SUBSIDIARY COMPANY DIRECTORS

Section 211(2) of the New Zealand Companies Act 1993 requires the company to disclose, in relation to its subsidiaries, the total remuneration and value of other benefits received by directors and former directors and particulars of entries in the interests registers made during the year ended 30 June 2013.

Apart from some overseas subsidiaries which have independent directors or are required to have a specific number of local residents as directors, no wholly owned subsidiary has directors who are not full-time employees of the group. The company had 256 subsidiaries worldwide at 30 June 2013.

No employee of Fletcher Building Limited appointed as a director of Fletcher Building Limited or its subsidiaries receives, or retains any remuneration or other benefits, as a director. The remuneration and other benefits of such employees, received as employees, are included in the relevant bandings for remuneration disclosed previously under Employee remuneration. Except where shown below, no other director of any subsidiary company within the group receives director's fees or other benefits as a director.

The following persons respectively held office as directors of subsidiary companies at the end of the year, or in the case of those persons with the letter (R) after their name ceased to hold office during the year. Alternate directors are indicated by the letter (A) after their name.

Companies placed in liquidation during the year are indicated by the letter (L) after their name.

AHI Roofing (Malaysia) SDN BHD
Z Bin Mat Desa (R), P Binti Mohamad (R), T Richards, W Roest (R), P Wilson, I Bin Harun, P Lamb

AHI Roofing (Middle East) Limited
T Richards, W Roest (R), N Olson

AHI Roofing Gyarto Es Kereskedelmi Korlatolt Felelossegu Tarasag
M Adamson, O Pascutiu, P Wilson

AHI Roofing Limited
T Richards, W Roest (R), N Olson

AHI Roofing Proizvodnja In Distribucija Stresnih Sistemov D.O.O.
M Adamson (R), O Pascutiu, T Richards, P Wilson

AHI Roofing Pty Limited
D Le Quesne, T Richards

Aickin Timber Limited
J Beveridge, W Roest (R), N Olson

Amatek Holdings Limited
M Farrell, N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Amatek Industries Pty Limited
N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Amatek Investments Limited
M Farrell, N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Amtel Pty Limited
N Gleeson (R), M Negri, T Richards, W Roest (R), P Zuckerman (R)

Andy Sellar Building Supplies Limited
J Beveridge, V Grant (A), A Sellar

Anson Building Supplies Limited
J Beveridge

Associated Water Equipment Pty. Ltd.
D Worley (R), W Roest (R), N Olson, L Mayne

Austral Bronze Crane Copper Limited
S Robertson, W Roest (R), D Worley (R), N Olson, L Mayne

Australian Construction Products Pty Limited
S Baker, M Malpass

Australian Fibre Glass Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Bandelle Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Baron Insulation Pty Ltd
T Richards, C Zeitlyn, S McKay (R)

Boden Building Supplies Limited
J Beveridge, P Boden, V Grant (A)

Builders Hardware Company Limited
J Beveridge

Building Choices Limited
J Beveridge, D Close, V Grant (A)

Building Prefabrication Solutions Limited
J Beveridge, N Olson

Building Products Superannuation Fund Pty Limited
S Hart, W Roest (R), L Box

Burford Building Supplies Limited
J Beveridge

Calvert Building Supplies Limited
J Beveridge

Cameron Building Supplies Limited
J Beveridge, D Cameron, V Grant (A)

Caravan Components Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Charmac Industries Proprietary Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Cleaver Building Supplies Limited
J Beveridge, M Cleaver, V Grant (A)

Cloudguard No 96 Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Collier Building Supplies Limited
J Beveridge

Consort Laminates Limited
M Adamson (R), P Hall, N Mason

Crane Distribution Limited
L Mayne, W Roest (R), D Worley (R), N Olson, T Hickey

Crane Distribution NZ Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Crane Distribution Properties Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Crane Employee Services Pty Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Crane Enfield Metals Pty Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Crane Group Limited
D Le Quesne, W Roest (R), D Worley (R), N Olson, L Mayne

Creeks Metal Industries Pty Limited
D Le Quesne, N Gleeson (R), L Huynh

Crevet Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Crevet Pipelines Pty Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

CTCI Pty Limited
W Roest (R), P Sackville (R), D Surveyor, E Woldhuis, N Olson, A Webster (A)

Cullen Building Supplies Limited
J Beveridge, R Cullen, V Grant (A)

Cullity Timber Holdings Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Dale King Building Supplies Limited
J Beveridge, V Grant (A), D King

Davis & Casey Building Supplies Limited
J Beveridge, T Davis, V Grant (A)

Deavoll Building Supplies Limited
J Beveridge, V Grant (A)

Decra Roofing Systems, Inc.
W Hudson, T Richards, W Roest (R), N Olson

Delcon Holdings (No. 1) Limited
W Roest (R), P Zuckerman, N Olson

Delcon Holdings (No. 2) Limited
W Roest (R), P Zuckerman, N Olson

Delcon Holdings (No. 3) Limited
A Cadman, W Roest (R), N Olson

Delcon Holdings (No. 8) Limited
T Richards, W Roest (R), N Olson

Delcon Holdings (No. 10) Limited
M Farrell, W Roest (R), N Olson

Delcon Holdings (No. 11) Limited
M Farrell, W Roest (R), N Olson

Delcon Holdings (No. 15) Limited
G Darlow, W Roest (R), N Olson

Delcon Holdings (No. 16) Limited
M Farrell, W Roest (R), N Olson

EE-Fit Pty Limited
T Richards, C Zeitlyn, S McKay (R)

EFA Technologies Pty Limited
D Le Quesne, M Malpass

Engineered Timber Solutions Ltd
J Beveridge

Evans Building Supplies Limited
J Beveridge, M Evans, V Grant (A)

FBHS (Aust) Pty Limited
W Roest (R), P Zuckerman, T Richards, N Gleeson (R), M Negri

FBSOL Pty Limited
W Roest (R), P Zuckerman, T Richards (R), N Gleeson (R), M Negri

FDL No. 28 Limited
J Beveridge

FDL No. 29 Limited
J Beveridge

FDL No. 30 Limited
J Beveridge

Fletcher Building (Australia) Finance Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Fletcher Building (Australia) Pty Limited
M Farrell, N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Fletcher Building (Fiji) Limited
A Kumar, P Thumath (R), C White, A Brown, M Malpass

Fletcher Building Holdings Limited
M Farrell, W Roest (R), J Ling (R), N Olson

Fletcher Building Holdings New Zealand Limited
M Farrell, M Adamson, W Roest (R), J Ling (R), N Olson

Fletcher Building Holdings USA Inc.
W Hudson (R), W Roest (R), M Quint, N Olson

Fletcher Building Industries Limited
A Carter, H Fletcher (R), A Jackson, J Judge, J Ling (R), K Spargo, C Tarrant, G Tilbrook, R Waters, M Adamson

Fletcher Building Netherlands Antilles B.V.
S Coeriel (R), M Farrell, E Rakers (US $3,865), W Roest (R), N Olson, J Mol-Rozema

Fletcher Building Netherlands B.V.
M Farrell, W Roest (R), P Ruoff (R), N Olson, D Slob, A Van De Werken (EUR 2,500)

Fletcher Building (New Zealand) Limited
M Farrell, W Roest (R), N Olson

Fletcher Building Nominees Limited
J McDonald, G Niccol, M Farrell, W Roest (R), C Munkowits, K Daly, N Olson

Fletcher Building Products Limited
T Richards, W Roest (R), N Olson

Fletcher Building Share Schemes Limited
G Niccol, J McDonald

Fletcher Challenge Building Bolivia S.A.
M Binns, K Cowie, H Ritchie

Fletcher Challenge Building UK Limited
J Ollard, D Wood

Fletcher Challenge Finance Investments Limited
M Farrell, W Roest (R), N Olson

Fletcher Challenge Forest Industries Limited
M August, J Ollard, D Wood

Fletcher Challenge Industries S.A.
M Binns, K Cowie, H Ritchie

Fletcher Challenge Investments Overseas Limited
M Farrell, W Roest (R), N Olson

Fletcher Challenge Overseas Holdings Limited
M Farrell, W Roest (R), N Olson

Fletcher Composite Research Limited
W Roest (R), P Zuckerman, N Olson

Fletcher Concrete (Fiji) Limited
P Thumath (R), A Kumar, A Brown, M Malpass, C White

Fletcher Concrete & Infrastructure Limited
M Malpass, W Roest (R), N Olson

Fletcher Construction (Nouvelle Caledonie) S.A.R.L.
A Brown

Fletcher Construction (Solomon Islands) Limited
A Brown, L Gray

Fletcher Construction Australia Pty Limited
N Gleeson (R), C Munkowits, L Huynh

Fletcher Construction Company (Fiji) Limited
A Brown, L Gray, J Matthews

Fletcher Construction Pty Limited
N Gleeson (R), C Munkowits, L Huynh

Fletcher Distribution Limited
J Beveridge, W Roest (R), N Olson

Fletcher Insulation (Vic) Pty Limited
T Richards, C Zeitlyn, S McKay (R)

Fletcher Insulation Pty Limited
T Richards, C Zeitlyn, S McKay (R)

Fletcher Morobe Construction Pty Limited
A Brown, K Fletcher, L Gray, L Mathias

Fletcher Pacific Steel (Fiji) Limited
D Hargovind (FJ $2,500), I Jones, W Roest (R), P Zuckerman

Fletcher Property Developments UK Limited
M August, J Ollard, D Wood

Fletcher Property Investments UK Limited
M August, J Ollard, D Wood

Fletcher Property Limited
G Darlow, W Roest (R), N Olson

Fletcher Residential Limited
G Darlow, W Roest (R), N Olson

Fletcher Steel Limited
W Roest (R), P Zuckerman (R), M Malpass, T Richards, N Olson

Fletcher Wood Panels (Australia) Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

FM Holdings Inc.
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

FMB Comércio Importacão e Exportacão de Laminados Decorativos Ltda
G Pikielny

Forman Building Systems Limited
T Richards, W Roest (R), N Olson

Forman Building Systems Pty Limited
T Richards, C Zeitlyn

Forman Commercial Interiors Limited
T Richards, W Roest (R), N Olson

Forman Group Limited
T Richards, W Roest (R), N Olson

Forman Insulation Limited
T Richards, W Roest (R), N Olson

Forman Manufacturing Limited
T Richards, W Roest (R), N Olson

Formica (Asia) Ltd
C Wang, D Wang

Formica (China) Trading Co., Ltd
C Wang, C Kao, C Gray

Formica (Malaysia) Sdn. Bhd.
K Leong, C Wang, J Yang

Formica (N.Z.) Limited
M Adamson (R), W Roest (R), N Olson, P Zuckerman

Formica (Nederland) B.V.
J Ruurd de Pater, N Mason

Formica (Singapore) Pte. Ltd
C Wang, C Chang, DH Wang

Formica (Thailand) Co., Ltd
W Kunanantakul, S Mahacharoenkeat, DH Wang, C Wang

Formica Canada Inc.
M Adamson (R), L Box, C Sarrazin, M Quint

Formica Corporation
M Adamson, L Box, W Roest (R), M Quint

Formica Danmark A/S
I Delen, U Hector, R Pollington

Formica de Mexico SA DE CV
M Adamson (R), L Box, M Quint, B Strobel

Formica Decorative Materials (China) Co., Ltd
P Foreman (R), C Kao, C Wang, C Gray

Formica Finance Limited
M Adamson (R), P Hall, W Roest (R), N Mason, R Pollington

Formica Global LLC
M Adamson (R), R Bollman (R), L Box, M Vernon, M Quint, B Strobel

Formica Holdco UK Limited
M Adamson (R), P Hall, N Mason, R Pollington

Formica Holding Corp.
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

Formica Holding GmbH
M Adamson, E Hoernisch, T Ruhnke

Formica Holdings Limited
M Adamson (R), P Hall, N Mason, R Pollington

Formica II Corporation
M Adamson R), L Box, W Roest (R), M Quint, P Zuckerman

Formica Iki Oy
M Adamson (R), I Delen, R Pollington, P Zuckerman

Formica International LLC
M Adamson (R), R Bollman (R), L Box, M Vernon, M Quint, B Strobel

Formica Korea Corporation
T Ren, C Wang

Formica Laminates (India) Private Limited
M Adamson (R), S Badri, L Box, N Mason, R Pollington, P Zuckerman

Formica Limited
M Adamson (R), L Box, P Foreman, P Hall, N Mason, D Pallas, R Pollington, W Roest (R), P Zuckerman

Formica LLC
I Delen, N Mason, R Pollington, A Tsvetov

Formica Middle East B.V.
M Adamson

Formica Norge A/S
I Delen, U Hector

Formica PSM Limited
M Adamson (R), P Hall

Formica S.A. (Spain)
M Adamson (R), P Hall, H Ruloffs

Formica S.A.S (France)
M Adamson (R), P Hall (R), N Mason, R Pollington, P Zuckerman

Formica Skandinavien AB
M Adamson (R), I Delen, R Pollington

Formica SP.zo.O.
N Mason

Formica Taiwan Corporation
T Ren, C Wang, DH Wang

Gatic Pty Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

G E Crane Investments Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

G E Crane Securities Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

G. E. Crane N.Z. Holdings Ltd
M Farrell, W Roest (R), D Worley (R), N Olson

G. E. Crane N.Z. Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Geoff Brown Building Supplies Limited
J Beveridge, G Brown, V Grant (A)

Geraldton Independant Building Supplies Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Graeme Joy Building Supplies Limited
J Beveridge, V Grant (A), G Joy

Gravure et Polissage de Surfaces Metalliques
M Adamson, P Hall, N Mason

Homapal GmbH
T Ruhnke

Home&Dry Limited (formerly DVS Limited)
T Richards, W Roest (R), N Olson

Hudson Building Supplies Pty Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Icon Industries National Administration Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Insulation Solutions Holdings Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Iplex Pipelines Australia Pty Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Iplex Pipelines NZ Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Iplex Properties Pty. Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

John Cockburn Building Supplies Limited
J Beveridge, J Cockburn, V Grant (A)

Ken Jones Building Supplies Limited
J Beveridge, V Grant (A), K Jones

Kenna Building Supplies Limited
J Beveridge, V Grant (A), L Kenna

Kevin Jarvis Building Supplies Limited
J Beveridge

Key Plastics Distribution Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Key Plastics Pty. Ltd.
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

KH Consolidated Industries (Canberra) Pty Limited
D Le Quesne, P Zuckerman (R), T Richards

Kimura Building Supplies Limited
J Beveridge, V Grant (A), J Kimura

Kingston Bridge Engineering Pty Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Kinsey Kydd Building Supplies Limited
J Beveridge, V Grant (A), S Kinsey

Kusabs Building Supplies Limited
J Beveridge, V Grant (A), G Kusabs

Laminates Acquisition Co.
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

Laminates Holdings Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Laminex (Australia) Pty. Ltd.
W Roest (R), D Surveyor, N Olson, P Zuckerman

Laminex Finance Pty Limited
N Gleeson (R), D le Quesne, L Huynh

Laminex Group (N.Z.) Limited
M Adamson (R), W Roest (R), N Olson, P Zuckerman

Laminex Group Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Laminex Overseas Holdings Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Laminex US Holdings Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Macready Building Supplies Limited
J Beveridge, V Grant (A), J MacReady

McDonald Building Supplies Limited
J Beveridge, R Callon (A)

McGill Building Supplies Limited
J Beveridge

Meleccio Enterprises Limited
G Darlow, W Roest (R), N Olson

Milnes-Gatic Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Milnes Holdings Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Minnell Building Supplies Limited
J Beveridge, V Grant (A), D Minnell

Morinda Australia Pty Limited
W Roest (R), P Zuckerman (R), T Richards, M Negri

Mount Timber & Hardware Limited
J Beveridge, W Roest (R), N Olson

New Zealand Ceiling & Drywall Supplies Limited
D Jones

Nick Letica Building Supplies Limited
J Beveridge, V Grant (A), N Letica

Nock Building Supplies Limited
J Beveridge

Northern Iron and Brass Foundry Pty. Ltd.
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

NZ Insulation Services Limited (formerly DVS Healthy Homes Limited)
T Richards, W Roest (R)

