



OTTAWA, June 8, 2018

## STATEMENT OF REASONS

Concerning the Initiation of Investigations into the dumping and the subsidizing of

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

## DECISION

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the Canada Border Services Agency initiated investigations on May 25, 2018 respecting the alleged injurious dumping and the alleged injurious 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

[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.

## **INTERESTED PARTIES**

### **Complainant**

[8] ArcelorMittal Dofasco G.P was founded as the Dominion Steel Casting Company in 1912 in Hamilton, ON. In 2006 Dofasco was acquired by Arcelor S.A. Later that year, Arcelor S.A merged with Mittal Steel.

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

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

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

[11] 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

### **Exporters**

[12] The CBSA identified 284 potential exporters of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential exporters were asked to respond to the CBSA's Dumping Request for Information (RFI). Potential exporters in China, South Korea and Vietnam were also asked to respond to the CBSA's Subsidy RFI. Finally, potential exporters located in China and Vietnam were asked to respond to the CBSA's Section 20 RFI.

### **Importers**

[13] The CBSA identified 62 potential importers of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential importers were asked to respond to the CBSA's Importer RFI.

## **Governments**

[14] Upon initiation of the investigations, the governments of China, South Korea and Vietnam were sent the CBSA's Government Subsidy RFI requesting information concerning subsidy programs available in each respective country. In addition, the Governments of China and Vietnam were sent the CBSA's Government Section 20 RFI.

[15] 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.

## **PRODUCT INFORMATION**

### **Definition**

[16] For the purpose of these investigations, 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**

[17] 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.

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

[19] 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.

[20] 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.

[21] 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.

[22] 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.

[23] 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.

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

[25] 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.

[26] 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.

[27] 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.



[28] 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.

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

[30] 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.

[31] 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.

[32] 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**

[33] 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.

[34] 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.

[35] 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.

[36] 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**

[37] 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**

[38] Prior to January 1, 2017, the allegedly dumped and subsidized goods were normally classified under the following tariff classification numbers:

7209.15.00.10	7209.25.00.10	7209.90.00.90
7209.15.00.40	7209.25.00.20	7211.23.00.00
7209.16.00.10	7209.26.00.10	7211.29.00.00
7209.16.00.20	7209.26.00.20	7211.90.00.90
7209.17.00.10	7209.27.00.10	7225.50.00.19
7209.17.00.20	7209.27.00.20	7225.50.00.29
7209.18.00.10	7209.28.00.10	
7209.18.00.20	7209.28.00.20	

[39] 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	

[40] 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.



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

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

[42] According to the complainant, with respect to subject goods, like goods consist of domestically produced CRS which falls within the product definition. For greater clarity, like goods do not include goods excluded from the subject goods product definition, such as automotive CRS.

[43] CRS produced by the complainant has the same physical characteristics and end uses as the subject goods imported from the named countries. The goods produced in Canada and the named countries are fully interchangeable when manufactured to industry standards and specifications. Subject goods from the named countries compete directly with like goods produced by the complainant. After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that domestically produced CRS are like goods to the subject goods. Further, the CBSA is of the opinion that subject goods and like goods constitute only one class of goods.

## **THE CANADIAN INDUSTRY**

[44] The complaint includes data on domestic production and on domestic sales of CRS for domestic consumption.

[45] The complaint contains letters of support from the two other Canadian producers of CRS, Essar Steel Algoma Inc. (Algoma), and Stelco Inc. (Stelco).<sup>1</sup>

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

### **Standing**

[47] Subsection 31(2) of SIMA requires that the following conditions for standing be met in order to initiate an investigation:

- a. the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- b. the production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

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<sup>1</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 1.

[48] As the complaint is supported by all known producers of like goods in Canada, the CBSA is satisfied that the standing requirements pursuant to subsection 31(2) of SIMA have been met.

**CANADIAN MARKET**

[49] The complaint included the annual production of like goods for the complainant and the supporting producers.

[50] The complainant, using Statistics Canada data, estimated the total volume of imports of subject goods originating from all countries for 2015 through 2017. The tariff classification numbers for CRS include both subject and non-subject goods. As such, the complainant made a number of adjustments in an effort to remove non-subject CRS. The most significant adjustments relate to the removal of automotive CRS.<sup>2</sup>

[51] The CBSA conducted its analysis of imports of the goods based on actual import documentation and based on commercial intelligence provided in the complaint.

[52] A review of CBSA import data demonstrated similar trends and volumes with respect to imports of subject goods compared to information provided in the complaint.

[53] Detailed information regarding the volume and value of imports of CRS and domestic production cannot be divulged for confidentiality reasons. The CBSA, however, has prepared the following tables to show the import share of CRS in Canada, as estimated by the CBSA.

**Table 1**  
**CBSA’S ESTIMATE OF IMPORT SHARE**  
**(BASED ON VOLUME)**

Country	2015	2016	2017
China	40.7%	62.6%	53.2%
South Korea	15.0%	6.7%	7.1%
Vietnam	0.0%	2.3%	9.5%
<b>Total Imports from Named Countries</b>	<b>55.7%</b>	<b>71.6%</b>	<b>69.8%</b>
Other Countries	44.4%	28.4%	30.2%
<b>Total Imports</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\*totals may not add to exactly 100% due to rounding

<sup>2</sup> Exhibit 2 (NC) – CRS Complaint – Pages 24-28.

[54] The complainant noted that domestic producers generally sell CRS directly to end-users and steel service centres. Steel service centres may further process the steel and supply smaller end-users and contractors.

[55] According to the complainant, imported CRS is generally purchased by traders for resale to end users and steel service centres. Alternatively, CRS may also be imported directly by end users and steel service centres. The ultimate customers for imported and domestically produced CRS are essentially the same.

### **EVIDENCE OF DUMPING**

[56] The complainant alleged that CRS from China, South Korea and Vietnam have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

[57] Normal values are generally based on the domestic selling price of like goods in the country of export where competitive market conditions exist or as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[58] The complainant provided information to support the allegation that the flat-rolled steel sector, which includes CRS, in China and Vietnam, may not be operating under competitive market conditions and as such, submitted that normal values should be determined under section 20 of SIMA.

[59] If there is sufficient reason to believe that the conditions described in section 20 of SIMA exist in the sector under investigation, normal values will be determined, where such information is available, on the basis of the domestic selling price or the cost of production 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 CBSA 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 CBSA and adjusted for price comparability.

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

[61] Estimates of normal values and export prices by both the complainant and the CBSA are discussed below.

## Normal Values

### Complainant's Estimates

[62] The complainant did not estimate the normal values for CRS from China using the methodology of section 15 of SIMA. The complainant provided information from the publicly available annual reports from a number of Chinese producers of CRS as well as price information reported in the CRU International Limited (CRU) and MEPS International Ltd (MEPS) publications. However, the complainant concluded that this information could not be used as it does not meet the criteria of section 15 of SIMA. Specifically, the complainant stated that the price information was based on both like goods and goods that are not like goods in relation to subject CRS. As such, these goods would not permit a proper comparison to the subject goods.

[63] With respect to South Korea, the complainant provided domestic price information as reported in the MEPS publication. However, the complainant did not estimate the normal values for CRS from South Korea using the methodology of section 15 of SIMA. The complainant again concluded that this information could not be used as it does not meet the criteria of section 15 of SIMA for the same reason as noted above.

[64] The complainant stated that they were unable to locate domestic price information for Vietnam and as such they were unable to estimate normal values using the methodology of section 15 of SIMA.

[65] Due to the fact that the domestic price information provided for China and South Korea does not meet the criteria of section 15 of SIMA, and due to the fact that domestic price information was unavailable for Vietnam, the complainant estimated normal values using a constructed cost approach to reflect the methodology defined under paragraph 19(b) of SIMA. The complainant based these estimates on their own costs of production for all domestically produced CRS that falls within the product definition, during the period Q4 2016 through Q3 2017, as well as public information from the named countries for the same period. This information was used to estimate normal values for goods imported into Canada during the period January 1, 2017 to December 31, 2017. The complainant submitted that it is appropriate to use cost information for this period due to the lag time between the production and shipment of the goods.

[66] One normal value was estimated for each named country 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.

