2020.

[290] If the CITT finds that the dumping has not caused injury, retardation or is not threatening to cause injury, the proceedings will be terminated and all provisional anti-dumping duty collected or security posted will be refunded.

[291] If the CITT makes a finding that the dumping has caused injury, retardation or is threatening to cause injury, anti-dumping duty in an amount equal to the margin of dumping will be levied, collected and paid on imports of COR that are of the same description as goods described in the CITT's finding.

[292] If the CITT finds that the subsidizing has not caused injury, retardation or is not threatening to cause injury, the proceedings will be terminated and all provisional countervailing duty collected or security posted will be refunded.

[293] If the CITT makes a finding that the subsidizing has caused injury, retardation or is threatening to cause injury, countervailing duties in the amount equal to the amount of subsidy on the imported goods will be levied, collected and paid on imports of COR that are of the same description as goods described in the CITT's finding.

[294] For purposes of the preliminary determination of dumping or subsidizing, the CBSA has responsibility for determining whether the actual and potential volume of goods is negligible. After a preliminary determination of dumping or subsidizing, the CITT assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the CITT is required to terminate its inquiry in respect of any goods if the CITT determines that the volume of dumped or subsidized goods from a country is negligible.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[295] 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 investigation 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 determination could be subject to anti-dumping and/or countervailing duty.

[296] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

UNDERTAKINGS

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

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

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

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

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

PUBLICATION

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

INFORMATION

[303] This *Statement of Reasons* is 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: Denis Chénier 613-954-0032
Lindsay Kyne 613-960-3099

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 Estimated Margins of Dumping, Estimated Amounts of Subsidy and Provisional Duties Payable

Appendix 2: Description of Identified Programs and Incentives

APPENDIX 1 – SUMMARY OF ESTIMATED MARGINS OF DUMPING, ESTIMATED AMOUNTS OF SUBSIDY AND PROVISIONAL DUTIES PAYABLE

The following table lists the estimated margins of dumping, the estimated amounts of subsidy, and the provisional duty by exporter as a result of the decisions mentioned above. Imports of subject goods released from the Canada Border Services Agency on or after March 20, 2020, will be subject to provisional duties at the rates specified below.

Country of Origin or Export	Estimated Margin of Dumping*	Estimated Amount of Subsidy*	Total Provisional Duty Payable*
Turkey			
Atakaş Çelik Sanayi ve Ticaret A.Ş	39.7%	1.70%	41.4%
Borçelik Çelik Sanayi Ticaret A.Ş	39.7%	0.87%	39.7%
Tatmetal Celik Sanayi Ve Ticaret A.Ş.	39.7%	1.15%	40.85%
All Other Exporters - Turkey	39.7%	7.72%	47.42%
United Arab Emirates			
Al Ghurair Iron & Steel LLC	49.0%	0.00%	49.0%
United Iron and Steel Company LLC	49.0%	0.00%	49.0%
All Other Exporters - United Arab Emirates	49.0%	0.00%	49.0%
Vietnam			
China Steel and Nippon Steel Vietnam Joint Stock Company	36.3%	0.00%	36.3%
Hoa Sen Group Joint Stock Company	91.8%	0.002%	91.8%
Nam Kim Steel Joint Stock Company	46.0%	0.12%	46.0%
Ton Dong A Corporation	50.0%	0.00%	50%
All Other Exporters- Vietnam	91.8%	0.20%	91.8%

* As a percentage of export price.

APPENDIX 2 – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES

The following subsidy programs are included in the current investigation. Questions concerning these programs were included in the Subsidy RFIs sent to the governments of the named countries and to all known producers/exporters of subject goods.

Evidence provided by the complainant and obtained by the CBSA suggests that the GOT, GOU and GOV have provided support to exporters/producers of subject goods in the following manner.

TURKEY

This Appendix consists of descriptions of the subsidy programs which the responding exporters (i.e. the three respondents for which sufficient information was available to estimate an amount of subsidy) benefited from during the course of the subsidy POI and other potentially actionable subsidy programs identified by the CBSA.

The CBSA has used the best information available to describe the potentially actionable subsidy programs that may not have been used by the responding exporters in the current investigation. This includes using information provided by the GOT, exporters and related suppliers, information included in the complaint, as well as information obtained from CBSA research on potential subsidy programs in Turkey.

Subsidy Programs Used by the Responding Exporters

Program 1. Turk Eximbank – Rediscount Credit Program

The legal basis for this program are the Turk Eximbank Law, Principles and Articles of Association, and the “*Implementation Principles for Rediscount Program*”.¹⁰⁷ 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.

