



OTTAWA, August 13, 2021

## STATEMENT OF REASONS

Concerning the final decisions with respect to  
the dumping and subsidy investigations of

**GRINDING MEDIA FROM INDIA**

## DECISIONS

On July 29, 2021, pursuant to paragraph 41(1)(b) of the *Special Import Measures Act*, the Canada Border Services Agency made final determinations respecting the dumping and subsidizing of certain grinding media originating in or exported from India.

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

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## SUMMARY OF EVENTS

[1] On October 27, 2020, the Canada Border Services Agency (CBSA) received a written complaint from Magotteaux Limitée (Magotteaux) (hereinafter, “the complainant”), alleging that imports of certain grinding media (GM) originating in or exported from India 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.<sup>1</sup>

[2] On November 17, 2020, 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 Government of India (GOI) that a properly documented complaint had been received. The GOI was also provided with the non-confidential version of the subsidy complaint and was invited for consultations prior to the initiation of the subsidy investigation, pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*.

[3] On December 16, 2020 consultations were held between the Government of Canada and the GOI via videoconference. During the consultations, the GOI made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. A written copy of the GOI’s remarks regarding the complaint was submitted on the same day. The CBSA considered the written representations made by the GOI in its analysis.

[4] The complainant provided evidence to support the allegations that GM from India has 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.

[5] On December 17, 2020, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of GM from India.

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

[7] On February 15, 2021, pursuant to subsection 37.1(1) of SIMA, the CITT made preliminary determinations that there is evidence that discloses a reasonable indication that the alleged dumping and subsidizing of GM from India have caused or are threatening to cause injury to the domestic industry.

[8] On March 10, 2021, the CBSA notified interested parties that the preliminary stage of the investigations will be extended pursuant to subsection 39(1) of SIMA.

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<sup>1</sup> Exhibit 2 (NC) – Grinding Media Complaint.

[9] On April 30, 2021, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing of GM originating in or exported from India.

[10] On April 30, 2021, pursuant to subsection 8(1) of SIMA, provisional duty was imposed on imports of dumped and subsidized goods that are of the same description as any goods to which the preliminary determinations apply, and that are released during the period commencing on the day the preliminary determinations were made and ending on the earlier of the day on which the CBSA causes the investigations in respect of any goods to be terminated pursuant to subsection 41(1) of SIMA or the day the CITT makes an order or finding pursuant to subsection 43(1) of SIMA.

[11] Based on the available evidence, the CBSA is satisfied that GM originating in or exported from India has been dumped and subsidized. Therefore, on July 29, 2021, the CBSA made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(b) of SIMA in respect of those goods.

[12] The CITT's inquiry into the question of injury to the domestic industry is continuing, and it will issue its decision by August 27, 2021. Provisional duties will continue to be imposed on the subject goods from India until the CITT renders its decision.

### **PERIOD OF INVESTIGATION**

[13] The Period of Investigation (POI) for the dumping and subsidy investigations is October 1, 2019 to September 30, 2020.

### **PROFITABILITY ANALYSIS PERIOD**

[14] The Profitability Analysis Period (PAP) for the dumping investigation is July 1, 2019 to September 30, 2020.

### **INTERESTED PARTIES**

#### **Complainant**

[15] The name and address of the complainant is as follows:

Magotteaux Limitée  
601 rue Champlain  
Magog, QC J1X 2N1

[16] Magotteaux is a subsidiary of Magotteaux International S.A. (the Magotteaux Group), with its headquarters located in Belgium. The Magotteaux Group has production facilities around the world, including the Magog facility in Canada, and can produce a wide range of GM, including cast and forged, low and high chromium, as well as ceramic grinding beads.<sup>2</sup>

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<sup>2</sup> Exhibit 2 (NC) – Grinding Media Complaint, paras. 6-11.

[17] Magotteaux was incorporated in Quebec and has been in operation since 1979. The Magog facility is the only GM production facility in Canada under the Magotteaux Group and produces iron cast grinding media exclusively.<sup>3</sup>

[18] Magotteaux is the only known producer of GM in Canada.<sup>4</sup>

### **Trade Unions**

[19] According to the complainant, persons employed in the production of GM in Canada are not represented by a trade union.<sup>5</sup>

### **Importers**

[20] At the initiation of the investigations, the CBSA identified three potential importers of the subject goods based on both information provided by the complainant and CBSA import entry documentation. All of the potential importers were asked to respond to the CBSA's Importer Request for Information (RFI).<sup>6</sup>

[21] The CBSA received one response to the Importer RFI from a non-resident importer. CBSA officers performed verifications by way of Verification Questionnaires for the importer, Vega Industries Limited USA.

### **Exporters**

[22] At the initiation of the investigations, the CBSA identified 11 potential exporters, producers, and vendors of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential exporters, producers, and vendors were asked to respond to the CBSA's Dumping RFI<sup>7</sup> and the CBSA's Subsidy RFI<sup>8</sup>.

[23] One exporter, its subsidiary vendor, and one of its subsidiary producers collectively responded to the Dumping RFI. The exporter and the subsidiary producer also collectively responded to the Subsidy RFI. Information on the results of the investigations pertaining to the exporter are summarized in the *Results of the Dumping Investigation* and *Results of the Subsidy Investigation* sections, found below.

[24] CBSA officers performed verifications by way of Verification Questionnaires for the exporter AIA Engineering Ltd. and its subsidiary producer Welcast Steels Ltd.

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<sup>3</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 1 – Affidavit of Plant Manager, paras. 3&6.

<sup>4</sup> Exhibit 2 (NC) – Grinding Media Complaint, para. 12.

<sup>5</sup> Exhibit 2 (NC) – Grinding Media Complaint, para. 69.

<sup>6</sup> Exhibit 23 (NC) - Importer RFI.

<sup>7</sup> Exhibit 22 (NC) – Exporter RFI – Dumping.

<sup>8</sup> Exhibit 21 (NC) – Exporter RFI – Subsidy.

## Government

[25] For the purposes of these investigations, “Government of India or GOI” refers to all levels of government, i.e., federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

[26] At the initiation of the investigations, the CBSA sent a Government Subsidy RFI<sup>9</sup> to the GOI. The GOI provided a response to the Government Subsidy RFI.

## PRODUCT INFORMATION

### Product Definition<sup>10</sup>

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

*Chrome cast iron grinding media in spherical (“ball”) or ovoid shape, with a diameter of 12.7 millimetres (½ inch) to and including 76.2 millimetres (3 inches) within tolerances of 5 percent (5%), with an alloy composition of 10 percent or more ( $\geq 10\%$  of total mass) chromium (“Cr”) content and produced through the casting method, originating in or exported from India.*

### Additional Product Information<sup>11</sup>

[28] For greater clarity, the product definition does not cover:

- Grinding media produced through the forging or stamping method; and
- Chromium cast iron grinding media with an alloy composition of less than 10 percent chromium ( $< 10\%$  of total mass).

[29] Within the mineral processing industry, a range of grinding conditions or environments exists and each of these mill environments presents particular conditions for grinding media that require the application of specific physical and chemical properties for optimum grinding media performance. Size and chemical composition of grinding media are two important factors influencing a grinding’s wear resistance and performance in a ball mill.

[30] Size of the grinding media depends on the mill feed size (particle size of material supplied to the mill) and achieved degree of fineness (size and percentage of required class size material at the exit of a ball mill). Grinding media are typically spherical in shape.

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<sup>9</sup> Exhibit 26 (NC) – Government Subsidy RFI.

<sup>10</sup> Exhibit 2 (NC) – Grinding Media Complaint, para 16.

<sup>11</sup> Exhibit 2 (NC) – Grinding Media Complaint, paras. 17-22, and Exhibit 1 – Affidavit of Plant Manager, paras. 4-10.

[31] GM are normally produced using a metal alloy composed mostly of steel scrap and alloys such as chromium. The chromium content of grinding media is another key component to the grinding media's performance and affects the grinding media's wear resistance against abrasion and corrosion, as well as the level of hardness of the grinding media.

[32] GM normally encompasses an alloy composition of 10 percent or more chromium content, with typical thresholds that do not exceed 35% chromium. The chromium content of GM is measured by testing the total chemical composition of the alloy with a spectrometer, determining the percentage of chromium to the total mass of the alloy.

[33] Production of GM in Canada focuses on the market segment of greatest demand which is 1" to 1 ½" grinding balls of 15% to 18% chromium content. There are no international technical standards applicable to grinding media.

### **Production Process<sup>12</sup>**

[34] The production of GM normally has seven main steps, which entails: (1) segregation of scrap metal, melting and preparation of the alloy; (2) preparation of the sand casts; (3) pouring of alloy and sand casting; (4) breaking of the casts; (5) heat treatment; (6) quenching; and (7) quality control.

