



OTTAWA, November 15, 2018

## STATEMENT OF REASONS

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

**COLD-ROLLED STEEL  
FROM CHINA, SOUTH KOREA AND VIETNAM**

### DECISION

On October 31, 2018, pursuant to paragraph 41(1)(b) of the *Special Import Measures Act*, the Canada Border Services Agency made final determinations respecting the dumping and subsidizing of certain cold-rolled steel in coils or cut lengths from China, South Korea and Vietnam.

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

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## SUMMARY OF EVENTS

[1] On April 5, 2018, the Canada Border Services Agency (CBSA) received a written complaint from ArcelorMittal Dofasco G.P., of Hamilton, Ontario, (hereinafter, “the complainant”), alleging that imports of certain cold-rolled steel in coils or cut lengths (CRS) from the People’s Republic of China (China), the Republic of Korea (South Korea) and the Socialist Republic of Vietnam (Vietnam) (hereafter “the named countries”) are being 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 April 26, 2018, 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 governments of China, South Korea and Vietnam that a properly documented complaint had been received. The governments of China, South Korea 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 May 15, 2018, consultations were held between the Government of Canada and the Government of China via video conference. During the consultations, the Government of China made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. On May 17, 2018, the Government of China provided written representations related to the consultations. The CBSA considered the representations made by the Government of China in its analysis.

[4] On May 23, 2018 consultations were held between the Government of Canada and the Government of Vietnam. During the consultations, the Government of Vietnam made representations with respect to the evidence presented in the non-confidential version of the subsidy complaint and provided them in writing. The CBSA considered the representations made by the Government of Vietnam in its analysis.

[5] Also on May 23, 2018, consultations were held between the Government of Canada and the Government of South Korea.

[6] The complainant provided evidence to support the allegations that CRS 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.

[7] On May 25, 2018, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of CRS from China, South Korea and Vietnam.

[8] 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.

[9] On July 24, 2018, 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 CRS from China, South Korea and Vietnam have caused injury or are threatening to cause injury to the domestic industry.

[10] On August 23, 2018, 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 CRS from China, South Korea and Vietnam. On the same date, the CBSA notified interested parties of a change to the investigations schedule.

[11] On August 23, 2018, 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 investigations in respect of any goods to be terminated pursuant to subsection 41(1) of SIMA or the day the CITT makes an order or finding pursuant to subsection 43(1) of SIMA.

[12] Based on the available evidence, the CBSA is satisfied that CRS originating in or exported from China, South Korea and Vietnam have been dumped and subsidized. Therefore, on October 31, 2018, the CBSA made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(b) of SIMA in respect of those goods.

[13] The CITT's inquiry into the question of injury to the Canadian industry is continuing, and it will issue its decision by December 21, 2018. Provisional duties will continue to be imposed on the subject goods from China, South Korea and Vietnam until the CITT renders its decision.

#### **PERIOD OF INVESTIGATION**

[14] The Period of Investigation (POI) for these investigations is April 1, 2017, to March 31, 2018.

#### **PROFITABILITY ANALYSIS PERIOD**

[15] The Profitability Analysis Period (PAP) for the dumping investigation is April 1, 2017, to March 31, 2018.

## **INTERESTED PARTIES**

### **Complainant**

[16] The complainant is ArcelorMittal Dofasco G.P, 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.

[17] ArcelorMittal Dofasco G.P produces CRS at its facility in Hamilton, Ontario. The company is the largest of three producers of CRS in Canada.

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

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

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

Essar Steel Algoma Inc.  
105 West Street  
Sault Ste. Marie, Ontario

Stelco Inc.  
386 Wilcox Street  
Hamilton, Ontario

### **Importers**

[20] At the initiation of the investigations, the CBSA identified 62 potential importers of the subject goods based on both information provided by the complainant and CBSA import entry documentation. The CBSA sent an Importer Request for Information (RFI) to all potential importers of the goods. The CBSA received four responses to the Importer RFI.

### **Exporters**

[21] At the initiation of the investigations, the CBSA identified 284 potential exporters/producers of the subject goods from information provided by the complainant and CBSA import entry documentation. All of the potential exporters were sent the CBSA's Dumping and Subsidy RFIs. Exporters located in China and Vietnam were also sent the Section 20 RFI.

[22] One company that was involved in the sale of subject goods to Canada during the POI provided a response to the Dumping RFI.<sup>1</sup> However, the CBSA did not receive responses to the Dumping RFI from the Chinese producers of these goods. One producer of cold-rolled steel from Vietnam also provided a response to the CBSA's Dumping RFI; however, this company did not export subject goods that were released into Canada during the POI.<sup>2</sup>

[23] No companies in China and Vietnam responded to the Section 20 RFI.

[24] No companies provided a response to the Subsidy RFI.

### **Governments**

[25] For the purposes of these investigations, "Government of China (GOC)", "Government of South Korea (GOK)", 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.

[26] At the initiation of the investigation, the CBSA sent a Government Subsidy RFI to the GOC, GOK and GOV. In addition, the GOC and GOV were sent the CBSA's Government Section 20 RFI.

[27] None of the governments of the named countries provided a response to the Government Subsidy RFI or the Government Section 20 RFI.

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<sup>1</sup> Exhibit 58, Response to Dumping RFI Salzgitter Mannesmann International GmbH (NC).

<sup>2</sup> Exhibit 62, Response to Dumping RFI VNSteel – Phu My Flat Steel Co. Ltd. (NC).

## **PRODUCT INFORMATION**

### **Definition**

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

*Cold-reduced flat-rolled sheet products of carbon steel (alloy and non-alloy), in coils or cut lengths, in thicknesses up to 0.142 inches (3.61 mm) and widths up to 73 inches (1854 mm) inclusive, originating in or exported from the People's Republic of China, the Republic of Korea, and the Socialist Republic of Vietnam, and excluding:*

- a) organic coated (including pre-paint and laminate) and metallic coated steel;*
- b) steel 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;*
- c) steel products for use in the manufacture of aeronautic products;*
- d) perforated steel;*
- e) stainless steel;*
- f) silicon-electrical steel; and*
- g) tool steel.*

### **Additional Product Information<sup>3</sup>**

[29] For greater certainty, where the nominal and actual measurements vary, a product is considered to be subject goods if either the actual or nominal measurement (being plus or minus allowable tolerances in the applicable standards), meets the definition set forth above.

[30] The product definition covers both annealed and “full-hard” (unannealed) CRS as well as rectangular and non-rectangular cross-section products.

[31] The maximum widths and thicknesses that apply to non-rectangular CRS are the same as those that apply to rectangular CRS, i.e., thicknesses up to 0.142 inches (3.61 mm) and widths up to 73 inches (1854 mm) inclusive.

[32] The product definition includes carbon steel, whether alloyed or non-alloyed. Alloying elements may include boron, titanium, manganese, silicon, copper, aluminum chromium, cobalt, lead, nickel, tungsten, molybdenum, niobium, vanadium, and zirconium.

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<sup>3</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – Pages 16-19.

[33] The product definition includes cold-rolled steels generally described as interstitial free (IF) steels, high-strength-low-alloy (HSLA) steels, motor lamination steels and advanced high-strength steels (AHSS). IF steel is a common term for a low carbon steel with low levels of elements like titanium or niobium. HSLA steels contain low levels of elements like copper, titanium, chromium, niobium, vanadium and/or molybdenum. Motor lamination steels contain low levels of elements like silicon and aluminium, but are commercially and metallurgically distinct from silicon-electrical steel. AHSS is a term used to describe steel with high tensile strength.

[34] CRS includes “black plate”, which is an industry term used to describe light gauge, low carbon, cold-reduced steel intended for use in the production of tin mill products or for use in its untinned state. It is supplied either dry or oiled. CRS for use in the production of tin mill products is included in the product definition (as it is black plate), but the finished product, tin plate, is excluded from the product definition.

[35] CRS is manufactured to meet certain Canadian Standards Association (CSA) and/or ASTM specifications, or equivalent specifications. ASTM specifications for cold-rolled steel meeting the product definition include, but are not limited to A568/A568A, A606/A606M, A424, A1008/A1008M, A726, A625/A625M, and A650/A650M. CRS that does not meet a specification is generally referred to as “non-prime” or “seconds”. Both prime and non-prime CRS for non-automotive uses are included in the product definition.

[36] The product definition excludes CRS with organic and metallic coatings. Coating methods include spraying, laminating, plating and hot-dip treatments.

[37] The product definition excludes cold-rolled steel for use in automobiles and automobile parts, hereafter referred to as “automotive”. Automotive producers include Original Equipment Manufacturers (OEMs) and part producers.

[38] The product definition excludes perforated cold-rolled steel. Perforated steel is steel sheet that has a pattern of punched or stamped holes throughout the length and width of the steel sheet.

[39] The product definition excludes stainless cold-rolled steel. The *Customs Tariff* currently defines stainless steel as steel containing no more than 1.2% carbon and 10.5% or more of chromium by weight. This is the same definition that will apply to the subject goods definition. Stainless steel may also include other alloying elements. Stainless steel is commercially and metallurgically distinct from carbon steel, including alloyed carbon steel. Alloyed carbon steel (or alloy carbon steel) is included in the product definition.



[40] The product definition excludes silicon-electrical steel. Silicon-electrical steels include both grain-oriented electrical steel (commonly known as GOES) and non-oriented electrical steel (NOES). At present, the notes to Chapter 72 of Canada's *Customs Tariff* schedule defines silicon-electrical steel as:

Alloy steels containing by weight at least 0.6% but not more than 6% of silicon and not more than 0.08% of carbon. They may also contain by weight not more than 1% of aluminum but no other element in a proportion that would give the steel the characteristics of another alloy steel.

[41] The above definition of silicon-electrical steel will apply to the subject goods definition.

[42] The product definition excludes tool steel. Tool steel is a variety of steel with distinct characteristics, such as hardness, that make it suitable for hand tools and dies. Tool steel will meet CSA or ATSM standards, such as ASTM 681 or ASTM 686. The *Custom Tariff* has specific tariff classification numbers for cold-rolled tool steel, such as such as 7225.50.00.11 and 7225.50.00.21.

[43] More specifically, tool steel is defined as steel which contains the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[44] CRS falling within the product definition is commonly used in the production and manufacture of other goods, including household appliances, drums, tubing, furniture and strapping.

#### **Production Process<sup>4</sup>**

[45] The primary input for CRS is hot-rolled steel sheet (HRS). While details may vary from mill to mill, the process by which HRS is produced is essentially the same for all domestic producers.

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<sup>4</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – Pages 19-20.

[46] HRS is rolled on a continuous strip mill at temperatures above 1600°F (870°C) from an incoming hot slab up to 9" (229 mm) thick. The slab is made of steel produced in a basic oxygen furnace or an electric arc furnace. The slab is progressively reduced to a sheet of the required thickness, 0.625" (15.875 mm) or less. Processing in the mill may include slitting or shearing to remove tongues and tails from the sheet. During hot-rolling, surface oxide (scale) forms, which is not acceptable for cold-rolling. This scale may be removed at a separate pickle line mill or at a continuous pickling cold-rolling mill. After pickling, rinsing and drying, oil may be applied as a temporary protection against rust.

[47] HRS is transformed into CRS through a cold-rolling process. The HRS is reduced in thickness by a cold reduction rolling process on a continuous or reversing cold-rolling mill. The process produces a steel that is referred to as "full-hard". Full-hard steel has minimal ductility (i.e., it is not pliable) and it can be sold in the merchant market or further processed as an annealed product. "Full hard" sheet may go through further internal processing into non-like goods, such as conversion to corrosion-resistant steel sheet or tin-plate.

[48] Annealing is the process of heating and cooling the steel to recover ductility. After annealing, a sheet may go through a temper rolling process that results in improved sheet shape, surface and performance during steel fabrication.

#### **Product Use<sup>5</sup>**

[49] The subject goods are typically used in the production and manufacture of other goods, including household appliances, drums, tubing, furniture and strapping.

#### **Classification of Imports**

[50] Beginning January 1, 2017, under the revised customs tariff schedule, subject goods are normally classified under the following tariff classification numbers:

7209.15.00.00	7209.26.00.00	7211.29.00.00
7209.16.00.00	7209.27.00.00	7211.90.00.00
7209.17.00.00	7209.28.00.00	7225.50.00.00
7209.18.00.00	7209.90.00.00	
7209.25.00.00	7211.23.00.00	

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

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<sup>5</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – Page 20.

## **LIKE GOODS AND CLASS OF GOODS**

[52] 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.

[53] 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.

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

[55] In its preliminary injury inquiry for these investigations, the CITT reviewed the matter of like goods and classes of goods. On August 8, 2018, it issued its preliminary injury inquiry determination and reasons indicating that “*the Tribunal, will analyze the allegations of injury and threat of injury on the basis that domestically produced CRS, as described in the product definition, is “like goods” in relation to the subject goods and that there is a single class of goods*”.<sup>6</sup>

## **THE CANADIAN INDUSTRY**

[56] The complainant, combined with the two supporting producers, account for all known domestic production of like goods.

## **IMPORTS INTO CANADA**

[57] During 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 parties.

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<sup>6</sup> Canadian International Trade Tribunal; Cold-Rolled Steel Dumping and Subsidizing Determination and Reasons (August 8, 2018), PI-2018-002, paragraph 39.

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

**Imports of CRS  
(% of Volume)**

Country	POI (April 1, 2017 to March 31, 2018)
China	57.9%
South Korea	6.9%
Vietnam	6.2%
All Other Countries	29.0%
<b>Total Imports</b>	<b>100.0%</b>

**REPRESENTATIONS**

[59] On July 4, 2018, the CBSA received written representations from POSCO, an exporter from South Korea, concerning the CRS investigations. These representations followed a meeting held on June 22, 2018 with the CBSA, representatives from POSCO, and a representative from the Embassy of the Republic of Korea.<sup>7</sup>

[60] During the meeting, and in their written representations, POSCO alleged that the volume of imports from South Korea was *de minimis*. During the meeting POSCO also noted that they would be providing additional information to support their claims. The CBSA received no further information from POSCO in this regard.

[61] On August 8, 2018, further meetings were held with representatives from the South Korean Ministry of Trade, Industry and Energy (MOTIE) and the CBSA. In addition to re-iterating POSCO's allegations that the volume of imports from South Korea was *de minimis*, MOTIE expressed reservations concerning potential negative impacts of any participation by South Korean exporters/producers or the GOK, as well as the undertaking of time and effort that is required to complete the Subsidy RFIs in particular.

[62] On August 13, 2018, the CBSA received further written representations from POSCO requesting that the CRS subsidy investigation be terminated by the CBSA.<sup>8</sup>

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<sup>7</sup> Exhibit 70, Written representations from POSCO (NC).

<sup>8</sup> Exhibit 71, Letter from POSCO requesting termination of investigation (NC).

[63] As part of the investigations, the CBSA reviewed import documentation for goods which were produced by POSCO, as well as a number of other producers from both subject and non-subject countries. Where the import documentation indicated that the goods are non-subject, the CBSA has excluded those goods from the calculation of import volumes.

[64] During the final phase of the investigations the complainant submitted additional documents<sup>9</sup>, as well as case arguments<sup>10</sup> that further support their allegations that the conditions described in section 20 of SIMA exist in the flat-rolled steel sectors in both China and Vietnam. The submissions also further supported allegations pertaining to the subsidy investigation relating to South Korea and Vietnam. In general, the case arguments reiterate support for the CBSA's methodologies used to estimate normal values, export prices and amounts of subsidy for the preliminary determinations.

[65] No reply submissions were received.