Pacific Trade & Export Limited
G Darlow, W Roest (R), N Olson

Perstorp Warerite Limited
M Adamson (R), P Hall, N Mason

PinkFit Limited
T Richards, W Roest (R), N Olson

Placemakers Limited
J Beveridge, W Roest (R), N Olson

Polymer Fusion Education Pty Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Raoul Holdings Limited
M Malpass, W Roest (R), N Olson

Rocla Australia Pty Limited
D Le Quesne, M Malpass

Rocla Concrete Pipes Pty Limited
D Le Quesne, M Malpass

Rocla Drilling Pty Limited
D Le Quesne, M Malpass

Rocla Group Superannuation Fund Pty Limited
J Gardiner, W Roest (R), L Box

Rocla Industries Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Rocla Masonry Pty Limited
D Le Quesne, M Malpass

Rocla Materials Pty Limited
D Cilento, M Malpass

Rocla NSW Pty Limited
D Le Quesne, M Malpass

Rocla Pty Limited
S Baker, D Cilento, M Malpass

Rocla SA Pty Limited
D Le Quesne, M Malpass

Rocla Vic Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Rolleston Building Supplies Limited
J Beveridge, V Grant (A), R Rolleston

S Cubed Pty Limited
W Roest (R), P Zuckerman (R), T Richards, N Gleeson (R), M Negri

Seabar Holdings (No 16) Limited
G Darlow, W Roest (R), N Olson

Servicios Formica de Mexico SA DE CV
M Adamson (R), L Box, M Quint, B Strobel

Shanghai Fletcher Building Materials Trading Company Limited
W Roest (R), C Wang, P Wilson

Shanghai Formica Decorative Material Co., Ltd
P Foreman (R), J Hu, C Kao, C Wang, C Gray

Shed Boss NZ Limited
M Farrell, W Roest (R), N Olson

Sisalation Pty Limited
T Richards, S McKay (R), C Zeitlyn

Southbound Building Supplies Limited
J Beveridge, V Grant (A), A Rance

Steven Marshall Building Supplies Limited
J Beveridge, V Grant (A), S Marshall

Stickland Building Supplies Limited
J Beveridge, V Grant (A), L Stickland

Stramit (Preston) Pty Limited
D Le Quesne, P Zuckerman (R), T Richards

Stramit Corporation Pty Limited
W Roest (R), P Zuckerman (R), T Richards, M Negri

Stramit Pty Limited
D Le Quesne, P Zuckerman (R), T Richards

Sullivan & Armstrong Building Supplies Limited
J Beveridge, V Grant (A), J Sullivan

Surface Materials Iki Oy
M Adamson, P Alderson, J Kerbs

TAF Building Systems Pty Limited
D Le Quesne, T Richards

Tasman Australia Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Tasman Building Products Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Tasman Insulation New Zealand Limited
T Richards, W Roest (R), N Olson

Tasman Investments (Netherlands Antilles) N.V.
S Coeriel (R), M Farrell, E Rakers (US $3,675), W Roest (R), J Mol-Rozema, N Olson

Tasman Sinkware North America, Inc.
W Roest (R), N Olson

Tasman Sinkware Pty Limited
J Bayer, T Richards, W Roest (R), L Mayne

TBP Group Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Ted Harper Building Supplies Limited
J Beveridge, V Grant (A), E Harper

Tenedora Formica Mexico, S.A. de C.V.
M Adamson (R), L Box, M Quint, B Strobel

Terrace Insurances (PCC) Limited
J Crowder, M Eades (£2,500), M Farrell, W Roest (R), N Olson

Terry Mellsop Building Supplies Limited
J Beveridge

The Diller Corporation
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

The Fletcher Construction Company Cook Islands Limited
A Brown, L Gray

The Fletcher Construction Company Limited
G Darlow, W Roest (R), N Olson

The Fletcher Organisation (Vanuatu) Limited
A Brown, L Gray, Diract Limited, Lotim Limited

The Fletcher Trust and Investment Company Limited
G Darlow, W Roest (R), N Olson

Thomas Street Pty Limited
D Le Quesne, M Malpass

Thor Plastics Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Trade Mart Limited
J Beveridge, W Roest (R), N Olson

Trademates Limited
J Beveridge, W Roest (R), N Olson

Unidur GmbH
M Adamson

Ward Building Supplies Limited
J Beveridge

Wesfi Limited
D Le Quesne (R), W Roest (R), D Surveyor, N Olson, P Zuckerman

Wesfi Manufacturing Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Winstone Wallboards Limited
T Richards, W Roest (R), N Olson

COMPANIES LIQUIDATED:

Laminex Inc
W Roest (R), M Quint

Waterman Building Supplies Limited
J Beveridge

COMPANIES AMALGAMATED:

Auckland Frame and Truss Supplies Limited
J Beveridge, B Bibbie, R Grimmer, D King, O Lyttleton, S Marshall, L Stickland, J Sullivan, R Spiers, B Deavoll (R)

Christchurch Frame & Truss Limited
J Beveridge, B Bibbie, M Cleaver, D Close, M Evans, R Grimmer (A), O Lyttelton (A), R Callon (R)

Decorative Surfaces Holding AB
M Adamson, I Delen, U Hector

Formica Vertriebs GmbH
M Adamson, E Hoernisch, T Ruhnke

Homapal Plattenwerk Beteiligungs-GmbH
T Ruhnke

Homapal Plattenwerk GmbH & Co KG
T Ruhnke, M Adamson (R), F Homann (R)

Waikato/BOP Frame & Truss Limited (formerly Tango Warkworth Limited)
J Beveridge

Wellington Frame & Truss Limited
J Beveridge

The O'Brien Group Limited
M Adamson, W Roest (R), D Worley (R)

NON-CONFIDENTIAL ATTACHMENT A-2.8.1

NON-CONFIDENTIAL ATTACHMENT A-2.8.2

Fletcher Building
2013 Annual Report

Fletcher Building

You can obtain an electronic copy of the Annual Report by going to the following website address: **fbu.com/investor-centre/reports**.

The Annual Shareholders' Meeting of Fletcher Building Limited will be held in the Level 4 Lounge, South Stand, Eden Park, Reimers Avenue, Auckland, at 10.30am on Wednesday, 16 October 2013.

This report is dated 4 September 2013 and is signed on behalf of the board of Fletcher Building Limited.

Ralph Waters
Chairman of Directors

Mark Adamson
Managing Director

SNAPSHOT

$326 million

NET EARNINGS for the financial year to 30 June 2013, 76% higher than for the prior year.

34c

PER SHARE DIVIDEND for the 2013 financial year.

$569 ▲ million

OPERATING EARNINGS for the 2013 financial year.

BUILDING ON SUCCESS

CHAIRMAN'S REVIEW

This past year Fletcher Building has once again encountered mixed economic conditions. In contrast to the past four years, this year we experienced a strong improvement in market conditions in New Zealand, and a marked deterioration in activity levels in Australia. Also diverging from recent trends was the US market which had solid growth in volumes compared with China, previously a strong growth market but which slowed in the past year.

▲ **Ralph Waters**
Chairman

Uncertain economic conditions have thus continued to set the background for the performance of the company. In this context, it is pleasing to report that we have delivered operating earnings within the guidance range provided to the market last year and that this has been achieved at the same time as a number of restructuring initiatives have been undertaken. Importantly, while underlying growth in earnings over last year was modest, operating cashflows were up strongly reflecting the renewed focus during the year on lifting cash returns.

Repositioning for the future

Following his appointment as chief executive officer last year, Mark Adamson has undertaken a thorough review of Fletcher Building's strategy and operating model. As detailed later in this report, Mark and the executive team have identified a number of opportunities where, by making changes to the decentralised operating model, further efficiency gains and operational improvements can be effected. These initiatives have been grouped together under the project name FBUnite.

A key priority of FBUnite is to ensure that our businesses remain competitive in the face of strong domestic currencies and increased competition from local manufacturers and imports. The board is in full support of the FBUnite programme and believe that its successful implementation will provide a very strong foundation for the next chapter in Fletcher Building's future.

Operating performance

Net earnings for the year to 30 June 2013 were $326 million, compared with $185 million in the 2012 financial year. As the prior year's result included significant items totalling $132 million after tax, prior year net earnings before significant items were $317 million. Net earnings before significant items were 3 percent higher than for the prior year.

Operating earnings (earnings before interest and tax) were $569 million compared with $403 million achieved in the prior year, and prior year operating earnings before significant items of $556 million.

Total group revenues of $8,517 million were down 4 percent mainly due to the sale of several businesses during the year.

New Zealand operating earnings before significant items increased by 38 percent and this was driven by rising levels of new house building activity, strong momentum with the repairs and rebuilding work in Canterbury, and contributions from several large infrastructure projects. We were able to counter the impacts of the high New Zealand dollar and increased competition through cost reduction and efficiency initiatives that were implemented during the year.

Economic conditions in Australia deteriorated as the year progressed. Residential and commercial markets were weak, and a slowdown in mining and resources investment had a knock-on effect across other parts of the construction industry. Consequently, operating earnings before significant items from the Australian businesses fell by 22 percent.

Operating earnings before significant items from our operations beyond Australasia declined by 11 percent. Improved volumes in North America were offset by worsening conditions in Europe, while Asia was generally flat or slightly down.

A highlight of this year's result was cashflow from operations, which was 25 percent higher at $559 million. This was driven by stronger cash contributions from the Construction, Building Products and Distribution divisions.

Balance sheet

As a result of the increase in operating cashflow and lower capital expenditure levels, the balance sheet was strengthened during the year. Net debt declined by $283 million and our gearing ratio, the ratio of net debt to net debt plus equity, declined to 33.3 percent from 37.4 percent in the prior year.

Shareholder return

It is especially pleasing to report that the total shareholder return for the year to 30 June 2013 was 50.5 percent, driven principally by a resurgent share price. A year ago I noted the negative investor sentiment towards the building materials sector that had resulted in disappointing returns to shareholders. This year's very strong outcome reflects the sharp change in the view of investors towards our sector, with most building materials and products companies in Australia experiencing similarly strong share price appreciation.

Dividend

The total dividend for the year is 34 cents per share, consistent with what was paid in the prior year. This represents a pay-out ratio of 71 percent, a level we are comfortable with given this year's strong operating cashflow and the strength of the balance sheet. We anticipate that in the future the dividend will grow at a slower rate than earnings as we seek to return the dividend pay-out ratio to a level that is sustainable over the long term.

People

This past year has continued to present many challenges for our people. Some have had to grapple with the pressures of rapidly increased demand for products and services, whilst others have faced the difficulty of dealing with declining markets and industry over-capacity. The need to further rationalise operations in a number of our businesses has tested many of our people. On behalf of the board I thank everyone for their commitment and efforts this year.

Directors

As noted in last year's annual report, Hugh Fletcher and Jonathan Ling retired from the board at the end of September 2012. The retirement of Hugh Fletcher was part of the board's programme of regular rotation of directors with most only having a nine year expected term. Typically this has seen one director retiring each year, so refreshing the board over time.

Outlook

As we look ahead, we expect many of the trends that we have experienced over the past year to influence our performance in 2014.

In New Zealand, we are expecting a further increase in construction activity across most sectors. The residential housing market, particularly in Auckland, is expected to be strong in the coming year. The repair of houses and infrastructure in Christchurch will continue to boost activity levels and there is growing interest in commercial building projects within the central business area.

After a long period of weak demand in civil infrastructure and commercial building, a steady improvement is expected. Recent government announcements for major projects in Auckland and Canterbury are encouraging, and there are good opportunities for building in the health and education sectors as well.

The outlook in Australia remains uncertain. While volumes have generally stabilised at current levels, there has been little improvement evident in residential construction and commercial activity has remained flat with no obvious signs of recovery. The knock-on impact of a slowdown in mining and resources investment is expected to impact overall activity levels.

Trading conditions in North America continue to remain mixed. While there have been improving trends in the residential housing market and positive signs that the market may continue to improve during the year, the commercial market has remained flat.

In South-East Asia, demand has remained firm and the outlook is positive, however, growth and activity levels have slowed in China and Taiwan and the near term outlook in these markets remains uncertain.

European markets show no signs of improvement, and a recovery there is not expected in the short to medium term.

In terms of the earnings outlook for the 2014 financial year, a sustained improvement in activity levels in New Zealand coupled with operational efficiency gains should drive earnings growth. However, no significant volume growth is forecast in the Australian market and any further deterioration from current levels will temper earnings momentum elsewhere across the group.

BUILDING OUR FUTURE

CHIEF EXECUTIVE'S REVIEW

Since starting as chief executive in October last year, the executive team and I have been looking at the Fletcher Building business model and how we might evolve the way we work in the future. Through this process we formed a strong view of the opportunities to foster greater collaboration across the group, combine resources and better leverage our scale, improve our operating efficiency and better target investment towards future growth opportunities.

These ideas have evolved into a number of separate but related work streams, which will collectively transform how Fletcher Building operates, under the banner of FBUnite. FBUnite's goal is to build the foundations for Fletcher Building's next phase, by fundamentally transforming the way Fletcher Building operates, with the twin aims of creating shareholder value and charting the growth path for the next decade and beyond.

We want to retain the best aspects of our decentralised business model, with businesses working close to their customers and being focused on their product and market segments. At the same time we want to harness the collective strength of the Fletcher Building group to reduce costs and more efficiently deliver supporting and enabling services to our businesses.

A further priority since I started last October has been to undertake, in conjunction with the board and executive team, a broad strategy review. This work has validated our position as an integrated manufacturer and distributor of infrastructure and building products, as well as a construction company.

This strategy review has led to several new areas of exploration within the FBUnite programme. In particular, we have work streams looking at:

- how we can harness digital technologies to further drive revenues and make it easier for customers to interact with us;
- future opportunities in our distribution activities across Australia and New Zealand;
- other growth opportunities for expansion in adjacent products or industries.

This work is on-going and will feed into the strategic conversations we are having at executive and board level.

Simplifying the business

During the year, a number of changes were made to simplify our divisional structure and bring greater clarity around business clusters.

The long steel and distribution businesses have been brought into the Infrastructure Products division, alongside the concrete, concrete products and quarry businesses. Subsequently, the Iplex Pipelines and Crane Copper Tube businesses that were acquired as part of the acquisition of Crane were also combined with Infrastructure Products, thereby bringing all the pipe business units together in one division and providing a broader suite of products to end customers. The Infrastructure Products division is thus comprised of businesses that manufacture products used typically in the early part of the construction cycle and involve heavy manufacturing processes. In grouping these businesses in this way, we have been able to leverage existing channels to market and better serve our customers with a broader solutions offering.

The other businesses within the Steel division – the coated steel businesses of Stramit Building Products, Dimond, Pacific Coilcoaters and Gliderol – have been grouped within the Building Products division. Again, there was a clear rationale for this, as the Building Products division is comprised of building materials businesses that are more commonly utilised in the middle and latter parts of the construction cycle.

Both the Infrastructure Products and Building Products divisions have made a number of further organisational changes during the year to combine businesses and reduce complexity.

Management changes

As a result of the changes over the past year, both the Steel and Crane divisions were disestablished as separate divisions, reducing our number of divisions to five from seven.

Following these changes, David Worley decided to leave Fletcher Building. Tim Hickey was appointed

▲ **Mark Adamson**
Chief Executive

chief executive Distribution Australia in March, having worked previously as a senior executive for Yum Brands in the US and as the CEO of Midas Australia.

In June, John Beveridge announced his resignation as chief executive of the Distribution division. Dean Fradgley has been appointed chief executive of the New Zealand Distribution business to replace John, and will relocate from the UK to take up his role in October 2013. Dean has more than twenty years' experience in retailing and for the past thirteen years has worked within the trade and hardware sectors.

Earnings overview

Achieving net earnings for the year of $326 million was a solid outcome given the mixed trading conditions we encountered across our operations. This year's result included a number of costs relating to restructuring and business efficiency initiatives, the benefits of which will be seen in the current financial year and beyond.

Operating earnings of $569 million were within the guidance range provided at the half year, albeit towards the lower end of the range. This was due to the deterioration in trading conditions we experienced in Australia throughout the year.

A particularly noteworthy aspect of this year's result was the strong uplift in operating cashflow of 25 percent to $559 million. This was driven by a focused effort across our businesses on cash management.