#### 1. Segregation of scrap metal, melting and preparation of the alloy

[35] GM is produced using steel scrap metal as the main raw material input, consisting of iron and a variety of alloys. A high Cr content is preferable when pricing of this raw material is competitive, otherwise, mixed scrap is used, and the Cr content adjusted by adding ferrochrome (FeCr).

[36] The scrap metal is prepared and loaded into the electric induction melting furnace to be melted down to a "liquid state" available for pouring. Once molten, the alloy composition is tested and adjusted through the addition of other metals, principally FeCr, in order to achieve the correct chemical composition. For each batch, the chemical composition of the alloy is tested with a spectrometer and corrective additions are made until the alloy's chemical composition falls within the desired tolerance range.

[37] The molten metal is then transferred to hand ladles where the degassing process is done. After degassing, slag is skimmed off from the molten metal. The batch is then transferred into the pouring tank, a heated tank located above a casting line from which the alloy is poured into the sand casts.

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<sup>12</sup> Exhibit 2 (NC) – Grinding Media Complaint, paras 23-46.

## **2. Preparation of the sand casts**

[38] First, the sand mould, in which the liquid alloy will be poured, is shaped through an automated process. The moulds are created by pouring a green sand mix into a moulding chamber using compressed air. The sand is then squeezed between a ram and a swing, which are provided with a set of matching pattern plates that can be changed depending on the grinding media size to be produced.

## **3. Pouring of alloy and sand casting**

[39] Next, the liquid alloy, having been transferred to the pouring tank, is poured through the pouring sprue, a hole on the top of the sand mould left by the pattern impressions. The alloy then fills the inner cavities shaped in the right ball sizes by the pattern plates. Once poured, there is a “cool down” period, allowing the alloy to cool down and solidify within the cavities, leaving a set of solid metal balls connected by metal sprues.

## **4. Breaking of the casts**

[40] Once the metal alloy has solidified back to a solid shape, the sand mould with the solid metal balls inside, is transferred into the first of two rotary breaking drums. In the first “shake-out” drum, the sand mould is broken, and the sand taken out of the process, leaving only the metal grinding balls and pouring sprue. The balls and the sprues are then transferred to a second “breaker” drum to separate the balls from one another and break the sprues connecting each ball. The balls are then transferred into containers for another cooling period between 24-48 hours.

## **5. Heat Treatment**

[41] After cooling, the balls are moved to the heat treatment process. The balls move by conveyor to a furnace, which evenly and uniformly heats the balls to a specified temperature dependent upon required hardness.

## **6. Quenching**

[42] Once the heat treatment is completed, the grinding balls are quenched by placing the batch in a bath filled with a polymer-based quenching fluid. This involves the controlled cooling of a metal from a high temperature to a cooler temperature to facilitate the formation of the desired microstructure and physical properties. This thermal shock creates a stress inside the balls, making them achieve a hardness level measured on the Rockwell C scale using a durometer.

## **7. Quality control**

[43] Finally, quality tests such as metallurgical microscopic observations, experimental ball mills test, impact testing, and hardness tests are carried out to determine if the hardness of the balls is within the acceptable range. The balls are then packaged, ready to be shipped to customers.



## **Product Use<sup>13</sup>**

[44] GM are used to crush or grind material in a grinding mill. The type of mills in which this takes place are generally called ball mills, which are facilities in which a grinder is operated to crush mineral ore or raw materials. In the mining industry, the grinding process is the first step in the extraction of the ore from the mineral substrate in which it is found. Grinding mills are used for the comminution of iron ore, gold, copper, or other types of ores. In the cement industry, the grinding mill is essential to the comminution of limestone and other raw materials used in the production of cement and clinker.

[45] A ball mill is a cylindrical device used in grinding (or mixing) materials like ore, chemicals, water, or cement production raw materials. Ball mills rotate around a horizontal axis, partially filled with the material to be ground plus the grinding medium, with or without the addition of water (i.e., wet or dry mill conditions). The internal cascading effect caused by the rotation of the material to be ground with the grinding media causes the material to be reduced to a powder or slurry. Ball mills are designed to operate continuously, fed at one end with the material to be ground and the grinding media, and discharging the ground material at the other end.

[46] In the mining industry, dry grinding mills are primarily used when the downstream preparation process requires dry material, or in order to save water resources in dry environments. However, wet grinding is generally the norm in the Canadian mining and cement industries.

[47] Ball mills can grind various ores and other materials either wet or dry. There are two kinds of ball mills, grate type and overflow type, due to different ways of discharging material. Different ball mills will require different types of grinding, each material having its own specific properties and advantages.

## **Classification of Imports**

[48] The dumped and subsidized goods are normally classified under the following tariff classification numbers: 7325.91.00.10 and 7325.91.00.90.

[49] The listing of tariff classification numbers is for convenience of reference only. The tariff classification numbers may 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 CLASS OF GOODS**

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

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<sup>13</sup> Exhibit 2 (NC) – Grinding Media Complaint, paras. 47-52.

[51] In considering the issue of like goods, the CITT typically looks at a number of factors, including the physical characteristics of the goods (such as composition and appearance) their market characteristics (such as substitutability, pricing, distribution channels and end uses), and whether the domestic goods fulfill the same customer needs as the subject goods.

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

[53] In its preliminary injury inquiry for these investigations, the CITT further reviewed the matter of like goods and classes of goods. On March 2, 2021, the CITT issued its preliminary inquiry *Statement of Reasons*<sup>14</sup> for the investigations, indicating that it considered the subject goods to be comprised of a single class of goods.

### **THE CANADIAN INDUSTRY**

[54] The complainant accounts for all known domestic production of like goods.

### **IMPORTS INTO CANADA**

[55] During the final phase of the investigations, the CBSA refined the volume and value of imports based on information from CBSA import entry documentation and other information received from the exporter and importer.

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

**Imports of GM**  
(% of Total Import Volume)

<b>Country of Origin</b>	<b>POI (October 1, 2019 to September 30, 2020)</b>
India	100%
All Other Countries	0%
<b>Total Imports</b>	<b>100%</b>

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<sup>14</sup> Canadian International Trade Tribunal; Grinding Media Dumping and Subsidy Determination and Reasons (March 2, 2021), PI-2020-006.

## INVESTIGATION PROCESS

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

[58] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from all known and potential exporters, producers, and vendors in India. Information was also requested from the GOI concerning financial contributions made to exporters, producers, and vendors of GM released into Canada during the POI. The GOI was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

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

[60] All parties requested an extension to respond to their respective RFIs. The CBSA reviewed each request and granted extensions in instances where the reasons for making the requests constituted unforeseen circumstances or unusual burdens.

[61] After reviewing the RFI responses, supplemental RFIs (SRFIs) and deficiency letters were sent to several responding parties to clarify information provided in the responses and request additional information, where necessary. Verifications of the responding parties were conducted by way of Verification Questionnaires.

[62] Details pertaining to the information submitted by the exporters in response to the Dumping and Subsidy RFI as well as the results of the CBSA's investigations, are provided in the *Dumping Investigation* and *Subsidy Investigation* sections of this document.

[63] As part of the final phase of the investigations, case briefs and reply submissions were provided by counsels representing the complainant and the exporter from India. Details of the representations are provided in **Appendix 2**.

## **DUMPING INVESTIGATION**

### **Normal Value**

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

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

### **Export Price**

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

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

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

### **Margin of Dumping**

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

## Results of the Dumping Investigation

### AIA Engineering Ltd.

[70] AIA Engineering Ltd. (AIA), established in 1979, is a publicly traded limited corporation in India and a manufacturer and exporter of GM. AIA has a total of three production facilities capable of producing subject goods, i.e. Moraiya and Kerala facilities located in Gujarat and Trichy facility located in Tamilnadu.

[71] Welcast Steels Ltd. (Welcast), established in 1972, is a publicly listed company in India and a subsidiary of AIA. Welcast is a manufacturer of GM with its only production facility located in Karnataka.

[72] Vega Industries Middle East F.Z.C. (Vega ME), located in Ajman, UAE was established in 2002 and is a wholly owned subsidiary of AIA. Vega ME is a global distributor of products produced by AIA and its affiliated companies, including the subject goods exported to Canada.

[73] During the POI, all of the subject goods exported by AIA were sold to Vega Industries Limited USA (Vega USA). Vega USA, located in Brentwood, Tennessee, is a wholly owned subsidiary of Vega ME. Vega USA is a non-resident importer who re-sold the subject goods to unrelated purchasers in Canada.