[66] The CBSA has noted the arguments and evidence submitted by the complainant and has taken them into consideration.

### **INVESTIGATION PROCESS**

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

[68] Regarding the Section 20 inquiry, information was requested from all known and potential exporters and producers of CRS in China and Vietnam and from the GOC and GOV. The CBSA also sent surrogate RFIs to all known producers of CRS in Italy, South Korea and Sweden to gather information to determine normal values under paragraph 20(1)(c) of SIMA.<sup>11</sup> 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.

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<sup>9</sup> Exhibit 88, Close of Record documents from complainant (NC).

<sup>10</sup> Exhibit 90, Case arguments from complainant (NC).

<sup>11</sup> South Korean exporters did not receive a separate surrogate RFI as they each received a full dumping RFI.

[69] 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 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 CRS; and whether any resulting subsidy was specific in nature. Information was also requested from the governments of those countries, concerning financial contributions made to exporters or producers of CRS 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.

[70] 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 the verification visits 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.

[71] On the date the preliminary determinations were made the CBSA revised its investigations schedule to indicate that the expected date of the final decisions was October 31, 2018 rather than November 21, 2018. Interested parties were notified of this revision. This change was made due to the lack of participation in the investigations.

[72] Under Article 15 of the World Trade Organization (WTO) Anti-dumping Agreement, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As Vietnam is listed as a least developed country, other low income country or lower middle income country or territory on the Development Assistance Committee List of Official Development Assistance Recipients<sup>12</sup>, the President recognizes this country as a developing country for purposes of actions taken pursuant to SIMA.

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<sup>12</sup> [www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC\\_List\\_ODA\\_Recipients2018to2020\\_flows\\_En.pdf](http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf)

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

### **DUMPING INVESTIGATION**

[74] The following presents the results of the investigation into the dumping of CRS originating in or exported from China, South Korea and Vietnam.

#### **Normal value**

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

[76] In the case of prescribed countries such as China and 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 determined on the basis of section 20 of SIMA using either the selling prices or costs of like goods in a “surrogate” country.

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

#### **Export Price**

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

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

## **Margin of Dumping**

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

## **RESULTS OF THE DUMPING INVESTIGATION**

### **Section 20 Inquiry**

[81] 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.

[82] The provisions of section 20 are applied on a sector basis rather than on the country as a whole. The sector reviewed will normally only include the industry producing and exporting the goods under investigation.

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

[84] 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.

[85] The complainant alleged that the conditions described in section 20 prevail in the flat-rolled steel sector, which includes CRS, in China and in Vietnam. That is, the complainant alleges that these industry sectors in China and in Vietnam do not operate under competitive market conditions and consequently, prices of CRS established in the Chinese and Vietnamese domestic markets are not reliable for determining normal values.<sup>13</sup>

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<sup>13</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – Page 46.



[86] The complainant provided a variety of evidence supporting the claim that the GOC and GOV substantially determine prices of CRS, respectively, sold in China and Vietnam, including a pricing analysis. The complainant provided evidence of state-ownership in the steel industry, involving principally the CRS input producers and CRS producers. The complainant also provided evidence of subsidization in the steel industry, which includes the flat-rolled steel sector.

[87] Finally, the complainant cited specific GOC policies such as China's 13th Five Year Plan, the 2016 Iron and Steel Industry Adjustment and Upgrade Plan and the State Council Decision on Accelerating the Development of Strategic Emerging Industries as evidence of continued influence on market forces in China, including the flat-rolled steel sector, which includes cold-rolled steel. Also, the complainant referred to specific GOV policies such as the Steel Master Plan 2007-2015 and 2015-2025, the Strategy on exports and imports for 2011-2020, with visions to 2030 and the Industrial Development Strategy through 2025, as evidence of continued influence on market forces in Vietnam in the flat-rolled steel sector, including CRS.

[88] At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the complainant, from its own research and from past investigations, to support the initiation of a section 20 inquiry to examine the extent of GOC and GOV involvement in pricing in the flat-rolled steel sector, which includes cold-rolled steel. The information indicated that Chinese and Vietnamese prices in this sector have been influenced by various government industrial policies. Consequently, the CBSA sent Section 20 RFIs to the GOC and GOV and all known producers and exporters of cold-rolled steel in China and Vietnam to obtain information on the matter.

#### **RESPONSES TO SECTION 20 INQUIRY – CHINA**

[89] The CBSA received one incomplete response to the Chinese Section 20 RFI from Salzgitter Mannesmann International (HK) Ltd., a trading company located in Hong Kong.<sup>14</sup>

[90] The response from Salzgitter Mannesmann International (HK) Ltd. is considered to be incomplete because most questions in the RFI were left unanswered and questions related to the GOC's involvement in pricing in their domestic flat-rolled steel sector were generally not applicable in Hong Kong. No producers or exporters in China provided the CBSA with a response to the Section 20 RFI, nor was any information with respect to GOC influence on the flat-rolled steel sector provided.

[91] As part of the Section 20 inquiry, surrogate RFIs were sent to all known producers of CRS in Italy and Sweden. These countries were selected as they are major exporters of CRS to Canada. No producers located in these countries responded to the RFI.

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<sup>14</sup> Exhibits 52 (PRO) & 53 (NC), Response to Exporter RFI from Salzgitter Mannesmann International (HK) Ltd.

[92] Also, as part of the Section 20 inquiry, the RFIs sent to importers requested information on re-sales in Canada of CRS imported from countries other than China and Vietnam. One of the four importer responses contained 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 CBSA determined that this information could not be used for the purposes of determining normal values pursuant to section 20 of SIMA.

## **Results of the Section 20 Inquiry - China**

### GOVERNMENT INDUSTRIAL POLICIES ANALYSIS

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

- *The 13<sup>th</sup> Five-Year National Economic and Social Development Plan;*
- *The Steel Capacity Replacement Policy*
- *The Iron and Steel Industrial Adjustment and Upgrade Plan*
- *The Iron and Steel Industrial Restructuring Policy*
- *The National Steel Policy and the Steel Revitalization/Rescue Plan;*
- *The 12<sup>th</sup> Five-Year Development Plan for the Steel Industry*

#### *13<sup>th</sup> Five-Year Plan for National Economic and Social Development*

[94] The GOC adopted its 13<sup>th</sup> Five-Year Plan for National Economic and Social Development of the People's Republic of China (2016-2020) (13<sup>th</sup> Five-Year Plan)<sup>15</sup>, on March 15, 2016. The 13<sup>th</sup> Five-Year Plan outlines China's goals, principles and targets for its development for the period of 2016-2020.

[95] The objectives outlined in the *13<sup>th</sup> Five-Year Plan* continue the themes expressed in the *12<sup>th</sup> Five-Year Steel Plan*, including the strengthening of state owned enterprises (SOE) and control over the economy within the steel industry.

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<sup>15</sup> Exhibit 93 (NC), Section 20 Report – Attachment 1.

[96] The *13<sup>th</sup> Five-Year Plan* calls for greater involvement of SOEs in the development of the Chinese economy. Specifically, Chapter 11 of the plan states:

“We will ensure that public ownership is dominant and that economic entities under diverse forms of ownership develop side by side ... We will exercise oversight over economic entities under all forms of ownership in accordance with the law ... We will remain firmly committed to ensuring that state-owned enterprises grow stronger, better and bigger and work to see that a member of such enterprises develop the capacity for innovation and become internationally competitive, thereby injecting a greater life into the state-owned sector, helping it exercise a greater level of influence and control over the economy, increasing its resilience against risk, and enabling it to contribute more effectively to accomplishing national strategic objectives.”<sup>16</sup>

[97] Given the overcapacity in the steel industry causing excess supply, the above statement supports GOC intentions to further consolidate the steel industry through mergers and restructuring and that the GOC views SOEs as having an important role to play in the economy.

#### *Steel Capacity Replacement Policy*

[98] On January 8, 2018, the Ministry of Industry and Information Technology of China issued the *Steel Capacity Replacement Policy* to cut existing steel production capacity and strictly ban the launch of any new steelmaking facilities in 2018. The new policy is to ensure zero growth of production capacity in steel, cement and plate glass industries and to continue capacity replacement measures this year.

[99] According to a report<sup>17</sup> by South China Morning Post, China fulfilled its target of cutting back steel capacity by 50 million tonnes in 2017, as well as phasing out another 120 million tonnes of low-tech illicit steel product capacity. China also plans to meet the 2016 to 2020 capacity cutback target of eliminating up to 150 million tonnes ahead of schedule in 2018.

[100] The discussion above on the *13<sup>th</sup> Five-Year Plan* together with the *Steel Capacity Replacement Policy*, indicate that the GOC plays a key role in the administration of the steel industry, which includes the flat-rolled steel sector.

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<sup>16</sup> Exhibit 93 (NC), Section 20 Report – Attachment 1.

<sup>17</sup> Exhibit 93 (NC), Section 20 Report – Attachment 4.

## *Iron and Steel Industry Adjustment and Upgrade Plan*

[101] On November 14, 2016, the Ministry of Industry and Information Technology of China issued the *Iron and Steel Industry Adjustment and Upgrade Plan (2016 - 2020)*<sup>18</sup>, to support the Chinese steel industry's development in 2016-2020. The Plan aims to raise the average annual growth rate of industrial added value from 5.4% in 2015 to 6.0% by 2020, raise the capacity utilization rate from 70% in 2015 to 80% by 2020, and raise the industrial concentration in top ten producers from 34.2% in 2015 to 60% by 2020. As supporting measures, the Plan calls on local governments to utilize existing funds, explore multiple kinds of support measures, and guide financial institutions and social funds to support key tasks of the Plan.

[102] Comments on the 2015 draft *Steel Industry Adjustment Policy* from a report by the American Iron and Steel Institute included the following:

The measures described in the Policy reflect ongoing government intervention in the management and operation of steel companies and the allocation of resources in the industry. As a result, the Policy is largely inconsistent with the goal of subjecting the industry to market discipline... The absence of concrete steps towards fundamental market-driven reforms and significant capacity reductions will render the Policy ineffective in addressing this fundamental problem.<sup>19</sup>

The specific measures contained in the Policy indicate that market forces will not be permitted to play a "decisive" role in the development of China's steel industry, and that the role of the market will remain secondary to the role of the government.<sup>20</sup>

[103] An article from the South China Morning Post outlines the objectives of the Ministry of Industry and Information Technology of China regarding the steel industry which align with the Plan:

- The Adjustment Plan does not remove the primary barrier to market reforms in the Chinese steel industry – state ownership;<sup>21</sup>
- While the Adjustment Plan acknowledges objectives related to China's excess capacity crisis, it fails to provide for any effective means to significantly reduce it;<sup>22</sup>
- The Policy aims to concentrate 60 percent of production capacity into three to five ultra-large, globally competitive enterprises, along with several leading enterprises in regional or specialty markets by 2025;<sup>23</sup>

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<sup>18</sup> Exhibit 93 (NC), Section 20 Report – Attachment 5.

<sup>19</sup> Exhibit 93 (NC), Section 20 Report – Attachment 6, page 1.

<sup>20</sup> Exhibit 93 (NC), Section 20 Report – Attachment 4, page 2.

<sup>21</sup> Exhibit 93 (NC), Section 20 Report – Attachment 4, page 3.

<sup>22</sup> *Ibid*, page 4.

<sup>23</sup> *Ibid*.

[104] Other observations were made on the draft *Steel Industry Adjustment Policy* which included that the Chinese government intends to continue “its top-down management” of all aspects of the steel industry including the number and location of enterprises, of products that they produce and the technologies they should use to produce them.<sup>24</sup> Also, the draft envisions “ultra-large steel groups” to be formed through mergers and acquisitions and to dominate the market, with the government “supporting the unification of strong and dominant enterprises” and encouraging them to “implement strategic reorganizations” throughout the production chain.<sup>25</sup>

[105] The CBSA was only able to obtain a Chinese version of the *Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)*. Although there are limited documents in English that could be found in the public domain regarding the plan for the flat-rolled steel sector, the Chinese version of the *Iron and Steel Industry Adjustment and Upgrade Plan*, along with the discussion on the draft *Steel Industry Adjustment Policy*, together with the article from the American Iron and Steel Institute, indicate that these measures and reforms affect all of the steel industry in China, including the flat-rolled steel sector, which includes cold-rolled steel.

#### *Iron and Steel Industrial Restructuring Policy*

[106] On March 20, 2015, the Ministry of Industry and Information Technology released a draft document entitled, *Iron and Steel Industrial Restructuring Policy (Steel Restructuring Revision)*.<sup>26</sup> The *Steel Restructuring Revision* is intended to replace the *National Steel Policy* previously issued in 2005.

[107] Currently, no information is available to the CBSA regarding whether a formal version of the policy exists. However, given the information available on the draft *Steel Restructuring Revision*, the major objectives of the *Steel Restructuring Revision* can be summarized into four main categories as follows: re-structuring of the steel industry, capacity requirements, profitability targets, and productivity targets.<sup>27</sup>

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<sup>24</sup> Exhibit 93 (NC), Section 20 Report – Attachment 6, page 2.

<sup>25</sup> *Ibid.*

<sup>26</sup> Exhibit 93 (NC), Section 20 Report – Attachment 7.

<sup>27</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – page 155, para. 362 and page 158, para 369.

[108] Additionally, Article 4 in the *Steel Restructuring Revision* provides further support of the GOC strengthening of the control and oversight over the Chinese steel industry:

“There should be continuous innovation in the means of governmental administration; ongoing and retrospective oversight and services should be continuously strengthened; and the role of the government should be more effectively realized. Relevant laws and regulations should be better implemented in the industry in order to basically build a fair and competitive market environment. A sound investment project information disclosure system and corporate credit record system should be established in order to form an open, honest community oversight system.”<sup>28</sup>

[109] This extract also indicates that the GOC has realized that the current steel industry is not in a fair and competitive market environment.

#### *The National Steel Policy and the Steel Revitalization/Rescue Plan*

[110] The Development Policies for the Iron and Steel Industry – Order of the National Development and Reform Commission [No. 35], (National Steel Policy)<sup>29</sup> was promulgated on July 8, 2005 and outlines the GOC’s future plans for the Chinese domestic steel industry. The major objectives of the National Steel Policy are:

- The structural adjustment of the Chinese domestic steel industry;
- Industry consolidations through mergers and acquisitions;
- The regulation of technological upgrading with new standards for the steel industry;
- Measures to reduce material and energy consumption and enhance environmental protection; and
- Government supervision and management in the steel industry.

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<sup>28</sup> *Ibid* – page 158, para. 368.

<sup>29</sup> Exhibit 93 (NC), Section 20 Report – Attachment 11.

[111] On March 20, 2009, the GOC promulgated the Blueprint for the Adjustment and Revitalization of the Steel Industry issued by the General Office of the State Council (Steel Revitalization/Rescue Plan).<sup>30</sup> This macro-economic policy was the GOC's response to the global financial crisis and is also the action plan for the steel industry for the 2009-2011 period. This plan included the following major tasks:

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

[112] There are common measures between these two GOC policies, as *the Steel Revitalization/Rescue Plan* is an acceleration of the major objectives of *the National Steel Policy*. These measures and reforms affect all of the steel industry in China, and as a result affect CRS producers in the flat-rolled steel sector.