Investing for the future

Consistent with our increased focus on cash management, capital expenditure for the 2013 financial year was $246 million, down from $353 million in the previous year. Looking ahead we expect a modest increase in capital expenditure in the current year between $250 million and $300 million excluding acquisitions. In addition to the continued investment across our businesses, this year we will be prioritising capital expenditure on information technology and supporting infrastructure that will enable various FBUnite projects.

Health and Safety

We have continued to further reduce our injury rates over the past year. Our primary injury rate measure is the 12-month rolling average Total Recordable Injury Frequency Rate per million employee and contractor hours (TRIFR), with total injuries being the sum of lost-time and medical treatment injuries. In the year to 30 June 2013 this rate was 6.80, a reduction from 8.48 in the prior year. This figure was more than 60 in 2005. Our lost time injury frequency rate has dropped from 3.27 to 2.82.

Delivering in Canterbury

This past year has been one of considerable progress in our role as project manager for the Canterbury Home Repair Programme. In June we reached an important milestone with the completion of 40,000 full scope home repairs – marking the halfway point in the home repair programme. We expect repairs to the final Earthquake Commission (EQC) referred property will be completed in December 2014 which is well ahead of the original target set.

With this achievement, our attention is turning to ensuring that we are able to transition our people involved with the home repair programme to larger commercial construction projects and other parts of our business as the residential repair workload decreases. Their skills will be invaluable to the work that remains to be done in Canterbury.

Looking ahead

While implementing FBUnite is a key priority for us over the next few years, we will continue to work on strengthening and extending our core positions across New Zealand and Australia. We believe there will be good opportunities across our markets for further organic growth through our existing businesses and that we can also drive internal efficiencies and improve our cost competitiveness. At the same time, we will continue to seek opportunities to extend core positions in New Zealand and Australia through infill and adjacent acquisitions, along with opportunities to leverage existing assets and capabilities in selected new markets.

Beyond Australia and New Zealand, we will seek to build and enhance positions in select products and geographies where we believe we have proven capabilities that can be leveraged successfully.

BOARD OF DIRECTORS

Ralph G Waters

CPEng, FIE Aust, M Bus

Independent Non-Executive Chairman of Directors

Chairman of the Nominations Committee

First appointed 10 July 2001

Mr Waters, 64, has extensive management experience in the Australasian building products industry including as managing director of Email, a major Australian industrial company, and until 31 August 2006 as the chief executive officer and managing director of Fletcher Building. He is chairman of Woolworths, Fletcher Building Industries and the ICC Cricket World Cup 2015 and is a director of Asciano. Mr Waters is a Chartered Professional Engineer and a Fellow of the Institution of Engineers Australia.

Mark D Adamson

BA (Hons), ACA, ATII

Non-independent Executive Director

First appointed 1 October 2012

Mr Adamson, 47, is chief executive officer and managing director of the company. He joined the Formica Group in 1998 as chief financial officer of the European division followed by the role of managing director UK and Eire and in 2004 became president of Formica Europe. He became the chief executive of Formica Corporation in 2008 and of the Laminates & Panels division in 2011. Prior to joining Formica he was financial controller of the pharmaceutical company GlaxoSmithKline. Mr Adamson is a member of the English Institute of Chartered Accountants and the Institute of Taxation and a director of Fletcher Building Industries.

Antony J Carter

BE (Hons), ME, MPhil (Loughborough)

Independent Non-Executive Director

Member of the Remuneration and Nominations Committees

First appointed 1 September 2010

Mr Carter, 55, was previously managing director of Foodstuffs (Auckland) and Foodstuffs (New Zealand), New Zealand's largest retail organisation, and a director of a number of related companies. He has extensive experience in retailing, having joined Foodstuffs in 1994 and from having owned and operated several Mitre 10 hardware stores, and was a director and later chairman of Mitre 10 New Zealand. Mr Carter is chairman of Fisher & Paykel Healthcare, Air New Zealand (with effect from 27 September) and the Blues LLP, a director of ANZ Bank New Zealand and Fletcher Building Industries, co-chair of the NZ Initiative and a trustee of the Maurice Carter Charitable Trust.

Alan T Jackson

BEng (Hons), PhD (Auckland), MBA (IMD Management Institute)

Independent Non-Executive Director

Chairman of the Remuneration Committee and member of the Nominations Committee

First appointed 1 September 2009

Dr Jackson, 60, was until 2009 chairman Australasia, senior vice president and director of The Boston Consulting Group. He has been an international management consultant since 1987 with The Boston Consulting Group and has proven experience at the most senior levels of international and government business. Dr Jackson has worked across a range of industries including resources, diversified industrials, building products and construction sectors including as chairman of Housing Corporation New Zealand. Dr Jackson is a Fellow of the Institution of Professional Engineers. He is a director of Delegat's Group and Fletcher Building Industries and a trustee of The ICEHOUSE Auckland.

John F Judge

BCom, FCA, MPP, FINSTD

Independent Non-Executive Director

Chairman of the Audit and Risk Committee and member of the Nominations Committee

First appointed 9 June 2008

Mr Judge, 60, has considerable experience in Australasian business and brings financial and analytical knowledge to the board. His career includes various roles within Ernst & Young culminating in the position of chief executive of Ernst & Young New Zealand. He is chairman of ANZ Bank New Zealand and the Auckland Art Gallery Foundation, a director of Fletcher Building Industries and a member of the Otago University Business School advisory board.

Kathryn D Spargo

LLB (Hons), BA

Independent Non-Executive Director

Member of the Audit and Risk and Nominations Committees

First appointed 1 March 2012

Ms Spargo, 61, has extensive business experience from advisory roles on strategic and governance issues following a career in legal practice in both the public and private sectors. She has a number of non-executive directorships, including ASX listed companies, UGL and Sonic Healthcare, and of SMEC Holdings and Investec Bank (Australia). She also serves as a director on a number of "not for profit" businesses. Ms Spargo is currently the chair of the Australian Accounting Professional and Ethical Standards Board, is a member of the International Ethics Standards Boards for Accountants and is a Fellow of the Australian Institute of Company Directors.

Cecilia Tarrant

BA, LLB (Hons), LLM (Berkeley)

Independent Non-Executive Director

Member of the Audit and Risk and Nominations Committees

First appointed 10 October 2011

Ms Tarrant, 52, is an executive-in-residence at The University of Auckland Business School after over 20 years' experience in international banking and finance in the USA and Europe. In that time, she worked as a real estate finance lawyer and as an investment banker with Credit Suisse First Boston and Morgan Stanley, culminating in holding the position of managing director in Morgan Stanley's Global Capital Markets Group in London. Ms Tarrant is currently a trustee of The University of Auckland Foundation, a director of Fletcher Building Industries and Shopping Centres Australasia Property Group Trustee NZ and deputy chair of the Government Superannuation Fund Authority.

Gene T Tilbrook

BSc, MBA (University of Western Australia)

Independent Non-Executive Director

Member of the Audit and Risk and Nominations Committees

First appointed 1 September 2009

Mr Tilbrook, 62, was finance director at Wesfarmers until his retirement in May 2009. He led Wesfarmers' business development group, becoming executive director, business development in 2002 and finance director in 2005. Mr Tilbrook is a director of Fletcher Building Industries, Orica, Aurizon Holdings and the GPT Group. He is a councillor of Curtin University of Technology and of the Australian Institute of Company Directors (WA).

MANAGEMENT TEAM

Mark Adamson
Chief Executive Officer and Managing Director

Gerry Bollman
Chief Executive Business Strategy and Performance

Kate Daly
Group General Manager Human Resources

Graham Darlow
Chief Executive Construction

Martin Farrell
Company Secretary and General Counsel

Tim Hickey
Chief Executive Distribution Australia

Mark Malpass
Chief Executive Infrastructure Products

Nick Olson
Chief Financial Officer

Tim Richards
Chief Executive Building Products

Paul Zuckerman
Chief Executive Laminates & Panels

Mark Adamson
Chief Executive Officer and Managing Director

Mark Adamson is the chief executive officer and managing director of Fletcher Building. Prior to taking up his current role in October 2012, Mark held a number of positions with the Formica Group. He joined the Formica Group in 1998 as chief financial officer of the European division. Following that role he was appointed managing director UK and Eire, in 2004 was appointed president of Formica Europe and then chief executive of Formica Corporation in 2008. Prior to joining Formica Corporation he was financial controller of the pharmaceutical company GlaxoSmithKline. Mark holds a Bachelor of Arts degree in Business Finance from Northumbria University UK. He is a member of the English Institute of Chartered Accountants and the Institute of Taxation.

Gerry Bollman
Chief Executive – Business Strategy and Performance

Gerry Bollman joined the senior management team at Formica Group in 2008, based in the United States of America but working extensively across Europe, Asia and India. Prior to moving to New Zealand in October 2012 to commence his current role, Gerry was most recently Formica Group's vice president – strategy & business development. In that role Gerry spent considerable time working with Formica Asia on their China growth and expansion; with Formica Europe on the acquisition in India; and with the Laminex Australia and New Zealand teams on their transformation programmes. Before joining Formica he spent 7 years with the global management consultancy Booz Allen Hamilton. Gerry holds an MBA from The University of Michigan and a Bachelor of Science degree (Finance) from Xavier University in Cincinnati.

Kate Daly
Group General Manager – Human Resources

Kate Daly joined Fletcher Building as the group general manager of human resources in June 2011. Prior to this she was general manager corporate affairs, people & performance at Coca-Cola Amatil (NZ). Ms Daly has also worked for Deutsche Bank, Merrill Lynch, ABN AMRO and Greenwich Healthcare Trust in London. Kate holds a Bachelor of Commerce degree (majoring in Economics and International Business) and a Bachelor of Science degree (majoring in Pharmacology) from The University of Auckland.

Graham Darlow
Chief Executive – Construction

Graham Darlow has held the role of chief executive, construction since November 2011. He joined Fletcher Building in 1988, after starting his career as a professional engineer in Australia and the United Kingdom. He progressed through Fletcher Construction's engineering division to become general manager in 2001. After holding senior positions on many of New Zealand's largest construction projects, he now plays a significant role in the rebuild of Christchurch. Graham is a fellow and past president of the Institution of Professional Engineers New Zealand and a fellow of the Institute of Civil Engineers (UK). Graham holds a Bachelor of Engineering (Civil) from Auckland University and attended the Advanced Management Programme at Mt Eliza Business School.

Martin Farrell
Company Secretary and General Counsel

Martin Farrell joined Fletcher Challenge Limited in 1980 where he headed the tax function across the Fletcher Challenge group. In early 2000 he also became company secretary. His responsibilities have been with the board, governance, legal and taxation matters. Prior to joining Fletcher Challenge he worked for KPMG. Martin has Bachelor of Commerce and Bachelor of Laws degrees from the University of Otago. He is a chartered accountant and a member of the New Zealand Institute of Chartered Accountants.

Tim Hickey
Chief Executive – Distribution Australia

Tim Hickey was appointed chief executive, Distribution Australia, in July 2013. Prior to this permanent appointment he was interim executive general manager of Tradelink between April 2013 and July 2013. Tim was most recently chief executive of Midas Australia, a business which was transformed from a position of voluntary administration into a profitable franchise operation under Tim's leadership. He has previously worked as a senior executive for PepsiCo restaurants and Yum Brands in the US, holding various roles in marketing and operations. Tim has a Bachelor of Economics from Macquarie University and has completed courses in marketing management from the University of NSW and strategic management from the Macquarie Graduate School of Management.

Mark Malpass
Chief Executive – Infrastructure Products

Mark was appointed chief executive, infrastructure products division (formerly concrete) in November 2011. Prior to joining Fletcher Building he had a 19 year career with ExxonMobil Corporation. He has had senior leadership roles in Australia, United States and most recently Singapore, where he led strategic change across the Asia-Pacific business. Mark has also held the role of country manager and chairman of Mobil Oil New Zealand. He was also a director of the New Zealand Refining Company. Mark holds an MBA from Victoria University of Wellington, Bachelor of Engineering (BE Mechanical, Hons) from the University of Auckland, and New Zealand Certificate in Engineering (NZCE Mechanical) from Auckland Institute of Technology.

Nick Olson
Chief Financial Officer

Nick Olson joined Fletcher Building as chief financial officer in April 2013. Prior to this he held the position of chief financial officer, Telecom Corporation of New Zealand Limited, from October 2010 until December 2012. Nick joined Telecom in January 2002, and between 2002 and 2010 held numerous roles with the company, including treasurer, general manager finance and group controller. Prior to this he spent 13 years in the investment banking industry. Nick has extensive capital markets, mergers and acquisitions and corporate finance experience. In 2012 was awarded 'CFO of the year' at the annual New Zealand CFO Awards. Nick holds a Bachelor of Engineering (1st Class Hons) from the University of Auckland and is an Associate Chartered Accountant (NZICA).

Tim Richards
Chief Executive – Building Products

Tim Richards was appointed chief executive, building products division in October 2011. He has been with Fletcher Building since 2005 when the Amatek Group was acquired and he became general manager of Stramit, a leading Australian manufacturer and distributor of steel building products and systems. Prior to joining Stramit Tim worked for Boral Timber and KPMG. Tim holds a Bachelor of Business (Accountancy) from Charles Sturt University, is a member of the Institute of Chartered Accountants in Australia, and in 2010 attended the Advanced Management Program at The Wharton School, University of Pennsylvania.

Paul Zuckerman
Chief Executive – Laminates & Panels

Paul Zuckerman was appointed chief executive, laminates & panels division in October 2012. Prior to this he was chief executive of the steel division, a role he held since May 2007. Prior to joining Fletcher Building he held the position of president, Greater China with BlueScope Steel. He held numerous senior management roles with BlueScope over a 13 year period. Prior to this he spent eight years at PPG Industries, a leading global manufacturer of industrial coating, glass and chemical products. Paul gained his Bachelor of Science degree in Chemistry from Syracuse University and his Master of Business Administration from Ohio State University.

DIVISIONAL OVERVIEW

Infrastructure Products

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The Infrastructure Products division is a manufacturer, distributor and marketer of heavy construction materials, including aggregate, cement, concrete and masonry products, plastic PE and PVC pipe, and long steel products. Its products and services are typically used in the early stages of the construction cycle.

Key businesses

Crane Copper Tube
Firth
Fletcher Easysteel
Golden Bay Cement
Humes Pipeline Systems
Iplex Pipelines
Rocla Pipeline Products
Rocla Quarry Products
Winstone Aggregates

25% of total revenue
39% operating earnings

Building Products

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The Building Products division manufactures a broad range of building products for residential and commercial markets. Those products include plasterboard, glasswool insulation and other insulation and acoustic products, metal roof tiles, longrun roofing and other rolled steel products.

Key businesses

Decra Roofing Systems
Dimond
Fletcher Aluminium
Fletcher Insulation
Forman Group
Gerard Roofing Systems
Pacific Coilcoaters
Stramit Building Products
Tasman Insulation
Winstone Wallboards

16% of total revenue
21% operating earnings

Laminates & Panels

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The Laminates & Panels division includes the Laminex and Formica businesses. Formica manufactures and distributes decorative surface laminates in North America, Europe and Asia. Laminex is the leading Australasian manufacturer and distributor of decorative surface laminates, component products, particleboard and medium density fibreboard (MDF).

Key businesses

Formica
Laminex

20% of total revenue
21% operating earnings

Distribution

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The Distribution division consists of building, plumbing and pipeline distribution businesses in Australia and New Zealand. PlaceMakers and Mico operate in New Zealand, with Tradelink, Hudson Building Supplies, Northern's Plumbing Supplies and Mico Design operating in Australia.

Key businesses

Hudson Building Supplies
Mico
PlaceMakers
Tradelink

25% of total revenue
9% operating earnings

Construction

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The Fletcher Construction Company is the preeminent general contractor in New Zealand and the South Pacific. The company's five divisions are; Building + Interiors, Developments, South Pacific, Earthquake Recovery (EQR) and Engineering. Fletcher Residential is New Zealand's leading specialist residential home building group.

Key businesses

Building + Interiors
Developments
Earthquake Recovery
Infrastructure
South Pacific
Residential

14% of total revenue
15% operating earnings

Percentage of operating earnings excludes corporate costs.