[74] AIA, Welcast, and Vega ME collectively provided substantially complete responses to the Exporter dumping RFI and supplemental dumping RFIs, including a database of domestic sales of GM during the PAP. Vega USA provided a substantially complete response to the Importer RFI and three supplemental RFIs.

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

[76] Where there were sufficient domestic sales, normal values were determined using the methodology of section 15 of SIMA, based on domestic selling prices of like goods. Where there were insufficient sales of like goods that met the conditions of sections 15 and 16 of SIMA, normal values were determined using the methodology of paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[77] The amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of the SIMR, based on the profits earned by AIA on its domestic sales of goods of the same general category during the PAP.

[78] During the POI, all of the subject goods exported by AIA were sold to Vega USA, a related importer. Due to the relationship between the parties, a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the section 24 export prices with the section 25 export prices.

[79] The reliability test revealed that the export prices in accordance with section 24 of SIMA were unreliable and, therefore, export prices were determined in accordance with section 25 of SIMA.

[80] The total normal value compared to the total export price results in a margin of dumping of 15.7% for AIA, expressed as a percentage of the export price.

#### All Other Exporters

[81] For exporters of subject goods that did not provide a response to the dumping RFI or did not furnish sufficient information, the normal values and export prices were determined on the basis of facts available.

[82] In establishing the methodology for determining normal values and export prices under the ministerial specification, the CBSA analyzed all the information on the administrative record, including the complaint, the CBSA's estimates at the initiation of the investigations, information submitted by the exporter of GM from India, and customs documentation.

[83] The CBSA decided that the normal values determined for the exporter whose submissions were complete and reliable for the final determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for determining normal values since it reflects exporters' actual trading practices during the POI. One exporter, AIA, provided substantially complete and reliable submissions.

[84] The CBSA examined the difference between the normal value and the export price for each individual transaction for AIA and decided that the highest amount by which the normal value exceeded the export price (expressed as a percentage of export price), was an appropriate basis for determining normal values. The transactions were examined to ensure that no anomalies were considered, such as a very low volume or value, effects of seasonality or other business factors. No such anomalies were identified. This methodology limits the advantage that an exporter may gain from not providing the necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

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

[86] Based on the above methodologies, for exporters that did not provide a response to the Dumping RFI, the margin of dumping of subject goods originating in or exported from India was determined to be 38.7%, expressed as a percentage of export price.

## Summary of Results - Dumping

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

### Margins of Dumping by Exporter (October 1, 2019 to September 30, 2020)

Country of Origin or Export	Margins of Dumping (as % of Export Price)
<b>India</b>	
AIA Engineering Limited	15.7%
All Other Exporters	38.7%

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

[89] The goods under investigation have been dumped and the margins of dumping determined for the goods are greater than the threshold of 2% and are therefore not considered insignificant. As a result, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made a final determination of dumping respecting certain GM originating in or exported from India.

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

## SUBSIDY INVESTIGATION

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

[92] Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada where:

- (a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- (b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;

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

[93] Where subsidies exist they may be subject to countervailing measures if they are specific in nature. According to subsection 2(7.2) of SIMA a subsidy is considered to be specific when it is limited, in a legislative, regulatory or administrative instrument, or other public document, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy.

[94] A “prohibited subsidy” is either an export subsidy or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export. An export subsidy is a subsidy or portion of a subsidy contingent, in whole or in part, on export performance. An “enterprise” is defined as including a group of enterprises, an industry and a group of industries. These terms are all defined in section 2 of SIMA.

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

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

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



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

## **Results of the Subsidy Investigation**

[98] At the initiation of the investigation, the CBSA sent Subsidy RFIs to the GOI, as well as to all known exporters, producers and vendors of GM in India.

[99] The GOI requested an extension to submit their response to the Government Subsidy RFI. The CBSA granted the extension and the GOI provided an incomplete response on the extended deadline of February 9, 2021. Following its review, on March 23, 2021, the CBSA sent a deficiency letter to the GOI stating that their response was incomplete.

[100] On April 13, 2021, the GOI responded to the deficiency letter by providing supplemental information, but the submission was still considered to be deficient and on May 11, 2021, the CBSA sent a second deficiency letter to the GOI. By the closing of the record date of June 8, 2021, the GOI had not responded to the second deficiency letter.

[101] Deficiencies identified for the GOI, amongst other issues, was that it did not provide information pertaining to the majority of the alleged subsidy programs and did not include copies of the required legislation, regulations and government notices concerning the alleged subsidy programs. The GOI was informed that should it elect to submit a complete response to the Government Subsidy RFI in sufficient time to allow full analysis and verification of the information provided, the CBSA would endeavor to use such information for the purpose of the final phase of the subsidy investigation.

[102] As a result, the CBSA does not have the information necessary to determine if the programs that were used by the cooperative exporter constitute actionable subsidies, or to determine the actual amount of subsidy for the cooperative exporter using the regular subsidy provisions of SIMA. Without complete information from the GOI, the CBSA cannot determine if any of these programs are specific, a condition that is necessary in determining that a program constitutes an actionable subsidy under SIMA.

[103] In consideration of the level of cooperation received from the exporter who provided a substantially complete response to the Subsidy RFI, the CBSA determined an amount of subsidy for the cooperative exporter pursuant to a ministerial specification under subsection 30.4(2) of SIMA based on the information available, including the information provided in their responses to the Subsidy RFI and SRFIs.

AIA Engineering Ltd. (AIA)

[104] AIA is a producer and exporter of subject goods and provided substantially complete responses to the Subsidy RFI and SRFIs including subsidy Verification Questionnaires.

[105] For purposes of the final determination, AIA was found to have received countervailable benefits from the following six subsidy programs:

- Program 2: Duty Drawback Scheme (DDS)
- Program 4: Export Promotion Capital Goods Scheme (EPCG)
- Program 5: Merchandise Exports from India Scheme (MEIS) / Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP)
- Program 6: Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit
- Program 9: Electricity Duty Exemption
- Program 10: Electricity Duty Reduction on Furnace

[106] The above subsidy programs were considered to be specific and therefore actionable. This decision was made from the analysis of the information provided by AIA. For purposes of the final determination, the amount of subsidy for AIA is 6.3%, expressed as a percentage of the export price.

[107] A description of identified programs and incentives is included in **Appendix 3**.

All Other Exporters

[108] For all other exporters of subject goods originating in or exported India, the CBSA determined an amount of subsidy, pursuant to a ministerial specification under subsection 30.4(2) of SIMA, on the basis of the following methodology:

- 1) the amount of subsidy for each of the six programs, as found at the final determination, for the producer/exporter located in India for whom the CBSA has sufficient information to determine an amount of subsidy, plus;
- 2) the highest amount of subsidy for the six programs listed in (1), applied to each of the remaining ten potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[109] Using the above methodology, for the final determination, the amount of subsidy for all other exporters is 34.5%, expressed as the percentage of the export price.

## Summary of Results - Subsidizing

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

### Amounts of Subsidy by Exporter (October 1, 2019 to September 30, 2020)

Country of Origin or Export	Amounts of Subsidy (as % of Export Price)
<b>India</b>	
AIA Engineering Limited	6.3%
All Other Exporters	34.5%

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

[112] Pursuant to subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the export price of the goods is defined as insignificant. However, according to section 41.2 of SIMA, the CBSA is required to take into account Article 27.10 of the *WTO Agreement on Subsidies and Countervailing Measures* (ASCM) when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a product from a developing country should be terminated where the authorities determine that the overall level of subsidies granted upon the product in question does not exceed 2% of its value calculated on a per unit basis.

[113] Neither the ASCM nor SIMA defines or provides any guidance regarding the determination of a “developing country” for purposes of Article 27.10 of the ASCM. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients*<sup>15</sup> and regards a country as developing if it is listed as a least developed country, other low income country, lower middle income country or territory. As India is included in these lists for 2021, the CBSA extends developing country status to India for purposes of this investigation.

[114] As can be seen from the table above, the goods under investigation have been subsidized, and the amounts of subsidy determined are greater than the threshold of 2% and therefore not insignificant. As a result, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made a final determination of subsidy respecting certain GM originating in or exported from India.

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<sup>15</sup> <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC-List-ODA-Recipients-for-reporting-2021-flows.pdf>

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

## **DECISIONS**

[116] On July 29, 2021, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made final determinations respecting the dumping and subsidizing of certain grinding media originating in or exported from India.

## **FUTURE ACTION**

[117] The provisional period began on April 30, 2021, and will end on the date the CITT issues its finding. The CITT is expected to issue its decision by August 27, 2021. Provisional anti-dumping and countervailing duties will continue to apply until this date on imports of the subject goods from India. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available through the CBSA's website at: [www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html).