¹⁰⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 38 and exhibits 20 & 21

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; and
- 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:

- 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. 3332¹⁰⁸;
- 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 legislated¹⁰⁹;
- the Bank’s policies and operations have been formulated to work within the framework of the export-led growth strategies pursued by the Turkish government¹¹⁰;
- the Responsibilities and Powers of the Supreme Advisory and Credit Guidance Committee, which is comprised of GOT officials¹¹¹;
- 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 markets¹¹²; and
- losses incurred by Turk Eximbank as a result of political risks are covered by the Turkish Treasury¹¹³.

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

¹⁰⁸ 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

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ 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

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.

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 loans, obtained by the responding exporters during the POI (or where interest accrued during the POI).

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.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific pursuant to paragraph 2(7.2)(b) of SIMA.

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

The legal basis for this program are the Turk Eximbank Law, Principles and Articles of Association, and the "Implementation Principles for Post-Shipment Rediscount Credit Program".¹¹⁴ 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.

¹¹⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 57 and exhibits 20 & 27

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 in the same manner as described for Program 1 above. This program appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

While one of the respondents used this program during the POI, the CBSA estimated 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 are the Turk Eximbank Law, Principles and Articles of Association, and the “Implementation Principles for Pre-Export Credit Program”.¹¹⁵

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.¹¹⁶

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 in the same manner as described for Program 1 above. This program appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

Program 6. Turk Eximbank –Investment Credit for Export

The legal basis for this program are the Turk Eximbank Law, Principles and Articles of Association, and the “Implementation Principles for Investment Credit for Export Program”.¹¹⁷

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.¹¹⁸ 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.¹¹⁹

¹¹⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 67 and exhibits 20 & 26

¹¹⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 66-67

¹¹⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 84 and exhibits 20 & 28

¹¹⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 84

¹¹⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 85

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 GOT¹²⁰. In the final phase of the investigation, the CBSA will attempt to identify a more suitable benchmark rate, from long term commercial provided by Turkish commercial banks for USD denominated loans.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

Program 8. Turk Eximbank – Export Credit Insurance including: Short-term Export Credit Insurance

The legal basis for this program are the Turk Eximbank Law, Principles and Articles of Association and “Implementation Principles for Short-Term Export Credit Insurance”.¹²¹

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.¹²²

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).¹²³

¹²⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 19-20

¹²¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 102

¹²² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 101

¹²³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 107

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.¹²⁴

This program appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

The CBSA reviewed Turk Eximbank's 2014 to 2018 Annual Reports and other information available on the administrative record.¹²⁵ The CBSA's preliminary analysis indicates 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. As such, for the purposes of the preliminary phase of the investigation, the CBSA is of the opinion that no countervailable benefit was provided under this program. For the purposes of the preliminary determination, the CBSA also excluded this program from the "all other rate".

In the final phase of the investigation, the CBSA will continue to assess the financial viability of the insurance program in relation to the premiums being charged to the insured parties.

Program 10. Credit Guarantee Fund (KGF) Scheme for Turk Eximbank Programs

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 provide 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.¹²⁶ 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%.¹²⁷

¹²⁴ 6.5.12 of SIMA Handbook

¹²⁵ 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

¹²⁶ EXH 362 (NC) – CBSA Research; Exhibits 1- KGF website Information Center

¹²⁷ 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

Under SIMA, as a general rule, an entity will constitute “government” when it possesses, exercises, or is vested with governmental authority.¹²⁸ 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.”¹²⁹

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.¹³⁰

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 “The Credit Guarantee Fund (CGF) will be restructured to prioritize the financing investments, exports, new ventures and R&D projects.¹³¹” Similarly the 11th Development Plan says that “The 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.”¹³²

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 paper¹³³). 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.

¹²⁸ SIMA Handbook, Section 6.3.3.3

¹²⁹ EXH 362 (NC) – CBSA Research; Exhibits 1- KGF website Information Center / FAQs

¹³⁰ EXH 362 (NC) – CBSA Research; Exhibits 1- KGF website Information Center / FAQs

¹³¹ EXH 166 (NC) – Response to RFI – PMS – GOT; Exhibit 10 – Medium Term Programme 2018-2020

¹³² EXH 166 (NC) – Response to RFI – PMS – GOT; Exhibit 6 – 11th Development Plan, Paras. 299-300

¹³³ EXH 30 (NC) – COR2 Complaint; Attachment 47; page 88

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. This program appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

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.

On the other hand, a financial contribution could be provided resulting in countervailable benefit under loans other than Eximbank loans, if such loans guaranteed by the KGF were provided. As such, the name of the program will be changed to “Credit Guarantee Fund (KGF) Equity Backed Guarantees and Treasury Backed Guarantees” and the program will be looked at as a program distinct from Eximbank programs. As such, in the final phase of the investigation, the CBSA will assess whether the KGC provided guarantees on any other loans provided to the producers or exporters of subject goods.

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”).¹³⁴

¹³⁴ 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.¹³⁵

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.¹³⁶

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 constitute 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 appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

¹³⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 197

¹³⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 198

In past subsidy investigations, the CBSA¹³⁷ and Australia¹³⁸ 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.