$246 million

Capital expenditure

$8,517 million

Total revenue

18,830 people

Across all divisions

▲ **Mark Malpass** meets with Golden Bay Cement general manager, Michele Creagh, at Eastport, Auckland.

'Through reorganising our businesses into logical, larger business units we have enabled the division to better leverage operational capabilities, functional depth and the benefits of scale.'

Mark Malpass
Chief Executive Infrastructure Products

The Infrastructure Products division is a manufacturer, distributor and marketer of heavy construction materials, including aggregate, cement, concrete and masonry products, plastic PE and PVC pipe, and long steel products. Its products are typically used in the early stages of the construction cycle.

Infrastructure Products operating earnings increased by $13 million to $222 million as a result of continued operational improvements, cost reductions and efficiency gains.

Revenues were 9 percent lower primarily due to the sale of the Austral Wright metals business in June 2012. On a like-for-like basis, revenues decreased by 2 percent while market shares were largely stable for all businesses.

Significant divisional restructuring was carried out this year, with businesses being reorganised into logical, larger business units. This has resulted in annualised savings of $6 million and will enable the division to better leverage operational capabilities, functional depth and the benefits of scale.

Operating earnings of the cement, concrete and aggregates businesses increased by 6 percent to $73 million. Cement volumes were up 4 percent, and while slightly lower prices were offset by operational improvements, earnings were impacted by increased distribution costs. Ready-mix concrete volumes were up 19 percent, and prices were generally stable. Aggregates volumes in New Zealand were up 6 percent, while Australian volumes declined 15 percent.

The concrete pipes and products businesses recorded a 10 percent increase in operating earnings to $67 million. Australian pipe volumes were 9 percent lower, but earnings benefitted from further cost efficiencies and improved product premiums. New Zealand concrete pipe volumes increased by 9 percent due to growth in the Auckland and Canterbury markets.

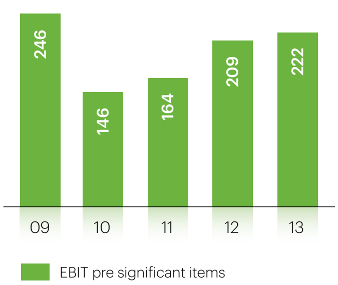
Operating earnings in Iplex Pipelines and Crane Copper Tube were 21 percent lower at $54 million, due to the sale of the Austral Wright and Mico Metals businesses at the start of the year. In Australia volumes declined by 4 percent with weaker mining demand and continued soft building markets, partially offset by contracts to supply coal seam gas projects. Product substitution continued to have a significant impact on Crane Copper Tube. Impacts of volume declines were partially offset with the implementation of cost-to-serve tools, account management and continued rationalisation of the businesses. New Zealand plastic pipe volumes increased in line with activity levels in Canterbury and Auckland.

Steel operating earnings increased to $28 million from $11 million in the prior year. The long steel business benefitted from improved manufacturing efficiencies which helped to reduce conversion costs. Volumes were 6 percent higher, reflecting the increase in demand in New Zealand. Steel distribution businesses experienced increased earnings with a focus on product mix and reducing customer service costs.

Looking ahead, disciplined cost management will continue across both markets, in conjunction with a comprehensive programme of manufacturing and supply-chain optimisation.

A focus of the division is to continue leveraging its scale to drive utilisation and efficiencies, with emphasis on innovation and enhancing our overall value proposition. Share growth across the value chain is also a priority, as is building deep functional capability, particularly in sales and operations management.

Infrastructure Products (NZ $million)



'A key priority is to continue the business efficiency initiatives particularly in Australia where volumes and margins remain soft.'

Tim Richards
Chief Executive Building Products

Building Products manufactures a broad range of building products for the residential and commercial markets. Products manufactured by Building Products businesses include: plasterboard, glasswool insulation and other insulation and acoustic products, metal roof tiles, roofing and other rolled steel products.

Building Products operating earnings before significant items of $122 million were 12 percent higher than the prior year. Revenues declined by 3 percent but the benefit of cost reduction initiatives undertaken in the first half of the year positively impacted earnings.

The plasterboard business recorded a 43 percent increase in operating earnings in a stronger New Zealand residential construction market.

The insulation business' operating earnings were down 36 percent on the prior year. Australian glasswool margins continue to be soft due to the strong Australian dollar and continued excess inventory across the industry. Restructuring undertaken in Australia during the first half of the year helped to drive earnings higher in the second half. New Zealand glasswool volumes were flat on the prior year reflecting increased levels of competition and a warmer autumn.

Operating earnings for the sinkware business declined by 37 percent due to declining volumes and margins. Operating earnings for the New Zealand aluminium business doubled driven by increased market share and volumes. The opening of a new aluminium powder coating and assembly facility in Christchurch in July 2012 significantly improved our capability in the region.

In late 2012 the coated steel businesses were transferred to the Building Products division. In grouping our coated steel businesses with other materials commonly utilised in the middle and latter parts of the construction cycle we can better leverage our channels to market and provide improved end-to-end solutions.

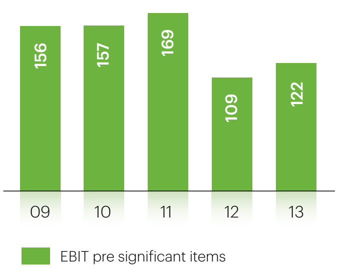
Operating earnings for the coated steel businesses were up 7 percent to $52 million due to strong performances from the New Zealand based businesses. Roof tile volumes increased by 10 percent driven by strong increases in Europe, Africa and New Zealand, and operating earnings increased by 31 percent.

In Australia, volumes in the Stramit roll-forming business were down on the prior year but an improving trend during the year meant that second half volumes were slightly ahead of the same period in the prior year. Restructuring in Stramit has substantially lowered the fixed operating cost of the business, and operating earnings in that business in the second half of the year were 25 percent higher than for the prior corresponding period.

Under Stramit we now operate three engineered solutions businesses, all involved primarily in the manufacture and supply of small buildings and garages. This presence provides a valuable channel to market for our roll-formed steel product and brings us closer to the end customer.

A key divisional priority for 2014 is to continue the business efficiency and cost reduction initiatives particularly in Australia where volumes and margins remain soft and the economic outlook is uncertain. Enhancing cross-business opportunities and efficiency through shared technology solutions is also an area of investment across the division and the group more broadly.

Building Products (NZ $million)



Tim Richards (right) meets Pacific Coilcoaters general manager at Mt Wellington, Auckland.

'The continued promotion and extension of premium products helped mitigate price pressure.'

Paul Zuckerman
Chief Executive Laminates & Panels

The Laminates & Panels division includes Laminex and Formica. Formica manufactures and distributes high-pressure decorative surface laminates in North America, Europe and Asia. Laminex operates in Australia and New Zealand and is the leading Australasian manufacturer and distributor of decorative surface laminates, component products, particleboard and medium density fibreboard (MDF).

Operating earnings in Laminates & Panels were $120 million compared with $65 million in the prior year. The prior year's result included significant items totalling $74 million. Excluding significant items, operating earnings were 13 percent lower than the prior year. Revenues declined by 6 percent to $1,738 million.

Prices and margins were generally flat or slightly down as a result of strong price competition in markets where volumes were under pressure. The continued promotion and extension of premium products, particularly in North America, helped mitigate price pressure. Input prices in key materials such as paper and resins were either flat or down on the prior year.

FORMICA

Formica's operating earnings before significant items were $58 million, down from $71 million in the prior year. Volumes and revenue in markets in Europe were down by 5 percent. Markets in Spain, Central Europe and the United Kingdom continued to deteriorate while Scandinavia remained stable. However, further increases were recorded in the growth markets of Russia and the Middle East. Further costs were incurred in the closure of Formica's plant in Bilbao, Spain, which was completed during the year.

Revenue in Asia was down by 2 percent with volumes down in China and Taiwan by 2 percent and 3 percent respectively, while Thailand remaining stable. During the year Formica acquired a small manufacturing site in India, which will provide direct access to the fastest growing high pressure laminate market.

In North America revenue was up by 1 percent while volumes were up marginally over the prior year. Continued improvement in the residential sector was largely offset by the commercial market in which Formica has greater exposure, with no improvement evident over the prior year.

LAMINEX

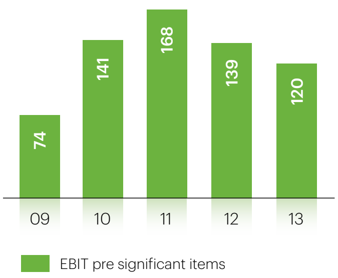
Laminex's operating earnings before significant items were $62 million compared with $68 million in the prior year. Australian revenue was down 9 percent with increased new residential commencements off-set by decline in the housing renovation and commercial sectors. Sales volumes were maintained but there was significant pressure on product pricing and margins.

New Zealand revenues were down by 10 percent due to the exit of some product ranges and the sale of the bench fabrication business. Underlying revenue was up slightly on the previous year. In both Australia and New Zealand we completed a number of cost reduction and business restructure initiatives, aimed at reducing cost and re-sizing operations in line with market demand.

Enhanced digital and Enterprise Resource Planning (ERP) systems capabilities are a priority for the coming year, along with operational and service improvements, and product development and innovation.

In October Formica will open its purpose-built manufacturing facility in Jiujiang, China, which will significantly increase capacity across Formica's Asia operations.

Laminates & Panels (NZ $million)



Paul Zuckerman (left) meets with local staff at the Formica Showroom in Melbourne.

Tim Hickey (right) is shown around the Mico showroom in Mt Wellington, Auckland, by branch staff.

‘Our focus is on lifting our customer offering through better product availability and improved speed of service.’

Tim Hickey
Chief Executive Distribution Australia

NEW ZEALAND

PlaceMakers is the premier supplier of building materials to New Zealand’s residential and commercial construction markets. Mico Plumbing specialises in the distribution of plumbing, pipeline and bathroom products.

AUSTRALIA

Tradelink Plumbing Centres, a network of 211 branches supplying plumbing supplies to residential and commercial markets, is our largest distribution business in Australia. Northern’s Plumbing Supplies and Mico Design also operate in the plumbing, bathroom and associated industries. Hudson Building Supplies business specialises in the supply of building hardware and products.

PlaceMakers

Revenues rose 9 percent with market conditions showing improvement from the second quarter onwards. Operating earnings increased by 33 percent over the prior year to $36 million, with the increase in revenues more than offsetting the margin decline of almost 1 percent. Earnings were positively impacted by operational improvements, such as procurement benefits and reduction in facility and employee costs. In addition, inventory and working capital ratios improved on the prior year.

In June, PlaceMakers opened a new purpose-built branch in the Christchurch suburb of Hornby. Following the resignation of John Beveridge after four years leading the business, Dean Fradgley was appointed chief executive Distribution New Zealand and he will have responsibility across all our New Zealand distribution businesses.

Tradelink, Hudson Building Supplies, Mico Plumbing

Operating earnings for these distribution businesses were $14 million compared with $37 million in the prior year.

Australian revenues declined 11 percent due to difficult trading conditions. Hudson delivered earnings benefits from an improved cost position as some Queensland locations were rationalised during 2013 whilst retaining revenue across its markets in NSW and Queensland. Tradelink revenues fell sharply in the second and third quarters of 2013, particularly in Western Australia and South Australia. In the final quarter of 2013 revenues began to improve as branch improvement programmes targeting improved service levels to customers were implemented and economic conditions stabilised.

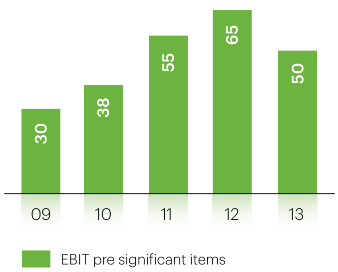
New Zealand revenues were down 18 percent due to the sale of the Corys Electrical business with effect from December 2012. On a like-for-like basis, revenues increased by 3 percent over the prior year driven by improved economic activity and market share gains in the plumbing segment. Operating earnings included $4 million profit from the sale of surplus property in Christchurch.

A key appointment this year was that of Tim Hickey to the position of chief executive, Distribution Australia. Tim was appointed in an interim role leading Tradelink and Hudson Building Supplies in March, with his permanent appointment announced in July 2013.

Looking ahead, a key strategic focus for PlaceMakers is enhancing and greatly broadening its use of digital platforms to improve the customer experience, a focus which extends across Fletcher Building.

Cost-out initiatives will continue in Australia in the coming year with trading conditions expected to remain flat. The benefit of improvement initiatives and expected positive uplift in economic conditions should deliver earnings improvements.

Distribution (NZ $million)



‘After a long period of weak demand in civil infrastructure and commercial building, we’re expecting a steady improvement.’

Graham Darlow
Chief Executive Construction

The Fletcher Construction Company is the preeminent general contractor in New Zealand and the South Pacific. The division is grouped around a building and interiors business, engineering infrastructure, South Pacific construction and earthquake recovery (Fletcher EQR). Fletcher Residential is one of New Zealand’s leading home building groups, offering a range of homes and developments.

The Construction division’s operating earnings for the year were $87 million, up 74 percent on the prior year. This was due to a significant upturn in house sales and increased activity in Christchurch, particularly with the Canterbury Home Repair Programme and the infrastructure rebuild.

In June the Canterbury Home Repair Programme reached the halfway point in respect of full-scope house repairs, with 40,000 homes completed. A further 47,000 emergency repairs and 18,000 installations under the winter heating initiative have also been completed. It is anticipated the final Earthquake Commission (EQC) referred property will be completed in December 2014, well ahead of the original target set.

Fletcher EQR has proven a valuable talent incubator within our business, with considerable engineering and other technical expertise built up over time. Ensuring we retain these skills across the business when residential repair work decreases is a key priority.

The repair of houses and infrastructure in Christchurch is expected to continue for some time and there is growing interest in commercial building projects within the CBD.

All other business units performed in line with expectations.

The Construction backlog was $1,022 million at the end of June compared with $1,094 million at the end of June 2012. However, Fletcher Construction is the preferred bidder on the MacKays to Peka Peka roading project north of Wellington ($570 million) and the Wynyard land development proposal is preferred for Fonterra’s new Head Office in Auckland ($70 million). The contract for the Aquatic Centre for the South Pacific Games in Papua New Guinea ($61 million) was confirmed after balance date.

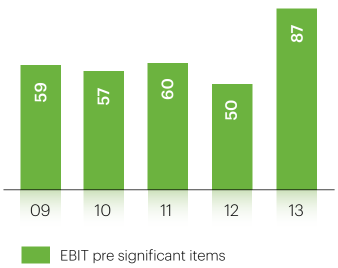
Major contracts awarded during the year include the University of Auckland Science Block upgrade for $138 million, the Rangiriri Bypass Project for $75 million and a further $99 million share of the Stronger Christchurch Infrastructure Rebuild Team (SCIRT) work.

A number of major projects are progressing well including the Waterview Tunnel Alliance. Assembly of the tunnel boring machine has started and tunnelling is due to commence in November. Construction of the Men’s Prison at Wiri is also progressing well and the new headquarters for ASB Bank was completed on time and to budget.

After a long period of weak demand in civil infrastructure and commercial building, a steady improvement is expected. The recent Government announcements for major projects in Auckland and Canterbury are encouraging, and there are opportunities for building in the health and education sectors as well.

Fletcher Residential performed very well with strong sales from the Stonefields development in Auckland. Large land holdings have also been secured in the Auckland region for future building activity. There is now a strategy to extend housing operations beyond the current model to include multi-storey and affordable homes in Auckland and elsewhere.

Construction (NZ $million)



Graham Darlow discusses the recent ASB headquarters construction in Auckland with ASB CEO Barbara Chapman.

‘FBUnite will transform how Fletcher Building operates whilst retaining the decentralised business model that keeps businesses focused on their customers.’

Gerry Bollman
Chief Executive Business Strategy and Performance

The FBUnite business transformation programme seeks to drive benefits across Fletcher Building from greater collaboration, combining resources and leveraging the group’s scale, improving operating efficiency, and investing in the capabilities for growth.

FBUnite is comprised of a number of work streams that will collectively transform how Fletcher Building operates whilst at the same time retaining those aspects of the decentralised business model that keep businesses focused on their customers, products and core market segments.