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

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

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

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

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

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

## **PUBLICATION**

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

## **INFORMATION**

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

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

**Telephone:** Jason Huang 343-553-1891  
Benjamin Crossan 343-553-1634

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

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



For Doug Band  
Director General  
Trade and Anti-dumping Programs Directorate

## APPENDIX 1

### SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY

Exporter	Margins of Dumping (as % of Export Price)	Amounts of Subsidy (as % of Export Price)
<b>India</b>		
AIA Engineering Limited	15.7%	6.3%
All Other Exporters	38.7%	34.5%

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

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

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

## **APPENDIX 2**

### **DUMPING AND SUBSIDY REPRESENTATIONS**

During the investigations, submissions containing representations were received on behalf of Magotteaux Limitée (complainant)<sup>16</sup> and AIA Engineering Ltd (AIA)<sup>17</sup>.

Following the June 8, 2021 closing of the record, case briefs were received on behalf of the complainant<sup>18</sup> and AIA<sup>19</sup>. The CBSA received reply submissions on behalf of the complainant<sup>20</sup> and AIA<sup>21</sup>.

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

The material issues raised by the parties are summarized as follows:

#### **DUMPING REPRESENTATIONS**

##### **Whether Market Segment is a Product Characteristic**

###### **Case Briefs**

Counsel for AIA submitted during the investigation and in the case brief that there are two distinct market segments for grinding media (i.e., cement and mining) and that the most important factor affecting AIA's price quoted to its customers is the application for which the customer is buying the material. AIA submitted that pricing and profitability in the cement segment is considerably higher than those in the mining segment, while cost differences are minor between the two segments.<sup>22</sup>

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<sup>16</sup> Exhibit 82 (PRO) and 83 (NC) – Complainant's comments regarding product characteristics – Magotteaux Limitée

<sup>17</sup> Exhibit 71 (PRO) and 72 (NC) – Response to dumping SRFI #1 – AIA Engineering Ltd.

<sup>18</sup> Exhibit 123 (PRO) and 124 (NC) – Case Brief – Magotteaux Limitée

<sup>19</sup> Exhibit 125 (PRO) and 126 (NC) – Case Brief – AIA Engineering Ltd.

<sup>20</sup> Exhibit 127 (PRO) and 128 (NC) – Reply Submission – Magotteaux Limitée

<sup>21</sup> Exhibit 129 (NC) – Reply Submission – AIA Engineering Ltd.

<sup>22</sup> Exhibit 72 (NC) – AIA's response to Question C1(b) of dumping SRFI #1, and Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd., page 2-3.

Counsel for AIA further submitted that price is the key distinguishing characteristic between the cement and mining segments and provided supporting data indicating that AIA's POI average domestic selling price to the cement segment was higher than its average selling price to the mining segment. AIA argued that there is no fair comparison between normal value and export price unless this fundamental difference is fully taken into account, and cited that a fair comparison between normal value and export price is required according to Article 2.4 of the WTO Anti-Dumping Agreement (ADA).<sup>23</sup>

Counsel for AIA submitted that market segment or end-use has been considered as a product characteristic for model matching purposes by the CBSA in its past investigations, such as *Dry Wheat Pasta* and *Fabricated Industrial Steel Components*.<sup>24</sup> Counsel for AIA argued that an adjustment to normal value pursuant to paragraph 5(d) of the SIMR should be made if the CBSA rejects market segment as a product characteristic and submitted that the amount for the adjustment should be equal to the POI average price difference between AIA's domestic sales to the cement and mining segments.<sup>25</sup>

Counsel for the complainant submitted during the investigation that grinding media presents the same physical characteristics and is an abrasive used for comminution to grind or reduce matter into particulates, regardless of its end-use or of the end-users.<sup>26</sup> Counsel for the complainant also submitted that market segment is not a product characteristic affecting price comparability for purposes of applying section 15 or 19 of SIMA and argued that AIA did not point to any differences (such as conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics) other than price that affect price comparability.<sup>27</sup>

Counsel for the complainant submitted that grinding media is produced using the same production lines, the same raw materials, and the same production techniques, regardless of who the customer may be, and results in similar costs of production. The complainant also submitted that scrap pricing and chromium content are the most important drivers of costs and, accordingly, prices.<sup>28</sup>

Counsel for the complainant submitted that the end-use distinction is not a matter that imparts fundamental physical characteristic distinctions, and argued that the grinding media described as subject goods is essentially the same as the like goods in this investigation. Counsel for the complainant further submitted that end-use or market segment was not deemed of relevance in characterising the product's characteristics in the investigations conducted by the governments of Brazil and India involving grinding media.<sup>29</sup>

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<sup>23</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd., page 3-4.

<sup>24</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd., page 7-8.

<sup>25</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd., page 6.

<sup>26</sup> Exhibit 83 (NC) – Complainant's comments regarding product characteristics, page 2.

<sup>27</sup> Exhibit 83 (NC) – Complainant's comments regarding product characteristics, page 4-6.

<sup>28</sup> Exhibit 83 (NC) – Complainant's comments regarding product characteristics, page 6-7.

<sup>29</sup> Exhibit 83 (NC) – Complainant's comments regarding product characteristics, page 7-11.



## Reply Submissions

Counsel for the complainant reiterated its position in the reply submission and submitted that “AIA’s argument that price in itself must be considered as an adjustment factor to reflect price comparability under the ADA is simply wrong”. Counsel for the complainant further refuted AIA’s argument by referring to Vega USA’s response to the importer RFI and submitted that the method used by Vega USA to determine selling prices to different end-users (i.e., mining and cement) is essentially the same.<sup>30</sup>

Counsel for the complainant submitted that section 5 of the SIMR makes reference to qualitative differences between the subject goods and the like goods wherein an adjustment would be warranted and argued that AIA’s approach to propose the Regulation 5 adjustment is not an adjustment provided for under the regulatory construct.<sup>31</sup>

## CBSA’s Response

The CBSA has reviewed the information submitted by AIA and has taken into consideration the representations provided by AIA and the complainant. Based on the information on the record, the CBSA found that there was no difference in the costing of grinding media based upon application (i.e., cement or mining), although the selling prices to different market segments varied during the POI. In addition, the CBSA found that the most significant factors affecting costs, ultimately price, are materials and energy.<sup>32</sup> The CBSA did not find that the application of grinding media is a cost factor.

The CBSA also found that the same grinding media can be used in both the mining and cement segments as they are interchangeable, as such, the application of grinding media does not impact the product characteristics (i.e., grade, size, shape and heat treatment) identified by the CSBA at the initiation of the investigations. For purposes of this investigation, the CBSA did not consider market segment or end-use as a product characteristic. The CBSA recognizes that market segment or end-use has been used as a product characteristic in previous investigations, however, decisions on such issues were made on a case-by-case basis.

Paragraph 5(d) of the SIMR provides that the selling price of like goods shall be adjusted if the conditions of sale differ between the subject goods and the like goods, which is normally referred to the differences of actual payment periods in the domestic market and for sales to the importer. The market segment issue is irrelevant to section 5 of the SIMR.

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<sup>30</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, page 2-3.

<sup>31</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, page 4.

<sup>32</sup> Exhibit 44 (PRO), Exhibit D16, AIA’s response to dumping RFI.

## **Amount for Profits Determined under Paragraph 11(1)(b) of SIMR**

### **Case Briefs**

Counsel for AIA submitted that the CBSA made no distinction between the amounts for profits realized on AIA's domestic sales to the cement vs. mining segments at the preliminary determination, and argued that this unjustifiable rejection of this distinction is unfair considering that AIA's export sales to Canada were predominantly made to the mining segment.

Counsel for AIA further submitted that AIA earns a much higher profit on domestic sales to the cement segment than the profits earned on its domestic sales to the mining segment, and argued that the amount for profits earned on domestic sales to the cement segment can't be applied to AIA's export sales to the mining segment. As such, AIA submitted that separate profit ratios should be applied for sales to the mining and cement segments when determining paragraph 19(b) normal values.<sup>33</sup>

### **CBSA's Response**

Paragraph 11(1)(b) of the SIMR provides direction on what the CBSA is to use as a reasonable amount for profits when calculating paragraph 19(b) normal values, and profit must be established in accordance with a hierarchy provided under subparagraph 11(1)(b)(i) to 11(1)(b)(vi) of the SIMR.

Since market segment was not considered as one of the product characteristics for purposes of selecting like goods in this investigation, and as explained in the "Results of the Dumping Investigation" section, a reasonable amount for profits determined for AIA was made pursuant to subparagraph 11(1)(b)(ii) based on the weighted average profits earned on domestic sales of goods that are of the same general category as the subject goods sold to Canada, regardless of market segment or end-use.