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 or exporters of subject goods during the POI, for the purposes of the preliminary determination, the CBSA considered that no countervailable benefits were granted under this program, in light of evidence that the GOT has adequate controls in place to ensure all export commitments are met and for monitoring compliance with the IPR. For the purposes of the preliminary determination, the CBSA excluded this program from the “all other rate”.

In the final phase of the investigation, the CBSA will continue to review and verify information with respect to this program.

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.¹³⁹

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.

¹³⁷ CBSA; Dry What 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;

¹³⁸ EXH 362 (NC) – CBSA Research; Exhibits 1; Australia Anti-Dumping Commission, *Statement of Essential Facts No. 495 – Rebar from Turkey*, April 18, 2019

¹³⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 208

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%.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

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.¹⁴⁰

The BITT rate is specified by the 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, 2019.¹⁴¹ This regulation is administered by Ministry of Treasury and Finance.¹⁴²

With the May 15, 2019 amendment, the below stated transactions remained to be subject to 0% BITT:¹⁴³

- 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; and
- 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.

¹⁴⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 214

¹⁴¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 213 & exhibit 51; and EXH 345 (NC) – Response to SRFI 1; exhibit 1

¹⁴² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 216

¹⁴³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 214

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, 2019:¹⁴⁴

- Foreign exchange sales to enterprises having industrial registry certificate,
- Foreign Exchange sales to exporters

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 certificate can be obtained by any industrial establishment.¹⁴⁵

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.

¹⁴⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 214

¹⁴⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 215

Having regards to the above, for the purposes of the preliminary determination, the CBSA has considered that any benefit resulting from the BITT on Foreign Exchange Transactions is not specific and therefore not countervailable. For the purposes of the preliminary determination, the CBSA excluded this program from the “all other rate”.

Program 27. Investment Incentive 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, 2012.¹⁴⁶

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.¹⁴⁷

There are nine aspects of support measures under either one of the schemes:¹⁴⁸

- 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.

¹⁴⁶ EXH 200 (NC) – Response to RFI – Subsidy GOT; page 228

¹⁴⁷ EXH 200 (NC) – Response to RFI – Subsidy GOT; pages 228-229

¹⁴⁸ EXH 200 (NC) – Response to RFI – Subsidy GOT; pages 229-231

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.

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).¹⁴⁹

¹⁴⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 231

According to the GOT, unless they are operating in region 6, the producers of subject merchandise could only benefit from General Investment Incentive Scheme.¹⁵⁰ The CBSA notes that producers operating in region 5 are also eligible if they are in an OIZ.¹⁵¹ 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).¹⁵² 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.¹⁵³

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. 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 may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because they are restricted to specified sectors, and in some instances, it favors enterprises operating in an OIZ or other special zone.

¹⁵⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 232

¹⁵¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 53

¹⁵² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 232 and exhibit 53

¹⁵³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 236 and exhibit 53

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.¹⁵⁴

Information on the record confirmed that HRS was supplied by Erdemir for the production of subject and like goods.¹⁵⁵

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 share 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).¹⁵⁶ Erdemir denoted the group structure of Erdemir and its subsidiaries as OYAK Mining and Metallurgy Group.

¹⁵⁴ EXH 030 (NC) – COR2 Complaint; page 158

¹⁵⁵ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Q.3.

¹⁵⁶ 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

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%).¹⁵⁷ Erdemir was privatized in 2006.¹⁵⁸

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.¹⁵⁹ 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".¹⁶⁰ This right of the TPA was a precondition of privatization.¹⁶¹

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 usufructory in representation of Group A shares."¹⁶² 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 power¹⁶³, 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.

¹⁵⁷ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Q.2

¹⁵⁸ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; response to question 12

¹⁵⁹ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; response to question 15

¹⁶⁰ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Annex 5

¹⁶¹ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; response to question 17

¹⁶² EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; Annex 5, Articles of Association – article 22

¹⁶³ EXH 166 (NC) – Response to RFI – PMS – GOT; response to question 5

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, 1961.¹⁶⁴ OYAK utilizes the contribution collected from its members in its investments. While realizing its investments, OYAK aims to contribute to the development of Turkish economy and prioritizes the areas where this contribution shall be at the highest level”.¹⁶⁵

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.¹⁶⁶ 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.¹⁶⁷ Under the Law, OYAK shall be a corporate body with financial and administrative autonomy.¹⁶⁸ 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.¹⁶⁹

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.¹⁷⁰ 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.¹⁷¹

¹⁶⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205

¹⁶⁵ Exhibit 362 (NC) CBSA Research Exhibits 1 - Website at <https://www.oyak.com.tr/member-services/>, accessed January 16, 2020.