#### *12th Five-Year Development Plan for the Steel Industry*

[113] The 12<sup>th</sup> Five-Year Development Plan for the Steel Industry (12<sup>th</sup> Five-Year Development Plan) is a policy document that was released by the GOC's Ministry of Industry and Information Technology on November 7, 2011.<sup>31</sup> The *12<sup>th</sup> Five-Year Development Plan* served as the guiding document for the development of the Chinese steel industry for the 2011-2015 period and was followed by the *13<sup>th</sup> Five-Year National Economic and Social Development Plan (2016-2020)*, which was discussed in detail in a previous section. Some of the key objectives in the plan included:

- Increased mergers and acquisitions to create larger, more efficient steel companies;
- GOC restrictions on steel capacity expansion;
- Upgrading of steel industry technology;
- Greater GOC emphasis on high-end steel products; and
- GOC directed relocation of iron and steel companies to coastal areas.

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<sup>30</sup> Exhibit 93 (NC), Section 20 Report – Attachment 12.

<sup>31</sup> Exhibit 93 (NC), Section 20 Report – Attachment 13.

[114] Also included in this plan were minimum requirements for steel production in order to eliminate smaller players in the market. Through this plan, the GOC continued its reform and restructuring of the Chinese steel industry. The GOC's target was that by 2015, China's top 10 steel producers would represent 60% of the country's total steel output. According to *the National Steel Policy*, the long-range GOC target for mergers and acquisitions is to have the top 10 Chinese steel producers account for 70% of total national steel production by 2020.<sup>32</sup> This plan was the next development stage of the GOC directives aimed at achieving this long-range 2020 target.

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

[116] Together with the GOC's: Criterion for the Production and Operation of Steel Industry<sup>33</sup> – GY [2010] No. 105 and Several Observations of the General Office of the State Council on Further Strengthening Energy-saving and Emission Reduction Efforts as well as Accelerating of Restructuring of Steel Industry<sup>34</sup> – GBF (2010) No. 34, these policies set out the detailed requirements for existing production and operations of steel enterprises in China.

[117] Should steel enterprises not follow to the GOC's requirements, laws and industrial policies, there are repercussions which include the withdrawal of steel production licenses and credit support.

#### GOVERNMENT OWNERSHIP OF SUPPLIERS/PRODUCERS

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

- *State Ownership of the Cold-Rolled Steel Producers; and*
- *GOC Ownership of Suppliers of Raw Materials.*

#### *State Ownership of Cold-Rolled Steel Producers*

[119] The complaint provided evidence of state-owned enterprises which produce CRS in China. The complaint identified 27 enterprises which are known to be state-owned or controlled.<sup>35</sup> In the same manner as state-owned and state-controlled steel producers, state-owned and state-controlled CRS producers are driven by GOC mandates and do not necessarily operate under market forces.

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<sup>32</sup> Exhibit 93 (NC), Section 20 Report – Attachment 11.

<sup>33</sup> Exhibit 93 (NC), Section 20 Report – Attachment 14.

<sup>34</sup> Exhibit 93 (NC), Section 20 Report – Attachment 15.

<sup>35</sup> *Ibid* – page 162, para. 381.



[120] The presence of state-owned and state-controlled enterprises that produce CRS in the flat-rolled steel sector would necessitate that private companies supplying CRS would have to compete with these state-owned and state-controlled enterprises operating under non-market conditions.

### *State Ownership of Raw Material Suppliers*

[121] As mentioned previously, according to the *Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)* and *Steel Industry Adjustment Policy (2015 Revision)*, the vision is to have 60% of production capacity moved into three to five ultra large, globally competitive enterprises in regional or specialty markets by 2025.<sup>36</sup>

[122] The CBSA conducted its own research on the most recent data available on steel production as reported by the World Steel Association (WSA). Based on the CBSA's research, the top ten steel producers by volume in China<sup>37</sup> accounted for 37.3% of all steel production in China during 2017.<sup>38</sup> Of these ten producers, eight are state-owned, and the combined production of steel by these eight state-owned enterprises in China represents 30.3% of all steel production in China during 2017.

[123] According to the complaint, the GOC's extensive ownership and control of the majority of large Chinese steel producers means that these companies produce and market steel according to GOC objectives and policies instead of market conditions.<sup>39</sup>

[124] The information provided by the complainant and available from the World Steel Association supports the assertion that there is substantial state ownership and control of suppliers of raw materials. Given that the state-owned steel companies produce raw material inputs for CRS, there is a strong likelihood that prices of CRS are also distorted in the flat-rolled steel sector as a result of potentially distorted raw material input prices.

### **Chinese Domestic Price Analysis**

[125] 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 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.

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<sup>36</sup> Exhibit 2 (NC) – CRS Complaint– page 158, para. 369.

<sup>37</sup> Exhibit 93 (NC), Section 20 Report - Attachment 16.

<sup>38</sup> Exhibit 93 (NC), Section 20 Report - Attachment 17.

<sup>39</sup> *Ibid*, para. 380.

[126] At the initiation, the complainant used information from MEPS, a publisher of steel market prices around the world, to compare CRS prices in China to those in other competitive markets.

[127] During the investigation, the complainant provided a more recent MEPS report that covered the POI in its entirety.<sup>40</sup> The CBSA used the recent MEPS report to calculate the differences between the domestic prices of CRS in China and in the other countries.<sup>41</sup> The table below demonstrates that prices of CRS in China are significantly lower than in other countries, suggesting that the GOC's involvement in the CRS sector is affecting prices. CRS prices in China were lower than domestic pricing in other markets by \$164/metric tonne (MT) to \$471/MT in various periods.

[128] Detailed information regarding domestic prices cannot be divulged for confidentiality reasons. Certain details provided in submissions were designated as confidential information by the complainant. Therefore, based on the MEPS report submitted by the complainant, the CBSA has prepared the following table to show CRS's domestic price differences between China and other countries.

**Comparison of Domestic CRS Prices in Different Countries (\$/MT)<sup>42</sup>**

	<b>Difference between China vs. Others*</b>
<b>2015</b>	196-344
<b>2016</b>	212-471
<b>2017</b>	164-459
<b>POI<sup>43</sup></b>	185-451

\* "Others" refers to the United States, Japan and the European Union

[129] The analysis shows that prices of cold-rolled steel are significantly lower in China in comparison to prices in the United States, Japan and the European Union.

<sup>40</sup> Exhibit 66 (PRO), Pricing for various markets from ArcelorMittal Dofasco G.P.

<sup>41</sup> Exhibit 92 (PRO), Section 20 Report – Attachment 20.

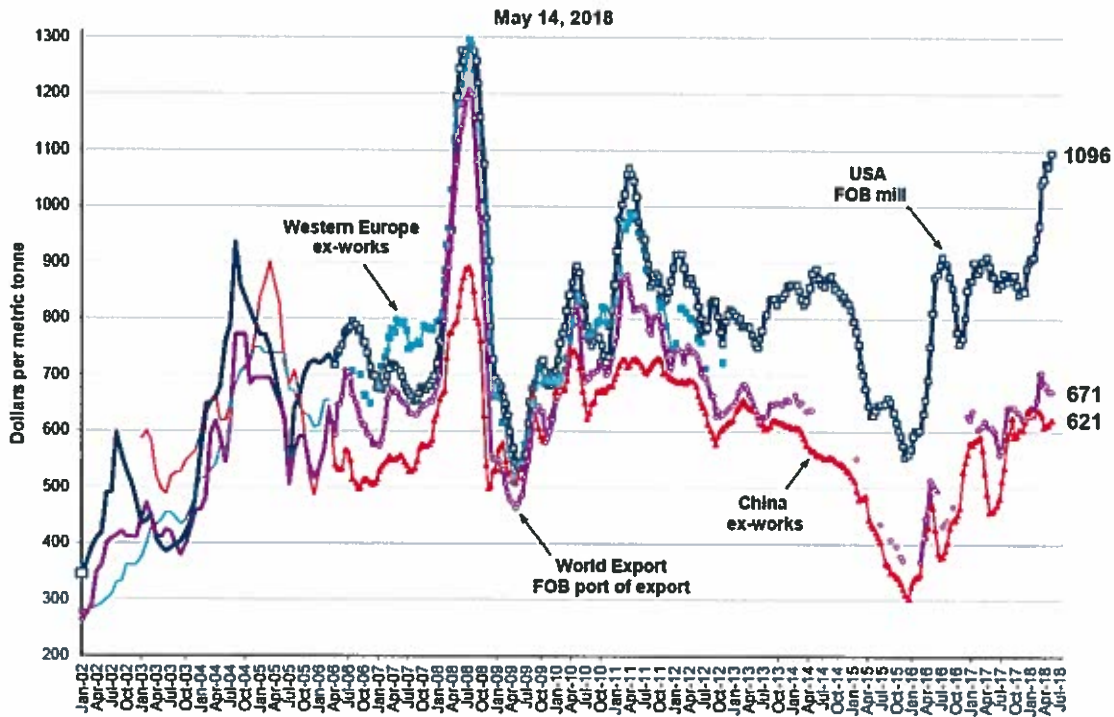
<sup>42</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – page 169, Table 28.

<sup>43</sup> Exhibit 92 (PRO), Section 20 Report – Attachment 20.

[130] The CBSA did not receive any responses to the Dumping RFI and therefore no domestic sales information of CRS from China was available. However, the CBSA was able to obtain information from Steel Benchmarker, which collected and analyzed ex-mill prices of plate, scrap, hot-rolled band and cold-rolled coil in China, the United States and other regions during the review period from January 2017 to December 2017.<sup>44</sup> Steel Benchmarker also includes a summary chart of a domestic price comparison of cold-rolled coils, which has been reproduced below.<sup>45</sup> Based on this information, the CBSA concluded that FOB mill prices of CRS in China were consistently lower than those in the United States or world average prices.

### SteelBenchmarker™ CRC Price

USA, China, Western Europe and World Export  
 (WSD's PriceTrack data, Jan. 2002 - March 2006; SteelBenchmarker data begins April 2006)



[131] In addition, based on a MEPS report, the domestic selling prices of CRS in China were 28.2 % lower than the reported domestic selling prices of CRS in other countries during the POI. This is strong evidence that prices in China are lower than they would be in a competitive market.

<sup>44</sup> Exhibit 93 (NC), Section 20 Report – Attachment 19, page 10 and 12.

<sup>45</sup> *Ibid*, page 5.

[132] The information discussed above, supports the conclusion that the domestic prices of CRS in China are not substantially the same as they would be if they were determined in a competitive market.

### *Summary of the Results of the Section 20 Inquiry*

[133] The wide range and material nature of the GOC measures have resulted in significant influence on the flat-rolled steel sector in China, which includes cold-rolled steel. Based on the preceding, the President is of the opinion that:

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

### **RESPONSES TO SECTION 20 INQUIRY – VIETNAM**

[134] The CBSA did not receive any responses to the Section 20 RFI from producers or exporters in Vietnam.

[135] As part of the Section 20 inquiry, surrogate RFIs were sent to all known producers of CRS in Italy and Sweden. These countries were selected as they were both major exporters of CRS to Canada. No producers/vendors located in these countries responded to the RFI.

[136] Also, as part of the Section 20 inquiry, the RFIs sent to importers requested information regarding re-sales in Canada of CRS imported from countries other than China and Vietnam. The CBSA received responses from four importers; however, only one of the importers provided information on re-sales in Canada of like goods from non-subject countries. As previously indicated, the information provided by this importer represented a very small volume of imports and could not be used for the purposes of determining normal values pursuant to section 20 of SIMA.

### **Results of the Section 20 Inquiry - Vietnam**

#### GOVERNMENT INDUSTRIAL POLICIES

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

- *The Master Plan on the Development of Vietnam's Steel Industry (2007-2015); and*
- *The New Master Plan (2015-2025).*

## *The Steel Master Plan 2007-2015*

[138] *The Master Plan on the Development of Vietnam's Steel Industry (2007-2015)* (Steel Master Plan) (Decree No. 145/2007/QD-TTg)<sup>46</sup> was presented to the Organization for Economic Co-operation and Development Steel Committee on July 1, 2013. It outlines the GOV's objectives in respect to the steel industry.

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

- a) 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.
- b) 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.
- c) 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.
- d) 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.

[140] In addition to the broader goals outlined above, the Steel Master Plan also sets out specific development objectives with respect to the manufacture of pig iron, ingot steel (raw steel), finished steel products, and the export of pig iron and other steel types.<sup>47</sup> With respect to the manufacture of finished steel products, the Steel Master Plan provides targeted production levels for specified time periods. The document states, as follows:

*By 2010, 6.3-6.5 million tonnes of finished steel products (1.8-2.0 million tonnes of flat steel products); by 2015, 11-12 million tonnes (6.5-7.0 million tonnes of flat steel products); by 2020, 15-18 million tonnes (8-10 million tonnes of flat steel products); and by 2025, around 19-22 million tonnes (11-13 million tonnes of flat steel products and 0.2 million tonnes of special steel) will be manufactured.*<sup>48</sup>

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<sup>46</sup> Exhibit 93 (NC), Section 20 Report – Attachment 21.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

[141] 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.<sup>49</sup>

[142] The complainant argues that based on the solutions revealed in the Steel Master Plan, the GOV is imposing technical barriers that may have the effect of distorting market prices. For example, the GOV issued direction “To protect the domestic market through lawful technical barriers and quality environmental standard [...]”.<sup>50</sup>

[143] The Steel Master Plan includes specific tasks for the GOV’s Ministry of Finance and Ministry of Natural Resources and Environment. The presence of these directives suggest that the GOV has the power to impose mechanisms that control or impact the prices in the steel industry, which would encompass the flat-rolled steel sector and CRS market.<sup>51</sup>

#### *The Steel Master Plan 2015-2025*

[144] The Master Plan for the Development of Steel Manufacturing and Distribution System (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 to 2025.<sup>52</sup>

[145] The Steel Master Plan 2015-2025 presents substantial revisions to its predecessor that had set out the direction for the steel industry until the year 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.*

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<sup>49</sup> *Ibid.*

<sup>50</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – Attachment 128.

<sup>51</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – page 172, para. 406.

<sup>52</sup> Exhibit 93 (NC), Section 20 Report - Attachment 47 NC – Steel Master Plan 2015-2025 - Decision 694QD-BCT

[146] The Steel Master Plan 2015-2025 provides direction for the Vietnamese steel sector through 2025, and a vision of the sector through 2035.<sup>53</sup> The CBSA has reviewed publicly available news reports and articles, which provide further elaboration as to what is included in this plan. For example, the Prime Minister’s Decision No. 879/QD-TTg approved the *Industrial Development Strategy through 2025, vision toward 2035*. The strategy 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.<sup>54</sup>

[147] The Vietnamese Steel Association (VSA) has recently declared to the Ministry of Industry and Trade “that the State would no longer manage the steel industry with any master plan” in the event that a certain “planning law” is put in place in 2018.<sup>55</sup> 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 Government will enhance disbursement for many projects with public investment to finish the projects, leading to higher demand for steel products.<sup>56</sup> Again, this information leads the CBSA to believe that the GOV has a certain leverage on steel production.

[148] As discussed above, the new Steel Master Plan established control of construction and investment projects in the steel industry. As evidence of this fact, the GOV has intervened to start and stop multiple projects. This allows the government to manage the supply of steel products and, in turn, influence domestic prices in the steel sector.

[149] The CBSA finds that the existence of the new Steel Master Plan demonstrates the GOV’s intention to remain active in managing the domestic steel sector. Such influence would alter the natural forces of supply and demand and could substantially influence the price of goods in this sector.

#### GOVERNMENT OWNERSHIP OF SUPPLIERS/PRODUCERS

[150] The Law on Investment (No. 59-2005-QH11), adopted by the National Assembly of Vietnam on November 29, 2005 (*Current LOI*)<sup>57</sup>, regulates investment activities for business purposes; the rights and obligations of investors; the guarantee of lawful rights and interests of investors; encouragement of investment and investment incentives; State administration of investment activities in Vietnam and offshore investment from Vietnam.<sup>58</sup>

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<sup>53</sup> CRS Complaint NC – Attachment 129 – *Foreign Consultancy to Evaluate Steel Sector Master Plan*.