## **Application of Paragraph 11(1)(c) of SIMR**

### **Case Briefs**

Counsel for AIA submitted that, when determining paragraph 19(b) normal values, a reasonable amount for administrative, selling and all other costs must first be determined in accordance with subparagraph 11(1)(c)(i) of the SIMR on the basis of the GS&A expenses incurred by the exporter on its domestic sales, and further submitted that the CBSA is permitted to consider the other alternative (i.e., subparagraph 11(1)(c)(ii)) only if a reasonable amount can't be established under subparagraph 11(1)(c)(i) of the SIMR.

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<sup>33</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd., page 12-13.

Counsel for AIA argued that the GS&A expenses incurred by its related trading company (i.e., Vega Middle East) for the export sales to Canada are irrelevant to AIA's GS&A expenses incurred on its domestic sales, and submitted that the application of subparagraph 11(1)(c)(i) of the SIMR would preclude the inclusion of those GS&A expenses as AIA had provided a GS&A ratio on its domestic sales.<sup>34</sup>

### **Reply Submissions**

Counsel for the complainant refuted the GS&A claim made by AIA and argued that, in applying subparagraph 11(1)(c)(ii) of the SIMR, the GS&A expenses must include all GS&A incurred in the sequence of the sales transactions by all parties involved in the sales transaction.<sup>35</sup>

### **CBSA's Response**

The CBSA has reviewed and verified the information submitted by AIA and considered the costing information of the exporter to be well supported and adequate, as such, a reasonable amount for administrative, selling and all other costs determined for AIA was made pursuant to subparagraph 11(1)(c)(i) of the SIMR on the basis of the GS&A expenses that are reasonably attributable to the production and domestic sales of like goods made by the exporter.

### **Application of Section 22 of SIMR**

#### **Case Briefs**

Respecting the industry profit calculated at the preliminary determination for purposes of estimating the section 25 export price, counsel for AIA argued that the CBSA claimed that the amount for profit was estimated in accordance with paragraph 22(c) of the SIMR, however, it failed to demonstrate that the requirements of that provision were met. Counsel for AIA further argued that the amount for profit used by the CBSA was plainly unreasonable when the CBSA had other financial data available on the record regarding the actual profits earned by the two grinding media suppliers in Canada (i.e., Vega USA and the complainant).<sup>36</sup>

### **Reply Submissions**

Counsel for the complainant submitted that the amount for profit calculated by the CBSA was appropriate and fully in holding the application of the SIMR, and argued that the use of the complainant's profit as a benchmark was not warranted because the profit was suppressed on account of the injury caused by the presence of dumped and subsidized subject goods in the Canadian market.<sup>37</sup>

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<sup>34</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd., page 9-10.

<sup>35</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, page 5-6.

<sup>36</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd., page 10-12.

<sup>37</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, page 6.

## **CBSA's Response**

Paragraphs 22(a) to (c) of the SIMR prescribe the methods by which the amount for profit may be determined for purposes of calculating the section 25 export price. It is the CBSA's policy that paragraphs 22(a) to (c) are applied in sequence, and the selection of which goods fall in the category of "like" goods, goods of "the same general category" or goods that are of "the group or range of goods that is next largest to the same general category" is at the discretion of the President of the CBSA. The CBSA must be satisfied that the goods selected reasonably fall in the definition of the category being used.

Given that only one of the two interested parties (i.e., the complainant and Vega USA) provided the required financial information in accordance with section 22 of the SIMR, the CBSA is precluded from using the profit data from a single party in order to maintain the confidentiality of the data provided, as such, paragraphs 22(a) and 22(b) cannot be considered in establishing an amount for profit.

The CBSA utilized alternative sources of information in applying paragraph 22(c) of the SIMR, and the best information available for this investigation is a "Financial Performance Data" report published by Innovation, Science and Economic Development Canada (ISEC). For the purposes of the final determination, the amount for profit was determined pursuant to paragraph 22(c) of the SIMR, by using the most recent profit data available from a report generated using ISEC's 2019 Financial Performance Data. The industry selected by the CBSA is classified as North American Industry Classification System (NAICS) 331511 – iron foundries industry, which represents goods that are of the group or range of goods that is next largest to the same general category.

## **SUBSIDY REPRESENTATIONS**

### **Duty Drawback Scheme (DDS)**

#### **Case Briefs**

Counsel for AIA submitted that the amount of subsidy under DDS should be based exclusively on the DDS value related to subject goods exported to Canada and that were received during the POI.<sup>38</sup>

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<sup>38</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd, page 14.

## **Reply Submissions**

Counsel for the complainant refuted the statement made by counsel for AIA and submitted that under DDS, products made out of duty paid inputs are exported and thereafter a refund of duty is claimed on the basis of two methods: i) actual duty/tax incidence (brand rate) or ii) averages (all industry rates). The complainant submitted that AIA's argument that the amount of subsidy should be based exclusively on the benefit amount related to subject goods is incorrect and should be set aside and that the CBSA was correct to proceed to calculate the benefit received as it did.<sup>39</sup>

## **CBSA's Response**

Due to the lack of a complete response from the GOI, there is not sufficient information on the record to determine whether the program are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy program is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information on the record indicates that this program does not appear to be generally available to all enterprises in India. As a result, the CBSA determined an amount of subsidy pursuant to a ministerial specification under subsection 30.4(2) of SIMA based on the information provided by AIA. The CBSA calculated the amount of subsidy based on the benefits received by AIA under the DDS that were attributable to all sales during the POI.

## **Export Promotion Capital Goods Scheme (EPCG)**

### **Case Briefs**

Counsel for AIA submitted that EPCG allows the import of capital goods for pre-production, production and post-production without payment of customs duty and the benefit applies to the production of goods sold in all markets. Counsel for AIA submitted the benefit should be allocated accordingly. Counsel for AIA also submitted that certain type of duties exempted under EPCG are not countervailable, therefore, they should not be included in the calculation of the amount of subsidy, and further argued that this is supported by the decisions made by the US Department of Commerce and the European Commission.<sup>40</sup>

## **Reply Submissions**

Counsel for the complainant refuted the statement made by counsel for AIA and submitted that benefits received under EPCG establish the countervailability of the full amount received under that program "on the basis of the unpaid customs duty on imported capital goods spread across a period, which reflects the normal depreciate period of such capital goods." As such, the CBSA must refer back to the EPCG licenses and cumulate the amount of duty saved appearing on the face of the licenses without any adjustments.<sup>41</sup>

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<sup>39</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, page 6.

<sup>40</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd, page 15.

<sup>41</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, pages 6-7.

## **CBSA's Response**

Due to the lack of a complete response from the GOI, there is not sufficient information on the record to determine whether the program are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy program is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information indicates that this program does not appear to be generally available to all enterprises in India. As a result, the CBSA determined an amount of subsidy pursuant to a ministerial specification under subsection 30.4(2) of SIMA based on the information provided by AIA. The CBSA calculated the amount of subsidy based on the net benefits received by AIA under the EPCG that were attributable to all production during the POI.

## **Merchandise Export from India Scheme / Scheme for Remission of Duties and Taxes on Exported Products (MEIS)**

### **Case Briefs**

Counsel for AIA submitted that the amount of benefit under this program should be limited to amounts received during the POI in respect of exports of subject goods to Canada.<sup>42</sup> In addition, AIA's counsel submitted that the program has been terminated and that no amount of subsidy should apply to future shipments in the event that a final measure is imposed.<sup>43</sup>

### **Reply Submissions**

Counsel for the complainant refuted the statement made by counsel for AIA and submitted that another program is replacing MEIS, Scheme for Remission of Duties and taxes on Exported Products (RoDTEP) and provided new information to support its argument.<sup>44</sup>

## **CBSA's Response**

Due to the lack of a complete response from the GOI, there is not sufficient information on the record to determine whether the program are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy program is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information indicates that this program does not appear to be generally available to all enterprises in India. As a result, the CBSA determined an amount of subsidy pursuant to a ministerial specification under subsection 30.4(2) of SIMA based on the information provided by AIA. The CBSA calculated the amount of subsidy based on the benefits received by AIA under the MEIS that were attributable to all sales during the POI.

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<sup>42</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd, page 16.

<sup>43</sup> Exhibit 124 (NC) – Case Brief – Magotteaux Limitée, pages 11-12.

<sup>44</sup> Exhibit 129 (NC) – Reply Submission – AIA Engineering Ltd, page 7.

In addition, based on the information available on the record and due to the lack of a response from the GOI, the CBSA determined the amount of subsidy for future shipments pursuant to a ministerial specification under subsection 30.4(2) of SIMA based on the information on the record. The CBSA calculated the amount of subsidy for future shipments based on the benefits received by AIA during the POI.