¹⁶⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205

¹⁶⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, article 18

¹⁶⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, article 1

¹⁶⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, articles 2-17

¹⁷⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, article 4

¹⁷¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 64, Law No. 205, articles 7 & 8

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.¹⁷² In this context, in *United States – Countervailing Measures On Certain Pipe And Tube Products From Turkey*¹⁷³, the WTO Panel determined that the US DOC failed to provide evidence that suggest that military and government personnel within OYAK have made decisions under the direction of the GOT in pursuit of governmental economic policies.¹⁷⁴ 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.¹⁷⁵ These aims are in line with the government policies and actions cited in the numerous policy documents reviewed by CBSA.¹⁷⁶

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."¹⁷⁷ 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."¹⁷⁸ 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 2018-2020.¹⁷⁹

¹⁷² EXH 362 (NC) – CBSA Research; Exhibits 1 - WT/DS436/AB/R; *US – Carbon Steel (India) – Report of the Appellate Body*; Paragraph 4.45

¹⁷³ 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;

¹⁷⁴ 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

¹⁷⁵ EXH 362 (NC) – CBSA Research Exhibits 1. Website at <https://www.oyak.com.tr/home-page/>, accessed January 16, 2020.

¹⁷⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibits 15-19

¹⁷⁷ EXH 362 (NC) – CBSA Research Exhibits 1 – OYAK Press Release 3

¹⁷⁸ EXH 030 (NC) – COR2 Complaint – Attachment 105

¹⁷⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibits 15-19

Having regards to the above, for the purposes of the preliminary determination, the CBSA is of the opinion that Erdemir is possessing, exercising or vested with governmental authority, such as through the exercise of governmental function under some amount of government control. As such, the CBSA is of the opinion that Erdemir is a public body. In the final phase of the investigation, the CBSA will continue to assess whether there is evidence that OYAK and/or Erdemir are in fact, exercising government functions.

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.

Benchmark Price:

The determination of “fair market value” should, to the extent possible, parallel the provisions of Article 14(d) of the ASCM regarding the determination of “adequacy of remuneration”, particularly in terms of establishing the fair market value on the basis of prevailing market condition.

Thus, ideally, the benchmark prices should be based on the prices of the same, or similar goods, in relation to prevailing market conditions for HRS in Turkey (including price, quality, availability, marketability, transportation and other conditions of sale). As such, the ideal benchmark would consist of the prices paid by the producers for the same or similar goods purchased from private Turkish suppliers, under similar terms of sale.

However, where the government is the dominant supplier, its influence may be such as to distort the selling price of such goods provided by the private suppliers.

As mentioned earlier, Erdemir (including its subsidiaries) accounts for more than half of domestic production and over 30% of the total market.¹⁸⁰ Further, imports from Russia and Ukraine also have a strong presence in the Turkish market, representing about half of imports and over 20% of the apparent domestic consumption.¹⁸¹ Low-priced imports of HRS or CRS from Russia and Ukraine are the subject of several anti-dumping measures, in Brazil, Canada, the European Union, Mexico and the United States of America.¹⁸² Imports of HRS from Russia and Ukraine are priced about 10% lower than other imports and domestic goods and are likely to be having a depressing impact on all domestic prices.¹⁸³ Together, Erdemir and CIS imports represent the majority of HRS available in Russia, and would be the price setters. Similarly, the import prices from the other sources may be influenced by the dominant parties (i.e. Erdemir and CIS imports). Further, based on data from respondents from Turkey regarding their purchases of HRS, it is estimated that a significant proportion of the remaining imports (outside CIS) are from related parties.

For the reasons described above, for the purposes of the preliminary determination, the CBSA has used the published monthly HRS prices for Southern Europe, as reported by Metal Bulletin.¹⁸⁴ According to Erdemir, Southern Europe, along with CIS, were the most influential markets to monitor, in terms of setting prices for the domestic market.¹⁸⁵ Geographically, Southern Europe includes parts of Turkey, which makes it even more relevant as a benchmark.

In the final phase of the investigation, the CBSA will continue to assess the appropriateness of using prices in Turkey as benchmark for the comparison with Erdemir's selling prices.

Program 33: Incentives for R&D Operations and Investments

The legal basis for Incentives for Research & Development ("R&D") Activities are based on the "Law on supporting Research and Development Activities" (Law No. 5746).¹⁸⁶

¹⁸⁰ 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

¹⁸¹ 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

¹⁸² EXH 362 (NC) – CBSA Research; Exhibits 1 - (WTO) Semi-Annual Reports Under Article 16.4 of the Agreement

¹⁸³ 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

¹⁸⁴ EXH 030 (NC) – COR2 Complaint; exhibit 12

¹⁸⁵ EXH 371 (NC) – Erdemir Response to Appendix II and related questions of Subsidy Request for Information; response to question 6

¹⁸⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 291 and exhibit 68

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).¹⁸⁷ The support measures provided under the Law No. 5746 are

- R&D Allowance;
- Income Tax Withholding Support;
- Insurance Premium Support; and
- Stamp Tax Exemption.¹⁸⁸

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.