<sup>54</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – Attachment 133.

<sup>55</sup> *Ibid.*

<sup>56</sup> Exhibit 93 (NC), Section 20 Report – Attachment 39.

<sup>57</sup> Exhibit 93 (NC), Section 20 Report – Attachment 42.

<sup>58</sup> Exhibit 93 (NC), Section 20 Report – Attachment 43.

[151] Although the *Current LOI* provides for a common legal framework regardless of ownership types, foreign direct investment was still subject to conditions in many sectors in 2010.<sup>59</sup> More recently, the GOV adopted a SOE restructuring scheme aligned with the equitization (i.e. partial privatization) of SOEs. However, even though the number of SOEs has decreased from 12,000 in 1990 to 3,048 in 2014, this number remains substantial.<sup>60</sup> This demonstrates that the GOV still has a considerable influence on the investment activities of companies in their country.

[152] While there is not a large volume of information in the public domain to indicate the extent of state ownership in Vietnam's steel sector, there is sufficient information to indicate the market is dominated by state-owned VNSteel, the country's biggest steel producer and employer of approximately 14,000 workers.<sup>61</sup>

[153] In a discussion paper 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.*<sup>62</sup>

[154] In a public document jointly written by the World Bank Group and the Ministry of Planning and Investment of Vietnam, "Vietnam 2035 - Toward Prosperity, Creativity, Equity, and Democracy, they addressed a section specific to the *Economic Modernization and Private Sector Development*". An excerpt from this section, shows that Vietnam has maintained a virtual monopoly in several major segments of the economy. Also, by holding such control in key sectors, for instance, gas, electricity, coal, water, and mining and quarrying, the GOV has control of the cost of major inputs involved in the production of flat-rolled steel products and cold-rolled steel. In other words, the GOV can indirectly determine domestic prices through a variety of mechanisms which can involve the supply and price of inputs (goods and services) used in the production of cold-rolled steel.

[155] Given that the state-owned steel companies produce raw material inputs for CRS, there is a strong likelihood that prices of CRS are also distorted in the flat-rolled steel sector as a result of potentially distorted raw material input prices.

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<sup>59</sup> Exhibit 93 (NC), Section 20 Report – Attachment 24, page 6.

<sup>60</sup> *Ibid*, page 7.

<sup>61</sup> Exhibit 93 (NC), Section 20 Report – Attachment 30.

<sup>62</sup> Exhibit 93 (NC), Section 20 Report – Attachment 24, page 8.



### **Vietnamese Domestic Price Analysis**

[156] 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 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.

[157] At the initiation stage of the investigations, although information on world market prices for CRS was provided by the complaint with a MEPS report, the same could not be said with respect to domestic market prices for CRS in Vietnam. Despite this difficulty, the complainant used Vietnam customs declaration data to calculate a weighted average import price of CRS into Vietnam as a proxy for domestic Vietnamese pricing.<sup>63</sup> At the same time, the CBSA did its own research and experienced the same difficulties obtaining information in the public domain regarding CRS pricing. It was reasoned that these import prices into Vietnam would reflect the general market price of CRS in that country and was the best available information.

[158] During the investigation, the CBSA received one response to the Dumping RFI from a Vietnamese producer, VNSteel – Phu My Flat Steel Co., Ltd. (PFS), which did not export subject goods that were released into Canada during the POI. The CBSA was able to compare domestic prices of CRS in Vietnam, provided by PFS in their Dumping RFI response, to domestic prices of CRS in other countries for purposes of the final determination.

[159] Detailed information regarding the Vietnamese producer's domestic prices and, also, the domestic prices in other countries cannot be divulged for confidentiality reasons. This has restricted the ability of the CBSA to disclose the CRS domestic price difference between Vietnam and other countries (United States, Japan and the European Union).

[160] Based on information obtained, the CBSA was able to confirm that prices of CRS in Vietnam are significantly lower than they are in other countries. This is evidence that prices in Vietnam are lower than they would be in a competitive market.

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<sup>63</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – page 181, para.432 and Attachment 91.

### *Summary of the Results of the Section 20 Inquiry*

[161] Based on the information on the record, the GOV's macro-economic policies and actions have influenced the Vietnamese steel industry, which encompasses the flat-rolled steel sector. Based on the preceding, the President 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.

### **China**

[162] The CBSA received a response to the Dumping RFI from Salzgitter Mannesmann International GmbH (Salzgitter). Salzgitter is located in Germany but has subsidiaries in various countries including China. Salzgitter was involved in the sale of subject goods to Canada that were produced in China. The companies that produced the goods sold to Canada by Salzgitter did not respond to the CBSA's Dumping RFI.

[163] As discussed above, for the purposes of the final determination, the CBSA has formed the opinion that the conditions described in section 20 of SIMA exist in the flat-rolled steel sector in China.

[164] 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, no such information was available to the CBSA.

[165] As there is no surrogate information available and no exporters or producers of subject goods from China provided a complete response to the CBSA's Dumping RFI, the normal values and export prices were determined under subsection 29(1) of SIMA pursuant to a Ministerial specification, on the basis of facts available.

[166] In establishing the methodology for determining normal values and export prices, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, and customs import documentation.

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

[168] The CBSA decided that the normal value 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 determining normal values for goods from China as it reflects the best information available to the CBSA. The methodology for estimating the normal value is explained in greater detail in the *South Korea* section below.

[169] The CBSA examined the difference between the normal value it estimated at initiation and the export prices for each individual transaction in order to obtain an appropriate amount for the normal value methodology. The transactions were also examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. Based on this analysis the CBSA excluded certain transactions from consideration.

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

[171] Therefore, the normal values were determined based on the export price, plus an amount equal to 91.9% of that export price.

[172] Based on the above methodologies, the margins of dumping for all exporters of subject goods from China is 91.9%, expressed as a percentage of the export price.

### **South Korea**

[173] No exporters of subject goods from South Korea provided a response to the CBSA's Dumping RFI. As such, normal values and export prices for subject goods from South Korea were determined under subsection 29(1) of SIMA pursuant to a Ministerial specification, on the basis of facts available.

[174] In establishing the methodology for determining normal values and export prices, 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.

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

[176] 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 determining normal values for goods from South Korea as it reflects the best information available to the CBSA.

[177] As described in the *Cold-rolled Steel - Initiation Statement of Reasons*, one normal value was estimated for South Korea by aggregating the estimated costs of producing the goods (materials, direct labour and overhead), a reasonable amount for selling, general and administrative (SG&A) costs and other costs, and a reasonable amount for profits.

[178] This estimated normal value was based on the complainant's own costs of production for all domestically produced CRS that falls within the product definition, during the period of Q4 2016 through Q3 2017, as well as public information from South Korea for the same period.

[179] This information was used to estimate the normal value for goods imported into Canada during the period of January 1, 2017 to December 31, 2017. The complainant submitted that it was appropriate to use cost information for the period Q4 2016 through Q3 2017 due to the lag time between the production and shipment of the goods. For the purposes of the final determination, the CBSA has used the estimated normal value as the basis for determining the normal value for goods imported into Canada during the POI.

[180] Material costs were estimated based on the complainant's own data and adjusted based on HRS pricing in South Korea. HRS is the primary material used in the production of CRS. For South Korea, the complainant used the cost of HRS as reported by MEPS.

[181] Labour costs were estimated based on the complainant's labour costs and adjusted to reflect labour cost differences between Canada and South Korea. A downward adjustment of 37.6% was applied to these costs based on productivity adjusted cost of labour comparisons reported by the Boston Consulting Group.<sup>64</sup>

[182] Overhead costs were based on the complainant's unadjusted factory overhead costs. According to the complainant they are an efficient and technologically advanced producer of CRS and as such, no downward adjustment to overhead costs is required.

[183] The complainant estimated the amount for SG&A and financial expenses, as well as the amount for profits, based on the publicly available financial statements of POSCO, a CRS producer located in South Korea.

[184] As noted in the *Cold-rolled Steel - Initiation Statement of Reasons*, for the purposes of the initiation of the investigation, the CBSA adjusted the complainant's estimated normal value to correct an error in the amount for profits.

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<sup>64</sup> Exhibit 2 NC, Cold-Rolled Steel Complaint – Attachment 15.

[185] The CBSA examined the difference between the normal value it estimated at initiation and the export prices for each individual transaction in order to obtain an appropriate amount for the normal value methodology. The transactions were also examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. Based on this analysis the CBSA excluded certain transactions from consideration.

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

[187] Therefore, the normal values were determined based on the export price, plus an amount equal to 53.0% of that export price

[188] Based on the above methodologies, the margins of dumping for all exporters of subject goods from South Korea is 53.0%, expressed as a percentage of the export price.

#### **Vietnam**

[189] During the investigation, the CBSA received one response to the Dumping RFI from a Vietnamese producer, VNSteel – Phu My Flat Steel Co., Ltd. (PFS), which did not export subject goods that were released into Canada during the POI. The CBSA considered the domestic price information provided by this company as part of its Section 20 inquiry.

[190] As discussed above, for the purposes of the final 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.

[191] 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, no such information was available to the CBSA.

[192] As there is no surrogate information available and no exporters of subject goods from Vietnam provided a response to the CBSA's Dumping RFI, the normal values and export prices for subject goods from Vietnam were determined under subsection 29(1) of SIMA pursuant to a Ministerial specification, on the basis of facts available.

[193] In establishing the methodology for determining normal values and export prices, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, and customs import documentation.

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

[195] The CBSA decided that the normal value 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 determining normal values for goods from Vietnam as it reflects the best information available to the CBSA.

[196] The CBSA examined the difference between the normal value it estimated at initiation and the export prices for each individual transaction in order to obtain an appropriate amount for the normal value methodology. The transactions were also examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

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

[198] Therefore, the normal values were determined based on the export price, plus an amount equal to 99.2% of that export price.

[199] Based on the above methodologies, the margins of dumping for all exporters of subject goods from Vietnam is 99.2%, expressed as a percentage of the export price.

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

**Summary of Results - Dumping  
Period of Investigation (April 1, 2017 to March 31, 2018)**

Country of origin or export	Margin of Dumping (as % of Export Price)	Imports of CRS (as % of Volume)
China - All Exporters	91.9%	57.9%
South Korea - All Exporters	53.0%	6.9%
Vietnam - All Exporters	99.2%	6.2%

[201] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of the goods of an exporter if it is satisfied that the goods have not been dumped or the margin of dumping of the goods of that exporter is insignificant, meaning a margin of dumping that is less than 2% of the export price of the goods.

[202] As can be seen from the table above, the goods under investigation have been dumped and the margins of dumping determined in respect of the goods of the exporters are greater than the threshold of 2% and are therefore not considered insignificant. As a result, the legislative requirement is satisfied for making a final determination of dumping.

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

**SUBSIDY INVESTIGATION**

[204] 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.

[205] 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.

[206] 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.

[207] 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.

[208] 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.

[209] 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.



[210] Financial contributions provided by state-owned enterprises (SOEs) may also be considered to be provided by the government for purposes of this investigation. A SOE may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

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

[211] The CBSA received no responses to the Subsidy RFI from any companies that exported subject goods to Canada during the POI. In addition, no governments of the named countries provided a response to the Government Subsidy RFI.

[212] As no exporters of subject goods or governments provided a response to the Subsidy RFI, the amounts of subsidy were determined under a Ministerial specification pursuant to subsection 30.4(2) of SIMA, on the basis of facts available.

[213] In establishing the methodology for determining the amounts of subsidy, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA’s own research and the CBSA’s estimates at the initiation of the investigation.

[214] Based on the facts available, the CBSA decided to determine an amount of subsidy for all exporters of the goods from each subject country based on the methodology used at the initiation of the investigation.

[215] The estimated amount of subsidy at initiation was based on the difference between the estimated full costs of the subject goods, which are the costs of producing the goods plus allocated SG&A, of producers in each country and the individual estimated export price of the goods, as declared on import documentation. This difference was then expressed as a percentage of the estimated export price of the goods from each country.

[216] This methodology uses the best information available to determine an amount of subsidy as it represents the differential between the producers’ full costs of the subject goods and the export price. Subsidies reduce the total cost to produce a good, thereby allowing producers to sell their goods at a lower price.

[217] Using the above methodology, for the final determination, the amounts of subsidy for all exporters in China, South Korea and Vietnam are 11.6%, 11.3% and 6.5% respectively, expressed as a percentage of the export price.

[218] A description of identified programs and incentives, as was published in the *Cold-rolled Steel - Initiation Statement of Reasons* and subsequently in the *Cold-rolled Steel – Preliminary Determinations Statement of Reasons* is included as **Appendix 2**.

**Results of the Subsidy Investigation by Country**

**Summary of Results - Subsidy  
Period of Investigation (April 1, 2017 to March 31, 2018)**

Country of origin or export	Amounts of Subsidy (as % of Export Price)	Imports of CRS (as % of Volume)
China - All Exporters	11.6%	57.9%
South Korea - All Exporters	11.3%	6.9%
Vietnam - All Exporters	6.5%	6.2%

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

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

[221] However, according to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a product from a developing country should be terminated where the authorities determine that the overall level of subsidies granted upon the product in question does not exceed 2% of its value calculated on a per unit basis.

[222] Neither the ASCM nor SIMA defines or provides any guidance regarding the determination of a “developing country” for purposes of Article 27.10 of the ASCM. As an administrative alternative, the CBSA refers to the Development Assistance Committee List of Official Development Assistance Recipients and regards a country as developing if it is listed as a least developed country, other low income country or lower middle income country or territory.<sup>65</sup> As Vietnam is included in these lists, the CBSA extends developing country status to Vietnam for purposes of this investigation.

<sup>65</sup> [www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC\\_List\\_ODA\\_Recipients2018to2020\\_flows\\_En.pdf](http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf)

[223] All of the goods under investigation have been subsidized. The amounts of subsidy of cold-rolled steel originating in or exported from China and South Korea are greater than the threshold of 1% and are, therefore, not considered insignificant. The amounts of subsidy of cold-rolled steel originating in or exported from Vietnam are greater than the threshold of 2% and are, therefore, not considered insignificant.

## **DECISIONS**

[224] On October 31, 2018, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made final determinations of dumping and subsidizing respecting CRS originating in or exported from China, South Korea and Vietnam.

## **FUTURE ACTION**

[225] The provisional period began on August 23, 2018, and will end on the date the CITT issues its finding. The CITT is expected to issue its decision by December 21, 2018. Provisional anti-dumping and countervailing duties will continue to apply until this date on imports of subject goods from China, South Korea and Vietnam. For further details on the application of provisional duties, refer to the Statement of Reasons issued for the preliminary determinations, which is available through the CBSA's website at: [www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html).

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

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

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

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

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

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

## **PUBLICATION**

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

## INFORMATION

[232] 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, 11<sup>th</sup> floor  
Ottawa, Ontario K1A 0L8  
Canada

**Telephone:** Sean Robertson 613-954-7409  
Laurie Trempe 613-954-7337

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

**Web site:** [www.cbsa-asfc.gc.ca/sima-lmsi](http://www.cbsa-asfc.gc.ca/sima-lmsi)



Doug Band  
Director General  
Trade and Anti-dumping Programs Directorate

## ATTACHMENTS

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

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

<b>Country of Origin or Export</b>	<b>Margin of Dumping*</b>	<b>Amount of Subsidy*</b>	<b>Amount of Subsidy per Metric Tonne</b>
China - All Exporters	91.9%	11.6%	506 Chinese Renminbi
South Korea - All Exporters	53.0%	11.3%	86,733 South Korean Won
Vietnam - All Exporters	99.2%	6.5%	2,607,988 Vietnamese Dong

\* As a percentage of export price.