### **Gujarat Electricity Duty Exemption Scheme (GEDES) and Electricity Duty Reduction on Furnace**

#### **Case Briefs**

Counsel for AIA submitted the GOI has demonstrated that this program is not countervailable as there is no basis for a finding of specificity. In addition, counsel for AIA argued that the amount of benefit estimated at the preliminary determination under this program was overstated.<sup>45</sup>

#### **Reply Submissions**

Counsel for the complainant refuted the statement made by counsel for AIA and submitted that GEDES is specific as it provides duty exemption to certain select industrial undertakings for a period of five years.<sup>46</sup> Counsel for the complainant also argued that the Electricity Duty Reduction on Furnace program is also specific as it reduces the rate of duty on electricity consumed in electrochemical, electrolyte and electrometallurgy processes carried out by specific industrial establishments operating in a specific geographic area.<sup>47</sup>

#### **CBSA's Response**

Due to the lack of a complete response from the GOI, there is not sufficient information on the record to determine whether the program are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy programs are not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information indicates that these two programs do not appear to be generally available to all enterprises in India. As a result, the CBSA determined an amount of subsidy pursuant to a ministerial specification under subsection 30.4(2) of SIMA.

### **Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit**

#### **Case Briefs**

Counsel for AIA submitted that this program was ended on June 30, 2021 and in the event that final measures are imposed, no amount of subsidy should be imposed on future exports to Canada.<sup>48</sup>

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<sup>45</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd, page 16.

<sup>46</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, pages 7-8.

<sup>47</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, page 8.

<sup>48</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd, page 17.

## **Reply Submissions**

Counsel for the complainant refuted the statement made by counsel for AIA and submitted that this program has been extended. Even though the extension conditions have been delayed, the CBSA should countervail benefits received under this program based on rates known to have been conferred under this program during the POI.<sup>49</sup>

## **CBSA's Response**

Due to the lack of a complete response from the GOI, there is not sufficient information on the record to determine whether the program are specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy program is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information indicates that this program does not appear to be generally available to all enterprises in India. As a result, the CBSA determined an amount of subsidy pursuant to a ministerial specification under subsection 30.4(2) of SIMA.

In addition, based on the information available on the record and due to the lack of a response from the GOI, the CBSA determined the amount of subsidy for future shipments pursuant to a ministerial specification under subsection 30.4(2) of SIMA based on the information on the record. The CBSA calculated the amount of subsidy for future shipments based on the benefits received by AIA during the POI.

## **Government of India Response**

### **Case Briefs**

Counsel for AIA submitted that the information requested by the CBSA in the deficiency letters sent to the GOI was unnecessary or had already been provided by the GOI, particularly, regarding some programs that are clearly export subsidies (specific on that basis), the CBSA would not need or use the information relating to benefits received by all sectors of the Indian economy, which impose an undue burden contrary to the WTO Agreement on Subsidies and Countervailing Measures.<sup>50</sup>

## **CBSA's Response**

As noted in the earlier sections of this *Statement of Reasons* respecting the results of the CBSA's subsidy investigation, the information submitted by GOI was found to be incomplete. In response to the subsidy RFI, the GOI failed to provide information pertaining to the majority of the alleged subsidy programs and did not include copies of the required legislation, regulations and government notices concerning the alleged subsidy programs.

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<sup>49</sup> Exhibit 128 (NC) – Reply Submission – Magotteaux Limitée, page 8

<sup>50</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd, page 17.



The GOI was given a second opportunity to submit a complete response following the first deficiency letter, however, the second response did not sufficiently address the deficiencies identified by the CBSA. The CBSA did not receive a response to the second deficiency letter from the GOI.

## **Export Subsidies**

### **Case Briefs**

Counsel for AIA submitted that programs 2, 4, 5 and 6 are export subsidies as they are contingent on exports and argued that under these programs should reduce the provisional dumping duties according to section 10 of SIMA.<sup>51</sup>

Counsel for the complainant agreed that programs 2, 4, 5 and 6 are export subsidies and the benefits of these export subsidy programs should be allocated only on the recipient's export sales and not on the total sales of the beneficiary.<sup>52</sup>

### **CBSA's Response**

For the purposes of the final determinations, the CBSA could not determine whether the named subsidy programs are export subsidies due to the lack of a complete response by the GOI, as such, section 10 of SIMA is not applicable.

## **Undisclosed Countervailable Programs and Benefits**

### **Case Briefs**

Counsel for the complainant submitted that programs administered by the Gujarat Industrial Development Corporation ("GIDC") were in place throughout the entire POI. GIDC acts as an incentivized industrial development location providing 216 advantages. In addition, counsel for the complainant submitted that AIA and Welcast failed to address the benefits of their operations being in GIDC Estates. In addition, AIA failed to inform the CBSA of new, or undisclosed subsidization programs in place in areas or states where AIA and Welcast operate.

These incentives were put in place during the POI and AIA ought to have disclosed this to the CBSA, regardless of whether they received any specific countervailable benefit under the program. Counsel for the complainant submitted that the program must be added to the list of potentially countervailable programs and therefore estimated benefits must be added to the Final Determination subsidy rates calculated by the CBSA in this investigation.<sup>53</sup>

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<sup>51</sup> Exhibit 126 (NC) – Case Brief – AIA Engineering Ltd, page 17.

<sup>52</sup> Exhibit 124 (NC) – Case Brief – Magotteaux Limitée, pages 11-12.

<sup>53</sup> Exhibit 124 (NC) – Case Brief – Magotteaux Limitée, pages 9-11.

## **Reply submissions**

Counsel for AIA refuted the statement made by the complainant and submitted that AIA has fully disclosed all programs under which it received benefits and their information is consistent with the responses submitted by the GOI. Specifically, AIA disclosed that it has not been allotted land from GIDC directly but holds land by way of assignment of lease and that it has not received benefits under the Scheme for Capital Subsidy for large industries.<sup>54</sup>

## **CBSA's Response**

The CBSA has reviewed and verified the information submitted by AIA and has not found the programs administered by the GIDC to have benefited AIA or Welcast.

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<sup>54</sup> Exhibit 129 (NC) – Reply Submission – AIA Engineering Ltd, pages 2-3.

### **APPENDIX 3 – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES**

This Appendix consists of descriptions of the subsidy programs which the responding exporter benefited from during the course of the Period of Investigation (POI), as well as of other potentially actionable subsidy programs identified in this investigation. Questions concerning these programs were included in the Subsidy RFI sent to the government of India (GOI) and to all known exporters/producers of subject goods.

The Canada Border Services Agency (CBSA) has used the best information available to describe the potentially actionable subsidy programs. This includes using information provided by the exporter, information included in the complaint, as well as information obtained from CBSA research on potential subsidy programs in India.

#### **Subsidy programs used by the responding exporter**

Based on information available, for purposes of the final determination, the CBSA has found that these programs were used by the responding exporter in India.

For the purposes of the final determination, these programs constitute a financial contribution in that the 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, pursuant to section 2(1.6)(b) of *Special Import Measures Act* (SIMA).

The available information indicates that these programs do not appear to be generally available to all enterprises in India. As well, due to the lack of a response by the GOI, there is not sufficient information on the record to determine that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. Therefore, guided by the principles of subsection 2(7.3) of SIMA and basing its opinion on the best available information, the CBSA has taken the position that the subsidy derived from these programs is likely to be specific in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

## **Program 2: Excessive Duty Drawback (DDB)**

During the POI, the cooperative exporter received a benefit under this program in the form of excessive duty drawback. Pursuant to section 75 of the *Customs Act 1962* and the *Customs and Central Exercise Duties Drawback Rules 2017*, Duty Drawback Scheme (DDS) replaced Duty Entitlement Passbook Scheme and is administered by the Department of Revenue.<sup>55</sup> Under the DDS, products made out of duty paid inputs are exported and thereafter a refund of duty is claimed on the basis of two methods: i) actual duty/tax incidence (brand rate) or ii) averages (all industry rates). Duty drawback rates are normally published on a yearly basis. According to the information provided in the complaint, the duty drawback rates for 2019 and 2020 for the goods subject to the complaint (i.e. under HS heading 7325) are 1.8% and 1.6% of the FOB value of the goods, respectively.<sup>56</sup>

## **Program 4: Export Promotion Capital Goods Scheme (EPCG)**

During the POI, the cooperative exporter received a benefit under this program in the form of an exemption from basic customs duty rates on importation of certain capital goods. Pursuant to Chapter 5 of the FTP and Chapter 5 of the *Handbook of Procedures (HBP)*,<sup>57</sup> the objective of the Export Promotion Capital Goods Scheme (EPCG) is to facilitate import of capital goods for producing quality goods and services to enhance India's export competitiveness.