It is expected that annual total benefits from FBUnite will be in the range of $75 million to $100 million per annum. FBUnite is, however, a multi-year programme, with individual work streams set to be completed within different timeframes such that this quantum of benefit will take several years to be fully realised. Capital and operating expenditure will be incurred in the 2014 financial year to enable a number of work streams to be implemented which will offset early gains, although benefits should become evident from the 2015 financial year onwards.

A number of work streams have commenced within the business transformation programme including the following:

Shared services

The shared services project aims to reduce the cost of core support functions through centralising transactional tasks and increasing productivity by leveraging the group’s scale. The project is targeting finance (accounts receivable, accounts payable, credit management), human resources (payroll, recruitment, learning and development, health and safety) and ICT (user support, IT maintenance, IT infrastructure).

Procurement

The procurement project is focussed on achieving greater procurement co-ordination and cost savings from the $800 million per annum of indirect third party expenditure across the group. A specialist procurement function has been established leveraging the group’s size, experience and leading practice. Reductions in the cost to suppliers of serving the group, fostering greater collaboration and innovation in procurement, are other core goals. The first categories targeted have included transport and logistics, office supplies, mobile plant, printing, plant consumables, packaging, health and safety, waste management, temporary labour and fuel.

Property

The group’s total property costs across New Zealand and Australia are in excess of $200 million per annum from around 1,000 property interests. A review of the property portfolio is being undertaken, with the goal of reducing the group’s property footprint through network optimisation and business co-location opportunities.

Operations excellence

The operational excellence programme is addressing manufacturing and supply chain aspects of Fletcher Building’s manufacturing and warehouse facilities. The programme will provide the tools needed to achieve operations excellence and is expected to take around 3 years to be fully implemented, in conjunction with other work streams including procurement and property management.

Network optimisation

The network optimisation project will identify, evaluate and implement options to move products from the point of manufacture or supply to the customer at the lowest cost, while meeting service requirements. The options will consider how the network of transport lanes, storage and distribution locations is best configured and used to meet customer demand, and whether changes are required to transport, warehouses, product handling, business processes and information systems.

▲ **Nick Olson** (left) Chief Financial Officer and **Gerry Bollman** (right) Chief Executive – Business Strategy and Performance at Fletcher Building Head Office.


King
OVERSIZE


GREENS

1,700

Homes completed per month, as at June 2013

40,000

House repairs completed by the CHRP programme, as at 30 June 2013

In the past year Canterbury has settled to a great degree in respect of seismic activity, allowing repair and rebuild work in the region to progress further and removing some uncertainty and nerves from the minds of residents. Undoubtedly there are still challenges to face before the region returns to a level of normality similar to that prior to the earthquakes.

Pleasingly, we made considerable progress in Canterbury over the past 12 months, primarily through Fletcher EQR's role as project manager for the Canterbury Home Repair Programme (CHRP).

We passed two major milestones in 2013. In January 2013 the amount paid to contractors involved in the programme reached $1 billion. By the end of June that figure had reached $1.3 billion and the programme reached the halfway point in respect of full-scope house repairs – 40,000 homes completed. The completion rate at June was approximately 1,700 homes per month.

It is anticipated the final Earthquake Commission (EQC) referred property will be completed in December 2014, well ahead of the original targets set.

Work on the programme involves a range of challenges including the recruitment and retention of skilled staff and contractors; meeting technical requirements for foundations, other structural and general building work; and delivering to the valid expectations of various stakeholders, including homeowners.

A key priority going forward is to ensure we facilitate opportunities for Fletcher EQR's highly-skilled employees to transition from the home repair programme to larger commercial construction projects and other parts of our business as the residential repair workload decreases. Their skills are invaluable considering the work still ahead in Canterbury.

We also continued to invest in our other operations in Canterbury over the past year. Fletcher Aluminium officially opened a $5 million powder coating and assembly facility in Wigram, Christchurch in July 2012, and Firth opened its third ready-mix concrete plant in the region in April this year. In June PlaceMakers opened a brand new 2,745sqm store in the Christchurch suburb of Hornby.

As a large employer in the region, our involvement in the community also continues. We remain a significant sponsor and supporter of the Christchurch Arts Festival, and are a sponsor of the Champion Canterbury Business Awards and its acknowledgement of achievement and innovation in the region.

We are also a foundation sponsor of the recently established University of Canterbury Quake Centre. It is working with the engineering and construction industries on joint-venture earthquake engineering research projects, training initiatives and product development, while building on New Zealand's established reputation in the field of earthquake engineering. Lessons learnt in Canterbury will undoubtedly have benefit much further afield than Canterbury and New Zealand.

Fletcher EQR scorecard as at 23 August 2013

$14.5m

Amount paid per week to contractors

18,373

Staff and contractors inducted

47,500

Emergency repairs

80

Homes completed per day

‘Developing a strong internal pipeline of future leaders is a key priority.’

Kate Daly
Group General Manager
Human Resources

We employ a diverse workforce of 18,830 people, based across 40 countries. The main areas of focus with regard to our people strategy is to develop a strong leadership pipeline, the attraction and retention of talent across the group and the creation of a high performance, highly engaged and diverse workforce.

Developing leaders

Developing a strong internal pipeline of future leaders is a key priority. During the year we launched a Leadership Framework across the group to provide a clear structure for learning and development. Branch management has been identified as a focus area to develop a strong pipeline of leadership talent, and Branching Out was the first leadership programme launched under the new framework. Over 160 branch managers have completed the first two modules and this will be a core leadership programme going forward.

A senior leadership programme, The Leaders Edge, was developed and launched in partnership with The University of Auckland Business School. The final two leadership programmes will be delivered in the coming year.

Attracting and retaining talent

Our aspiration is to be an employer of choice in every country in which we operate. Demand for roles across New Zealand and Australia remains high, with the processing of over 26,000 applications over the past year. Our internal sourcing model places emphasis on providing an effective and efficient service to the business and 1,100 roles across New Zealand and Australia have been placed during the year.

The Employee Educational Fund continues to be a strong retention tool for New Zealand, Australia and the South Pacific. The fund provided over $4 million of funding in the 2013 financial year. This funding was used for workplace learning, leadership development, grants for tertiary study for employees, supporting dependants of employees to retrain and re-enter the workforce, and to provide financial support for employees’ children to study in tertiary institutions.

Rebuilding Christchurch

The Fletcher Construction Earthquake Recovery (EQR) team continues to play a significant role in the Christchurch rebuild. During the year the team grew in size from 540 to 700 direct employees. With the final referred claim now expected to be completed by the end of December 2014, a priority in the coming year is to determine how the skills and expertise of the EQR team can be best utilised beyond that time. Given the labour shortages in Christchurch, we are working together with the Ministry for Social Development to ensure opportunities to create a skills legacy are provided for Christchurch.

Diversity

Building a diverse and inclusive workforce is a key focus area across the group. In the past year we have provided employment opportunities for 54 people through alliances with Te Puni Kokiri, Limited Services Volunteer, Work and Income and the Department of Corrections.

As the principal sponsor of the First Foundation we funded 6 scholarships for high achievers from low decile schools in the past year.

During the year the Remuneration Committee approved a diversity policy that will drive greater participation across the Fletcher Building group with the specific focus of creating a more diverse and inclusive workplace. Directors were pleased to see that over the past twelve months the number of female senior leaders increased from 14 percent to 16 percent. There will be a continued focus to ensure that this trend continues. The board composition remains unchanged from 2012; there are eight directors, with 25 percent being women.

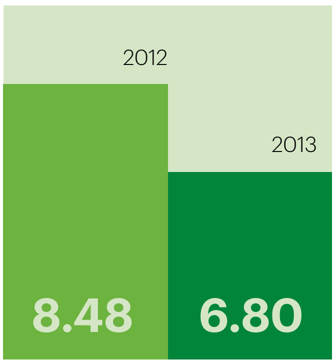
We are also into our fourth year of participation with the Global Women programme and continue to have board representation on the Equal Employment Opportunities Trust.

Kate Daly (left) developing work with senior Fletcher Building teams, Auckland.

HEALTH & SAFETY

Injury rates

Based on the 12-month rolling average TRIFR.



Lost time injury frequency

Our rate has dropped 13.8% from 3.27 to 2.82.

The correlation between improved health and safety, engagement and productivity in the workplace makes health and safety a key strategic priority.

In the past year we have paid particular attention to the reports of the Pike River Royal Commission and the Independent Task Force Review of Health and Safety in New Zealand. Broadly we believe that improved safety performance can be driven by business organisations setting clear goals for continual improvement, reinforced by regulatory requirements that ensure safety performance is addressed with due diligence.

Additionally, we support improved alignment of health and safety legislation across New Zealand and Australia, as is soon to be implemented. This will enable increased consistency and coordination of health and safety management across Fletcher Building; one of the objectives of our FBUnite business transformation programme. FBUnite has been a catalyst for integrating health and safety and daily operational management, ensuring safety is a key consideration in every operational decision made.

Pleasingly, over the past year we further reduced our injury rates. Our primary injury rate measure is the 12-month rolling average Total Recordable Injury Frequency Rate per million employee and contractor hours (TRIFR), with total injuries being the sum of lost-time and medical treatment injuries. In the year to 30 June 2013 this rate was 6.80, a reduction from 8.48 in the prior year. This figure was more than 60 in 2005. Our lost time injury frequency rate has dropped from 3.27 to 2.82.

Despite our progress, serious injuries still occur. During the past year, 15 employees and contractors suffered serious injuries, including 10 severe lacerations and five fractures. Each of these incidents has been investigated and measures to mitigate the associated risks have been implemented.

To reduce significant operational risks and hazards that could result in serious injuries or fatalities, we have engaged external process-safety audits of our most high-risk sites. Our four most high-risk facilities have now been audited and improvements across those locations are being implemented. Our first priority has been to mitigate the risk of fires and explosions in our high-temperature manufacturing facilities. We are developing further standardised controls for significant hazards across the group, driven by business unit input.

Additionally, each of our business units has developed long-term plans for prioritising and addressing general workplace health issues. Workplace health has a considerable impact on business productivity, culture and engagement. To ensure our on-site managers are competent in respect of health and safety, an enhanced group-wide training programme has been developed and implemented by the FB Learning Academy. Areas of focus include safety leadership development and ensuring a strong understanding of emerging regulatory requirements.

For the sixth year, our Health, Safety and Sustainability Awards were held in recognition of achievements around the company. Submissions were received from business units across the world. The business unit award for safety excellence went to Fletcher Aluminium, for demonstrating a high level of safety commitment, with evidence of successful programmes to reduce injuries and to improve overall workplace health.

ENVIRONMENT & SUSTAINABILITY

Ngaruawahia bypass bridge, New Zealand.

In addition to reducing the environmental impacts resulting from the manufacture and distribution of building materials, we seek to play a broader role in leading our industries towards improved sustainable performance. From the extraction of raw materials to the eventual end-of-life of products and projects, our environmental efforts span across the entire value-chain.

As a largely manufacturing-based business, a key focus remains the reduction of carbon emissions. Pleasingly, we achieved our goal of reducing group CO_2 emissions intensity by 5 percent between 2007 and the end of 2012. Total CO_2 emissions and energy use were reduced by 11 percent, although these numbers are largely attributable to a decrease in overall production.

Our energy and CO_2 inventory is updated every six months, and provisional figures for the 2013 financial year show total CO_2 emissions of 1,287,961 tonnes – an increase of 6,938 on the prior corresponding period. This includes the CO_2 emitted during the generation of electricity used by Fletcher Building. Emissions from our New Zealand operations totalled 711,397 tonnes, while Australian operations emitted 419,190 tonnes and international 157,374 tonnes.

Our goal now is to further reduce our CO_2 emissions by 10 percent between 2012 and 2020. Achieving this will be driven by further process and efficiency improvements, increasing our use of alternative energy sources and being smarter about the way we store and distribute our products.

We have partnered with the New Zealand Energy Efficiency and Conservation Authority (EECA) to identify and implement energy reduction initiatives across our New Zealand operations. In Australia, we have a programme of energy efficiency assessments that is reported to the Federal Government, as part of our requirements under the Energy Efficiency Opportunities programme. Through our group-wide programme of operational excellence we are pursuing further efficiency improvements.

The implementation of dedicated software to capture and report on energy use, CO_2 emissions and other sustainability factors will also help facilitate improvement across the business.

Our environmental strategy has been influenced by the additional costs associated with the emissions trading schemes in New Zealand and Australia, and the fact that reduced carbon emissions will have a broader positive impact on society.

Sustainability and climate change in particular have a major influence on research, innovation and product development across Fletcher Building. A number of our businesses are developing new products and solutions to further meet emerging customer preferences in areas of environmental sustainability. Examples include Firth Industries' seismic foundation solution, window glazing systems with a thermal break to reduce heat loss through the aluminium frames and insulated concrete floors and masonry products. Many of these products are also being developed to align with external building rating criteria and to gain certification in recognition of their environmental attributes.

To ensure overall transparency we continue to participate in the Carbon Disclosure Project (CDP), which requires us to report how we manage the risks and opportunities of climate change, and provide a complete inventory of our annual energy use and CO_2 emissions. In February we were the only New Zealand manufacturer named in the 2012 NZX50 Carbon Disclosure Project Leadership Index. To be included in the leadership index a company must be in the top 10 percent of respondents in respect of the quality and completeness of their disclosures, and have a measured understanding of climate change issues, risks and opportunities facing it.

In November 2012 we published our second sustainability report (**fbu.com/sustainability/**). This will be updated again later this year.

Reduced emissions

Our total CO_2 emissions and energy use were reduced by 11%.

Fletcher Building is a New Zealand based building materials manufacturer whose securities are listed on the New Zealand and Australian stock exchanges.

These exchanges require formal adoption of approved corporate governance practices by listed company boards of directors. Accordingly, the board of Fletcher Building confirms that it is committed to the highest standards of behaviour and accountability, and has adopted policies and procedures that reflect this commitment.

The company has adopted the principles recognised by the ASX Corporate Governance Council as an appropriate way to organise its corporate governance policies and reporting. In establishing its corporate governance procedures, the company reviews the practices and trends in corporate governance in other jurisdictions, and has incorporated these where appropriate.

The company believes that the practices it has adopted ensure that it meets the requirements of NZX's Corporate Governance Best Practice Code and the Financial Markets Authority's Corporate Governance in New Zealand Principles.

Fletcher Building's corporate governance practices, including matters reserved for the board and those delegated to senior executives, are fully detailed on its website and shareholders seeking an in-depth review are encouraged to access information from this source.

This section on corporate governance contains commentary on seven of the eight principles recognised by the ASX Corporate Governance Council. The Remuneration Report addresses the final principle being the requirement to remunerate fairly and responsibly.

A fuller discussion on corporate governance is included on the company's website at **fbu.com/investor/governance**.

1. Ensuring solid foundations for management and oversight

The company's procedures are designed to:

- Enable the board to provide strategic guidance for the company and effective oversight of management.
- Clarify the respective roles and responsibilities of board members and senior executives in order to facilitate board and management accountability to both the company and its shareholders.
- Ensure a balance of authority so that no single individual has unfettered powers.

The board has an obligation to protect and enhance the value of the company's assets, and to act in its interests. It exercises this obligation through the approval of appropriate corporate strategies and processes, with particular regard to portfolio composition and return expectations. These include approval of transactions relating to acquisitions, divestments and capital expenditures above delegated authority limits, financial and dividend policy and the review of performance against strategic objectives.

As part of its review of the strategic direction of the company, a strategy session is held with senior management each year. Senior management are expected to address strategic issues in the business as part of their board review sessions. Special strategic reviews are also held of each business unit on a rolling two year cycle or where material change is evident or contemplated.

The company achieves board and management accountability through written terms of reference for the chairman, directors and management, and a formal delegation of authority to the chief executive. The effect of this framework is that whilst the board has statutory responsibility for the activities of the company, this is exercised through delegation to the chief executive, who is charged with the day-to-day leadership and management of the company. As part of its annual review of its governance processes, the board reviews the delegations to the chief executive each year.

The terms of reference for directors and the chairman, the charters for board committees and the delegation to the chief executive officer all provide for reviews of the performance of directors and senior management. The nominations committee assesses the composition and effectiveness of the board and its committees annually. The chair of the nominations committee undertakes one-on-one reviews annually with all directors on the effectiveness of the board.