[67] Material costs were estimated based on the complainant's own data and adjusted based on HRS pricing in the named country or region. HRS is the primary material used in the production of CRS.

[68] For China, the complainant used the cost of HRS in China as reported by CRU. For South Korea, the complainant used the cost of HRS in South Korea as reported by MEPS. For Vietnam, the complainant used the average price of HRS for the Asia region (China, Japan, and South East Asia) as reported by CRU. The complainant was unable to locate Vietnam specific HRS pricing.<sup>3</sup>

[69] Labour costs were estimated based on the complainant's labour costs and adjusted to reflect labour cost differences between Canada and each of the named countries. A downward adjustment was applied to these costs based on productivity adjusted cost of labour comparisons reported by the Boston Consulting Group and by Trading Economics.

[70] The wage adjustment factors were as follows:

- China – downward adjustment of 50.6%<sup>4</sup>
- South Korea – downward adjustment of 37.6%<sup>5</sup>
- Vietnam – downward adjustment of 91.2%<sup>6</sup>

[71] 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.

[72] The complainant estimated the amounts for SG&A and financial expenses, as well as the amounts for profits, based on the publicly available financial statements of CRS producers in the named countries. For China, the complainant used amounts reported by Maanshan Iron and Steel Company in their annual financial statements. For South Korea and Vietnam, the complainant used amounts from POSCO and the Hoa Sen Group, respectively. These amounts for SG&A and financial expenses, as well as the amounts for profits, are reported as a percent of the cost of goods manufactured and are provided below.<sup>7</sup>

Item	China	South Korea	Vietnam
SG&A	3.7%	7.3%	10.7%
Financial Expenses	1.5%	0.1%	2.5%
Profit	7.3%	6.3%	7.6%

<sup>3</sup> Exhibit 2 (NC) – CRS Complaint – Pages 36-39.

<sup>4</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 15.

<sup>5</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 15.

<sup>6</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 14.

<sup>7</sup> Exhibit 2 (NC) – CRS Complaint – Pages 36-39.

[73] The complainant provided information supporting the initiation of section 20 inquiries respecting the allegedly dumped goods from China and Vietnam. The complainant submitted that domestic selling prices in China and Vietnam are substantially influenced by government policies and should not be used in the calculation of normal values since the prices are not reflective of competitive market conditions. As a result, the complainant also estimated normal values for China and Vietnam using the methodology of section 20 based on surrogate country information.<sup>8</sup>

[74] The complainant submits that South Korea is an appropriate surrogate country as the cost of steel materials used by CRS producers in South Korea are based on international market pricing.

[75] The complainant estimated normal values for CRS from China and Vietnam based on the aggregate of the estimated cost of production in South Korea, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, as per the methodology of subparagraph 20(1)(c)(ii) of SIMA. The normal values estimated by the complainant were calculated in the same manner as the South Korean paragraph 19(b) normal values discussed above.<sup>9</sup>

#### **CBSA's Estimates:**

[76] The CBSA found the complainant's section 19 and section 20 normal value estimates to be reasonable and representative.

[77] The CBSA acknowledges that the complainant's estimated normal values lack specificity. The complainant did not estimate normal values for multiple specific products and instead provided one normal value based on the average total cost of production of all like CRS it produced during the period of Q4 2016 to Q3 2017, as adjusted, and other publicly available information.

[78] While the CBSA recognizes that there may be differences in the costs of production of the various types of like and subject goods, the CBSA finds this approach to be reasonable based on the export price information that was available to the complainant. As the complainant did not have information to estimate the export prices of specific CRS products imported from each country, they estimated one export price for each country based on publicly available import data obtained from Statistics Canada. This will be explained further in the "Export Price" section that follows. In order to make a comparison to the export price, the complainant estimated one normal value for each country. The CBSA finds that it is reasonable for the complainant to assume that the subject goods imported during 2017 would reflect a product mix similar to their production for the period of Q4 2016 to Q3 2017.

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<sup>8</sup> Exhibit 2 (NC) – CRS Complaint – Pages 39-48.

<sup>9</sup> Exhibit 2 (NC) – CRS Complaint – Pages 46-48.



[79] In analyzing the evidence provided by the complainant, the CBSA noted an error in a formula contained in the complainant's normal value calculations. The complainant indicated that the amount for profits for each named country was calculated as a percentage of the cost of goods manufactured, however, in the complainant's normal value calculations, the amount for profits was multiplied by the total cost. The CBSA has adjusted the complainant's normal value calculations accordingly.

[80] Based on the information available, the CBSA finds the complainant's constructed cost methodology and constructed surrogate methodology are reasonable. As such, only the adjustments discussed above were made to the complainant's estimates of normal values.

[81] As discussed above, if there is sufficient reason to believe that conditions described in section 20 of SIMA exist in the sector under investigation, normal values will be determined pursuant to section 20 of SIMA on the basis of the domestic selling price or cost of production plus a reasonable amount for SG&A, plus a reasonable amount for profits of the like goods sold by producers in any country designated by the CBSA 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 CBSA and adjusted for price comparability.

[82] As detailed in the "Section 20 Inquiries" section of this *Statement of Reasons*, the CBSA has information which demonstrates that the prices of CRS in China and Vietnam may be significantly affected by government policies in the respective countries and that prices of CRS in China and Vietnam may not be substantially the same as they would be if they were determined in a competitive market. As a result, normal values for China and Vietnam were estimated in accordance with the methodology of section 20 of SIMA.

[83] In summary, the CBSA has estimated normal values for China and Vietnam based on the methodology of subparagraph 20(1)(c)(ii) of SIMA, using surrogate information from South Korea. The CBSA has estimated normal values for South Korea using a constructed cost approach based on the methodology of paragraph 19(b) of SIMA.

### **Export Price**

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

[85] The export prices estimated by the complainant are based on publicly available import data obtained from Statistics Canada for the period of January 1, 2017 to December 31, 2017. As the Statistics Canada data includes both subject and non-subject goods, the complainant made a number of adjustments to remove non-subject goods. Based on the information available to the complainant, the CBSA finds these adjustments to be reasonable.

[86] The complainant estimated an average export price for each named country based on the weighted average declared value for 2017.<sup>10</sup>

[87] The CBSA estimated an export price for each named country based on the value for duty as declared on the customs entry documentation and reports generated through the Facility for Information Retrieval Management (FIRM) for each individual shipment imported from January 1, 2017 to December 31, 2017. The CBSA reviewed customs entry documentation for CRS entering Canada and adjusted the FIRM data to correct any errors respecting the quantity and value for duty.

### **Estimated Margins of Dumping**

[88] The CBSA estimated the margins of dumping by comparing the estimated normal values with the weighted average estimated export prices for each of the named countries. Based on this analysis, it is estimated that CRS imported into Canada from each of the named countries were dumped. The estimated margins of dumping for each country are listed in the table below.

**TABLE 2**

#### **ESTIMATED MARGINS OF DUMPING**

<b>Country</b>	<b>Estimated Margin of Dumping as % Export Price</b>
China	25.0%
South Korea	14.8%
Vietnam	61.0%

### **SECTION 20 INQUIRES**

[89] 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.<sup>11</sup>

[90] 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.

<sup>10</sup> Exhibit 2 (NC) – CRS Complaint – Pages 31-32.

<sup>11</sup> China and Vietnam are prescribed countries under Section 17.1 of the Special Import Measures Regulations.

[91] 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. Before initiating such an inquiry, the CBSA must first analyze the information submitted in the complaint and the evidence it has gathered independently to determine if it is sufficient to warrant the initiation of an inquiry.

[92] The complainant alleged that the conditions described in section 20 prevail in the flat-rolled steel sector, which includes CRS, in China and 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>12</sup>

### **China**

[93] With respect to China, the complainant provided evidence supporting its claim that the GOC substantially determines domestic prices of CRS. This included evidence of export and import controls as well as state-ownership in the steel industry and flat-rolled steel sector. The complainant also cited specific GOC policies such as the *National Steel Policy* and the *Steel Revitalization/Rescue Plan*, the *12th Five-Year Development Plans for the Steel Industry*, and the *13<sup>th</sup> Five-Year Plan on National Economic and Social Development*.<sup>13</sup>

[94] The information currently available to the CBSA indicates that there are numerous GOC industrial policies that have been implemented which influence the steel industry and the flat-rolled steel sector, which includes CRS, in China. In previous section 20 inquiries, the GOC's industrial plans have been found to strongly influence the decisions of enterprises in China.