The EPCG allows import of capital goods for pre-production, production and post-production at zero, 3% and 5% basic customs duty<sup>58</sup>, subject to an export obligation equivalent to six times of the duty saved on the imported capital goods within a period of six years.

## **Program 5: Merchandise Export from India Scheme (MEIS) / Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP)**

During the POI, the cooperative exporter received a benefit under this program in the form of reduced future customs duty. The objective of MEIS is to offset infrastructural inefficiencies and associated costs involved in the export of goods/products that are produced/manufactured in India, and especially of those goods/products that enhance India's export competitiveness because they have a high export intensity and employment potential. Different reward rates under MEIS are prescribed (i.e. 2%, 3%, 5%) depending on the specific merchandise and country. Rewards are calculated on the basis of realized FOB value of exports in free foreign exchange or on the basis of FOB value of exports as given in the shipping bills in free foreign exchange, whichever is less. Rewards are given in the form of freely transferable financial instrument known as Scrips which can be used only for payment of custom duties.<sup>59</sup>

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<sup>55</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 95 – Section 75 of the Customs Act, 1962 and Exhibit 96 - Customs and Central Exercise Duties Drawback Rules, 2017

<sup>56</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibits 97 to 100.

<sup>57</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 101 – Chapter 5 of the FTP, and Exhibit 102 – Chapter 5 of the HBP.

<sup>58</sup> Exhibit 43 (NC) page 28 – Response to Exporter Subsidy RFI – AIA Engineering Limited.

<sup>59</sup> Exhibit 43 (NC) page 34 – Response to Exporter Subsidy RFI – AIA Engineering Limited.

## **Program 6: Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit**

Program *Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit* was introduced by the Reserve Bank of India (RBI) on December 4, 2015.<sup>60</sup> The program was in effect from April 1, 2015 for five years, and “from the month of December 2015 onwards, banks shall reduce the interest rate charged to the eligible exporters as per our extant guidelines on interest rates on advances by the rate of interest equalization provided by Government of India.” The rate of interest equalization specified in the program is 3% per annum, i.e., eligible exporters can receive reduction in interest rate of 3% from banks.

The scheme is available to exports of a wide range of products under 416 tariff codes including HS code 7325, and to exports made by Micro, Small & Medium Enterprises (MSMEs) across all tariff codes.<sup>61</sup> In November 2018, the RBI increased the reduction in interest rate from 3% to 5% for exports made by MSMEs<sup>62</sup>, and in January 2019, the RBI expanded and included exports made by merchant exporters in the program.<sup>63</sup> On May 13, 2020, the RBI approved the extension of the program for one more year, up to March 31, 2021.<sup>64</sup>

## **Program 9: Electricity Duty Exemption**

The GEDES is provided under the Gujarat Electricity Duty Act, 1958 (Electricity Act) under Section 3(2)(vii) and (viii). As per the said clauses, electricity duty shall not be levied on electricity units for motive power and lighting used by:

- a. a new industrial undertaking with respect to premises used by such undertaking for a period of five years from the date on which the industrial undertaking begins to manufacture or produce goods for the first time;
- b. an additional unit of the industrial undertaking on a different, independent and identifiable premises for a period of five year from:
  - i. date on which the additional unit begins to manufacture or produce goods for the first time;
  - ii. date on which the additional unit begins to manufacture or produce goods for the first time after the commencement of the Gujarat Electricity Duty (Amendment) Act, 2013.

However, to be entitled for the exemption the “new industrial undertaking” and the “additional unit of the industrial undertaking” will have to obtain a certificate regarding eligibility. The certificate is granted after an application in the prescribed format has been made.

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<sup>60</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 109 – Reserve Bank of India, Notification DBR.Dir.BC.No.62/04.02.001/2015-16, December 4, 2015.

<sup>61</sup> Reserve Bank of India, Notification DCBR.CO.SCB.Cir. No. 1/13.05.000/2015-16, February 11, 2016 (<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT322468DA7E3559F4FDCA05F627EE6310FB3.PDF>)

<sup>62</sup> <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11421&Mode=0>

<sup>63</sup> <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11453&Mode=0>

<sup>64</sup> <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11887&Mode=0>

Further, “new industrial undertaking” has been defined to mean any industrial undertaking which:

- a. is not formed by splitting or reconstruction of a business of undertaking already in existence;
- b. is not formed by transfer to a new business or undertaking of a building, machinery or plant previously used in India for any industrial purpose of such value in relation to the total value of investments, as may be notified by the State Government;
- c. is not an expansion of the existing business or undertaking in the State.

Similarly, the term “additional unit of the industrial undertaking” has been defined as an industrial undertaking which:

- a. is not formed by splitting or reconstruction of a business of undertaking already in existence;
- b. is not formed by transfer to a new business or undertaking of a building, machinery or plant previously used in India for any industrial purpose of such value in relation to the total value of investments, as may be notified by the State Government.

#### **Program 10: Electricity Duty Reduction on Furnace**

Under the authority of the *Gujarat Electricity Duty Act 1958* and relevant notifications issued by the SGOG, the rate of duty on electricity consumed in electrochemical, electrolyte and electrometallurgy processes carried out by industrial establishments is reduced from 15% to 10%, subject to certain conditions.<sup>65</sup>

#### **Other potentially actionable subsidy programs identified by the CBSA that were not used by the responding exporter**

Based on the information available, for purposes of the final determination, the CBSA has found that these programs were not used by the participating exporter in India. As the GOI did not provide a complete response to the Subsidy RFI, the CBSA’s ability to conduct its analysis of additional programs for the final determination was limited. However, based on the information available from the complaint, responses from the participating exporter and CBSA’s own research, these programs may constitute financial contribution provided by the GOI, confer benefit to the producers and appear to be specific.

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<sup>65</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 123 – Gujarat Electricity Duty Act, 1958 and Exhibit 73 – SDCOM finding concerning electricity duty exemption on furnace (i.e. SGOG Notification GHU-87-51-ELD-1187-6023-K, September 4, 1987).

## **I. Relief from Duties and Taxes on Materials and Machinery**

### **Program 1 : Advanced Authorizations Scheme (AAS)**

Pursuant to Chapter 4 of the *Foreign Trade Policy 2015-2020* (FTP) issued by the GOI, Advanced Authorization Scheme (AAS) allows duty free import of inputs that are physically incorporated into products that are subsequently exported. Import duty of fuel, oil and catalysts that are consumed or utilized in the production of export products may also be exempted.<sup>66</sup> According to the FTP, Advanced Authorization can be issued either to a manufacturer exporter or a merchant exporter tied to a supporting manufacturer, and is valid for 12 months from the date of issue of the Authorization.

The CBSA has previously countervailed this program in investigations including Oil Country Tubular Goods (OCTG II), Carbon Steel Welded Pipe (CSWP II), and Polyethylene Terephthalate Resin (PET Resin).

The program may constitute a financial contribution in that 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, pursuant to section 2(1.6)(b) of SIMA. The program may be considered as specific pursuant to paragraph 2(7.2)(b) of SIMA if it is contingent, in whole or in part, on export performance, and, as such, considered as a prohibited subsidy.

### **Program 3 : Duty Free Import Authorization Scheme (DFIA)**

Pursuant to Chapter 4 of the FTP, Duty Free Import Authorization Scheme (DFIA) allows import of inputs including oil and catalyst used/consumed in the production of exported products without payment of basic customs duty. The difference between the DFIA and the AAS is that the DFIA only applies to basic customs duty, however, additional customs duty/excise duty, being not exempt, may be adjusted as credit.<sup>67</sup>

The program may constitute a financial contribution in that 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, 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. Further, the subsidy may be considered as specific pursuant to paragraph 2(7.2)(b) of SIMA because it is contingent, in whole or in part, on export performance, and, as such, considered as a prohibited subsidy.

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<sup>66</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 76 – Chapter 4 of the FTP.

<sup>67</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 76 – Chapter 4 of the FTP.

## II. Preferential Loans and Loan Guarantees

### Program 7: Pre-shipment and Post Shipment Export Financing

Program *Pre-shipment and Post Shipment Export Financing* was first introduced by the RBI in 1967, with the intention of making short-term working capital financing available to exporters at internationally comparable interest rates, with export credit available both in Rupee as well as in foreign currency.<sup>68</sup> The program provides export-contingent loans to eligible companies at preferential interest rates. Pre-shipment financing is issued by a financial institution when a seller requires working capital respecting the goods prior to shipment. Post shipment financing is a type of loan provided by a financial institution to an exporter or seller against a shipment that has already been made.