**NOTE:** The margins of dumping reported in the table above are the margins determined by the CBSA for purpose of the final determination of dumping. In the event of an injury finding by the CITT, the dumping duty for future exports of subject goods will be subject to these anti-dumping duty rates pursuant to a ministerial specification.

As reported in the table above, the amounts of subsidy (as a percentage of export price) are the amounts determined by the CBSA for purposes of the final determination of subsidizing. These amounts do not reflect the countervailing duty to be levied on future importations of subsidized goods, which will be based on the specific amounts of subsidy, per metric tonne, converted into Canadian dollars, as shown in the table above.

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

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

## **APPENDIX 2 – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES**

The CBSA received no responses to the Subsidy RFI from any companies that exported subject goods that were released into Canada during the POI. In addition, no governments of the named countries provided a response to the Government Subsidy RFI.

The following subsidy programs were 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 exporters/producers of subject goods.

Evidence provided by the complainant and obtained by the Canada Border Services Agency (CBSA) suggests that the Governments of China, South Korea and Vietnam have provided support to exporters/producers of subject goods in the following manner.

### **China**

#### **CATEGORY 1: PREFERENTIAL LOANS AND LOAN GUARANTEES**

##### **Program 1: Loans from State-Owned Banks at Preferential Rates**

This program relates to government loans at a preferential rate of interest. The benefit provided in this case is a lower rate of interest than would otherwise be available if the enterprises had to obtain a non-guaranteed commercial loan (i.e. the benchmark non-guaranteed commercial loan). Financial institutions may be considered to constitute “government” if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

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

In Canada - *Fabricated Industrial Steel Components (FISC)*, Canada - *Carbon and Alloy Steel Line Pipe (Line Pipe)*, US - *Carbon Quality Steel Line Pipe*, US – *Cold-Rolled Steel Flat Products* and US - *High Pressure Steel Cylinders*, the authorities countervailed this program. In the final affirmative determination in the countervailing duty investigation of *Cold-Rolled Steel Flat Products* from China, the US Department of Commerce (DOC) stated the Policy banks in the People’s Republic of China (PRC) and state-owned commercial banks (SOBCs) make loans to cold-rolled steel producers at preferential terms as a matter of government policy. These loans are typically made at low or negative real rates of return. At least two policy banks specifically support the steel industry: the China Development Bank provides loans for key state-directed capital investment projects, while the Export-Import Bank of China (China ExIm Bank) provides policy financial support to promote exports.

The GOC provides preferential loans to PRC steel producers for development and improvement of key steel industry projects and technologies. Further, additional policies that provide preferential loans for key projects and technologies were established in the GOC's 2006-2010 Five Year Plan. The S&T Development Plan (2006-2020) calls for increasing innovation and invention through "fiscal incentives, soft loan facilities including interest discounts and preferential loan provision, governmental investment measures, schemes for the promotion of 're-innovation' by assimilation of foreign technology... {and} the definition and implementation of PRC industry - and product-standards."

This program may constitute 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 or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

**Program 2: Loan Guarantee through the Government of China/SOE banks/public bodies**

Assurance provided by the Government of China, a SOE bank or public body (the guarantor) to assume the debt obligation of a borrower if that borrower defaults. A guarantee can be limited or unlimited, making the guarantor liable for only a portion or all of the debt.

In Canada – *Large Diameter Carbon and Alloy Steel Line Pipe*, Canada – *FISC*, Canada – *Line Pipe* and US - *Cold-Rolled Steel Flat Products*, the authorities countervailed this program.

Financing guarantee companies provide guarantees for borrowers or debt issuers and play an important role in helping small businesses and rural projects secure funds, according to a statement from the Legislative Affairs Office of the State Council and the China Banking Regulatory Commission<sup>66</sup>.

This program may constitute 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 or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

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<sup>66</sup> [www.chinadaily.com.cn/business/2017-08/22/content\\_30939856.htm](http://www.chinadaily.com.cn/business/2017-08/22/content_30939856.htm).



### **Program 3: Debt and Interest Forgiveness on Loans from State-Owned Banks**

To stimulate the economy and support the development of key industries, the state-owned banks write off bad debts or interest owed by state-owned enterprises.

In Canada – *Certain Seamless Casing*, the CBSA determined one exporter received benefits from this program.

In US - *Carbon and Alloy Steel Standard, Line and Pressure Pipe* and US – *Circular Welded Carbon Quality Steel Pipe*, US - *Cold Rolled Steel Flat products*, the American authority determined that a respondent received benefit as debt forgiveness.

In Australia – *Carbon and Alloy Steel Cut-to-Length Plate* and Australian – *Cold Rolled Steel Flat products*, the Australian authority countervailed this program.

This program may constitute 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 or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 4: Preferential Export Financing and Export Credit Guarantee/Insurance**

The China Export & Credit Insurance Corporation (Sinasure) is a state-funded policy-oriented insurance company that was established to promote the PRC's foreign trade and economic cooperation. The China ExIm Bank and Sinasure each provide export credit guarantees which, according to information from the Bank, have “played a key role in supporting Chinese companies to go global” and promoted “the export of new - and high-tech products” such as cold-rolled steel.

This program may constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA; i.e., 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. The above confers a benefit to the exporter by way of reducing its financial costs upon obtaining loans from a financial institution, and the benefit is equal to the amount of the exemption/deduction. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

## **CATEGORY 2: GRANTS AND GRANT EQUIVALENTS**

### **Program 5: Insurance Grants**

Local and Provincial Government Reimbursement Grants on Credit Insurance Fees.

In Canada – *Galvanized Steel Wire*, Canada - *Pup Joints*, Canada - *Stainless Steel Sinks*, Canada - *Line Pipe*, and Canada - *Large Diameter Carbon and Alloy Line Pipe*, the CBSA determined that exporters received benefits under this program.

In US – *Concrete Steel Wire Strand*, the American authority countervailed this program as a local and provincial grant.

The financial contribution by the government is the direct transfer of funds pursuant to paragraph 2(1.6)(a) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 6: Design, Research and Development Grants**

In Canada – *Photovoltaic Modules and Laminates*, and Canada - *OCTG*, the CBSA determined that more than one exporter received benefits under this program.

The financial contribution by the government is the direct transfer of funds pursuant to paragraph 2(1.6)(a) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 7: Export Performance Grants**

In Canada - *OCTG*, Canada - *Carbon Steel Welded Pipe*, and Canada - *Steel Grating*, the CBSA determined that at least one exporter received benefits under this program. As per the OCTG's *Statement of Reasons* (SOR) issued at the final determination, the program was established in the Circular of the Trade Measures of the Administration of International Market Development Funds for Small and Medium-Sized Enterprises Cai Qi No. 467, 2000, which came into force on October 24, 2000. The program was established to support the development of Small and Medium-sized Enterprises (SME), to encourage SMEs to join in the competition of international markets, to reduce the business risks of the enterprises, and to promote the development of the national economy. The granting authority is the Foreign Trade and Economic Department and the program is administered at the local levels.

In US - *Steel Wheels* the American authority countervailed this program.

Companies in the PRC receive such grants provided by the GOC to assist in the development of export markets or to recognize export performance. PRC cold-rolled steel producer Angang and BaoSteel likely received subsidies under this program.

The financial contribution by the government is the direct transfer of funds pursuant to paragraph 2(1.6)(a) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

**Program 8: Performance Award Grants**

A grant that provides financial aid for enterprises with excellent performances.

In Canada – *Line Pipe*, the CBSA countervailed this program.

This program is 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. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

**Program 9: Reductions in Land Use and/or Rental Fees**

This program provides for the reduction in land use fees and rental rates for certain number of years. Examples of this program in action include: a document titled '[2003] No. 8 Preferential Supply of Land', in order to offset costs for industrial companies in the Ninghai Economic Development Zone; or similar initiatives in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area.

As per the SOR issued in Canada - *Stainless Steel Sinks*, Canada - *Unitized Wall Modules* and Canada - *Certain Photovoltaic Modules and Laminates*, exporters benefited from this program.

In US – *Galvanised Steel and Aluminium Zinc Coated Steel*, US – *Hot Rolled Plate Steel*, US – *Hollow Structural Sections*, US – *Rod in Coils*, and Australia – *Hollow Structural Sections*, the authorities countervailed this program.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 10: Grants for the Retirement of Capacity**

The GOC's 12<sup>th</sup> Five-Year Plan for Energy Conservation and Emission Reduction calls for accelerating and eliminating "backward production capacity" in certain industrial sectors, including the elimination of 48 million metric tonnes of steel production. In 2013, the State Council issued the "Guiding Opinion on Resolving the Problem of Severe Excess Capacity," which called for establishing special funds to accelerate the elimination of backwards capacity and to also support industries with excess production capacity.

This program is 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. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 11: Grants for Relocating Production Facilities**

As part of the GOC's 12<sup>th</sup> Five-Year Steel Development Plan, the PRC has been locating urban based steel producers to locations outside of their current city. The GOC's 12<sup>th</sup> Five-Year Plan for Energy Conservation and Emission Reduction calls for the relocation for "heavy polluting enterprises" and for measures to optimize the "regional spatial layout" of "key industries," including the steel industry.

This program is 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. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 12: Award for Tax Payments**

In Canada - *Fabricated Industrial Steel Components (FISC)*, the CBSA has determined that one cooperating exporter received benefits under this program in the form of an award from the municipal government. Based on the information available, the company located in certain SEZs or Designated Areas may have been provided awards in the form of grants for their tax payments, covering the last one to two years.

For example, this program was referenced on the following website for Jiangsu Qidong SEZ where some exporters/producers of subject goods were located:

[www.zsw-qd.com/newsifo.asp?id\\_ixxx=567&A1=502](http://www.zsw-qd.com/newsifo.asp?id_ixxx=567&A1=502) and  
<http://baike.baidu.com/view/7940866.htm>

This award confers a direct benefit equal to the amount of the award provided. Therefore, the program is considered to constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. The program does not appear to be generally available to all enterprises in China and thus appears to be specific.

**Program 13: Grant - Patent Assistance/Award**

This program has been investigated and found to be actionable by the CBSA in previous subsidy investigations/reinvestigations involving China. However, the GOC did not provide sufficient information to the CBSA during the investigations/reinvestigations.

Based on the information available to the CBSA, this program was provided in several provinces, such Guangdong, Shanghai and Jiangsu.

For example, the GOC document associated with this program for Guangdong province may include: “Administrative Measures of Patent Award of Guangdong Province”. In Guangdong province, this program was administered by the Intellectual Property Office of Guangdong, the Bureau of Personnel of Guangdong Province and municipal level authorities. The program was established to support improvement in technology innovation and to promote intellectual property.

In addition, the GOC document associated with this program for Shanghai may include: “The administrative measures regarding the financial support/subsidy for Patents by Shanghai”. In Jiangsu province, this program was administered by Jiangsu Intellectual Property Office.

**Program 14: Grant - Special Fund for Fostering Stable Growth of Foreign Trade**

This program has been investigated and found to be actionable by the CBSA in previous subsidy investigations/reinvestigations involving China. However, the GOC did not provide complete information to the CBSA regarding this program during the investigations/reinvestigations. Based on the information available to the CBSA, this program was administered by local governments, such as Guangdong provincial governments and Jiangsu provincial governments, to provide financial support to some enterprises to award/assist them for the stable growth of foreign trade.

For example, in Guangdong province, the granting authorities responsible for this program were the Department of Finance of Guangdong Province and the Department of Foreign Trade and Economic Cooperation of Guangdong Province.

**Program 15: Interest payment subsidy for special projects**

This program was specifically identified by the CBSA through Baosteel's 2015 annual report and found to be countervailable by the CBSA in previous subsidy investigation of FISC.

Information available to the CBSA indicates that the benefit from this program may have been passed through to Baosteel's CRS division.

**Program 16: Interest subsidy for the importation of encouraged products and technology**

Based on the information available to the CBSA, the central government provided interest subsidy for the importation of encouraged products and technology.

For example, the GOC document associated with this program may include: "The administrative measures for interest subsidy fund for importations (Cai Qi [2012] 142)". The program was found to have benefited one FISC producer in a previous CBSA subsidy investigation.

**Program 17: Financial Subsidy from various levels of governments**

This program was specifically identified by the CBSA through Masteel's 2015 annual report.

Information available to the CBSA indicates that the benefit from this program may have been passed through to CRS producers.

**CATEGORY 3: PREFERENTIAL TAX PROGRAMS**

**Program 18: Corporate Income Tax Exemption and/or Reduction in Special Economic Zones (SEZs) AND Other Designated Areas**

This program was established under the Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises, which came into effect on July 1, 1991. The program was allegedly established to spur investment in special economic zones (SEZs) and designated areas to take the lead in their economic development. The granting authority responsible for this program is allegedly the State Administration of Taxation and the program is administered by local tax authorities. Under this program, it is alleged that an eligible enterprise may receive a reduced corporate income tax rate of 15%.

Under Article 57 of the Enterprise Income Tax Law in China and the “notification of the State Council on Providing Transitional Preferential Tax Treatments to High-Tech Enterprises Newly Set Up in Special Economic Zones and in the Pudong New District of Shanghai,” the GOC exempts HNTes from income taxes for the first two years after earning a profit from production, and pay only half of the standard tax rate for the next three years if located in a special economic zone (i.e., the Hainan, Shantou, Shenzhen, Xiamen, Zhuhai) or the Pudong New District of Shanghai. Certain cold-rolled steel producers are located in some of these special economic zones and, thus, are eligible for this subsidy.

In Canada – *Carbon Steel Welded Pipe* and Canada - *OCTG*, one of the companies received a benefit under this program.

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. 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.

**Program 19: Corporate Income Tax Reduction for New High Tech Enterprises (“NHTE”)**

Under Article 28.2 of the Enterprise Income Tax Law in China, companies designated as high- or new-technology enterprises (HNTes) are entitled to a reduced income tax rate of 10 percent instead of the normal national corporate tax rate of 25 percent. The granting authority responsible for this program is alleged to be the State Administration of Taxation and the program is administered by local tax authorities. In its notification of subsidy programs to the WTO, the GOC listed this program.

Many cold-rolled steel producers, such as Hunan Valin Lianyuan Iron & Steel Co., Ltd., are designated as HNTes and likely benefit from this program.

In Canada – *FISC* and in Canada – *Line Pipe*, US – *Hollow Structural Sections*, Australia – *Aluminum Extrusions*, and Australia – *Oil Country Tubular Goods*, the authorities countervailed this program.

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to enterprises in certain industries.

## **Program 20: Corporate Income Tax Reduction for Newly Profitable Enterprises**

This program was originally found pursuant to Article 57 of the *Income Tax Law of the People's Republic of China for Enterprises* and the *Notification of the State Council on Carrying out the Transitional Preferential Policies concerning Enterprise Income Tax, Guo Fa (2007), No. 39*.

The complainant alleged that “productive” enterprises scheduled to operate more than ten years may be exempt from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three to five years.

In Canada – *Certain Oil Country Tubular Goods*, the CBSA determined that two exporters have received benefits from this program.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

## **Program 21: Municipal/Local Income or Property Tax Reductions**

Reduction in various land use fees was established in order to offset costs for companies in local government promoted development zones. The program was usually administered by the Management Committee of the local municipal governments.