The board evaluates annually the performance of the chief executive and the chief executive's direct reports. The evaluation is based on criteria that include the performance of the business and the accomplishment of long-term strategic objectives, and other non-quantitative objectives established at the beginning of each year. During the most recent financial year, performance evaluation of senior executives were conducted in accordance with this process.

In addition to these annual performance reviews, significant policy issues and capital expenditure or divestment decisions of management are required to undergo a formal peer group review process, including review by the company's executive committee or approval by the board where necessary.

The governance procedures require the board to be comprised of a majority of independent directors and for there to be a separation of the role of chairman from that of the chief executive. These policies also provide that a director who has been employed in an executive capacity in the last three years cannot be considered an independent director. Therefore, R G Waters has been an independent director from 1 September 2009. With M D Adamson being an executive director, seven of the eight directors are independent directors.

2. Structuring the board to add value

Directors believe that for the board to be effective it needs to facilitate the efficient discharge of the duties imposed by law on the directors and add value to the company. To achieve this, the board is organised in such a way that it:

- Obtains a proper understanding of, and competence to deal with, the current and emerging issues of the business.
- Can effectively review and challenge the performance of management and exercise independent judgement.
- Can assist in the identification of director candidates for shareholder vote.

Board composition

While the constitution provides that the appropriate size for the board is between three and nine members, the board has determined that eight is an appropriate number at this time to ensure proper rotation arrangements. At least one-third of all directors stand for election every year although this can be increased due to requirements of the stock exchanges. The directors who retire in each year are those who have been longest in office since their last election or, if there are more than one of equal term, those determined by agreement. Subject to continued shareholder support, the standard term for a non-executive director is six years from the date that he or she initially stands for election. At the end of this term the director will offer his or her resignation. The board may, if it considers it appropriate, offer a further term of up to three years.

The board has constituted a nominations committee, chaired by the chairman of the company and composed of all the non-executive directors. This committee assists in the identification of appropriate directors and, through the committee chair, reviews the performance of existing directors.

Committees

Committees established by the board review and analyse policies and strategies, usually developed by management, which are within their terms of reference. They examine proposals and, where appropriate, make recommendations to the full board. Committees do not take action or make decisions on behalf of the board unless specifically mandated by prior board authority to do so. A committee or an individual director may engage separate independent counsel at the expense of the company in appropriate circumstances, with the approval of the chairman.

The current standing committees of the board are audit and risk, remuneration and nominations. These meet when necessary and consist entirely of non-executive directors. From time to time, the board may create ad hoc committees to examine specific issues on its behalf. The health and safety committee established to review on-site safety practices is one of those ad hoc committees.

Board process

Although directors are elected by the shareholders to bring special expertise or perspectives to board deliberations, decisions of the board are made as a group, after taking each perspective into account and the best interests of the company.

The directors receive comprehensive information on the company's operations before each meeting and have unrestricted access to any other information or records. To assist in ensuring information is timely, focused and concise, board papers are prepared and distributed electronically. Where directors cannot participate in a meeting they forward their views to another director in advance of the meeting. Senior management are also available at each meeting to address queries, and to assist in developing the board's understanding of the issues facing the company and the performance of its businesses.

Director participation remains very high, with no apologies for absences from any of the ten regular meetings during the year. In addition to these meetings were seven site visits and a strategic session with senior management. The audit and risk committee met on four occasions and the remuneration and nominations committees both met twice.

3. Promoting ethical and responsible decision-making

The company has written procedures to:

- Clarify the standards of ethical behaviour required of company directors and key executives, and ensure observance of those standards through a code of conduct and the terms of reference for directors and management.
- Prescribe the circumstances where directors and employees can trade in company securities.
- Annually establish and review progress against measurable objectives for correcting imbalances in workforce diversity and in particular, gender diversity at senior levels of the group.

The company has a written code of values and a code of conduct with which all employees are required to comply.

The company has a written policy on illegal and unethical conduct. It reinforces this policy with promotional programmes to employees and provides a FairCall confidential telephone hotline to enable reporting of inappropriate behaviour. The FairCall line is operated by an independent party, and the outcome of all matters raised is reported to the audit and risk committee.

New Zealand legislation and the company's securities trading code of conduct prevent short-term trading and dealing in the company's securities whilst directors and senior executives are in possession of non-public material and relevant information. The company reinforces these measures by requiring that any of the 127 persons comprising executives and directors, who are currently designated as having the opportunity to access price sensitive information, can transact in its securities only with the prior approval of the company secretary.

The company recognises that it has a number of legal and other obligations to non-shareholder stakeholders such as employees, clients, customers and the community as a whole. Its commitment to these obligations is captured in the code of values, and in various policies and procedures for ethical conduct, the responsibilities of employees, conflicts of interest, and relationships with suppliers and customers. These are incorporated into the employment terms of all employees.

The company is committed to developing an inclusive working environment that promotes employment equity and workforce diversity at all levels, including senior management and the board of directors. Fletcher Building believes that a workforce in which diversity differences, particularly in such matters as gender, age and race, are well-represented, builds competitive advantage and enhances business and thinking around the world.

4. Safeguarding the integrity in financial reporting

While the ultimate responsibility to ensure the integrity of the company's financial reporting rests with the board, the company has in place a structure of review and authorisation designed to ensure truthful and factual presentation of its financial position. This includes:

- An appropriately resourced audit and risk committee operating under a written charter.
- Review and consideration by the audit and risk committee of the accounts and the preliminary releases of results to the market.
- A process to ensure the independence and competence of the company's external auditors.
- Establishment of an internal audit function in the corporate office, with reporting responsibility to the audit and risk committee.
- Responsibility for appointment of the auditors residing with the audit and risk committee.

5. Making timely and balanced disclosure

The company has in place procedures designed to ensure compliance with the NZX and ASX Listing Rules such that:

- All investors have equal and timely access to material information concerning the company, including its financial situation, performance, ownership and governance.
- Company announcements are factual and presented in a clear and balanced way.

Accountability for compliance with disclosure obligations is with the company secretary. Significant market announcements, including the preliminary announcement of the half year and full year results, the accounts for those periods, and any advice of a change in an earnings forecast require prior approval by either the audit and risk committee or the board.

6. Respecting the rights of shareholders

The company seeks to ensure that its shareholders understand its activities by:

- Communicating effectively with them.
- Giving them ready access to balanced and clear information about the company and corporate proposals.
- Making it easy for them to participate in general meetings.

To assist with this, a company website is maintained with relevant information, including copies of presentations, reports and media releases. The corporate governance procedures are also included on the website. To further assist shareholders the company prepares and distributes its accounts in electronic format to shareholders who have so requested. This annual report is also available in electronic format. The company has continued to provide to all shareholders an annual review which is a summary of the group's operations and financial performance for the year.

7. Recognising and managing risk

The company has a formalised system for identifying, overseeing, managing and controlling risk. The processes involved require the maintenance of a risk register that identifies key risks facing the business and the status of initiatives employed to reduce them. The risk register is reviewed regularly, including as part of the internal audit reviews.

During the most recent financial year, management has reported to the board on the effectiveness of the company's management of its material business risks. As part of that report, appropriate assurances were received from management that the system of risk management and internal control is operating effectively in all material respects in relation to financial reporting risks.

Remunerating fairly and responsibly

The company seeks to ensure that its remuneration policies are fair and reasonable. It also seeks to ensure these policies attract and maintain talented and motivated directors and employees as a way of enhancing the performance of the company and aligning their interests with those of the company.

Non-executive directors' remuneration

The fees paid to non-executive directors for services in their capacity as directors during the year ended 30 June 2013 are shown in the table to the right.

The remuneration policy for non-executive directors does not include participation in either a share or share option plan. Non-executive directors or their associates are nevertheless required to hold at least 20,000 shares in the company.

The company's policy is to align directors' remuneration with that for comparably sized New Zealand and Australian companies. Directors' fees are normally reviewed annually by the nominations committee with effect from the beginning of the calendar year.

As part of its 2013 review of remuneration, the company commissioned an independent report on directors' remuneration in Australasia, which indicated that some increase in fees was justified having regard to market changes. As a result, from 1 January 2013, the base director's fee was increased from $140,000 per annum to $154,000 per annum, with audit and risk, remuneration and nomination committee fees remaining the same at $23,000, $17,500 and $10,000 respectively. The maximum aggregate fees payable in any year was set at $2,000,000 at the 2011 annual shareholders' meeting.

Committee chairs receive a 50 percent premium to the committee fee. The board chairman's fee is two and a half times the aggregate of the base and nominations committee fees paid to directors, and is inclusive of the time committed by the chairman for participation on other board committees. In acknowledgement of the additional time commitment required of any Australian-based director, a travelling allowance of $18,000 per annum is also payable. Where an ad hoc committee is convened, such as for due diligence, additional remuneration may be payable at $1,200 per half day.

The company believes that this provides an appropriate remuneration structure which recognises the increased global focus of the company's activities and the increased corporate governance obligations imposed on directors.

Directors do not receive any further remuneration in respect of them also being directors of Fletcher Building Industries Limited, the NZX listed issuer of the group's debt securities.

Non-executive directors' remuneration

	Base Fees $	Committee Fees $	Other Fees $	Total $
A J Carter	147,000	27,500		174,500
H A Fletcher	35,000	8,250		43,250
A T Jackson	147,000	36,500		183,500
J F Judge	147,000	44,500		191,500
K D Spargo	147,000	33,000	18,000	198,000
C Tarrant	147,000	33,000		180,000
G T Tilbrook	147,000	33,000	18,000	198,000
R G Waters	392,500		18,000	410,500
Total	**1,309,500**	**215,750**	**54,000**	**1,579,250**

Executive directors' remuneration

J P Ling was the chief executive and managing director until his retirement on 30 September 2012. Mr Ling's remuneration for the period from 1 July 2012 to 30 September 2012 was $2,236,321 comprising salary and accrued annual leave of $560,042 and termination payments of $1,676,278, including a special incentive to extend his tenure until the board was ready to appoint his replacement rather than leaving many months earlier as was his contractual right, and a final payment in respect of his participation in the Executive Long-Term Share Scheme.

M D Adamson was appointed chief executive and managing director on 18 June 2012 with effect from 1 October 2012. His remuneration comprises base remuneration of $1,500,000, a short-term incentive if specified annual performance targets are satisfied of up to 115% of base remuneration and participation in the company's long-term incentive scheme of up to 100% of base remuneration. In addition, his total remuneration includes a portion of the assessed value of options granted to him in November 2012.

The actual remuneration and the value of other benefits received by Mr Adamson in respect of the financial year was $3,320,446. This comprised $1,508,429 of base remuneration and relocation costs and allowances and accommodation payments in respect of his move from the United States to New Zealand as provided in his employment agreement, a short-term incentive payment of $1,538,250 and $273,767 paid in October 2012 in respect of his participation in the 2009 Executive Long-Term Incentive Scheme.

As required by the NZSX and ASX Listing Rules, shareholder approval of the two components of Mr Adamson's long-term incentives was received at the annual shareholders' meeting on 20 November 2012. His current long-term incentives consist of the issue of 500,000 options over shares of the company and entitlement to shares granted pursuant to the Executive Long-Term Share Scheme. The value of the 146,288 shares in the company acquired under the Executive Long-Term Share Scheme on 20 November 2012 was $1,005,000, although these are subject to on-going performance criteria.

The first grant of 500,000 options was made with effect from 1 October 2012, being the date of Mr Adamson's appointment. A further issue of up to 500,000 options may be made to Mr Adamson at the discretion of the board during the period from 1 October 2015 to 20 November 2015.

Each option was granted for no cash consideration. The initial exercise price for the first grant was $6.22, being the volume weighted price of Fletcher Building shares sold on the NZX in the ten business days immediately preceding the announcement of his appointment on 18 June 2012. The exercise price is increased annually, with effect from the date of grant, by the company's cost of capital, less any dividends actually paid.

There is a restrictive period of three years from the date of grant during which the options may not be exercised. Subject to the company's rules on the trading of securities, options may be exercised at any time between the third and sixth anniversary of the date of grant.

Directors are satisfied that they have received independent advice that Mr Adamson's terms of employment provide an appropriate remuneration package for the role of chief executive officer.

As executive directors, Messrs Ling and Adamson did not receive any further remuneration in their capacity as directors of Fletcher Building Industries Limited or other subsidiaries.

Directors' and officers' indemnification and insurance

The company has arranged a programme of directors' and officers' liability insurance covering directors, executives and employees in managerial positions acting on behalf of the company. Cover is for damages, judgements, fines, penalties, legal costs awarded and defence costs arising from wrongful acts committed whilst acting for the company.

Actions not covered include dishonest, fraudulent or malicious acts or omissions; wilful breach of a statute, regulation or a duty to the company; improper use of information to the detriment of the company; and breach of professional duty. The insurance cover is supplemented by indemnification by the company, but this does not cover liability for criminal acts.

Senior management remuneration

The company's remuneration strategy aims to attract, retain and motivate high calibre employees at all levels of the organisation, and so drive performance and sustained growth in shareholder value. Underpinning this strategy is a philosophy that total remuneration should be provided that is competitive in the markets in which the company operates – particularly for delivering superior performance that contributes to improved business results.

Total remuneration for executives comprises fixed pay, including the value of any benefits, and a short-term variable incentive in the form of an annual performance related bonus that forms a significant portion of the total package.

All executive performance bonuses require achievement of a mixture of company financial and personal targets.

The company's remuneration committee is kept fully appraised of relevant market information and best practice, obtaining advice from external advisors when necessary. Remuneration levels are reviewed annually for market competitiveness.

Fixed remuneration

It is the company's policy to pay fixed remuneration comparable to the median and total compensation comparable to the upper quartile for equivalent roles in the country or region in which the incumbent is located. For the purposes of determining total remuneration within the senior executive group, it is assumed that senior executives will on average achieve 75 percent of their potential short-term incentives over time, such percentages to be reassessed periodically in the light of the actual earnings achieved over the business cycle. It is considered appropriate that 50 percent of long-term variable incentives be achieved over a normal business cycle.

Short-term incentive remuneration

Short-term incentive remuneration is available to recognise the contribution of senior executives to company and individual performance objectives. Short-term incentive remuneration targets are expressed as a percentage of fixed remuneration which is up to 100 percent of the fixed remuneration for the chief executive and the direct reports to the chief executive, and up to 40 percent for all other senior executives.

Participation in the plan is by annual invitation, at which time the target incentive is established. This involves each participant being notified of a financial target and several challenging, measurable personal objectives for the financial year. Personal and financial objectives are independently assessed such that a participant can achieve their personal objectives even if the minimum financial target is not achieved.

The financial measures include the operating earnings target for the applicable division or business unit and the corporate Economic Value Added (EVA) target. Corporate executives are measured on a mix of EVA and personal objectives.

The target for commencement and determination of variable incentive payments is an assessed measure for each business unit or operating division, and is based on the approved budget. In most years 100 percent of the financial component is earned if 100 percent of target is achieved and up to 120 percent of the financial component is earned if 110 percent of budget target is achieved.

Individual variable compensation payments are offered entirely at the discretionof the board.

Long-term incentives

The company has implemented long-term cash-based performance incentive schemes, targeted at around 350 executives most able to influence financial results. Where performance targets are met, a cash bonus is payable with the after-tax amount invested in the company's shares. Participation in any year is by invitation, renewable annually and at the complete discretion of the company.

Where permitted by securities legislation in the relevant jurisdiction, participants purchase shares in the company at the offer price with an interest-free loan. The offer price is established at market value at the time of offer, which will normally be each 30 September. The shares are held by a trustee on behalf of participants until the end of a three year restrictive period which may be extended for one further year for up to 50 percent of the entitlement. Provided certain performance criteria are met and participants remain employed with the company throughout the restrictive period, legal title in the shares will be transferred to them at the end of the restrictive period.

The schemes are either share-ownership based for New Zealand and Australian executives or are designed to deliver the same economic value as the share scheme and is for a small number of executives in other jurisdictions where offering a share scheme is not optimum.

The cash-based share-ownership scheme, the Executive Long-Term Share Scheme (ELSS), will be offered to all eligible executives this year and is described in detail on the company's website at **fbu.com/investor-centre/governance**.