The CBSA has previously countervailed this program in the CSWP II investigation.

The 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 subsidy may be considered as specific pursuant to paragraph 2(7.2)(b) of SIMA because it is contingent, in whole or in part, on export performance, and, as such, is considered as a prohibited subsidy.

## III. Subsidy Programs provided by the State Government of Gujarat (SGOG)

### Program 8: Reimbursement of Net Value-added Tax (VAT) / Net State General Sales Tax (SGST) to MSMEs, Large, Mega & Ultra Mega Industrial Undertakings

Pursuant to the *Gujarat Industrial Policy 2015*, the State Government of Gujarat (SGOG) provides financial assistance by way of reimbursement of net Value-added Tax (VAT) / net State General Sales Tax (SGST) to MSMEs, Large, Mega & Ultra Mega Industrial Undertakings. The objective of this program is to attract increased investments to the state in the manufacturing sector to create more employment opportunities, and to achieve balanced regional growth and inclusive development of the state. The program came into effect on July 25, 2016 and remains in force for a period of five years.<sup>69</sup> The GOI confirmed the existence of the program in its most recent notification to the World Trade Organization (WTO).<sup>70</sup>

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<sup>68</sup> Reserve Bank of India, Notification DBR No.DIR.BC.14/04.02.002/2015-16, July 1, 2015 (<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/47FMC24510C0632B442B99FBE2ECEB03E27C1.PDF>)

<sup>69</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 120 – SGOG, New Scheme for Incentive to Industries, 2016 – 2021.

<sup>70</sup> GOI, Supplement to the New and Full Notification to the WTO, page 16, October 18, 2019. (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N343INDS1.pdf&Open=True>)



The 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 11. Provision of Land and Water for Less than Fair Market Value**

Pursuant to the *Gujarat Industrial Development Act 1962*, the Gujarat Industrial Development Corporation (GIDC) was established with a goal of accelerating industrialization in the state. The GIDC has established 182 industrial estates and has acquired maximum land for the development of industries in the state.<sup>71</sup> According to the complainant, the GIDC administers the program and provides certain industries with land at discounted allotment rates. The complainant submits that AIAE has six production facilities located in the GIDC Ahmedabad region where the discounted allotment rates apply.<sup>72</sup>

The 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.

### **IV. Subsidy Programs Provided by the State Government of Maharashtra (SGOM)**

#### **Program 12: Incentives for Large-scale Industries and Mega Projects under Package Scheme of Incentives (PSI)**

Program *Package Scheme of Incentives* (PSI) was first introduced in 1964 and has been amended from time to time. The objective of the PSI was to encourage the dispersal of industries to lesser developed areas in the state so as to achieve higher and sustainable economic growth. According to the current PSI, which came into effect on April 1, 2019 and is valid for a period of five years, the State Government of Maharashtra (SGOM) provides various financial incentives to Micro, Small & Medium Manufacturing Enterprises, Large Scale Industries (LSI), Mega Projects and Ultra Mega Projects.<sup>73</sup>

Under the PSI, LSI units are eligible for certain investment promotion subsidies, such as subsidy on 50 % of gross State General Sales Tax (SGST) payable by the unit on the first sale of eligible products billed and delivered within the state, exemption from electricity duty, and waiver of stamp duty. Respecting subsidies offered to mega projects, a customized package of incentives are provided to eligible mega projects, subject to state approval, up to a limit in the amount of investment made.

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<sup>71</sup> [https://en.wikipedia.org/wiki/Gujarat\\_Industrial\\_Development\\_Corporation](https://en.wikipedia.org/wiki/Gujarat_Industrial_Development_Corporation)

<sup>72</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 117 – GIDC land rates for YF 2019 – 2020.

<sup>73</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 126 – Package Scheme of Incentives, 2019.

The GOI confirmed the existence of the program in its most recent notification to the WTO.<sup>74</sup> The CBSA has previously countervailed this program in the OCTG II investigation.

The program may constitute a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. The program may be considered specific pursuant to 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 13: Incentives for Micro, Small & Medium Manufacturing Enterprises under PSI**

Pursuant to section 4 of the PSI, new Micro, Small & Medium Manufacturing Enterprises (MSMEs) and small industries that fall within the definition of the *Micro, Small and Medium Enterprises Development Act 2006*, are eligible for the following incentives:<sup>75</sup>

- Subsidy on 100 % of gross SGST payable by the unit on the first sale of eligible products billed and delivered within Maharashtra,
- Interest subsidy in respect of interest actually paid to the Banks and Public Financial Institutions on term loans for acquisition of fixed capital assets,
- Exemption from electricity duty,
- Waiver of stamp duty,
- Power tariff subsidy, and
- Additional incentives for strengthening MSMEs.

The GOI confirmed the existence of the program in its most recent notification to the WTO.<sup>76</sup>

The program may constitute a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. The program may also constitute financial contribution in that 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, 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.

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<sup>74</sup> GOI, Supplement to the New and Full Notification to the WTO, page 35, October 18, 2019. (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N343INDS1.pdf&Open=True>)

<sup>75</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 126 – Package Scheme of Incentives, 2019.

<sup>76</sup> GOI, Supplement to the New and Full Notification to the WTO, page 35, October 18, 2019. (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N343INDS1.pdf&Open=True>)

#### **Program 14. Provision of Land for Less than Fair Market Value**

Pursuant to the *Maharashtra Industrial Development Act 1962*, the Maharashtra Industrial Development Corporation (MIDC) was established to provide businesses with infrastructure such as land, roads and water supply. The MIDC has so far developed 233 industrial areas in the state.<sup>77</sup> According to the complainant, AIAE has one of its production facilities located in the MIDC industrial areas and the supporting documentation provided in the complaint indicates that the land rate provided by the MIDC for the industrial areas is approximately half of the rate for commercial areas in the state.<sup>78</sup>

The 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.

#### **V. Subsidy Programs Provided by the State Government of Tamil Nadu (SGOTN)**

##### **Program 15: Capital Subsidy / Electricity Duty Exemption under Tamil Nadu Industrial Policy (TNIP)**

The key objectives of the *Tamil Nadu Industrial Policy 2014* (TNIP) are to position Tamil Nadu as the most preferred state for manufacturing, to attract incremental investments of over 10% every year in manufacturing, and to achieve an annual average growth rate of 14% in the manufacturing sector in the state. Under the TNIP, various incentives are provided to eligible new and expansion manufacturing units depending on the location within the state, the size of investment and the employment criteria.<sup>79</sup>

Under the TNIP, manufacturing units located in the state are classified as three different district categories: A – Chennai, Tiruvallur and Kancheepuram, B – Other than A & C, and C – Southern Districts, and manufacturing units in the A & B categories are eligible for the following standard incentives:

- Capital Subsidy and Electricity Tax Exemption,
- Stamp Duty concession, and
- Environmental Protection Infrastructure subsidy.

Under this program, eligible new or expansion manufacturing units are provided with capital subsidy and electricity tax exemption on power purchased from the Tamil Nadu Generation and Distribution Corporation Ltd. or generated and consumed from captive sources based on employment and investment in fixed assets /eligible assets. The complainant submits that one of AIAE's facilities located in Trichy belongs to the A or B category, therefore, they are eligible for the capital subsidy and electricity tax exemption under this program.

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<sup>77</sup> [https://en.wikipedia.org/wiki/Maharashtra\\_Industrial\\_Development\\_Corporation](https://en.wikipedia.org/wiki/Maharashtra_Industrial_Development_Corporation)

<sup>78</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 116 – MIDC land rates.

<sup>79</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 128 – Tamil Nadu Industrial Policy 2014.

The program may constitute a financial contribution in the form of a contingent transfer of funds and liabilities within the meaning of paragraph 2(1.6)(a) of SIMA. The program may also constitute financial contribution in that 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, 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 16: Incentives for Mega, Super-Mega & Ultra-Mega Projects under TNIP**

Pursuant to the TNIP, Mega, Super-mega & Ultra-mega projects located in the A & B categories are eligible for a structured package of incentives if those projects satisfy both the investment and employment criteria fixed for each category. For example, net output VAT and Central Sales Tax (CST) paid by eligible mega projects are given as investment promotion subsidy or soft loan for 10 years from the date of commercial production with a ceiling of 80% of the investment made.<sup>80</sup> According to the complainant, one of AIAE's facilities located in Trichy belongs to the A or B category, therefore, they may be eligible for this program.

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

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<sup>80</sup> Exhibit 2 (NC) – Grinding Media Complaint, Exhibit 128 – Tamil Nadu Industrial Policy 2014.