In Canada - *Stainless Steel Sinks*, Canada - *Unitized Wall Modules* and Canada - *Certain Photovoltaic Modules and Laminates*, exporters used a program which the CBSA titles “*Reduction, Exemption or Refund of Land Use Fees, Land Rental Rates, and Land Purchase/Transfer Prices.*”

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

## **Program 22: Preferential Tax Policies for Foreign-Invested Enterprises (FIEs)**

In Canada - *Pup Joints*, a preferential tax treatment for FIEs was found to have been used. Further, the GOC has listed this title in its notification of subsidy programs to the WTO.



Despite the implementation of the new Enterprise Income Tax Law (EITL) in 2008, which officially superseded the old FIE Tax Law, FIEs have likely continued to benefit from various incentives that were provided under the older Foreign-Invested Enterprise Tax Law (FIE Tax Law). Specifically, Article 9 of the FIE Tax Law delegates to China's provincial and local governments the authority to provide exemptions and reductions of local income taxes for "productive" FIEs. Eligibility criteria vary by province and the relevant governmental authorities administer the application process. Cold-rolled steel producers may have benefitted from this program.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 23: Preferential Tax Policies related to Research and Investment**

This program was established in the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises* (*Guo Shui Fa* [1999] No. 173), which was promulgated on September 17, 1999, and came into effect on January 1, 2000. This program was established to encourage the research and development of enterprises. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities. Under this program, certain foreign investment enterprises may offset their taxable income by 150% of their R&D expenses for the same year, not to exceed the taxable income for the year.

In Canada – *Certain Seamless Casing, Certain Oil Country Tubular Goods and Certain Pup Joints*, the CBSA determined that two exporters received benefits from this program.

Further, the GOC has listed this title in its notification of subsidy programs to the WTO.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

## **CATEGORY 4: RELIEF FROM DUTIES AND TAXES**

### **Program 24: Offsets to Taxable Income Related to Purchases of Domestic Machinery**

According to the European Union in EU - *Organic Steel*, the program allows a company to claim tax credits on the purchase of domestic machinery if a project is consistent with the industrial policies of the GOC. A tax credit up to 40% of the purchase price of domestic equipment may apply to the incremental increase in tax liability from the previous year. The legal bases of this program are the Provisional measures on enterprise income tax credit for investment in domestically produced equipment for technology renovation projects of July 1, 1999 and the *Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment*, No. 52 [2008] of the State Administration of Taxation, effective January 1, 2008.

The GOC replied to the EU that this program has been terminated as from January 2008 according to the mentioned Notice No. 52 and that to the best of its knowledge, no program has replaced this program. Nevertheless, with regard to this program, a tax benefit (i.e. a tax credit) accrued in a certain year may actually be used in a different tax year and thus the benefits can extend beyond its period of validity even if the program has in the meantime been terminated. Other "terminated" tax programs have turned out to continue to confer benefits for some years after their official expiry date.

In Canada – *Certain Aluminum Extrusions and Certain Photovoltaic Modules and Laminates*, the CBSA countervailed this program.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

**Program 25: Exemption or Refund of Tariff and Import Value-Added Tax (VAT) for Imported Technologies and Equipment**

In the *OCTG I SOR* issued at the Final Determination, the CBSA's description of the program stated that the program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. The CBSA further stated that the program was established to absorb investment in SEZs and encourage districts to take the lead in development. The granting authority responsible for this program is the General Administration of Customs and this program is administered by local customs authorities. Under this program, machinery and equipment, spare parts, raw and semi-processed materials, means of transportation and other capital goods necessary for production that are imported by enterprises in SEZs shall be exempted from import duties. It is noted that the program was not one of the programs used by a cooperating exporter in *OCTG*, although in *Certain Photovoltaic Modules and Laminates*, and in *Unitized Wall Modules*, the CBSA determined that a cooperating exporter received benefits under this program.

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

**Program 26: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs**

Under a duty drawback program, a subsidy may exist where the amount of duties and taxes relieved or refunded on inputs incorporated into exported goods is found to be in excess of the actual liability that existed on those imports.

In Canada - *Certain Seamless Casing, Certain Oil Country Tubular Goods* and *Certain Pup Joints*, the CBSA determined that one exporter received benefits from this program.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

## **Program 27: Offset of Taxable Income on Purchases of Domestic Equipment**

The legal bases of this program are the Provisional measures on enterprise income tax credit for investment in domestically produced equipment for technology renovation projects of July 1, 1999 and the *Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment*, No. 52 [2008] of the State Administration of Taxation, effective January 1, 2008.

According to the European Union in EU - *Organic Steel*, this program allows a company to claim tax credits on the purchase of domestic equipment if a project is consistent with the industrial policies of the GOC. A tax credit up to 40% of the purchase price of domestic equipment may apply to the incremental increase in tax liability from the previous year.

The GOC replied to the EU that this program was terminated effective January 2008 according to Notice No. 52 and that to the best of its knowledge, no program has replaced it.

Nevertheless, it is believed that a tax benefit accrued in one year may be carried forward to future years and thus the benefits can extend beyond its period of validity even if the program has since been terminated.

In Canada – *Certain Seamless Casing, Certain Oil Country Tubular Goods and Certain Pup Joints*, the CBSA determined that one exporter received benefits from this program.

In EU – *Organic Coated Steel*, the authority countervailed this program.

In US – *Circular Welded Carbon Quality Steel Line Pipe*, the American authority countervailed this program.

This financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **Program 28: Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring**

The GOC imposes a deed tax on transfers of land and real estate. In the context of an ownership transfer by means of an asset sale, as opposed to a stock sale, a deed tax of three to five percent is levied on the amount of the purchase price, and the purchaser is responsible for paying the tax. The GOC's "Notice of the Ministry of Finance and the State Administration of Taxation on Several Deed Tax Policies Concerning Enterprise Reorganization and Restructuring," exempts this deed tax where the transfer of ownership occurs as part of the restructuring or merger of an SOE. Information reasonably available indicates that, for example, state-owned PRC cold-rolled steel producers Baosteel and Wuhan Steel acquired land and real estate as part of mergers of the two giant steelmakers directed by the GOC.

This financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **CATEGORY 5: GOOD / SERVICES PROVIDED BY THE GOVERNMENT AT LESS THAN FAIR MARKET VALUE**

#### **Program 29: Acquisition of Government Assets at Less than Fair Market Value**

The complainant alleges that numerous exporters have changed their ownership status from that of SOEs to either FIEs or private limited enterprises. During this time, China's state-owned oil companies shifted their focus toward core businesses and moved to divest themselves of peripheral operations. During the privatization process, the majority of the government-owned assets had been distributed to company employees at no cost.

In Canada – *OCTG*, the CBSA determined that one exporter received benefits under this program. Furthermore, in Canada – *Stainless Steel Sinks*, Canada – *Steel Piling Pipe*, and Canada – *Large Diameter Carbon and Alloy Steel Line Pipe*, this program was countervailed.

This program may constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

#### **Program 30: Provision of Land for Less than Adequate Remuneration by Government**

In Canada – *Line Pipe*, Canada - *Large Diameter Carbon and Alloy Steel Line Pipe*, and in US – *Hot-rolled flat products of iron, non-alloy or other alloy steel*, the CBSA countervailed this program.

All land in the PRC belongs to the government (i.e., either national or local governments, or through a “collective” at the township or village level), and government land agencies across the PRC control the allocation of land through the granting of land-use rights. The GOC’s steel policies direct government agencies to provide such land-use rights to favored projects and producers, including the cold-rolled steel industry.

This financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

**Program 31: Debt-to-Equity Swaps for Less than Fair Market Value**

The debt-to-equity swap was a measure used in the financial restructuring of China’s state owned enterprises (SOE) and state-owned banks. Pursuant to the Regulations of Asset Management Companies (promulgated by decree on November 20, 2000), the State Council established four asset management companies (AMCs) that were directed to purchase certain non-performing loans from state-owned banks. The four AMCs were supervised and managed by the People's Bank of China, China's Ministry of Finance and the China Securities Regulatory Commission. One of the authorized business activities available for the management of non-performing loans purchased by the AMCs was the debt-to-equity swap. A debt-to-equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company.

In Canada – *Seamless Casing*, EU - *Organic Steel*, EU – *Rod in Coils*, Australia – *Carbon and Alloy Steel Cut-to-Length Plate*, Australia – *Cold Rolled Steel Flat Products*, the authorities determined that cooperating exporters benefited from this program.

This financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to paragraph 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

**A summary of Chinese subsidy programs is as follows:**

***Preferential Loans and Loan Guarantees***

Program 1	Loans from State-Owned Banks at Preferential Rates
Program 2	Loan Guarantee through the Government of China/SOE Banks/Public Bodies
Program 3	Debt and Interest Forgiveness on Loans from State-Owned Banks
Program 4	Preferential Export Financing and Export Credit Guarantee/Insurance

***Grants and Grant Equivalents***

Program 5	Insurance Grants
Program 6	Design, Research and Development Grants
Program 7	Export Performance Grants
Program 8	Performance Award Grants
Program 9	Reductions in Land Use and/or Rental Fees
Program 10	Grants for the Retirement of Capacity
Program 11	Grants for Relocating Production Facilities
Program 12	Award for Tax Payments
Program 13	Grant - Patent Assistance/Award
Program 14	Grant - Special Fund for Fostering Stable Growth of Foreign Trade
Program 15	Interest payment subsidy for special projects
Program 16	Interest subsidy for the importation of encouraged products and technology
Program 17	Financial Subsidy from various levels of governments

***Preferential Tax Programs***

Program 18	Corporate Income Tax Exemption and/or Reduction in Special Economic Zones (SEZs) and Other Designated Areas
Program 19	Corporate Income Tax Reduction for New High Tech Enterprises (“NHTE”)
Program 20	Corporate Income Tax Reduction for Newly Profitable Enterprises
Program 21	Municipal/Local Income or Property Tax Reductions
Program 22	Preferential Tax Policies for Foreign-Invested Enterprises (FIEs)
Program 23	Preferential Tax Policies Related to Research and Investment

***Relief from Duties and Taxes***

- Program 24 Offsets to Taxable Income Related to Purchases of Domestic Machinery
- Program 25 Exemption or Refund of Tariff and Import Value-Added Tax (VAT) for Imported Technologies and Equipment
- Program 26 Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs
- Program 27 Offset of Taxable Income on Purchases of Domestic Equipment
- Program 28 Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring

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

- Program 29 Acquisition of Government Assets/Inputs at Less than Fair Market Value
- Program 30 Provision of Land for Less than Adequate Remuneration by Government
- Program 31 Debt-to-Equity Swaps for Less than Fair Market Value



## South Korea

### **CATEGORY 1: ENERGY SAVINGS AND OTHER GREEN PROGRAMS**

#### **Program 1: Management of Electricity Load Program (*this includes eight sub-programs alleged by complainant combined*)**

The complainant listed a number of incentives that, in general, companies can qualify for by reducing their usage of electricity. The incentives form part of the Management of Electricity Load Program, established through Articles 48 and 49 of the Electric Business Law in 2001. The program is operated under the supervision of the Ministry of Trade, Industry & Energy by the Korean Electric Power Corporation (KEPCO) and/or Korean Power Exchange (KPX) (which is wholly-owned by KEPCO). The funding for the program comes from the Electrical Industry Foundation Fund. KEPCO is majority owned (51.1%) by the South Korean Government.

It is possible that this program constitutes a financial contribution within the meaning of section 2(1.6)(b) of SIMA by exempting or deducting from amounts that would otherwise be owing and due to the Government. Evidence suggests that it may be specific within the meaning of paragraph 2(7.3)(a) in that there is exclusive use by a limited number of enterprises.

#### **Program 2: Green Subsidies: GOK Subsidies for “Green Technology R&D” and its Commercialization**

The GOK selected 27 core technologies for support in its five-year Green Growth Plan, adopted in January 2009. The Green Technologies R&D program provides for the establishment and enforcement of measures to facilitate research, development and commercialization of green technology. This includes financial support for these activities, in the form of grants to approved applicants. The South Korean Ministry of Knowledge Economy (MKE) is tasked with determining whether applicants are eligible under this program and consults with affiliated research institutions where technological evaluation and confirmation are necessary. Applicants must meet eligibility requirements set by law as well as the internal guidelines of the MKE.

It is possible that this program confers a financial contribution under paragraph 2(1.6)(a) as it involves the direct transfer of funds from the Government to a participating large corporation. Evidence suggests that this program is specific under paragraph 2(7.2)(a) of SIMA in that it is limited in law to certain core technologies.

### **Program 3: Modal Shift Grants**

The Modal Shift program aims to decrease greenhouse gas emissions in the transportation and logistics sector by increasing rail and vessel transport, while decreasing motorized vehicle freight, in the hope that this will promote a shift towards a greater use of environment-friendly means of transportation and rebalance the method of transport in the logistics sector. Under this program, the GOK provides grants from the Ministry of Land, Infrastructure and Transport to administering agencies for truck-to-rail “modal shift” entities and grants from the Ministry of Oceans and Fisheries (MOF) to administering agencies for truck-to-marine freight “modal shift” entities. The legal framework for this program is Article 21 of the Sustainable Transportation Logistics Development Act (STLDA), Article 24 of its Enforcement Decree, and Articles 14 through 17 of the Regulation on Modal Shift Agreement as promulgated by the MOF.

Evidence suggests that this program provides a financial contribution through the direct transfer of funds within the meaning of paragraph 2(1.6)(a). It is possible that this program is either *de jure* specific within the meaning of paragraph 2(7.2)(a) or *de facto* specific within the meaning of paragraph 2(7.3)(a)-(c).

### **CATEGORY 2: PREFERENTIAL TAX PROGRAMS**

#### **Program 4: RSTA Article 10(1)(2): Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies”**

This program was first introduced in 2010 for the purpose of facilitating South Korean corporations’ investments in their respective R&D activities relating to the Core Technologies program. The statutory basis for this program is Article 10(1)(2) of the restriction of Special Tax Act (RSTA). Paragraph 2 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(2) of the RSTA, and Appendix 8 of the Enforcement Decree sets forth a list of eligible technologies that are covered by the New Growth Engine program. The goal of the Core Technologies program is to boost general national economic activities. RSTA Article 10(1)(2) offers a credit towards taxes payable by a corporation with respect to the costs of researchers and administrative personnel engaged in R&D activities related to “core technologies.”

It is possible that this program provides a financial contribution under paragraph 2(1.6)(b). Evidence suggests that this program may be specific under paragraph 2(7.2)(a) of SIMA in that it is limited in law to certain core technologies.

#### **Program 5: RSTA Article 104(14): Tax Payment for Third-Party Logistics Operations**

This tax credit was introduced in 2007, with the purpose of motivating manufacturing companies to outsource logistics business operations to third parties that specialize in logistics by offering a tax incentive for doing so. Administered by the NTS, under the direction of the MOSF, Article 104(14) is the law authorizing the tax incentive, which is implemented through Article 104(14) of the Enforcement Decree of the RSTA. According to the *Statistical Yearbook for 2014*, only 172 companies claimed this credit in 2013, representing only 0.03% of all corporate tax returns filed.

It is possible that this program provides a financial contribution under paragraph 2(1.6)(b). Evidence suggests that the program may be *de facto* specific pursuant to paragraph 2(7.3)(b) or (c), as there is predominant use of the subsidy by a limited number of companies and/or disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

#### **Program 6: RSTA Article 104(5): Special Tax Credit for Payment Records**

Under Article 104(8) of the RSTA, a company will receive a tax deduction when it submits documents directly using the national tax information and communication networks. The GOK states that this program is administered by National Tax Service (NTS), which operates under MOSF, and companies automatically receive the tax deduction under this program if all of the eligibility criteria is met as established by Article 104-5 of the RSTA and Article 104-5 of its Enforcement Decree.