With respect to specificity, the complainant believes that the program is specific due to its discretionary nature. The CBSA acknowledge 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.¹⁸⁹ The Iron and Non-ferrous Metal accounted for 2.3% of the total number of R&D centers. For the purposes of the preliminary determination, the CBSA considered that the evidence suggested that the subsidy was generally available and therefore not specific. In the final phase of the investigation, however, the CBSA will request evidence that the expenditures are also distributed across all sectors.

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.¹⁹⁰ 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.¹⁹¹

¹⁸⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 291

¹⁸⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 291

¹⁸⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 89

¹⁹⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 299 and exhibit 70 (not translated)

¹⁹¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 301

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; and
- evidence that a government exercises meaningful control over an entity.

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.”¹⁹² 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.

¹⁹² EXH 362 (NC) – CBSA Research; Exhibits 1- Extracts from TUBITAK’s website

Pursuant to section 2(7.1) of SIMA, the subsidy may be 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 the 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 2018-2020.¹⁹³ On this basis, the CBSA preliminary 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.¹⁹⁴ Further the majority of the grants were distributed to manufacturing companies. As such, for the purposes of the preliminary determination, the CBSA has determined that the program is specific, pursuant to section 2(7.1) of SIMA.

In the final phase of the investigation, the CBSA will continue to gather and analyze information regarding this program.

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 productions and employment level 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, 2013.¹⁹⁵ The Social Security Institution (Institution) is responsible for administering the program.¹⁹⁶

According to the paragraph (1) 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 which are employee's share (9%) and the rest of the employer's share (6%) within the statutory periods. This incentive is an across the board application regardless of sector or region. With the additional paragraph (appended provision) of the 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.¹⁹⁷

¹⁹³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibits 15-19

¹⁹⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 76

¹⁹⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 306

¹⁹⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 309

¹⁹⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 307

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.

Other Program Not Previously Addressed

This additional program was reported by the GOT in its subsidy response: **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.¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰

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.

¹⁹⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 314 and exhibit 82

¹⁹⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 314

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

Pursuant to section 2(7.1) of SIMA, the subsidy may be 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 the 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, for the purposes of the preliminary determination, the CBSA has determined that the program is specific, pursuant to section 2(7.1) of SIMA.

In the final phase of the investigation, the CBSA will continue to gather and analyze information regarding this program, regarding the approval criteria, in general, and with respect to the projects that were relevant to the subject goods, and with respect to the distribution of the overall expenditures under the program.

Further, the following programs were reported by respondents:

- Additional program reported by Respondents: Minimum Wage Support
- Additional program reported by Respondents: Social Security Premium Support for Hiring New Employees Who Previously Unemployed
- Additional program reported by Respondents: Income Tax Withholding Support Under Law 7103
- Additional program reported by Respondents: Social Security Premium Support Under Law 4857
- Additional program reported by Respondents: Intern Salary Support
- Additional program reported by Respondents: Eximbank and Turkish Central Bank Factoring

While the first five of these programs appear to be generally available, the CBSA will review these additional programs in the final phase of the investigation. With respect to the Eximbank and Turkish Central Bank Factoring, the benefit to the responding exporter did not appear to be applicable to subject goods.

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 preliminary 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, confer benefit to companies and appear to be specific. Therefore, these programs appear to be countervailable.

The CBSA will continue to further investigate these programs in the final phase of the investigation.

**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).²⁰¹

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.²⁰²

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 in the preliminary phase of the investigation 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 in the same manner as described for Program 1 above. This program appears to be contingent upon an export commitment. Therefore, this program may be specific, pursuant to paragraph 2(7.2)(b) of SIMA.

²⁰¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 48

²⁰² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 47

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 ”.²⁰³

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.²⁰⁴ It is believed that at least one of the exporters of subject goods used this program during the POI.²⁰⁵

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.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific pursuant to paragraph 2(7.2)(b) of SIMA.

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.”.²⁰⁶

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.²⁰⁷

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

²⁰³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 76

²⁰⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 76

²⁰⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT, exhibit 27

²⁰⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 93

²⁰⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT, exhibit 29

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.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific pursuant to paragraph 2(7.2)(b) of SIMA.

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 2018-05-25.²⁰⁸ 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.²⁰⁹

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.

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.²¹⁰ Information on the record suggest that at least one of the exporters of subject goods used this program during the POI.²¹¹

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.

²⁰⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 120

²⁰⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 119

²¹⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 120 and Exhibit 31 - Circular Regarding TL Repayment Option.pdf

²¹¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page, exhibit 31

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.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific pursuant to paragraph 2(7.2)(b) of SIMA.