[95] With respect to the flat-rolled steel sector, which includes CRS, the CBSA has information which demonstrates that the prices of flat-rolled steel products, including CRS, may be significantly affected by the GOC's policies and that prices of CRS in China may not be substantially the same as they would be if they were determined in a competitive market.

### **Vietnam**

[96] With respect to Vietnam, the complainant provided evidence supporting its claim that the GOV substantially determines domestic prices of CRS, including evidence of government control of steel projects and investments as well as state-ownership in the flat-rolled steel sector, which includes CRS. The complainant also cited specific GOV policies such as the *Steel Master Plan*.<sup>14</sup>

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<sup>12</sup> Exhibit 2 (NC) – CRS Complaint – Pages 39-48.

<sup>13</sup> Exhibit 2 (NC) – CRS Complaint – Pages 150-153.

<sup>14</sup> Exhibit 2 (NC) – CRS Complaint – Pages 170-174.

[97] The information currently available to the CBSA indicates that there are numerous GOV industrial policies that have been implemented which influence the steel industry and the flat-rolled steel sector, which includes CRS, in Vietnam. Further, the information currently available indicates that prices of CRS in Vietnam may not be substantially the same as they would be if they were determined in a competitive market.

[98] In summary, the CBSA believes that there is sufficient evidence to support inquiries into the allegations that measures taken by the GOC and GOV substantially influence prices in the flat-rolled steel sectors, which includes CRS, of their respective countries, and that the prices are substantially different than they would be in a competitive market.

[99] Consequently, on May 25, 2018, the CBSA included in its investigation, section 20 inquiries in order to determine whether the conditions set forth in paragraph 20(1)(a) of SIMA prevail in the flat-rolled steel sector, which includes CRS, in China and in Vietnam.

[100] As part of this section 20 inquiry, the CBSA sent section 20 questionnaires to all potential producers and exporters of CRS in China and Vietnam, as well as to the GOC and GOV, requesting detailed information related to the flat-rolled steel sector, which includes CRS, in those countries.

[101] To enable the determination of normal values, should paragraph 20(1)(a) of SIMA be applicable, the CBSA requested domestic pricing and costing information from producers of CRS in Italy, South Korea and Sweden. These countries were selected as they are all major exporters of CRS to Canada. The CBSA sent questionnaires to known producers of CRS in these countries.<sup>15</sup> The CBSA also requested information from Canadian importers of CRS regarding their sales of CRS from other countries.

[102] In the event that the CBSA forms the opinion that domestic prices of CRS in China and/or Vietnam are substantially determined by their government, respectively, and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be if they were determined in a competitive market, the normal values of the goods under investigation will be determined, pursuant to paragraph 20(1)(c), where such information is available, on the basis of the domestic selling price or the aggregate of the cost of production, a reasonable amount for SG&A, and a reasonable amount for profits of the like goods sold by producers in any country designated by the CBSA and adjusted for price comparability; or, pursuant to paragraph 20(1)(d), where such information is available, on the basis of the selling price in Canada of like goods imported from any country designated by the CBSA and adjusted for price comparability.

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<sup>15</sup> South Korean exporters will not receive a separate surrogate RFI as they will each receive a full exporter RFI.

## EVIDENCE OF SUBSIDIZING

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

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

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

[105] A state-owned enterprise (SOE) may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or 4) some combination thereof.

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

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

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

[108] 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 countervailable.

[109] The complainant alleged that subject goods originating in or exported from China, South Korea and Vietnam have been subsidized and that exporters of subject goods from those countries have benefitted from actionable subsidies provided by various levels of their respective governments.

[110] In its analysis of the complainant’s allegations, the CBSA reviewed the information submitted in the complaint as well as other publicly available reference material to determine whether the programs listed could constitute financial contributions in accordance with subsections 2(1) and 2(1.6) of SIMA and thereby conferred benefits to the recipients in accordance with the definition of “subsidy” in subsection 2(1) of SIMA. These programs were further examined to establish whether they could also be considered specific under subsections 2(7.2) or 2(7.3) of SIMA.

[111] A country-by-country summary follows below.

### **China**

[112] The complainant identified 123 subsidy programs which may have conferred benefits to the producers/exporters of subject goods in China, and in turn resulted in the actionable subsidizing of exports of subject goods to Canada.<sup>16</sup>

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<sup>16</sup> Exhibit 2 (NC) – CRS Complaint – Subsidy Appendix 3.



[113] In identifying subsidy programs, the complainant primarily relied on the CBSA's investigations in regards to the subsidizing of *Aluminum Extrusions, Silicon Metal, Unitized Wall Modules, Copper Tube, Certain Laminate Flooring, Photovoltaic modules and laminates, Certain Oil Country Tubular Goods I, Carbon Steel Welded Line Pipe I, Large Diameter Line Pipe, Fabricated Industrial Steel Components, Steel Grating, Stainless Steel Sinks, Galvanized Steel Wire, Steel Plate 3 and Rebar I*. In addition, they relied on the United States Department of Commerce's (USDOC) investigation concerning *Certain Cold-Rolled Steel Flat Products from China* and submissions made to the WTO of *New and Full Notification Pursuant to Article XVI: 1 of the GATT 1994 and Article 25 of the SCM Agreement*<sup>17</sup> and *Request from the UNITED STATES to CHINA Pursuant to Article 25.10 of the Agreement*.<sup>18</sup>

[114] Given that the complainant's principal evidence with respect to the subsidy programs availability and/or use by CRS producers/exporters in China consists of references to past countervailing investigations by either the CBSA or the USDOC, the CBSA reviewed the relevant public reports for these investigations. The CBSA also reviewed the reports for other investigations not relied on by the complainant.<sup>19</sup> Further, the CBSA reviewed China's most recent subsidy notifications to the WTO.<sup>20</sup>

[115] Based on the information available to the CBSA, the CBSA identified 31 potentially actionable subsidy programs. These programs have been investigated and found to be actionable in the CBSA's or the USDOC's previous subsidy investigations involving goods from China and can be grouped into the following five categories:

1. Preferential Loans and Loan Guarantees;
2. Grants and Grant Equivalents;
3. Preferential Tax Programs;
4. Relief from Duties and Taxes; and
5. Goods/Services Provided by the Government at Less than Fair Market Value.

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<sup>17</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 158.

<sup>18</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 146.

<sup>19</sup> No references were made by the Complainant to CBSA's Polyethylene Terephthalate Resin investigation, the latest countervailing investigation involving goods from China.

<sup>20</sup> New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measure; China; 30 October, 2015; and New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measure – China - Supplement; 29 July 2016.

[116] The CBSA's analysis revealed that the 31 subsidy programs constitute potential financial contributions by the GOC that may have conferred benefits to producers/exporters of CRS. Some Chinese exporters, namely for example Baoshan Iron & Steel Co Ltd. and Hengyang Valin MPM Co Ltd., found to have benefited from subsidies in above mentioned investigations are large vertically integrated steelmakers which also produce and export CRS. CRS and other steel product manufacturers in China are commonly located in similar geographic areas and all belong to the steel industry, which is highly controlled and supported by the GOC. This indicates that subsidy programs may be available to exporters and producers of the subject goods. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA. Please refer to Appendix 1 for more information.

[117] If more information becomes available during the investigation that indicates that some exporters/producers of subject goods may have benefited from any of the remaining alleged programs or any other programs during the period of investigation (POI), the CBSA will request complete information from the GOC and exporters/producers of subject goods to pursue the investigation of the program.

[118] The CBSA concluded that sufficient evidence is available to support the allegations that CRS originating in or exported from China has been subsidized. In investigating the 31 programs, the CBSA has requested information from the GOC, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs, or any other programs, are actionable subsidies and, therefore, countervailable under SIMA.