Evidence suggests that this program provides a financial contribution under paragraph 2(1.6)(b). It is possible that this program is *de facto* specific pursuant to paragraph 2(7.3)(b) or (c), as there is predominant use of the subsidy by a limited number of companies and/or disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

#### **Program 7: RSTA Article 120: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes**

US DOC determined that this program was countervailable in the US Hot-Rolled FD Memo and the US Cold-Rolled FD Memo on the basis of all facts available (AFA). RSTA Article 120 was found to provide an exemption from local acquisition taxes for new properties that are acquired. The program is administered by local governments.

It is possible that this program provides a financial contribution under paragraph 2(1.6)(b). This program is potentially *de facto* specific pursuant to paragraph 2(7.3)(b) or (c), as there may be predominant use of the subsidy by a limited number of companies and/or disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

**Program 8: RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development**

US DOC determined that this program was countervailable in the US Hot-Rolled FD Memo and the US Cold-Rolled FD Memo on the basis of AFA. Under Article 22 of the RSTA, a domestic corporation whose income included any dividend income from investments in overseas resource development projects, as prescribed by Presidential Decree, was exempt from corporate tax for the portion of such dividend income that is exempted from the tax of the host country where the investment occurred. Article 19 of the Enforcement Decree of the RSTA prescribed the following investment projects as being eligible for this tax exemption: Agricultural products, Livestock products, Fishery products, Forest products, and Mineral products.

Evidence suggests that this program provides a financial contribution under paragraph 2(1.6)(b). It is possible that the program may be *de facto* specific pursuant to paragraph 2(7.3)(b) or (c), as there is predominant use of the subsidy by a limited number of companies and/or disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

**Program 9: RSTA Article 24: Tax Credit for Investment in Productivity Increase Facilities**

US DOC determined that this program was countervailable in the US Hot-Rolled FD Memo and the US Cold-Rolled FD Memo on the basis of AFA. Under RSTA Article 24, a domestic corporation could claim a deduction for investments made in: (1) facilities that improve and automatize the process; (2) high-technology equipment, as defined by the Presidential Decree; (3) computers and accompanying devices, software, telecommunications facilities, and other facilities used for the management of supply networks; (4) computers and accompanying devices, software, telecommunications facilities and other facilities used for managing customer relations; (5) computers and accompanying devices, software, telecommunications facilities and other facilities used for managing logistics processes; and (6) other systems as prescribed by Presidential decree. The purpose of this program is to promote productivity and automation of processes in facilities in business sectors through a deduction from taxes payable.

Evidence suggests that this program provides a financial contribution under paragraph 2(1.6)(b). This program is potentially *de facto* specific pursuant to paragraph 2(7.3)(b) or (c), as there is predominant use of the subsidy by a limited number of companies and/or disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

### **Program 10: RSTA Article 25: Tax Credit for Investment in Facilities for Environment or Safety**

US DOC determined that this program was countervailable in the US Hot-Rolled FD Memo and the US Cold-Rolled FD Memo on the basis of AFA. Under Article 25 of the RSTA, a domestic corporation could claim a deduction for investments made in : (1) facilities for a distribution business to be run in accordance with the Distribution Industry Development Act; (2) facilities installed in a trustee company by a trustor company, in accordance with the Act on the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of Their Cooperation; (3) industrial disaster prevention facilities; (4) mining safety facilities; (5) facilities reinforced or expanded by an individual designated as a person under priority management to carry out emergency preparedness duties in accordance with the Emergency Resources Management Act and Government orders; (6) facilities for preventing hazardous elements, in accordance with Article 9 of the Processing of Livestock Products Act or Article 48 of the Food Sanitation Act; (7) facilities installed to prevent illegal transfer of technology; and (8) facilities installed to develop overseas resources, and certain facilities, as prescribed by the Presidential Decree.

Evidence suggests that this program provides a financial contribution under paragraph 2(1.6)(b). This program is potentially *de facto* specific pursuant to paragraph 2(7.3)(b) or (c), as there is predominant use of the subsidy by a limited number of companies and/or disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

### **Program 11: RSTA Article 30: Tax Program for Special Depreciation**

Under Article 30 of the RSTA, a company that acquired certain fixed assets for use for business purposes was permitted to deduct depreciation costs related to those assets based on useful lives that differ from those used to calculate depreciation for financial accounting reporting purposes. Although Article 30 was revoked in 2010, taxpayers that applied for special deduction prior to 2010 for assets acquired before June 30, 2004 are able to continue applying this special appreciation on these assets in accordance with Article 4 of the Addenda to RSTA. Companies that meet the meet the aforementioned requirements under Article 4 of the addenda to RSTA automatically receive this tax reduction. This program is administered by the NTS, under the direction of MOSF.

Evidence suggests that this program provides a financial contribution through the deduction of amounts that would otherwise be owing within the meaning of paragraph 2(1.6)(b). This program may be *de facto* specific within the meaning of paragraphs 2(7.3)(a)-(c).

### **Program 12: RSLTA Article 78(4): Tax Reduction and Exemption for Industrial Complexes**

The CBSA found this program to be actionable in the *OCTG 2* investigation. The official name of the program is “Developing Industrial Complexes and Maximizing its Utilization”. Its purpose is to promote under-developed areas and pursue innovation within the industries through the provision of industrial sites and an appropriate allocation of the industries nationwide. The program is administered under Article 45 of the Industrial Sites and Development Act, as well as Article 78 of the Restriction of Special Local Taxation Act (RSLTA) and its Enforcement Decree. This program is administered by the municipal governments of the Industrial Complexes. Pursuant to the RSLTA, acquisition tax are exempted or reduced for entities listed in the Appendix 2 of the RSLTA.

Evidence and CBSA precedent suggest that the program provides a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA. The program was found to be limited in law to a group of enterprises, and therefore specific pursuant to paragraph 2(7.2)(a).

### **CATEGORY 3: PREFERENTIAL LOANS AND LOAN GUARANTEES**

#### **Program 13: KEXIM Export Factoring**

Korea Export-Import Bank (KEXIM) export factoring is a form of trade finance whereby KEXIM purchases account receivables arising from export transactions. KEXIM will provide financing for up to 80%-100% of the value of the trade bill at a discounted interest rate (LIBOR + spread). The factoring loans are provided by KEXIM on a non-recourse basis, meaning that KEXIM, and not the exporter, assumes the risk of loss with respect to purchaser default. This program is available to South Korean exporters for open-account export transactions.

Evidence suggests that this program provides a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. The program may be considered specific pursuant to paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

#### **Program 14: KEXIM Export Loan Guarantees**

KEXIM offers general financial guarantee support for export activity, whereby any default by a South Korean company on credit extended to it by financial institutions will be assumed by KEXIM with repayment of up to the entire principal and interest on the export-related loans. Loans by both South Korean and foreign financial institutions are eligible, as are bonds issues by the applicant.

Evidence suggests that this program provides a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. This program appears to constitute an export subsidy in that it is contingent on export performance and therefore is a prohibited subsidy and is considered to be specific under paragraph 2(7.2)(b) of SIMA.

#### **Program 15: KEXIM Import Financing**

KEXIM provides loans of up to 80% of the transaction value (90% for SMEs) for up to two years for imports of essential goods or natural resources that are considered important to South Korea's economy. This program was introduced in 1976. The repayment term is up to 10 years for capital goods and up to two years for other imports, with repayment made in periodic instalments of at least once per year and a grace period of up to three years for capital goods. This program is governed by Article 18(1)2 of the *KEXIM Act – Income important to the national economy* and Chapter 2 Section (1) of the *Loan Extension Regulations*.

It is possible that this program provides a financial contribution in the form of a contingent transfer of funds within the meaning of paragraph 2(1.6)(a). Evidence suggests that this program is also specific under paragraph 2(7.2)(a) of SIMA in that it is limited by law to enterprises engaged in importing certain essential goods or natural resources within the jurisdiction of the authority granting the subsidy.

#### **Program 16: KEXIM Overseas Investment Credit Program**

Under this program, KEXIM provides loans to South Korean companies to purchase foreign mines. This program may involve direct capital contributions, the acquisition of stocks and the provision of long-term funds. To be eligible, the company must have been doing business for over three years in the field of the targeted foreign asset. The interest rate is calculated by amending a base rate to account for delivery cost, administrative fees, credit rates and the expected profit.

Evidence suggests that this program provides a financial contribution within the meaning of paragraph 2(7.2)(a). The program appears to be specific at law in that it is limited to companies investing in foreign mines pursuant to the KEXIM Act, its enforcement decree and KEXIM's Regulation Governing Financing Operations.

#### **Program 17: KEXIM Short-Term Export Credits**

KEXIM extends preferential, low-interest pre-shipment financing to exporters to cover the costs of production and the shipment of exported goods. Companies can borrow up to the full value of the export contract, less any amounts received, in either South Korean won or a foreign currency. The discount interest rate payable under the program is either fixed rate (base rate + margin), floating (base rate + margin), or a foreign currency rate (LIBOR (or swap rate) + margin).

It is possible that this program provides a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. This program appears to constitute an export subsidy in that it is contingent on export performance and therefore is a prohibited subsidy and is considered to be specific under paragraph 2(7.2)(b) of SIMA.

**Program 18: KEXIM Trade Bill Rediscounting Program**

Under this program, exporters first discount their documents against acceptance or export letter of credit with participant commercial banks. Those banks, in turn, discount promissory notes with KEXIM. The program was introduced to benefit commercial banks by providing them with foreign currency for their short-term export credit. KEXIM, as a result, provides an indirect funding vehicle by which low-cost government loans are provided to exporters.

Evidence suggests that this program provides a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. This program appears to constitute an export subsidy in that it is contingent on export performance and therefore is a prohibited subsidy and is considered to be specific under paragraph 2(7.2)(b) of SIMA.

**Program 19: Korea Development Bank (KDB) Short-Term Discounted Loans for Export Receivables**

This program, administered by the Korea Development Bank and the Industrial Bank of Korea, provides short-term loans on export receivables. This allows companies to receive discounted receivables prior to their maturity. The “fee” paid by exporters is essentially a discounted rate of interest for this advance payment. The importer then pays the bank directly, which means that the exporter no longer bears the risk of non-payment.

In the *Rebar I* investigation, this program was investigated, but was found to be not applicable to the Subject Goods. Evidence suggests that the program may be applicable in this current investigation.

This program provides a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. The program likely constitutes an export subsidy in that it is contingent on export performance and therefore is a prohibited subsidy and is considered to be specific under paragraph 2(7.2)(b) of SIMA.



### **Program 20: Korean Trade Insurance Corporation (K-SURE) Export Credit Guarantee**

The CBSA found this program to be actionable in the *OCTG 2* investigation. The purpose of this program is to provide export credit guarantees. In order to be eligible for this program, applying companies must have outstanding loans from banks to purchase raw material and to manufacture goods based on letter of credit. The program is offered as an operational function of K-Sure, but not under any specific legislation.

Evidence and CBSA precedent suggests that this program provides a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. This program appears to constitute an export subsidy in that it is contingent on export performance and therefore is a prohibited subsidy and is considered to be specific under paragraph 2(7.2)(b) of SIMA.

### **Program 21: Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)**

This program was introduced in 1982, with the purpose of enhancing and stabilizing the supply of energy resources in South Korea. The laws and regulations relating to this program are Articles 12 and 14 of the Submarine Mineral Resources Development Act; Articles 5 and 11 (clause 1 and 2) of the Overseas Resources Development Business Act; Article 11 (clause 1) of its Enforcement Decree; Article 3 (paragraph 1) of its Ministerial Decree; and Articles 5, 6 (clause 1), 7 (clause 1), 20 (clause 1 and 2), 20-2, and 22-2 (clause 1, 2, and 4) as well as Appendices 1 and 2 of the Ministerial Notice promulgated by MOTIE on the Criteria for Overseas Resources Development Business Fund.

It is possible that this program provides a financial contribution within the meaning of paragraph 2(1.6)(a) through the direct transfer of funds and may provide a benefit in the form of the difference between the interest charged on these loans and the interest charged for a comparable commercial loan. The program is likely specific within the meaning of paragraph 2(7.2)(a) because it is limited by law to companies investing in foreign resource extraction.

### **Program 22: Dongbu's Debt Restructuring**

The US DOC determined that the financial contributions provided to Dongbu Steel in the context of its restructuring were countervailable in the *Corrosion-Resistant Steel Products* FD.

Dongbu Steel is a producer of Subject Goods in South Korea, with hot strip mill production capacity of 3 million MT per year in 2016 and cold-rolling capacity of 2.4 million MT per year. In 2014, after failing in an attempt to raise capital by selling several subsidiaries to POSCO, Dongbu applied for one of the GOK's financial restructuring programs. Dongbu applied for the "Corporate Voluntary Restructuring" Program under the Creditor Banks' Committee Arrangement. Nine creditor banks formed the "Dongbu Steel Creditor Banks Committee", including five majority government-owned banks and five private commercial banks (Nonghyup Bank, Shihan Bank, Hana Bank, Korea Exchange Bank). KDB, a government-owned bank, was the prime creditor. The Committee is tasked with reviewing and voting on the debt restructuring plan for Dongbu, with resolutions and decisions passed by affirmative votes of creditor financial institutions with at least 75% of the outstanding debt obligations.

Evidence suggests that this program may provide a financial contribution in various respects, including but not limited to the direct or contingent transfer of funds and the exemption or deduction of amounts that are owing and due to the government, pursuant to paragraphs 2(1.6)(a) and (b). It is possible that this program may be *de facto* specific within the meaning of paragraphs 2(7.3)(a)-(c), in light of the fact that the program is used by a limited number of companies.

#### **CATEGORY 4: GOODS/SERVICES PROVIDED BY THE GOVERNMENT AT LESS THAN FAIR MARKET VALUE**

##### **Program 23: Reductions of Lease Fees and other Financial Support in FEZs**

FEZs are areas designated by South Korea's Special Act on Designation and Management of Free Economic Zones ("SADMFEZ"). Companies that are located within an FEZ may be approved for benefits that include tax reductions and exemptions; exemptions and reductions of lease fees; and grants and financial support. Publicly available sources indicate that steel is one of the two main industries, along with petrochemicals, around which the Gwangyang Bay Area Free Economic Zone ("GFEZ") is based.

Exemptions and reductions of lease fees for companies in FEZs are granted pursuant to subarticles 16(2) and (4) and article 18 of the SADMFEZ. The program appears to provide for 50-100% tax reductions in accordance with local ordinances for foreign invested companies. It is possible that cash grants are also provided to cover factory and research facility construction costs, employment subsidies, employee training subsidies and other costs to a foreign-invested company with a foreign investment ration of 30% or higher, although the legislative basis for this is unclear.

This program appears to provide a financial contribution within the meaning of paragraph 2(1.6)(b) of SIMA by exempting or deducting from amounts that would otherwise be owing and due to the Government, or a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a). Evidence suggests that the program is specific within the meaning of paragraph 2(7.2)(a) in that it is geographically limited to a group of enterprises within an area designated as an FEZ under the SADMFEZ.

##### **Program 24: Customs Duties Reduced or Exempted**

This program, administered under the *Customs Act*, was found to be actionable in the CBSA's *Rebar I* investigation. Under this program, amounts that would otherwise be owing and due to the South Korean government are reduced and/or exempted.