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.

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.²¹² The allegations are based on the published prices of Boru Hatları ile Petrol Taşıma Anonim Şirketini [in English - Petroleum Pipeline Corporation] (BOTAS), the government entity²¹³ 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.²¹⁴ 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.²¹⁵

The natural gas market in Turkey has been regulated according to the provisions of Natural Gas Market Law No. 4646.²¹⁶ 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.²¹⁷

The GOT also indicated that the retail price also includes 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.²¹⁸ 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.²¹⁹ Information on the record suggest that at least one of the exporters of subject goods purchased natural gaz from BOTAS during the POI.²²⁰

²¹² EXH 30 (NC) – COR2 Complaint; paragraph 453

²¹³ 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

²¹⁴ EXH 30 (NC) – COR2 Complaint – Attachment 47, page 42 & 66

²¹⁵ EXH 30 (NC) – COR2 Complaint – Attachment 47, page 42

²¹⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 137 and exhibit 35

²¹⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 25

²¹⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 26

²¹⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 10

²²⁰ 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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

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. 6446.²²¹

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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

For the purposes of the preliminary determination, there is no evidence that exporters/ producers are benefiting from electricity on preferential terms. In the final phase of the investigation, the CBSA will investigate further.

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.²²²

²²¹ Exhibit 30 (NC) – COR2 Complaint; paragraph 453

²²² 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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

In the final phase of the investigation, the CBSA will further analyze whether any of the respondents received a benefit under this program during the POI.

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.²²³

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.²²⁴ The exemption is for enterprises which are established for the purpose of founding OIZ. The Ministry of Treasury and Finance is responsible for administering of the program.²²⁵

According to the GOT, for the purpose of establishing OIZs, commercial enterprises, such as enterprising committee, cooperative or under other names, are being established. These organizations are established to carry out the all or some of the services such as procure the land that OIZ to be established on, completion of infrastructure, construction of the workplaces. In the establishment of OIZ, land and workplace deliveries are within the scope of the VAT exemption.²²⁶

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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

²²³ EXH 30 (NC) – COR2 Complaint – Attachment 139

²²⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 145 and exhibit 40

²²⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 146

²²⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 144

None of the respondents reported benefits under this program. The CBSA will gather more information on this program in the final phase of the investigation.

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.²²⁷

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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

None of the respondents reported benefits under this program. The CBSA will gather more information on this program in the final phase of the investigation.

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”.²²⁸

“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.”²²⁹

²²⁷ EXH 30 (NC) – COR2 Complaint – Attachment 139

²²⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 150

²²⁹ 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*”.²³⁰ 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.²³¹

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 stipulate 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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

None of the respondents reported benefits under this program. In the final phase of the investigation, the CBSA will continue to gather and analyse information with respect to potential benefits under this program.

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*”.²³²

²³⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 151. and exhibit 41

²³¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 152

²³² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 157 and exhibit 42

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.²³³

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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

None of the respondents reported benefits under this program. In the final phase of the investigation, the CBSA will continue to gather and analyse information with respect to potential benefits under this program.

Program 16 : OIZ – Additional Support Granted Under the Investment Incentives Program

In its response to the Subsidy RFI, the GOT addressed this program under Program 27 - Investment Incentive Program.

In the final phase of the investigation, the CBSA will determine whether program 16 and program 27 should be merged as a single program.

²³³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 158-159

- 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.²³⁴ The GOT also reported that none of the producers/ exporters of subject goods operate in a Free Zone.²³⁵

For the purposes of the preliminary 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 preliminary determination, the CBSA excluded these six programs from the “all others rate”.

In the final phase of the investigation, the CBSA will remove these programs from the investigation if it remains satisfied that the programs related to Free Zones have not been used and were not available to any of the producers and/or exporters of subject goods.

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.²³⁶

The relevant legal basis for the tax exemption is paragraph (m) of Article 4 of Property Tax Law No. 1319.²³⁷ 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.²³⁸

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.

²³⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 29 and exhibit 14

²³⁵ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 29 and exhibit 14

²³⁶ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page. 220

²³⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 221 and exhibit 52

²³⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 223

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.²³⁹

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 stipulate 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.

This program may be specific, pursuant to paragraph 2(7.2)(a) of SIMA because it is specific to enterprises operating in an OIZ or other special zone.

None of the respondents reported benefits under this program. In the final phase of the investigation, the CBSA will continue to gather and analyse information with respect to potential benefits under this program.