## **South Korea**

[119] The complainant identified 45 subsidy programs which may have conferred benefits to the producers/exporters of subject goods in South Korea, and in turn resulted in the actionable subsidizing of exports of subject goods to Canada.<sup>21</sup>

[120] In alleging that actionable subsidies were applicable to the subject goods imported from South Korea, the complainant primarily relied on the USDOC's recent subsidy investigations involving hot-rolled, cold-rolled and corrosion-resistant steel sheet from South Korea, as well as the CBSA's previous subsidy investigations *Rebar I* and *OCTG II*. The complainant also relied on other publicly available information, including publications issued by the WTO, World Bank and GOK as well as annual reports from South Korean CRS producers.

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<sup>21</sup> Exhibit 2 (NC) – CRS Complaint – Subsidy Appendix 4.

[121] The vast majority of the 45 subsidy programs listed was included in the USDOC's recent final determinations of subsidization with respect to hot-rolled<sup>22</sup> and cold-rolled<sup>23</sup> steel sheet from South Korea. Further, six of these programs were also found to be countervailable in the USDOC's recent final determination of subsidization with respect to corrosion-resistant steel sheet from South Korea.<sup>24</sup>

[122] Given that the complainant's principal evidence regarding the subsidy programs' availability and/or use by CRS producers/exporters in South Korea consists of references to past countervailing investigations by either the USDOC or the CBSA, the CBSA reviewed the relevant public reports for these investigations. The CBSA also researched websites of a number of central and state government agencies in efforts to gather up-to-date information on the listed subsidy programs.

[123] Generally speaking, the reference material examined by the CBSA provided support for the complainant's allegation that the subject goods from South Korea have been subsidized. On the basis of its analysis, the CBSA determined that in respect of certain programs identified by the complainant there was not sufficient evidence regarding the applicability of the subsidy program to producers of CRS, the program did not appear to constitute a financial contribution or the program appeared to be generally available. Some of these conclusions were based on the analysis that was done in previous CBSA subsidy investigations involving goods from South Korea. Further, the CBSA also found that a number of programs appeared to be either duplicates or were very similar. Finally, some of the program names identified by the complainant were modified by the CBSA.

[124] As a result, the CBSA identified 27 potentially actionable subsidy programs. These programs have been investigated and found to be actionable either in the CBSA's or USDOC's previous subsidy investigations involving goods from South Korea and can be grouped into the following six categories:

1. Energy Savings and other Green Programs
2. Preferential Loans and Loan Guarantees;
3. Grants and Grant Equivalent;
4. Preferential Tax Programs;
5. Relief from Duties and Taxes; and
6. Goods/Services Provided by the Government at Less than Fair Market Value.

[125] The CBSA's analysis revealed that the 27 subsidy programs constitute potential financial contributions by the GOK that may have conferred benefits to producers/exporters of CRS. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[126] Please refer to **Appendix 1** for more information.

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<sup>22</sup> Exhibit 2 (NC) – CRS Complaint – Attachments 164, 165.

<sup>23</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 166.

<sup>24</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 167.

[127] If more information becomes available during the investigation process that indicates that some exporters/producers of subject goods may have benefited from any of the remaining alleged programs or any other programs during the POI, the CBSA will request complete information from the GOK and exporters/producers of subject goods to pursue the investigation of the program.

[128] The CBSA concluded that sufficient evidence is available to support the allegations that CRS originating in or exported from South Korea has been subsidized. In investigating the 27 programs, the CBSA has requested information from the GOK, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs, or any other programs, are actionable subsidies and, therefore, countervailable under SIMA.

## Vietnam

[129] The complainant identified 38 subsidy programs which may have conferred benefits to the producers/exporters of subject goods in Vietnam, and in turn resulted in the actionable subsidizing of exports of subject goods to Canada.<sup>25</sup>

[130] In alleging that actionable subsidies were applicable to the subject goods imported from Vietnam, the complainant relied on the most recent *New and Full Notification Pursuant to Article XVI: 1 of the GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures*,<sup>26</sup> the CBSA's subsidy investigation in *OCTG II*, the USDOC's most recent investigation concerning *Certain Steel Nails from Vietnam*<sup>27</sup> and the annual reports of Hoa Sen Steel Manufacturing, a Vietnamese CRS producer.

[131] The CBSA reviewed the public reports for the relevant investigations referred to by the complainant and other documentation submitted in the complaint including the latest subsidy notification to the WTO. The CBSA also researched websites of a number of central and state government agencies in order to gather up-to-date information on the subsidy programs.

[132] Generally speaking, the reference material examined by the CBSA provided support for the complainant's allegation that the subject goods from Vietnam have been subsidized. On the basis of its analysis, the CBSA determined that in respect of certain programs identified by the complainant there was not sufficient evidence regarding the applicability of the subsidy program to producers of CRS, the program did not appear to constitute a financial contribution or the program appeared to be generally available. Further, the CBSA found additional programs based on its review of Vietnam's Subsidy Notification to the WTO and the final determination of the CBSA's most recent subsidy investigation involving goods from Vietnam, *Copper Pipe Fittings II*. The CBSA also found that a number of programs appeared to be either duplicates or were very similar. Finally, some of the program names identified by the complainant were modified by the CBSA.

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<sup>25</sup> Exhibit 2 (NC) – CRS Complaint – Subsidy Appendix 5.

<sup>26</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 193.

<sup>27</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 191.

[133] As a result, the CBSA identified 12 potentially actionable subsidy programs. These programs have been investigated and found to be actionable in the CBSA's or the USDOC's previous subsidy investigations involving goods from Vietnam and can be grouped into the following four categories:

1. Preferential Loans and Loan Guarantees;
2. Grants and Grant Equivalents;
3. Preferential Tax Programs; and
4. Relief from Duties and Taxes.

[134] The CBSA's analysis revealed that the 12 subsidy programs constitute potential financial contributions by the GOK that may have conferred benefits to producers/exporters of CRS. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[135] Please refer to Appendix 1 for more information.

[136] If more information becomes available during the investigation process that indicates that some exporters/producers of subject goods may have benefited from any of the remaining alleged programs or any other programs during the POI, the CBSA will request complete information from the GOV and exporters/producers of subject goods to pursue the investigation of the program.

[137] The CBSA concluded that sufficient evidence is available to support the allegations that CRS originating in or exported from Vietnam has been subsidized. In investigating the 12 programs, the CBSA has requested information from the GOV, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs, or any other programs, are actionable subsidies and, therefore, countervailable under SIMA.

### **Estimated Amounts of Subsidy**

[138] The complainant was unable to estimate the amounts of subsidy on a program basis for the subject goods imported from China, South Korea and Vietnam. However, the complainant estimated the amounts of subsidy by calculating the difference between the estimated costs of production for the subject goods and their corresponding export prices. The complainant stated that the difference between the export price and the production cost of the subject goods for each country demonstrates that they are being sold to Canada at prices substantially below their cost of production, indicating a significant amount of subsidy.

[139] The CBSA estimated the amounts of subsidy conferred on exporters of the subject goods from China, South Korea and Vietnam by comparing the estimated full costs of the subject goods, which are the costs of producing of the goods plus allocated SG&A, with their weighted average export prices, as estimated above in the evidence of dumping section.

[140] The CBSA’s analysis of the information indicates that subject goods imported into Canada during the period of January 1, 2017 to December 31, 2017 were subsidized. The estimated amounts of subsidy, as a percentage of the export price, found for each of the named countries are summarized in the table below.

**TABLE 4**  
**ESTIMATED AMOUNTS OF SUBSIDY**

Country	Estimated Amount of Subsidy as a % of Export Price
China	10.2%
South Korea	12.9%
Vietnam	30.4%

**EVIDENCE OF INJURY**

[141] The complainant alleged that the subject goods have been dumped and subsidized and that such dumping and subsidizing have caused material injury and are threatening to cause material injury to the domestic industry producing like goods in Canada.

[142] SIMA refers to material injury caused to the domestic producers of like goods in Canada. The CBSA has concluded that CRS produced by the domestic industry is like goods to the subject goods from the named countries.

[143] In support of their allegations, the complainant provided evidence of an increase in the volume of dumped and subsidized imports; loss of market share and sales; undercutting, depression and suppression of prices; reduced production and resulting underutilization of capacity; and impacted financial results.

**Volume of Dumped and Subsidized Imports**

[144] The import volumes as estimated by the CBSA are detailed in the “Canadian Market” section of this *Statement of Reasons*. This information shows a trend of rising imports from China and Vietnam which increased from 40.7% and 0.0% of total imports in 2015, to 53.2% and 9.5% of total imports in 2017, respectively.