Evidence and CBSA precedent suggests that this program confers a benefit to the recipient in the form of a financial contribution pursuant to paragraph 2(1.6)(b). The CBSA found in *Rebar I* that there are no programs allowing the customs duties to be exempted for imports of equipment; rather, exemptions are applied on a case-by-case basis. The CBSA therefore found this program to be *de facto* specific under subsection 2(7.3) based on the manner in which the granting authority exercises discretion.

### **Program 25: Export Insurance through the Korea Trade Insurance Corporation (K-Sure)**

The CBSA found this program to be countervailable in the *OCTG 2* investigation. The purpose of this program is to provide insurance coverage to exporters in case of non-payments with respect to importer risk, letter of credit (L/C) risk, import country risk, etc. The program is offered as an operational function of the K-Sure, but not under any specific legislation.

Evidence and CBSA precedent suggests that this program provides a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. This program appears to constitute an export subsidy in that it is contingent in whole or in part on export performance and therefore is a prohibited subsidy and is considered to be specific under paragraph 2(7.2)(b) of SIMA.

### **CATEGORY 5: GRANTS AND GRANT EQUIVALENTS**

#### **Program 26: Sharing of Working Opportunities/Employment Creating Incentives**

This program aims to increase job opportunities for individuals through improvement and innovation. The program, managed by the Korea Labor Foundation, forms part of the Ministry of Employment and Labor's employment promotion policy. Employers that create new employment opportunities receive support for labour costs through this program.

Evidence suggests that this program provides a financial contribution through direct transfer of funds within the meaning of paragraph 2(1.6)(a). It is possible that this program may be *de facto* specific within the meaning of paragraph 2(7.3)(b), in light of the fact that the program was used by only 69 companies in 2013.

### **CATEGORY 6: RELIEF FROM DUTIES AND TAXES IN INPUTS, MATERIALS AND MACHINERY**

#### **Program 27: GOK Facilities Investment Support under RSTA Article 26**

This program encourages companies to invest outside of the overcrowding control region of the Seoul Metropolitan Area in their respective fields of business by providing tax incentives. The area's boundaries are defined by law in Article 9 and Table 1 of the Enforcement Decree of the Seoul Metropolitan Area Readjustment Planning Act. Eligible investments in facilities can produce a tax credit of up to 10% for eligible companies. If a company is in a tax loss situation for a given year, it may carry the credit forward for the next five years.

Evidence suggests that this program provides a financial contribution within the meaning of section 2(1.6)(b) of SIMA by exempting or deducting from amounts that would otherwise be owing and due to the Government. The program is likely specific within the meaning of paragraph 2(7.2)(a) in that it is geographically limited to a group of enterprises within the jurisdiction of the granting authority.

**A summary of South Korean subsidy programs is as follows:**

***Energy Savings and other Green Programs***

- Program 1 Management of Electricity Load Program
- Program 2 Green Subsidies: GOK Subsidies for “Green Technology R&D” and its Commercialization
- Program 3 Modal Shift Grants

***Preferential Tax Programs***

- Program 4 RSTA Article 10(1)(2): Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies”
- Program 5 RSTA Article 104(14): Tax Payment for Third-Party Logistics Operations
- Program 6 RSTA Article 104(5): Special Tax Credit for Payment Records
- Program 7 RSTA Article 120: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes
- Program 8 RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development
- Program 9 RSTA Article 24: Tax Credit for Investment in Productivity Increase Facilities
- Program 10 RSTA Article 25: Tax Credit for Investment in Facilities for Environment or Safety
- Program 11 RSTA Article 30: Tax Program for Special Depreciation
- Program 12 RSLTA Article 78(4): Tax Reduction and Exemption for Industrial Complexes

### ***Preferential Loans and Loan Guarantees***

- Program 13 KEXIM Export Factoring
- Program 14 KEXIM Export Loan Guarantees
- Program 15 KEXIM Import Financing
- Program 16 KEXIM Overseas Investment Credit Program
- Program 17 KEXIM Short-Term Export Credits
- Program 18 KEXIM Trade Bill Rediscounting Program
- Program 19 Korea Development Bank (KDB) Short-Term Discounted Loans for Export Receivables
- Program 20 Korean Trade Insurance Corporation (K-SURE) Export Credit Guarantee
- Program 21 Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)
- Program 22 Dongbu's Debt Restructuring

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

- Program 23 Reductions of Lease Fees and other Financial Support in FEZs
- Program 24 Custom Duties Reduced or Exempted
- Program 25 Export Insurance through the Korea Trade Insurance Corporation (K-Sure)

### ***Grants and Grant Equivalents***

- Program 26 Sharing of Working Opportunities/Employment Creating Incentives

### ***Relief from Duties and Taxes in Inputs, Materials and Machinery***

- Program 27 GOK Facilities Investment Support under RSTA Article 26

## Vietnam

### CATEGORY 1: RELIEF FROM DUTIES AND TAXES

#### Program 1: Exemptions of import duty

The programs of import duty exemptions are made available pursuant to the Law No. 107/2016/QH13<sup>67</sup> dated April 6, 2016, on export and import duties (Law No. 107) and Decree No. 134/2016/ND-CP<sup>68</sup> 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<sup>69</sup> 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<sup>70</sup> 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-CP<sup>71</sup> dated November 12, 2015, guiding the implementation of a number of articles of the law on investment.

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<sup>67</sup> <http://hethongphapluatvietnam.com/law-no-107-2016-qh13-dated-april-06th-2016-on-export-and-import-duties.html>.

<sup>68</sup> <http://hethongphapluatvietnam.com/decree-no-134-2016-nd-cp-dated-september-01-2016-guidelines-for-the-law-on-export-and-import-duties.html>.

<sup>69</sup> [www.wto.org/english/thewto\\_e/acc\\_e/vnm\\_e/WTACCVNM43\\_LEG\\_15.pdf](http://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_15.pdf).

<sup>70</sup> <http://hethongphapluatvietnam.com/decree-no-87-2010-nd-cp-of-august-13-2010-detailing-a-number-of-articles-of-the-law-on-import-duty-and-export-duty.html>.

<sup>71</sup> [www.itpc.gov.vn/investors/how\\_to\\_invest/law/Decree\\_No.118\\_2015/view](http://www.itpc.gov.vn/investors/how_to_invest/law/Decree_No.118_2015/view).

## **Program 2: Refunds of import duty**

The import duty refund programs are made available pursuant to the Law No. 107/2016/QH13 dated April 6, 2016, on export and import duties (Law No. 107) and Decree No. 134/2016/ND-CP dated September 1, 2016, on guidelines for the law on export and import duties (Decree No. 134). Law No. 107 replaced the Law on Export and Import Tax No. 45/2005/QH11 dated June 14, 2005, on detailing a number of articles of the law on export and import duties (Law No. 45). Decree 134 replaced Decree No. 87/2010/ND-CP dated August 13, 2010, guiding the implementation of a number of articles of the Law on Export Tax and Import Tax (Decree No. 87). Duty refund is stipulated in Article 19 of Law No. 45 and Law No. 107 and specified in Article 15 of Decree No. 87 and Article 33 to 37 of Decree No. 134. These programs were provided by the GOV.

This program is considered to be a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the Government are reduced and/or exempted, and 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, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

## **Program 3: Exemption/Reductions of Land Rent, Tax and Levy**

Land used for production and business purposes is governed by Law No. 45/2013/QH13<sup>72</sup> dated June 21, 2013, on Land (Law No. 45); Decree No. 46/2014/ND-CP<sup>73</sup> dated May 15, 2014, on regulating the collection of land rents and water surface rents (Decree No. 46); Circular No. 77/2014/TT-BTC<sup>74</sup> 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.

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<sup>72</sup> [www.itpc.gov.vn/investors/how\\_to\\_invest/law/Law\\_on\\_land/view](http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/view).

<sup>73</sup> <http://hethongphapluatvietnam.net/decree-no-46-2014-nd-cp-dated-may-15-2014-regulations-on-collection-of-land-rent-and-water-surface-rent.html>.

<sup>74</sup> <http://hethongphapluatvietnam.com/circular-no-77-2014-tt-btc-dated-june-16-2014-guiding-decree-no-46-2014-nd-cp-on-the-collection-of-land-rental-and-water-surface-rental.html>.



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.

#### **Program 4: 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.

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.

## **CATEGORY 2:      PREFERENTIAL LOANS AND LOAN GUARANTEES**

### **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-CP<sup>75</sup> dated August 30, 2011, on state investment credit and export credit (Decree No. 75) and Decree No. 151/2006/ND-CP<sup>76</sup> 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-NHNN<sup>77</sup> 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, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

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<sup>75</sup> <http://vietnamlawmagazine.vn/decree-no-75-2011-nd-cp-of-august-30-2011-on-state-investment-credit-and-export-credit-4762.html>.

<sup>76</sup> <http://hethongphapluatvietnam.com/decree-of-government-no-151-2006-nd-cp-of-december-20-2006-on-the-state-39-s-investment-credit-and-export-credit.html>.

<sup>77</sup> [www.lawfirm.vn/?a=doc&id=2551](http://www.lawfirm.vn/?a=doc&id=2551).

### **CATEGORY 3: PREFERENTIAL TAX PROGRAMS**

#### **Program 6: Enterprise income tax preferences, exemptions and reductions**

Corporate income tax and tax benefits are governed by Law No. 14/2008/QH12<sup>78</sup> dated June 3, 2008, on Enterprise Income Tax 2008 (Law No. 14); Law No. 32/2013/QH13<sup>79</sup> 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/QH13<sup>80</sup> 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.

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<sup>78</sup> [www.moj.gov.vn/vbpg/en/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=10499](http://www.moj.gov.vn/vbpg/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10499).

<sup>79</sup> <http://vbqpl.mpi.gov.vn/en-us/Pages/default.aspx?itemId=e8f95ed6-0c35-4522-9d94-4c3e25b104c8&list=documentDetail>.

<sup>80</sup> [www.itpc.gov.vn/investors/how\\_to\\_invest/law/Law\\_71\\_2014\\_QH13/view](http://www.itpc.gov.vn/investors/how_to_invest/law/Law_71_2014_QH13/view).

## **Program 7: Accelerated Depreciation of Fixed Assets**

Accelerated depreciation of fixed assets is specified in Circular 45/2013/TT-BTC<sup>81</sup> 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 8: Establishments Dealing with Exported Goods**

This program is made available pursuant to Decree No. 164/2003/ND-CP dated December 22, 2003, on detailing the implementation of the Law on Enterprise Income Tax (Decree No. 164). Article 39 of Decree No. 164 provides that business establishments dealing in export goods defined in Section III, List A of the Appendix to this decree shall enjoy certain income tax preferences. This program was provided by the GOV.

The list of sectors and regions eligible for preferences specified in Decree No. 164 was repealed and replaced with the list attached to Decree No. 108/2006/ND-CP dated September 22, 2006, detailing and guiding the implementation of a number of articles of the Investment Law (Decree No. 108).

Decree No. 164 is replaced by Decree No. 24/2007/ND-CP dated February 14, 2007 detailing the implementation of the Law on Enterprise Income Tax (Decree No. 24). Article 46.3 of Decree No. 24 provides that business establishments currently enjoying income tax preferences under Decree No. 164 which is issued before effective date of this decree continue to enjoy the relief until the end of the duration of the preferences.

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<sup>81</sup> [www.global-regulation.com/translation/vietnam/2955897/circular-45-2013-tt-btc%253a-a-guide-to-management-mode%252c-use-and-depreciation-of-fixed-assets.html](http://www.global-regulation.com/translation/vietnam/2955897/circular-45-2013-tt-btc%253a-a-guide-to-management-mode%252c-use-and-depreciation-of-fixed-assets.html).

This program was terminated on October 25, 2006 with the implementation of Decree No. 108 and Decree No. 24, except for situations provided for in Article 46.3.

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 investment projects within certain eligible sectors as specified in Section III, List A of the Appendix to Decree No. 164.

#### **CATEGORY 4: GRANTS AND GRANT EQUIVALENTS**

##### **Program 9: Investment support**

The complaint listed the two programs and referred to the US DOC's final determination in *Certain Steel Nails*.<sup>82</sup>

The programs are made available pursuant to *Decree 108/2006/ND-CP of the Government*, dated, September 22, 2006.<sup>83</sup> 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.

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<sup>82</sup> CRS Complaint (NC), Page 272, Appendix 5.

<sup>83</sup> [https://binhdinh.eregulations.org/media/Decree%20108-2006\\_CP\\_Investment\\_EN.pdf](https://binhdinh.eregulations.org/media/Decree%20108-2006_CP_Investment_EN.pdf).

## **Program 10: Export Promotion Program**

The National Trade program was established by Decision No. 279/2005/QD-TTg of 3 November 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 21 May 2009.<sup>84</sup>

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.

## **Program 11: Grants to Firms that Employ More than 50 Employees**

This program is made available pursuant to Decree No. 51/1999/ND-CP<sup>85</sup> dated July 8, 1999, detailing the implementation of Law No. 3/1998/QH10 on Domestic Investment Promotion (Amended) (Decree No. 51). Article 15 of Decree No. 51 provides the eligibility criteria for investment preferences. Articles 16 to 27 provides for various types of preferences for eligible investments. This program was provided by the GOV.

The last date that a company could apply for or claim benefits under this program was July 1, 2006, the date which Law No. 59/2005/QH11<sup>86</sup> dated November 29, 2005, on the Law on Investment (Law No. 59) came into effect. Articles 27 to 31 of Law No. 59 provides for the domains and sectors entitled to investment preference, including "labour intensive industries". Articles 32 to 44 provides for investment preferences and supports. This program is 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.

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to particular enterprises with a certain size.

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<sup>84</sup> [www.wto.org/english/tratop\\_e/tpr\\_e/s287\\_e.pdf](http://www.wto.org/english/tratop_e/tpr_e/s287_e.pdf).

<sup>85</sup> <https://uatminhkhue.vn/en/decree/decree-no-51-1999-nd-cp-dated-july-08--1999-of-the-government-detailing-the-implementation-of-law-no-03-1998-gh10-on-domestic-investment-promotion-amended-.aspx>.

<sup>86</sup> [www.wto.org/english/thewto\\_e/acc\\_e/vnm\\_e/WTACCVNM43\\_LEG\\_4.pdf](http://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_4.pdf).

## **Program 12: 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.

**A summary of Vietnamese subsidy programs is as follows:**

***Relief from Duties and Taxes***

- |           |   |
|-----------|---|
| Program 1 | Exemptions of Import Duty                           |
| Program 2 | Refunds of Import Duty                              |
| Program 3 | Exemption/Reductions of Land Rent, Tax and Levy     |
| Program 4 | Program Incentives on non-agricultural Land Use Tax |

***Preferential Loans and Loan Guarantees***

- |           |  |
|-----------|--|
| Program 5 | Export and Import Support in Forms of Preferential Loan, Guarantee and Factoring |
|-----------|--|

***Preferential Tax Programs***

- |           |  |
|-----------|--|
| Program 6 | Enterprise Income Tax Preferences, Exemptions and Reductions |
| Program 7 | Accelerated Depreciation of Fixed Assets                     |
| Program 8 | Establishments Dealing with Exported Goods                   |

***Grants and Grant Equivalents***

- |            |  |
|------------|--|
| Program 9  | Investment Support   |
| Program 10 | Export Promotion Program   |
| Program 11 | Grants to Firms that Employ More than 50 Employees                     |
| Program 12 | Assistance to Enterprises Facing Difficulties due to Objective Reasons |