In circumstances where shares cannot be acquired under the applicable securities legislation, equivalent economic entitlements are conveyed by way of cash bonus entitlements.

The comparator group of Australasian companies used to determine relative TSR performance for the 2013 offer comprises Adelaide Brighton, Amcor, Arrium, BlueScope, Boral, Brickworks, CSR, GWA Group, James Hardie, Leighton Holdings, Nuplex, Sims Group and Steel & Tube. The minimum and maximum EPS targets for the 2013 offer are for EPS for the year ended 30 June 2013 to increase by 8 percent per annum and 14 percent per annum respectively.

On 30 September 2013 the three year restrictive period in respect of the third issue under the ELSS, which was made in 2010, ends. The EPS minimum vesting threshold for the 2010 ELSS will not be met and accordingly no shares will vest in respect of the EPS tranche of shares in that offer. However, present indications are that the TSR of the company for the period will be in the 65th percentile of the comparator group of companies and accordingly participating executives in the ELSS (in respect of the TSR tranche) will be entitled to take up ownership of around 220,000 Fletcher Building shares.

Superannuation

Participation in defined benefit and defined contribution retirement savings plans is made available to executives as required by remuneration practices in relevant jurisdictions. For those participating, an amount to recognise the value of the employer contributions required is included in the remuneration information in the remuneration information later in this report.

Holding the company's securities

A standard term in the senior executive employment contract is a requirement that, over time, senior executives must acquire and maintain a holding in the company's ordinary shares until such time as the sum so invested, or the market value of their shareholding, exceeds 50 percent of their fixed remuneration. In meeting this obligation executives are required, from the date of receipt of the first payment under the senior executive short-term variable incentive plan, to apply at least half of the after tax proceeds so earned in acquiring shares.

The company believes this shareholding strengthens the alignment of senior executives with the interests of shareholders and puts their own remuneration at risk to long-term company performance. Apart from the long-term cash-based performance incentive schemes outlined above where an agreed percentage of any cash received is to be invested in purchasing shares, executives are left to their own discretion to organise acquiring the shares within the normal insider trading rules, and no allowance is made for the restriction on trading those shares. Directors may, in any year at their discretion, ease the share investment percentage required in terms of this policy in respect of any incentive payment arising in that year.

Shares issued to executives under the long-term incentive scheme, but still subject to the restrictive period, do not count towards the required minimum shareholding obligation.

The company does, however, allow New Zealand-based executives to meet their requirement to hold the company's shares by having an economic exposure to the shares through a defined contribution investment account in the Fletcher Building Retirement Plan, the value of which is calculated by reference to the Fletcher Building share price.

Disclosure policy

The New Zealand Companies Act 1993 requires the disclosure of all remuneration payable over $100,000 per annum in $10,000 bands. As the company must comply with this obligation, it has chosen not to also make detailed disclosure of the remuneration of the five highest paid executives as is considered best practice under the ASX Corporate Governance Guidelines.

Compliance with ASX corporate governance guidelines

The company meets all the best practice requirements of the ASX Corporate Governance Council other than making detailed disclosure of the five highest executives' remuneration. As is noted above, the company makes the remuneration disclosures required of a New Zealand company under the Companies Act 1993.

Employee remuneration

Section 211 (1) (g) of the New Zealand Companies Act 1993 requires disclosure of remuneration and other benefits, including redundancy and other payments made on termination of employment, in excess of $100,000 per year, paid by the company or any of its subsidiaries worldwide to any employees who are not directors of the company. To give more appropriate information on total employees' remuneration, where there is a contractual commitment to provide incentive remuneration in respect of the year ended 30 June 2013, the amount accrued as at 30 June 2013 has also been included in the total remuneration disclosed in the table to the right.

		Number of employees		
From NZ$	To NZ$	International business activities	New Zealand business activities	Total
100,000	110,000	522	350	872
110,000	120,000	389	240	629
120,000	130,000	300	159	459
130,000	140,000	232	117	349
140,000	150,000	161	82	243
150,000	160,000	116	66	182
160,000	170,000	82	39	121
170,000	180,000	79	41	120
180,000	190,000	74	28	102
190,000	200,000	53	32	85
200,000	210,000	53	23	76
210,000	220,000	30	19	49
220,000	230,000	33	17	50
230,000	240,000	28	14	42
240,000	250,000	12	11	23
250,000	260,000	11	15	26
260,000	270,000	18	11	29
270,000	280,000	20	6	26
280,000	290,000	22	7	29
290,000	300,000	12	6	18
300,000	310,000	11	6	17
310,000	320,000	10	4	14
320,000	330,000	11	4	15
330,000	340,000	8	2	10
340,000	350,000	9	4	13
350,000	360,000	6	4	10
360,000	370,000	5	2	7
370,000	380,000	4	2	6
380,000	390,000	8	2	10
390,000	400,000	2	1	3
400,000	410,000	3	4	7
410,000	420,000	1	5	6
420,000	430,000	4	1	5
430,000	440,000	3	2	5
440,000	450,000	3		3
450,000	460,000	3	1	4
460,000	470,000	2	2	4
470,000	480,000	1	3	4
480,000	490,000	3		3
490,000	500,000	2	2	4
500,000	510,000	1		1
510,000	520,000		2	2
520,000	530,000	1	1	2
540,000	550,000	1	1	2
550,000	560,000	1		1
570,000	580,000	3		3
580,000	590,000	1		1
590,000	600,000		1	1
610,000	620,000	2		2
650,000	660,000		1	1
670,000	680,000	1		1
680,000	690,000		1	1
700,000	710,000	2		2
730,000	740,000		1	1
770,000	780,000	2		2
780,000	790,000		1	1
1,000,000	1,010,000		1	1
1,030,000	1,040,000		2	2
1,130,000	1,140,000		1	1
1,180,000	1,190,000		2	2
1,360,000	1,370,000	1		1
1,480,000	1,490,000		1	1
2,550,000	2,560,000	1		1
		2,363	1,350	3,713

Cashflow and capital expenditure

Cashflow from operations was $559 million, up 25 percent on the $448 million achieved in the prior year. The improvement was due to strong cashflows in the Construction, Building Products and Distribution divisions, and reductions in working capital.

Capital expenditure for the period was $246 million, down from $353 million in the prior year. Of this total, $148 million was for stay-in-business capital projects and $98 million was for new growth initiatives, including $13 million for the acquisition of new businesses.

Capital management and funding

The group's gearing[3] at 30 June 2013 was 33.3 percent compared with 37.4 percent at 30 June 2012.

The group had total available funding of $2,690 million as at 30 June 2013. Of this, $819 million was undrawn and there was an additional $123 million of cash on hand. The group has drawn debt facilities maturing within the next 12 months of $33 million, and a further $112 million of capital notes subject to interest rate and term reset. These maturities are more than covered by the undrawn facilities and cash on hand.

The average maturity of the debt is 5 years and the currency split is 49 percent Australian dollar; 33 percent New Zealand dollar; 11 percent US dollar; and 7 percent spread over various other currencies.

74 percent of all borrowings have fixed interest rates with an average duration of 3 years and a rate of 7.4 percent. Inclusive of floating rate borrowings the average interest rate on the debt is 6.7 percent. All interest rates are inclusive of margins but not fees.

Interest coverage[4] for the period was 3.9 times compared with 3.7 times in the previous year.

Risk management

The company has an integrated programme to manage risk associated with movements in interest rates, commodity prices and exchange rates. This aims to ensure a base level of profitability and reduces volatility of earnings. Further details are provided in note 27 of the financial statements.

Retirement plans

The company operates a number of defined benefit retirement plans for its employees. The investment in all plans totalled 743 million at 30 June 2013.

During the year the company contributed $24 million towards funding these plans. The group expects to contribute $21 million to its defined benefit plans during the year to June 2014.

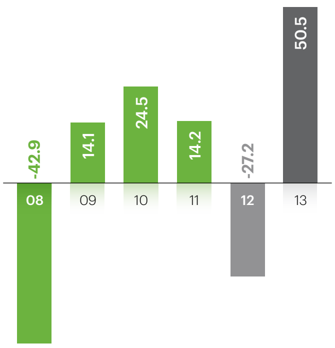
[1] Share price movement in year and gross dividend received, to opening share price.

[2] EBIT to average funds (net debt and equity less deferred tax asset).

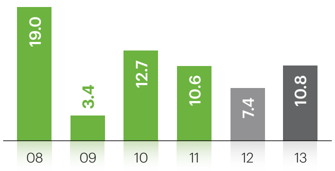
[3] Net debt (borrowings less cash and deposits) to net debt and equity.

[4] EBIT before significant items to total interest paid.

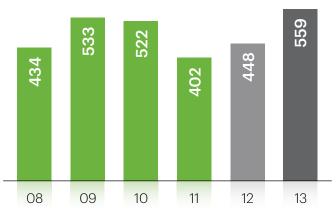
Total shareholder return (percentage) [1]



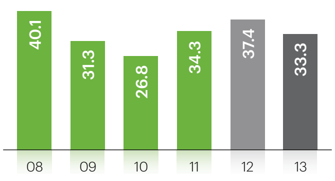
Return on average funds (percentage) [2]



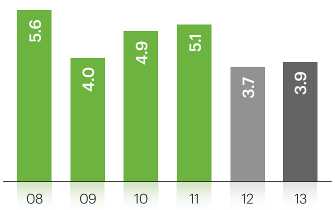
Operating cashflow (NZ $million)



Gearing (percentage) [3]



Interest cover (times) [4]



FINANCIAL STATEMENTS

Earnings statement

For the year ended 30 June 2013

	Notes	Fletcher Building Group		Fletcher Building Limited	
		Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Sales		**8,517**	8,839		
Cost of goods sold		**(6,346)**	(6,613)		
Gross margin		**2,171**	2,226		
Selling and marketing expenses		**(1,040)**	(1,095)		
Administration expenses		**(585)**	(603)		
Share of profits of associates	21	**21**	26		
Other investment income			1	2	2
Intercompany investment income	32			140	677
Other gains and losses	3	**4**	1		
Amortisation of intangibles	20	**(2)**			
Restructuring and impairment charges	4		(153)		
Operating earnings (EBIT)		**569**	403	142	679
Funding (costs)/income	6	**(147)**	(152)	136	40
Earnings before taxation		**422**	251	278	719
Taxation expense	7	**(85)**	(58)	(39)	(11)
Earnings after taxation		**337**	193	239	708
Earnings attributable to minority interests		**(11)**	(8)		
Net earnings attributable to the shareholders		**326**	185	239	708
Net earnings per share (cents)	9				
Basic		**47.6**	27.2		
Diluted		**47.5**	27.2		
Weighted average number of shares outstanding (millions of shares)	9				
Basic		**685**	681		
Diluted		**711**	681		
Dividends declared per share (cents)		**34.0**	34.0		

The accompanying notes form part of and are to be read in conjunction with these financial statements.

On behalf of the Board, 21 August 2013

Ralph Waters
Chairman of Directors

Mark Adamson
Managing Director

Statements of comprehensive income and movements in equity

For the year ended 30 June 2013

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M (Restated)	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Statement of comprehensive income				
Net earnings – parent interest	**326**	185	239	708
Net earnings – minority interest	**11**	8		
Net earnings	**337**	193	239	708
Movement in cashflow hedge reserve	**22**	(39)	3	(23)
Movement in pension reserve	**71**	(79)		
Movement in currency translation reserve	**(111)**	(39)		
Income and expenses recognised directly in equity	**(18)**	(157)	3	(23)
Total comprehensive income for the year	**319**	36	242	685
Statement of movements in equity				
Total equity at the beginning of the year as previously published	**3,603**	3,700	3,002	2,518
Change in accounting policy (Refer Note 1)	**(151)**	(72)		
Total equity at the beginning of the year as restated	**3,452**	3,628	3,002	2,518
Total comprehensive income for the year	**319**	36	242	685
Movement in minority equity	**(8)**	(10)		
Movement in reported capital	**25**	30	25	30
Dividends	**(233)**	(231)	(233)	(231)
Less movement in shares held under the treasury stock method	**(1)**	(1)		
Total equity	**3,554**	**3,452**	3,036	3,002

The accompanying notes form part of and are to be read in conjunction with these financial statements.

Balance sheet

As at 30 June 2013

	Notes	Fletcher Building Group June 2013 NZ$M	Fletcher Building Group June 2012 NZ$M (Restated)	Fletcher Building Limited June 2013 NZ$M	Fletcher Building Limited June 2012 NZ$M
Assets					
Current assets:					
Cash and deposits	15	**123**	168	38	77
Current tax asset	25	**30**	46		
Derivatives	27	**10**	4		
Debtors	16	**1,346**	1,460	26	27
Stocks	17	**1,353**	1,434		
Total current assets		**2,862**	3,112	64	104
Non current assets:					
Fixed assets	18	**2,261**	2,348		
Goodwill	19	**1,219**	1,243		
Intangibles	20	**510**	519		
Investments	21	**180**	150	5,447	5,429
Derivatives	27	**39**	69	49	65
Deferred taxation asset	25	**32**	38	13	15
Advances to subsidiaries	32			864	781
Total non current assets		**4,241**	4,367	6,373	6,290
Total assets		**7,103**	7,479	6,437	6,394
Liabilities					
Current liabilities:					
Provisions	22	**63**	95		2
Creditors and accruals	23	**1,181**	1,249	1	1
Current tax liability	25	**15**	18	38	12
Derivatives	27	**12**	3		
Contracts	24	**102**	115		
Borrowings	26	**144**	456	9	55
Advances from subsidiaries	32			3,262	3,208
Total current liabilities		**1,517**	1,936	3,310	3,278
Non current liabilities:					
Provisions	22	**20**	21		
Creditors and accruals	23	**87**	92		
Deferred taxation liability	25	**40**	20		
Retirement plan liability	34	**84**	137		
Derivatives	27	**46**	50	57	52
Borrowings	26	**1,755**	1,771	34	62
Total non current liabilities		**2,032**	2,091	91	114
Total liabilities		**3,549**	4,027	3,401	3,392
Equity					
Reported capital	11	**2,606**	2,582	2,628	2,603
Revenue reserves	12, 13	**1,078**	985	441	435
Other reserves	12, 13	**(165)**	(147)	(33)	(36)
Shareholders' funds		**3,519**	3,420	3,036	3,002
Minority equity	14	**35**	32		
Total equity		**3,554**	3,452	3,036	3,002
Total liabilities and equity		**7,103**	7,479	6,437	6,394

The accompanying notes form part of and are to be read in conjunction with these financial statements.

Statement of cashflows

For the year ended 30 June 2013

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Cashflow from operating activities				
Receipts from customers	**8,539**	8,908	26	2
Dividends received	**19**	32	140	677
Interest received		1	164	60
Total received	**8,558**	8,941	330	739
Payments to suppliers, employees and other	**7,790**	8,227		44
Interest paid	**149**	143	28	20
Income tax paid	**60**	123		
Total applied	**7,999**	8,493	28	64
Net cash from operating activities	**559**	448	302	675
Cashflow from investing activities				
Sale of fixed assets	**18**	16		
Sale of investments	**9**			
Sale of subsidiaries	**64**	11		
Total received	**91**	27		
Purchase of fixed assets	**233**	261		
Purchase of investments	**2**	6		
Purchase of subsidiaries	**11**	86		
Net debt in subsidiaries acquired		10		
Total applied	**246**	363		
Net cash from investing activities	**(155)**	(336)		
Cashflow from financing activities				
Net debt drawdown		107		59
Issue of capital notes		67		
Total received		174		59
Net debt repayment	**170**		74	
Repurchase of capital notes	**57**	21		
Advances to subsidiaries			59	487
Distribution to minority shareholders	**12**	13		
Dividends	**208**	201	208	201
Total applied	**447**	235	341	688
Net cash from financing activities	**(447)**	(61)	(341)	(629)
Net movement in cash held	**(43)**	51	(39)	46
Add opening cash deposits	**168**	115	77	31
Effect of exchange rate changes on net cash	**(2)**	2		
Closing cash and liquid deposits	**123**	168	38	77

The accompanying notes form part of and are to be read in conjunction with these financial statements.