[145] With respect to South Korea, the import data shows an overall decrease in subject imports from 2015 to 2016. Imports from South Korea stabilized in 2017 remaining near 2016 levels for that year.



[146] Collectively, imports of subject goods from the three named countries increased by 36.4% from 2015 to the year ended December 31, 2017. During this same time period, imports of subject goods from all other countries decreased by 26.0%. Further, during this period, the total apparent Canadian market decreased by 6.6%.

[147] In summary, based on the CBSA's estimates and analysis of import volumes, the CBSA finds the complainant's claim of increased import volumes to be reasonable and well supported.

### **Loss of Market Share and Sales**

[148] The Canadian market information provided by the complainant shows a significant overall decrease in the market share of domestically produced CRS from 2015 through 2017.

[149] The complainant provided declarations which detail specific examples of lost sales due to lower pricing from exporters of the subject goods from the named countries.<sup>28</sup> The complainant also provided supporting documentation, including price quotations and internal reports that support the link between the complainant's lost sales and the allegedly dumped and subsidized subject goods.

[150] In addition to the examples provided by the complainant, the supporting producer Algoma also provided similar examples.<sup>29</sup>

[151] Based on the CBSA's analysis of the information contained in the complaint, the CBSA finds the claim of loss of market share and sales to be well supported and sufficiently linked to the allegedly dumped and subsidized goods.

### **Price Undercutting, Depression and Suppression**

[152] The complainant states that the allegedly dumped and subsidized goods have captured sales and market share by undercutting the prices of the domestic industry. To support this allegation the complainant has provided specific examples of lost sales and offers of subject goods at prices well below that of the complainant. The supporting producers, Algoma and Stelco, have provided similar examples.<sup>30</sup>

[153] The complaint contains evidence of price undercutting by subject goods. It also contains documented instances where prices were suppressed or where the complainant, and/or supporting producers, were forced to lower prices or lose sales in response to allegedly dumped and subsidized imports from the named countries.

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<sup>28</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 8.

<sup>29</sup> Exhibit 2 (NC) – CRS Complaint – Attachment 7.

<sup>30</sup> Exhibit 2 (NC) – CRS Complaint – Pages 55-78.

[154] The complainant submitted evidence showing that the average selling prices from China, South Korea and Vietnam, from 2015 through 2017, are substantially lower than those of the complainant.<sup>31</sup> The CBSA found this information to be consistent with the average import price data estimated by the CBSA.

[155] Based on the information provided by the complainant, the average domestic price of CRS increased year over year during the period of 2015 through 2017. Generally, this trend would not support an allegation of price suppression; however, according to the complainant, this allegation should be viewed in comparison to CRS spot pricing in the United States (US). The complainant argued that the North American CRS market is integrated and that pricing should generally be the same in the North Eastern United States and Central Canada. The complainant has stated that the CRU US Midwest spot price should reflect the spot price of CRS in both of these regions.<sup>32</sup>

[156] The CBSA reviewed this information and found that, as the US Midwest spot price increased from 2015 to 2017, the complainant's average domestic price of CRS also increased. However, while the complainant's average domestic selling price did increase during this period, the rate of growth was significantly lower than that of the US Midwest spot price. This has led to an increasing discrepancy between the complainant's average domestic selling price and the US Midwest spot price. This may indicate that prices in the Canadian market have not increased as they would in absence of the allegedly dumped and subsidized goods.

[157] It is important to note that in July and September 2016 the United States imposed trade remedies against CRS from China and South Korea. The imposition of these trade remedies coincides with a significant increase in the difference between the CRU US Midwest spot price and the complainant's average pricing.

[158] With respect to changes in the cost of manufacturing, the income statements provided by the complainant do not support the allegation that the complainant was unable to increase pricing to reflect changes in the cost of production. However, the complainant did provide information which demonstrates that this situation did change in the final two quarters of 2017. The CBSA finds this information to be relevant as it is the most recent information provided.

[159] Based on its analysis of the information contained in the complaint, the CBSA finds the claim of price undercutting and suppression to be well supported and sufficiently linked to the allegedly dumped and subsidized goods.

[160] While the CBSA does acknowledge that there are account specific examples where price depression has occurred, based on a review of the complainant's confidential sales and financial data, as well as the consolidated domestic industry data, for the period of 2015 through 2017, the CBSA does not find the claim of price depression to be well supported.

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<sup>31</sup> Exhibit 2 (NC) – CRS Complaint – Pages 55-78.

<sup>32</sup> Exhibit 2 (NC) – CRS Complaint – Pages 72-75.

## **Reduced Production and Resulting Underutilization of Capacity**

[161] The complainant states that capacity utilization rates with respect to the production of CRS have suffered due to the presence of the dumped and subsidized goods. The complainant noted that they have been forced to alter normal production plans due to reduced demand and lower prices for CRS.<sup>33</sup>

[162] The complainant's production statement, as well as the consolidated production statement of the domestic industry, demonstrate a decrease in the production of like goods for use in the domestic market. In addition, the consolidated production statement of the domestic industry demonstrates a decrease in the capacity utilization rate for the production of like goods.

[163] Based on the information provided, the CBSA finds the claim of reduced production to be reasonable and well supported. Further, the CBSA also finds the claim of a decrease in capacity utilization for the consolidated domestic industry to be reasonable and well supported. Although the CBSA does not find that there have been significant changes in the capacity utilization rates of the complainant, the CBSA acknowledges that this may be attributable to changes in the production of non-like goods.

## **Impacted Financial Results**

[164] The complainant submits that the injurious impact of the dumped and subsidized goods is demonstrated in its financial results. To support this allegation, the complainant has provided its financial statements for 2015 through 2017.<sup>34</sup>

[165] The CBSA has reviewed the complainant's financial statements and the financial statements of the consolidated domestic industry. Specifically, the product income statements for non-automotive CRS.<sup>35</sup> The CBSA finds that the financial results of the complainant, and the consolidated domestic industry, have improved from 2015 to 2017.

[166] The complainant acknowledged that the non-automotive CRS financial statements do indicate an improved situation from 2015 to 2017. However, the complainant also noted that financial performance decreased over the course of 2017.

[167] The CBSA finds that the information contained in the complaint does not establish a trend of a significantly worsening financial results. However, the CBSA also notes that the baseline for these comparisons, the results of 2015, may not be an appropriate benchmark. While the CBSA finds it reasonable to assume that the presence of the injury factors described above would have some impact on the financial results of the domestic industry, the CBSA also finds that the information in the complaint does not sufficiently link the allegedly dumped and subsidized goods to any significant impact on the complainant's financial results.

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<sup>33</sup> Exhibit 2 (NC) – CRS Complaint – Pages 89-91.

<sup>34</sup> Exhibit 2 (NC) – CRS Complaint – Pages 78-89.

<sup>35</sup> Exhibit 2 (NC) – CRS Complaint – Attachments 5 and 16.

## **CBSA's Conclusion – Injury**

[168] Overall the CBSA finds that there is a reasonable indication that material injury has occurred to the CRS industry in Canada. The nature of the injury incurred by the complainant is well-documented in terms of loss of market share and sales, price undercutting and price suppression, reduced production and underutilization of capacity. The CBSA finds that the injury can be reasonably attributed to the allegedly dumped and subsidized goods from the named countries.

### **THREAT OF INJURY**

[169] The complainant alleges that the dumped and subsidized goods from the named countries threaten to cause further material injury to the Canadian domestic industry. The complainant submits that the threat posed by the subject goods is evident in a number of factors which are likely to have an impact in the next 12 to 24 months.<sup>36</sup>

[170] The complainant provided the following information to support the allegation that imports from the named countries threaten to cause further injury to the Canadian industry.

#### **Significant Increase in the Rate of Subject Goods Imports**

[171] The complainant alleges that the rapid increase in the volume of dumped and subsidized subject goods, at prices that undercut domestically produced like goods, pose a threat of further injury to the Canadian industry. This allegation is supported by import statistics provided by the complainant. The complainant submits that without protection, the trend of rapidly increasing imports is expected to continue.<sup>37</sup>

[172] The CBSA's analysis of import data supports the allegation of an increase in the importation of the alleged dumped and subsidized goods. From 2015 through 2017, the collective volume of imported goods from three named countries increased by 36.4%. At the same time, imports from all other countries decreased by 26.0%.