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. 2016/9495²⁴⁰. The Ministry of Industry and Technology (MIT) is responsible for administering the program.²⁴¹

Incentives under this program may include:²⁴²

Tax incentives:

- Customs duty exemption
- VAT exemption
- VAT refunds
- Corporate tax deductions or exemptions

Employment incentives:

- Social security premium support (employer’s share)

²³⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 221-222

²⁴⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 239 and exhibit 57

²⁴¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 241

²⁴² EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 239

- Income tax withholding support
 - Qualified personnel employment support
- Financial incentives:
- Interest support
 - grant support
 - Capital contribution support
 - Energy support
- 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.²⁴³

The CBSA reviewed the application documentation that must be provided by applicants.²⁴⁴ 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.²⁴⁵

Evidence on the record suggest that none of the exporters of subject goods used this program during the POI.

²⁴³ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 242

²⁴⁴ EXH 200 (NC) – Response to RFI – Subsidy – GOT; exhibit 57; 2016 9495 EK-1_EN.DOCX

²⁴⁵ EXH 166 (NC) – Response to RFI – PMS – GOT; exhibits 6-10 for the policy documents.

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 stipulate 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.

Pursuant to section 2(7.1) of SIMA, the subsidy may be 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.

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”.²⁴⁶ The “Turquality” program is regulated by Communiqué No. 2006/4 of the Money-Credit and Coordination Council.²⁴⁷ The Ministry of Trade is the national authority responsible for the administration of the program.²⁴⁸

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.²⁴⁹

No producers reported benefits under 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.

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

²⁴⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 247 and exhibit 58

²⁴⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 248

²⁴⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 247

Subsection 27.1(2) of the SIMR stipulate 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.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific pursuant to paragraph 2(7.2)(b) of SIMA.

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.²⁵⁰ 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 of 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.²⁵¹

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).²⁵²

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.²⁵³

²⁵⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 253

²⁵¹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 254

²⁵² EXH 200 (NC) – Response to RFI – Subsidy – GOT; pages 254-255 and exhibit 61

²⁵³ 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.²⁵⁴

The CBSA reviewed Law 5910²⁵⁵, 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 Principles²⁵⁶, 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 government function. As such, the TSEA is considered as a government body.

²⁵⁴ SIMA Handbook, Section 6.3.3.3

²⁵⁵ EXH 30 (NC) – COR2 Complaint; exhibit 47. pp. 602-624

²⁵⁶ 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

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.

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.

This program appears to be contingent upon an export commitment. Therefore, this program may be specific pursuant to paragraph 2(7.2)(b) of SIMA.

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”.²⁵⁷ 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 amount shall not exceed the standard fuel tank volumes of trucks and cooler units.²⁵⁸

The legal basis for the tax exemption 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.²⁵⁹ The Ministry of Treasury and Finance is administering this exemption.²⁶⁰

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 appears to be contingent upon an export commitment. Therefore, this program may be specific pursuant to paragraph 2(7.2)(b) of SIMA.

²⁵⁷ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 261

²⁵⁸ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 263

²⁵⁹ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 262

²⁶⁰ EXH 200 (NC) – Response to RFI – Subsidy – GOT; page 264 and exhibits 62 & 63

No evidence suggests that the service providers have passed through any benefits from this program. For the purposes of the preliminary determination, the CBSA determined that none of the producers / exporters of subject goods benefited from this program during the POI. The CBSA also excluded this program from the “all other rate”. Pending some clarification in the final phase of the investigation, the CBSA may eliminate this program for the purposes of the final determination.

United Arab Emirates

This Appendix consists of descriptions of the subsidy programs which the responding exporters (i.e. the two exporters for which sufficient information was available to estimate an amount of subsidy) benefited from during the course of the subsidy POI and other potentially actionable subsidy programs identified by the CBSA.

The CBSA has used the best information available to describe the potentially actionable subsidy programs that may not have been used by the responding exporters in the current investigation. This includes using information provided by the GOU, information provided by exporters and related suppliers, information included in the complaint, as well as information obtained from CBSA research on potential subsidy programs in the UAE.

Summary Of The United Arab Emirates Subsidies

Program 1: Import Duty and VAT Exemption in Free Trade Zone

The GOU provided that the “Import Duty and VAT Exemption in Free Trade Zone” falls within the VAT legal regulations of the UAE, the ‘Federal Decree-Law No. (8) of 2017 on Value Added Tax.’ The program seeks the appropriate and simplification of the proceeding to the implementation of the VAT, and does not in and of itself provide any exemptions to the 5% VAT or customs duties payable upon importation of input materials of machinery and equipment. The government also provided that “There is no exemption from the 5% VAT on imports of materials or machines or equipment or any other capital for producers located in free Trade Zones.”²⁶¹

Both exporters provided that they are exempted from paying customs duties on importations of input material, equipment and machinery. Since they hold an Industrial License in the UAE, they are exempted from such duties by the Industrial Development Bureau of the GOU. This constitutes a benefit in the form of revenue forgone. However, it appears to be generally available, and not only within a Free Trade Zone. Therefore it is not specific.