#### **Excess Capacity in the Named Countries**

[173] The complainant has provided reports and supplementary information to support the allegation of excess and underutilized production capacity in the named countries. Using information from CRU, the complainant provided estimates of the excess production capacity of CRS in the named countries.<sup>38</sup>

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<sup>36</sup> Exhibit 2 (NC) – CRS Complaint – Pages 93-95.

<sup>37</sup> Exhibit 2 (NC) – CRS Complaint – Pages 95-96.

<sup>38</sup> Exhibit 2 (NC) – CRS Complaint – Pages 97-102.

[174] The combined capacity and output data reveals that producers in the named countries have massive excess capacity. Based on information provided in the complaint, the utilization rate for CRS production in China is expected to remain stable near 68%. The utilization rates for CRS production in South Korea and Vietnam are expected to increase from 82% and 86% in 2017, to 84% and 91% in 2019, respectively. However, according to the complainant, the remaining excess capacity is still significantly higher than the total demand for CRS in the Canadian market. This is also true of the excess CRS capacity in China, where, according to the complainant, the total excess capacity is more than significantly larger than the entire Canadian CRS market.

[175] Based on the CBSA's analysis of the information provided in the complaint, the CBSA recognizes the significant excess capacity of CRS producers in the named countries.

### **Market Conditions**

[176] The complainant states that CRS producers in the named countries will be encouraged to export products in the next 12-24 months as domestic demand will remain significantly below production capacity. Further, the complainant pointed to conditions in the global steel market and noted issues related to low demand and global excess capacity. These allegations are supported by industry publications which forecast market demand and production.<sup>39</sup>

[177] With respect to the CRS market in Canada, the complainant noted that although prices rose from 2015 to 2017, and domestic profitability improved, the Canadian industry remains vulnerable to subject goods. The complainant noted that the relatively higher prices will attract a growing supply and demand for low priced subject goods.

[178] The CBSA's analysis of the information contained in the complaint revealed market conditions which the CBSA recognizes may lead CRS producers in the named countries to target certain export markets, including Canada.

### **Foreign Trade Remedy Actions**

[179] The complainant submits that there are a number of foreign trade remedy actions in place that are likely to lead to diversion of subject goods into the Canadian market. Specifically, the complainant has pointed to the recent Section 232 Investigation in the United States, and the potential impact that this decision may have on the Canadian market. The complainant also pointed to other conditions, such as the renegotiation of the South Korean – US free trade agreement, the initiation of a safeguards investigation related to CRS in the European Union, an anti-circumvention investigation against Vietnamese CRS in the United States, and trade remedies imposed by other countries against carbon cold-rolled flat products from China, South Korea and Vietnam.<sup>40</sup>

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<sup>39</sup> Exhibit 2 (NC) – CRS Complaint – Pages 102-128.

<sup>40</sup> Exhibit 2 (NC) – CRS Complaint – Pages 128-139.

[180] The CBSA acknowledges the presence of trade remedy actions in the United States, the European Union, and other countries, which may impact the exports of CRS from the named countries. Further, the CBSA recognizes that these restrictions may have a significant impact on the Canadian market.

### **Product Shifting**

[181] The complainant states that CRS is a downstream product of HRS. HRS is a standalone good but it is also a primary input for a number of different steel products. As such, the complainant argues, when trade remedies are imposed on the upstream HRS product, or another downstream HRS product, either in Canada or in a third-party country, exporters are likely to focus on shifting production and exports to goods not subject to a trade remedy, such as CRS.<sup>41</sup>

[182] The complainant cites a number of trade remedies in place against HRS, and other downstream HRS products, in a variety of countries.

### **Impact of the Subject Goods on the Price of Like Goods**

[183] The complainant states that the dumping and subsidizing of subject goods has suppressed the price of like goods in Canada. Further, the complainant states that the subject goods from China, South Korea and Vietnam have undercut the price of like goods and led to lost sales. The complainant alleges that the trend of aggressive pricing of subject goods from the named countries will continue, and that combined with the increasing volume of subject goods from these countries, will have increasingly injurious effects. The complainant has provided account specific information detailing offers of subject goods at prices below that of the complainant.<sup>42</sup>

[184] The complainant also argues that the trend of aggressive pricing of subject goods will increase the spread between the complainant's average domestic pricing and CRU US Midwest spot prices.

### **CBSA's Conclusion – Threat of Injury**

[185] The complaint contains evidence that discloses a reasonable indication that there is a threat of injury due to increasing import volumes of subject goods from China, South Korea and Vietnam. The increasing volumes of imports of subject goods at prices that substantially undercut domestic producer pricing will continue to suppress domestic prices and threaten to take further market share from the Canadian producers. The CBSA is of the view that the adverse volume and price effects of the alleged dumped imports threatens to cause domestic producers to suffer further decline in production, capacity utilization, market share and prices.

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<sup>41</sup> Exhibit 2 (NC) – CRS Complaint – Pages 139-140.

<sup>42</sup> Exhibit 2 (NC) – CRS Complaint – Pages 123-129& 140-141.

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

[186] The CBSA finds that the complainant has provided sufficient evidence that there is a reasonable indication that they have suffered injury due to the alleged dumping of subject goods imported into Canada. There is a reasonable indication that the injury the complainant has suffered in terms of loss of market share and sales, price undercutting and price suppression, reduced production and the resulting underutilization of capacity, is related directly to the price advantage the apparent dumping and subsidizing has produced between the subject imports and the Canadian produced goods.

[187] Evidence has been provided by the complainant to establish this link in the form of price quotes, market data and sales and financial information related to their production and sales of like goods in Canada.

[188] The CBSA also finds that the complainant provided sufficient evidence that there is a reasonable indication that continued dumping and subsidizing of subject goods imported into Canada from the named countries threatens to cause injury to the Canadian industry producing these goods.

## **CONCLUSION**

[189] Based on information provided in the complaint, other available information, and the CBSA's import documentation, the CBSA is of the opinion that there is evidence that CRS originating in or exported from China, South Korea and Vietnam have been dumped and subsidized. Further, there is a reasonable indication that such dumping and subsidizing has caused and is threatening to cause injury to the Canadian industry. As a result, pursuant to subsection 31(1) of SIMA, dumping and subsidy investigations were initiated on May 25, 2018.

## **SCOPE OF THE INVESTIGATIONS**

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

[191] The CBSA has requested information from all potential exporters and importers to determine whether or not subject goods imported into Canada during the POI of April 1, 2017 to March 31, 2018, were dumped. The information requested will be used to determine the normal values, export prices and margins of dumping, if any.

[192] The CBSA requested information from producers and exporters of CRS in China and Vietnam, as well as the GOC and the GOV, to determine whether the conditions of section 20 exist in the sector under investigation. The CBSA has also requested costing and sales information from producers of CRS in Italy, South Korea and Sweden. Where sufficiently available, this information may be used to determine normal values of the goods in the event that the CBSA forms an opinion that the evidence in this investigation demonstrates that section 20 conditions exist in the flat-rolled steel sector, which includes CRS, in China and/or Vietnam.



[193] The CBSA has also requested information from the GOC, GOK, GOV and all potential producers/exporters to determine whether or not subject goods imported into Canada during the POI of April 1, 2017 to March 31, 2018, were subsidized. The information requested will be used to determine the amounts of subsidy, if any.

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

### **FUTURE ACTION**

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

[196] If the CITT finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the CBSA's preliminary investigations reveal that the goods have been dumped and/or subsidized, the CBSA will make preliminary determinations of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by August 23, 2018. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[197] Under section 35 of SIMA, if, at any time before making preliminary determinations, the CBSA is satisfied that the volume of goods of a country is negligible, the investigation(s) will be terminated with respect to goods of that country.

[198] Imports of subject goods released by the CBSA on and after the date of preliminary determinations of dumping and/or subsidizing, other than goods of the same description as goods in respect of which a determination was made that the margin of dumping of, or the amount of subsidy on, the goods is insignificant, may be subject to provisional duty in an amount not greater than the estimated margin of dumping or the estimated amount of subsidy on the imported goods.

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

[200] After the preliminary determinations, if, in respect of goods of a particular exporter, the CBSA's investigations reveal that imports of the subject goods from that exporter have not been dumped or subsidized, or that the margin of dumping or amount of subsidy is insignificant, the investigation(s) will be terminated in respect of those goods.

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

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

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

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

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

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

### **UNDERTAKINGS**

[206] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated.

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

[208] An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped or subsidized goods. Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address to one of the officers identified in the “Information” section of this document.

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

## **PUBLICATION**

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

## **INFORMATION**

[211] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping and subsidizing. Written submissions should be forwarded to the attention of the SIMA Registry and Disclosure Unit.

[212] To be given consideration in this phase of these investigations, all information should be received by the CBSA by July 3, 2018.

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

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

[215] The schedule of investigations and a complete listing of all exhibits and information are available at: [www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html). The exhibits listing will be updated as new exhibits and information are made available.

[216] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also available through 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:** Shawn Ryan 613-954-7262  
Sean Robertson 613-946-4857

**Fax:** 613-948-4844

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

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



JUN 08 2018

Doug Band  
Director General  
Trade and Anti-dumping Programs Directorate

ATTACHMENT

- Appendix 1 – Description of Identified Programs and Incentives

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

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

### **China**

#### **Analysis of Chinese Subsidies to be Investigated**

#### **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 DOC stated the Policy banks in the 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>43</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.

**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 Plat* 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

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<sup>43</sup> [http://www.chinadaily.com.cn/business/2017-08/22/content\\_30939856.htm](http://www.chinadaily.com.cn/business/2017-08/22/content_30939856.htm).

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, 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 section 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*, etc., 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 section 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 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, 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 section 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 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 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. And 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 as 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 administrated 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 previous CBSA's 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 absorb 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 enterprises 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 section 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 section 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**

The 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 21. Municipal/Local Income or Property Tax Reductions**

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 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 22. Preferential Tax Policies for Foreign-Invested Enterprises (FIEs)**

In Canada - *Pup Joint*, 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 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 23. Preferential Tax Policies related to Research and Investment**

In Canada - *Certain Photovoltaic Modules and Laminates*, the CBSA determined that two cooperating exporters received benefits under this program. Further, the GOC has listed this title in its notification of subsidy programs to the WTO.



Under this program based on the 2008 corporate tax law, high- or new-technology enterprises may deduct 50 percent of their total R&D expenses from their taxable income. Eligible expenses include design costs, expenses for materials and fuel consumed through R&D activities, wages, salaries, and benefits for personnel engaged in R&D activities, depreciation expenses on instruments and equipment, and many other expenses.

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

In the *OCTG* 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 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 26. Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs**

In Canada - *Certain Photovoltaic Modules and Laminates*, the CBSA determined that one cooperating exporter received benefits under this program.

These subsidies maybe limited to certain domestic enterprises that undertake "encouraged" projects as set forth in the "Catalogue of Industries for Guiding Foreign Investment." These same subsidies are also available to PRC producers of cold-rolled steel, as the development and application of cold continuous rolling wide band steel is listed as an "encouraged" project.

The 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 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 such as production of OCTG. 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-ally 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 – *FISC*, Canada - *Seamless Casing*, Canada – *OCTG*, Canada – *Carbon Steel Welded Pipe*, Canada – *Pip Joints*, Canada – *Stainless Steel Sinks*, 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 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.

A summary of Chinese subsidy programs to be initiated 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**

### **Analysis of South Korean Subsidies to be Investigated**

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

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 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.

## 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 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 at law to certain core technologies.

## 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).

## Preferential Tax Programs

### 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 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 at law to certain core technologies.

### 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.<sup>152</sup> 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.

### 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

#### 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.

#### 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.

#### 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.

#### 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.

## 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).

## 12. RSTA Article 78(4): Tax Reduction and Exemption for Industrial Complexes

The CBSA found this program to be actionable in the *OCTG I* 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).

### Preferential Loans and Loan Guarantees

## 13. KEXIM Export Factoring

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 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. This program appears to constitute an export subsidy in that it is contingent on export performance and therefore is a prohibited subsidy under paragraph 2(7.2)(b) of SIMA.

#### 14. KEXIM Export Loan Guarantees

KEXIM offers general financial guarantee support for export activity, whereby any default by a 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 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 under paragraph 2(7.2)(b) of SIMA.

#### 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 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 3 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.

#### 16. KEXIM Overseas Investment Credit Program

Under this program, KEXIM provides loans to 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.

## 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 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 under paragraph 2(7.2)(b) of SIMA.

## 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 under paragraph 2(7.2)(b) of SIMA.

## 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 under paragraph 2(7.2)(b) of SIMA.

## 20. Korean Trade Insurance Corporation (K-SURE) Export Credit Guarantee

The CBSA found this program to be actionable in the *OCTG I* 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 L/C. 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 under paragraph 2(7.2)(b) of SIMA.

## 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 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.

## 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 US Galvanized FD.



Dongbu Steel is a producer of Subject Goods in 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.

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

##### 23. Reductions of Lease Fees and other Financial Support in FEZs

FEZs are areas designated by 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 section 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.



#### 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 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.

#### 25. Export Insurance through the Korea Trade Insurance Corporation (K-Sure)

The CBSA found this program to be countervailable in the *OCTG I* 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 under paragraph 2(7.2)(b) of SIMA.

#### Grants and Grant Equivalents

#### 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.

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

### 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 to be initiated 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 RSTA 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**

### **Analysis of Vietnamese Subsidies to be Investigated**

The complainant alleged the following subsidy programs in Vietnam:

- Program 1.** Import duty exemptions for goods imported to create fixed assets of investment projects
- Program 2.** Import duty exemptions for raw materials, supplies and accessories which cannot be domestically produced yet and are imported for production activities of investment projects
- Program 3.** Import duty exemptions for goods produced, processed, re-processed or assembled in non-tariff zones without the use of raw materials and accessories imported from abroad, when imported into the domestic market

- Program 5.** Import duty exemptions for imported fixed assets of investment projects
- Program 6.** Import duty exemptions for raw materials, supplies and components that cannot be domestically manufactured and are imported to serve manufacturing activities of investment projects
- Program 7.** Import duty exemptions for goods manufactured, processed, recycled or assembled in a free trade zone without using imported raw materials or components
- Program 9.** Import duty exemption for goods imported for further processing and processed exports under processing contracts
- Program 15.** Import duty exemption on equipment and machinery imported to create fixed assets in designated geographic areas

### General Information

The programs of import duty exemptions are made available pursuant to the Law No. 107/2016/QH13<sup>44</sup> dated April 6, 2016, on export and import duties (Law No. 107) and Decree No. 134/2016/ND-CP<sup>45</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>46</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>47</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.

Due to the similarity of the programs, the eight programs will be grouped into one program to be investigated: Exemptions of import duty.

### Financial Contribution

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.

<sup>44</sup> <http://hethongphapluatvietnam.com/law-no-107-2016-gh13-dated-april-06th-2016-on-export-and-import-duties.html>.

<sup>45</sup> <http://hethongphapluatvietnam.com/decreed-no-134-2016-nd-cp-dated-september-01-2016-guidelines-for-the-law-on-export-and-import-duties.html>.

<sup>46</sup> [https://www.wto.org/english/thewto\\_e/acc\\_e/vnm\\_e/WTACCVNM43\\_LEG\\_15.pdf](https://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_15.pdf).

<sup>47</sup> <http://hethongphapluatvietnam.com/decreed-no-87-2010-nd-cp-of-august-13-2010-detailing-a-number-of-articles-of-the-law-on-import-duty-and-export-duty.html>.

### Specificity

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>48</sup> dated November 12, 2015, guiding the implementation of a number of articles of the law on investment.

The complainant alleged the following subsidy programs in Vietnam:

**Program 4.** Refund of import duty paid on goods imported for export production or export into non-tariff zones

**Program 8.** Refund of import duties on goods that are initially imported for business operation but eventually used for manufacture of goods that have been exported into a foreign country or a free trade zone are refunded

### General Information

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.

Due to the similarity of the programs, the two programs will be grouped into one program to be investigated: Refunds of import duty.

### Financial Contribution

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.