²⁶¹ EXH 178 (NC) –Response to RFI – Subsidy – GOU; page 32

Program 2: Preferential Export Financing or Export Credit Insurance

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.”²⁶²

Both exporters provided they did not apply for, nor receive any export credit insurance through ECI during the POI. Therefore no benefit was conferred to either exporter during the POI. The GOU also responded that neither exporter applied for nor received any export credit insurance through ECI during the POI.

Program 3: Export Assistance Program

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.”²⁶³

The exporters provided that they did not apply for nor receive any export assistance under this program during the POI. Therefore no benefit was conferred to either exporter during the POI. The GOU also responded that neither exporter applied for nor received any export assistance under this program during the POI.

VIETNAM

This Appendix consists of descriptions of the subsidy programs which the responding exporters (i.e. the four respondents for which sufficient information was available to estimate an amount of subsidy) benefited from during the course of the subsidy POI and other potentially actionable subsidy programs identified by the CBSA.

The CBSA has used the best information available to describe the potentially actionable subsidy programs that may not have been used by the responding exporters in the current investigation. This includes using information provided by the GOV, information provided by exporters and related suppliers, information included in the complaint, as well as information obtained from CBSA research on potential subsidy programs in Vietnam.

²⁶² EXH 178 (NC) –Response to RFI – Subsidy – GOU; page 39

²⁶³ EXH 178 (NC) –Response to RFI – Subsidy – GOU; page 45

Subsidy Programs Used By The Responding Exporters

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 confer a benefit to the recipient equal to the amounts of the reductions and exemptions.

The program may be considered 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-CP²⁶⁴ 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.

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.

²⁶⁴ EXH 426 (NC) – 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 may be considered 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/QH13²⁶⁵ dated June 21, 2013, on Land (Law No. 45); Decree No. 46/2014/ND-CP²⁶⁶ dated May 15, 2014, on regulating the collection of land rents and water surface rents (Decree No. 46); Circular No. 77/2014/TT-BTC²⁶⁷ 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 confer a benefit to the recipient equal to the amounts of the reductions and exemptions.

The program may be considered 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.

²⁶⁵ EXH 426 (NC) – New Law No. 45.

²⁶⁶ EXH 426 (NC) – Decree No. 46.

²⁶⁷ 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/QH12²⁶⁸ dated June 3, 2008, on Enterprise Income Tax 2008 (Law No. 14); Law No. 32/2013/QH13²⁶⁹ 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/QH13²⁷⁰ 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 confer a benefit to the recipient equal to the amount of the reduction/exemption.

The program may be considered 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.

²⁶⁸ EXH 426 (NC) – Law No. 14.

²⁶⁹ EXH 426 (NC) – Law No. 32.

²⁷⁰ EXH 426 (NC) – Law No. 71.

Program 8: Investment support

The complaint listed the two programs and referred to the US DOC's final determination in *Certain Steel Nails*.²⁷¹

The programs are made available pursuant to *Decree 108/2006/ND-CP of the Government*, dated, September 22, 2006.²⁷² Decree 108 details in which areas the government will support new investments.

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 may be considered 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 preliminary determination, the CBSA has preliminarily 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, confer benefit to companies and appear to be specific. Therefore, for purposes of the preliminary determination, these programs appear to be countervailable. The CBSA will continue to further investigate these programs in the final phase of the investigation.

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.

²⁷¹ EXH 30 (NC) – COR2 Complaint; page 173

²⁷² EXH 426 (NC) – Decree No. 108.

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 confer a benefit to the recipient equal to the amounts of the refund.

The program may be considered 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, constitute a prohibited subsidy as defined in subsection 2(1) of SIMA.

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-CP²⁷³ dated August 30, 2011, on state investment credit and export credit (Decree No. 75) and Decree No. 151/2006/ND-CP²⁷⁴ dated December 20, 2006, on state investment credit and export credit (Decree No. 151). These programs were provided by the GOV.

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-NHNN²⁷⁵ issued by the State Bank of Vietnam.

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 confer a benefit to the recipient equal to the amounts of the reductions or exemptions.

The program may be considered specific pursuant to paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitute a prohibited subsidy as defined in subsection 2(1) of SIMA.

²⁷³ EXH 426 (NC) – Decree No. 75.

²⁷⁴ EXH 426 (NC) – Decree No. 151.

²⁷⁵ EXH 426 (NC) – Circular No. 28.

Program 7: Accelerated Depreciation of Fixed Assets

Accelerated depreciation of fixed assets is specified in Circular 45/2013/TT-BTC²⁷⁶ 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. 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 may be considered 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, 2009.²⁷⁷

This program where a direct transfer of funds from the Government is considered to be a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA.

The program may be considered 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.

²⁷⁶ EXH 426 (NC) – Circular No. 45.

²⁷⁷ EXH 426 (NC) – Decision No. 80.

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 confer a benefit to the recipient equal to the amount of the reduction/exemption.

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to particular enterprises targeted by the GOV.