### Specificity

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to enterprises located in certain geographic areas or contingent upon export performance and, therefore, constitute a prohibited subsidy as defined in subsection 2(1) of SIMA.

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<sup>48</sup> [http://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).

The complainant alleged the following subsidy programs in Vietnam:

**Program 10.** Land rent reduction/exemption for exporters and land use fees or leases exemptions/reductions

**Program 16.** Land-use levy exemption/reduction

**Program 17.** Land-rent exemption/reduction

**Program 18.** Land use tax exemptions/reductions

**Program 22** Preferences related to land use tax, land use levy, land rent and water surface rent

### General Information

Land used for production and business purposes is governed by Law No. 45/2013/QH13<sup>49</sup> dated June 21, 2013, on Land (Law No. 45); Decree No. 46/2014/ND-CP<sup>50</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>51</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.

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.

Due to the similarity of the programs, the five programs will be grouped into one program to be investigated: Exemptions/reductions of land Rent, tax and levy.

### Financial Contribution

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.

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<sup>49</sup> [http://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>50</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>51</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>.



## Specificity

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.

The complainant alleged the following subsidy programs in Vietnam:

**Program 11.** Interest rate support program under the State Bank of Vietnam

**Program 23.** Preferential Lending to Exporters

**Program 26.** Export Factoring

**Program 27.** Financial Guarantees by VietninBank and VietcomBank for Export Activity

**Program 35.** Preferential Lending under the Viet Bank Export Loan Program

## General Information

Investment credit and export credit are made available pursuant to Decree No. 75/2011/ND-CP<sup>52</sup> dated August 30, 2011, on state investment credit and export credit (Decree No. 75) and Decree No. 151/2006/ND-CP<sup>53</sup> dated December 20, 2006, on state investment credit and export credit (Decree No. 151). These programs were provided by the GOV.

The five programs will be grouped into one program to be initiated: Export and import support in forms of preferential loan, guarantee and factoring. 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>54</sup> issued by the State Bank of Vietnam.

## Financial Contribution

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.

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<sup>52</sup> <http://vietnamlawmagazine.vn/decree-no-75-2011-nd-cp-of-august-30-2011-on-state-investment-credit-and-export-credit-4762.html>.

<sup>53</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>54</sup> <http://www.lawfirm.vn/?a=doc&id=2551>.



### Specificity

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

The complainant alleged the following subsidy programs in Vietnam:

- Program 12.** Enterprise Income Tax preferences, exemptions and reductions
- Program 13.** Enterprise Income Tax exemptions and reductions for business expansion and intensive investment
- Program 14.** Tax preferences for investors producing and/or dealing in export goods
- Program 24.** Income Tax Preferences under Chapter V of Decree 24
- Program 25.** Income Tax Preferences under Chapter IV of Decree 124
- Program 30.** Tax Exemptions and Reductions for Encouraged Sectors
- Program 31.** Tax Exemptions and Reductions for Investments in Economic Zones or High Tech Industrial Parks
- Program 32.** Tax Exemptions and Reductions for Foreign-Invested Enterprises

### General Information

Corporate income tax and tax benefits are governed by Law No. 14/2008/QH12<sup>55</sup> dated June 3, 2008, on Enterprise Income Tax 2008 (Law No. 14); Law No. 32/2013/QH13<sup>56</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>57</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.

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<sup>55</sup> [http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=10499](http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10499).

<sup>56</sup> <http://vbqpl.mpi.gov.vn/en-us/Pages/default.aspx?itemId=e8f95ed6-0c35-4522-9d94-4c3e25b104c8&list=documentDetail>.

<sup>57</sup> [http://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).

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).

These program will be grouped into one program to be investigated under: Enterprise income tax preferences, exemptions and reductions.

### Financial Contribution

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.

### Specificity

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.

The complainant alleged the following subsidy programs in Vietnam:

**Program 19** Investment support

**Program 20** Infrastructure Development Investment Support

### General Information

The complaint listed the two programs and referred to the US DOC's final determination in *Certain Steel Nails*.<sup>58</sup>

The programs are made available pursuant to *Decree 108/2006/ND-CP of the Government*, dated, September 22, 2006.<sup>59</sup> Decree 108 details in which areas the government will support new investments.

The two programs will be grouped into one program to be investigated: Investment support.

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<sup>58</sup> CRS Complaint (NC), Page 272, Appendix 5.

<sup>59</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).

### Financial Contribution

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.

### Specificity

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.

#### **Program 21** Enterprise income tax and import duty preferences

The complainant didn't specifically provide details related to the alleged subsidy program and how it would constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA. Moreover, the program is more likely to be covered by two previously discussed programs related to subsidy in income tax and import duty. Therefore, the CBSA will not investigate this program separately.

#### **Program 28** Export Promotion Program

### General Information

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>60</sup>

### Financial Contribution

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

### Specificity

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is 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.

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<sup>60</sup> [https://www.wto.org/english/tratop\\_e/tpr\\_e/s287\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s287_e.pdf).

## **Program 29** Hoa Sen Group Subsidies

The complainant alleged that the Hoa Sen Group has been receiving preferential loans from state-owned banks and other preferential tax deductibles from the State. Since this was not under a specific program and the alleged benefits may fall into other subsidy programs, the CBSA will not initiate the investigation under the program.

## **Program 33** Accelerated Depreciation of Fixed Assets

### General Information

Accelerated depreciation of fixed assets is specified in Circular 45/2013/TT-BTC<sup>61</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.

### Financial Contribution

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.

### Specificity

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 34** Preferential Provisions for Carry-forward of Losses

The complaint listed this program and referred to the CBSA's final determination in Oil Country Tubular Goods II (OCTG II). This program was initiated and reviewed in OCTG II, but neither the GOV nor any exporters in Vietnam provided sufficient subsidy information regarding the program. The complainant didn't provide any updated information about the subsidy program or evidence regarding the applicability of the subsidy program to producers of CRS.

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<sup>61</sup> <https://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>.

Based on CBSA research, Article 14 of the Law on Enterprise Income Tax, No.14/2008/QH12, states that enterprises incurring losses are allowed to conduct loss carry forward to subsequent years. The amount of loss is used to offset taxable income in the subsequent years. The maximum duration of loss carry forward cannot exceed five years.

On the basis of the information currently available, the program appears to be generally available to all enterprises operating in Vietnam and no information available to the CBSA at this time suggests the specificity of the program. Therefore, the program was removed from the investigation for the initiation purposes.

### **Program 36 Grants to Firms that Employ More than 50 Employees**

#### General Information

This program is made available pursuant to Decree No. 51/1999/ND-CP<sup>62</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>63</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.

#### Financial Contribution

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.

#### Specificity

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>62</sup> <https://luatminhkhue.vn/en/decree/decree-no-51-1999-nd-cp-dated-july-08--1999-of-the-government-detailing-the-implementation-of-law-no-03-1998-qh10-on-domestic-investment-promotion-amended-.aspx>.

<sup>63</sup> [https://www.wto.org/english/thewto\\_e/acc\\_e/vnm\\_e/WTACCVNM43\\_LEG\\_4.pdf](https://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_4.pdf).

### **Program 37 Assistance to Enterprises Facing Difficulties due to Objective Reasons**

#### General Information

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.

#### Financial Contribution

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.

#### Specificity

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.

### **Program 38 Acquisition of State Assets at Less Than Fair Market Value**

The complainant listed this program and referred to the CBSA's final determination in OCTG II. This program was initiated and reviewed in OCTG II, but neither the GOV nor any exporters in Vietnam provided sufficient subsidy information regarding the program. The complainant didn't provide any updated information about the subsidy program or evidence regarding the applicability of the subsidy program to producers of CRS.

The CBSA conducted its own research but no information was found to suggest producers of CRS have acquired assets from the GOV. Therefore, the CBSA will not investigate this program.

### **Program Incentives on Non-agricultural land use tax**

#### General Information

Although the complainant provided the CBSA with information about the subsidy program, it did not include this program in the list of alleged subsidies.



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.

### Financial Contribution

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.

### **Establishments Dealing with Exported Goods**

#### General Information

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.

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.



### Financial Contribution

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.

### Specificity

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.

A summary of Vietnamese subsidy programs to be initiated 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
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#### *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

\*Note – Programs are re-numbered and re-named