Statement of cashflows
continued

For the year ended 30 June 2013

	Fletcher Building Group	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Analysis of subsidiaries acquired		
Fixed assets	**8**	41
Goodwill on acquisition	**3**	102
Current assets	**1**	19
Minority interests		(2)
Debt in subsidiaries		(10)
Current liabilities	**(1)**	(11)
Total assets and liabilities recognised	**11**	139
Gain recognised in respect of investment previously held		(4)
Adjustment to derecognise investment previously held in subsidiaries acquired		(49)
Cash paid to date for subsidiaries acquired	**11**	86

During the year the group acquired two minor subsidiaries for aggregate consideration of $11 million.

The accompanying notes form part of and are to be read in conjunction with these financial statements.

Reconciliation of net earnings to net cash from operating activities

For the year ended 30 June 2013

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Cash was received from:				
Net earnings	**326**	185	239	708
Earnings attributable to minority interests	**11**	8		
	337	193	239	708
Adjustment for items not involving cash:				
Depreciation, depletions, and amortisation	**220**	230		
Restructuring and impairment charges		122		
Provisions and other adjustments	**(51)**	(21)	(2)	(21)
Taxation	**25**	(65)	39	11
Non cash adjustments	**194**	266	37	(10)
Cashflow from operations [1]	**531**	459	276	698
Less gain on disposal of affiliates and fixed assets	**(6)**	(2)		
Cashflow from operations before net working capital movements	**525**	457	276	698
Net working capital movements	**34**	(9)	26	(23)
Net cash from operating activities [2]	**559**	448	302	675
Net working capital movements:				
Debtors	**34**	15	17	(24)
Stocks	**12**	71		
Contracts	**(6)**	20		
Creditors	**(6)**	(115)	9	1
	34	(9)	26	(23)

[1] Includes (gain)/loss on disposal of affiliates and fixed assets.

[2] As per the statement of cashflows.

The accompanying notes form part of and are to be read in conjunction with these financial statements.

Statement of accounting policies

For the year ended 30 June 2013

Basis of presentation

The financial statements presented are those of Fletcher Building Limited (the company) and its subsidiaries (the group). Fletcher Building Limited is a company domiciled in New Zealand, is registered under the Companies Act 1993, and is an issuer in terms of the Securities Act 1978 and the Financial Reporting Act 1993. The registered office of the company is 810 Great South Road, Penrose, Auckland. Fletcher Building Limited is a profit oriented entity.

The financial statements comprise the earnings statement, statement of comprehensive income, statement of movements in equity, balance sheet, statement of cashflows, and significant accounting policies, as well as the notes to these financial statements.

Accounting convention

The financial statements are based on the general principles of historical cost accounting, except that financial assets and liabilities as described below are stated at their fair value. These financial statements have been prepared in accordance with Generally Accepted Accounting Practice in New Zealand which is the New Zealand equivalent to International Financial Reporting Standards (NZ IFRS). They also comply with International Financial Reporting Standards.

The accounting policies have been applied consistently by all group entities, except as disclosed in note 1, changes in accounting policies.

Segmental reporting

Segmental information is presented in respect of the group's industry and geographical segments. The use of industry segments as the primary format is based on the group's management and internal reporting structure, which recognises groups of assets and operations with similar risks and returns. Inter-segment pricing is determined on an arm's length basis.

Estimates

The preparation of financial statements in conformity with NZ IFRS requires the directors to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of sales and expenses during the reporting period. Actual results could differ from those estimates. The estimates and assumptions are reviewed on an ongoing basis. For further information on areas of estimation and judgement, refer to the notes to the financial statements, in particular note 19.

Basis of consolidation

The consolidated financial statements comprise the company and its subsidiaries and the group's interest in associates, partnerships and joint ventures. Inter-company transactions are eliminated in preparing the consolidated financial statements.

Subsidiaries

Subsidiaries are included in the consolidated financial statements using the acquisition method of consolidation, from the date control commences until the date control ceases.

Associates

The equity method has been used for associate entities in which the group has a significant but not controlling interest.

Goodwill on acquisition

Fair values are assigned to the identifiable assets and liabilities of subsidiaries and associates of the group at the date they are acquired. Goodwill arises to the extent of the excess of the cost of the acquisition over the fair value of the assets and liabilities.

Goodwill is stated at cost, less any impairment losses. Goodwill is allocated to cash generating units and is not amortised, but is tested annually for impairment. Goodwill in respect of associates is included in the carrying amount of associates. Any discount on acquisition is recognised directly in earnings on acquisition.

Joint ventures and partnerships

Where the ownership interest in the joint venture is in the net residue of the business and does not give rise to an economic or controlling interest in excess of 50 percent, the share of the net assets and liabilities and earnings of the investment is included on an equity basis. If the interest does give rise to a controlling interest in excess of 50 percent, the investment is consolidated.

Joint ventures in which the ownership interest is directly in the assets and liabilities, rather than the net residue, are included on a proportional basis with assets, liabilities, revenues and expenses based on the group's proportional interest.

Valuation of assets

Land, buildings, plant and machinery, fixtures and equipment

The cost of purchasing land, buildings, plant and machinery, fixtures and equipment is the value of the consideration given to acquire the assets and the value of other directly attributable costs which have been incurred in bringing the assets to the location and the condition necessary for their intended service, including subsequent expenditure.

The costs of self constructed assets include, where appropriate, the costs of all materials used in construction, direct labour on the project, site preparation and installation costs, costs of obtaining resource consents, financing costs that are directly attributable to the project, variable and fixed overheads and unrecovered operating costs incurred during planned commissioning. Costs cease to be capitalised as soon as the asset is ready for productive use. All feasibility costs are expensed as incurred.

Leases in which the group assumes substantially all the risks and rewards of ownership are classified as finance leases and are measured at the lower of their fair value or the present value of the minimum lease payments at the inception of the lease.

Land, buildings, plant and machinery, leased assets and fixtures and equipment are stated at cost, less accumulated depreciation.

Investments

Investments are valued at historical cost. Impairments in the value of investments are written off to earnings as they arise.

Stocks

Trading stock, raw materials and work in progress are valued at the lower of cost or net realisable value, determined principally on the first-in, first-out basis. Cost includes direct manufacturing costs and manufacturing overheads at normal operating levels.

Debtors

Debtors are valued at estimated net realisable value. The valuation is net of a specific provision maintained for doubtful debts. All known losses are written off to earnings in the period in which it becomes apparent that the debts are not collectable. Trade debtors normally have 30 to 90 day terms.

Construction work in progress

Construction work in progress is stated at cost plus profit recognised to date, less progress billings and any provision for foreseeable losses. Cost includes all expenditure directly related to specific projects and an allocation of fixed and variable overheads incurred in the group's contract activities based on normal operating capacity.

Cash

Cash and deposits comprise cash and demand deposits with banks or other financial institutions and highly liquid investments that are readily convertible to cash.

Impairment

Impairment is deemed to occur when the recoverable amount falls below the book value of the asset. The recoverable amount is determined to be the greater of the fair value, less disposal costs or the sum of expected future discounted net cashflows arising from the ownership of the asset. Future net cashflows take into account the remaining useful life and the expected period of continued ownership, including any intended disposals, and any costs or proceeds expected to eventuate at the end of the remaining useful life or the end of the expected period of continued ownership.

For the purposes of considering whether there has been an impairment, assets are grouped at the lowest level for which there are identifiable cashflows that are largely independent of the cashflows of other groups of assets. When the book value of a group of assets exceeds the recoverable amount an impairment loss arises and is recognised in earnings immediately.

Goodwill and brands with an indefinite life are tested for impairment in June of each year. Other assets are tested for impairment when an indication of impairment exists.

Brands

Brands for which all relevant factors indicate that there is no limit to the foreseeable net cashflows, are considered to have an indefinite useful life and are held at cost and are not amortised, but are subject to an annual impairment test.

Retirement plans

The group's net asset in respect of its retirement plans is calculated separately for each plan by an independent actuary, as being the fair value of the plan's assets less the present value of the future obligations to the members. The value of the asset recognised cannot exceed the present value of any future refunds from the plans or reductions in future contributions to the plans.

Foreign currency

Translation of the financial statements of foreign operations

The assets and liabilities of the group's overseas operations are translated into New Zealand currency at the rates of exchange ruling at balance date. The revenue and expenditure of these entities are translated using an average exchange rate reflecting an approximation of the appropriate transaction rates. Exchange variations arising on the translation of these entities are recognised directly in the currency translation reserve.

Exchange differences

Monetary assets and liabilities in foreign currencies at balance date which are not covered by forward exchange contracts are translated at the rates of exchange ruling at balance date. Monetary assets and liabilities in foreign currencies at balance date which are covered by forward exchange contracts are effectively translated at the exchange rates specified in those contracts.

Non-monetary assets and liabilities in foreign currencies are translated at the exchange rates in effect when the amounts of these assets and liabilities were determined.

Net investments in foreign operations

Exchange differences arising from the translation of the net investment in foreign operations, and of related hedges, are taken to the currency translation reserve and are released to earnings upon disposal.

Financial instruments

Non-derivative financial instruments

Non-derivative financial instruments comprise borrowings, trade and other payables, cash and cash equivalents, and trade and other receivables.

Non-derivative financial instruments are recognised initially at fair value. Subsequent to initial recognition, non-derivative financial instruments are measured at amortised cost using the effective interest method, less any impairment losses.

Derivative financial instruments

Derivative financial instruments including foreign exchange contracts, interest rate swaps, currency swaps, options, forward rate agreements and commodity price swaps are utilised to reduce exposure to market risks.

Group policy specifically prohibits the use of derivative financial instruments for trading or speculative purposes. All the group's derivative financial instruments are held to hedge risk on underlying assets, liabilities and forecast and committed trading transactions.

The fair values of derivative financial instruments, as disclosed in the financial instrument note, are determined by applying quoted market prices.

The group holds derivative instruments until expiry except where the underlying rationale from a risk management point of view changes, such as when the underlying asset or liability which the instrument hedges no longer exists, in which case early termination occurs.

Derivative financial instruments are initially recorded at fair value and are then revalued to fair value at balance date. The gain or loss on revaluation is recorded either in earnings or equity depending on whether the instruments qualify for hedge accounting and the nature of the item being hedged. For a derivative instrument to be classified and accounted for as a hedge, it must be highly correlated with, and effective as a hedge of the underlying risk being managed. This relationship must be documented from inception.

Fair value hedges

Where a derivative financial instrument is designated as a hedge of a recognised asset or liability, or of a firm commitment, any gain or loss is recognised directly in earnings together with any changes in the fair value of the hedged risk.

Cashflow hedges

Where a derivative financial instrument is designated as a hedge of the variability in cashflows of assets or liabilities, or of a highly probable forecasted transaction, the effective part of any gain or loss is recognised directly in the cashflow hedge reserve within equity and the ineffective part is recognised immediately in earnings. The effective portion is transferred to earnings when the underlying cashflows affect earnings.

Net investment hedges

Where the derivative financial instruments are designated as a hedge of a net investment in a foreign operation, the derivative financial instruments are accounted for on the same basis as cashflow hedges through the currency translation reserve within equity.

Derivatives that do not qualify for hedge accounting

Where a derivative financial instrument does not qualify for hedge accounting, or where hedge accounting has not been elected, any gain or loss is recognised directly in earnings.

Valuation of liabilities

Taxation

The provision for current tax is the estimated amount due for payment during the next 12 months by the group. The provision for deferred taxation has been calculated using the balance sheet liability method. Deferred tax is recognised on the temporary difference between the carrying amount of assets and liabilities and their taxable value.

Deferred tax assets are not recognised on temporary differences and tax losses unless recovery is considered probable.

Finance leases

Finance leases are capitalised to reflect the borrowings incurred and the cost of the asset acquired. Such obligations are classified within borrowings. The finance cost portion of lease payments is written off to earnings. The leased asset is depreciated on a straight line basis over the estimated useful life of the asset with regard to residual values.

Borrowings

Interest bearing borrowings are initially recognised at fair value.

Creditors

Trade creditors and other liabilities are stated at cost or estimated liability where accrued.

Annual leave

Annual leave is recognised on an accrual basis.

Provisions

A provision is recognised when the group has a current obligation and it is probable that an economic benefit will be required to settle it.

Statement of accounting policies
continued

Intercompany guarantees

Where the company enters into financial guarantee contracts to guarantee the performance or indebtedness of other companies within the group, the company considers these to be insurance arrangements and accounts for them as such. In this respect, the company treats the guarantee contract as a contingent liability until such time as it becomes probable that the company will be required to make a payment under the guarantee.

Equity

Share capital

Ordinary shares are classified as shareholders funds. Costs directly attributable to the issue of new shares or options are shown in shareholders funds as a reduction from the proceeds.

Dividends are recognised as a liability in the period in which they are declared.

Where a member of the group purchases the company's share capital the consideration paid is deducted from equity under the treasury stock method as if the shares are cancelled, until they are reissued or otherwise disposed of.

Income determination

Sales recognition

Sales are recognised in accordance with the terms of sale when the benefits of ownership and risk of loss passes to the customer.

Construction contracts

Earnings on construction contracts (including sub-contracts) are determined using the percentage-of-completion method. Earnings are not recognised until the outcome can be reliably estimated. The company uses its professional judgement to assess both the physical completion and the forecast financial result of the contract. Provision is made for estimated future losses on the entire contract from the date it is first recognised that a contract loss may be incurred.

Investment revenue

Dividends and distributions are taken to earnings when received, or accrued where declared prior to balance date.

Funding costs

Net funding costs comprise interest expense, interest income, amortisation of prepaid expenses and gains/losses on certain financial instruments that are recognised in earnings.

Depreciation

Depreciation of fixed assets is calculated on the straight line method. Expected useful lives, which are regularly reviewed on a weighted average basis are:

Buildings	30 years
Plant and machinery	13 years
Fixtures and equipment	5 years
Leased assets capitalised	10 years

Leasing commitments

Expenditure arising from operating leasing commitments is written off to earnings in the period in which it is incurred.

Retirement plan expense

Obligations for contributions to defined contribution plans are recognised in earnings as incurred. The actuarial cost of providing benefits under defined benefit plans is expensed as it accrues over the service life of the employees, after taking account of the income expected to be earned by the assets owned by the plans.

All actuarial gains or losses are recognised in the pension other comprehensive income reserve (the pension reserve) in the year in which are they incurred.

Long service leave

Long service leave is recognised in earnings on an actuarial basis.

Research and development

Expenditure on research activities is recognised in earnings as incurred.

Executive share scheme

The company has implemented a long term cash-based performance incentive scheme targeted at the company's executives most able to influence the results of the company with an agreed percentage of any cash received to be invested in purchasing the company's shares.

The executive long-term share scheme introduced in 2008 allows group executives to acquire shares in the company at market price, funded by an interest free loan from the group. The executives are entitled to vote on the shares and to receive cash dividends, the proceeds of which are used to repay the loan. The shares are held in trust for the executives by the Trustee, Fletcher Building Share Schemes Limited. Payment of half of any benefit under the executive performance share scheme is dependent upon the group's total shareholder return exceeding the 51st percentile of the total shareholder return of a comparative group of companies over a three year restricted period.

Payment of the other half of any benefit is dependent upon the group achieving an earnings per share target. In addition, in respect of the benefit which is dependant on total shareholders return, the three year restricted period is automatically extended for up to one year if total shareholders return is less than the 51st percentile. Executives can elect to extend the restricted period for up to one year if total shareholders return is between the 51st and 75th percentile. No extension is permitted for the benefit which is dependant upon achieving an earnings per share target.

At the end of the restricted period or any extension, the group will pay a bonus to the executives to the extent that performance targets have been met, the after tax amount of which will be sufficient for the executives to repay the balance of the loan for the shares which vest.

If the performance obligations are not met or are only partially met, the trustee will acquire the beneficial interest in some or all of the shares. The loan provided in respect of those shares which do not transfer to the executives (the forfeited shares) will be novated to the trustee and will be fully repaid by the transfer of the forfeited shares.

The group will recognise an expense in earnings over the restricted period to provide for the maximum bonus payable.

The group accounts for the share schemes under the treasury stock method. The receivable owing from the executives, representing the shares held in the company, is deducted from the group's paid up capital. If the performance targets based on total shareholder return are not met and the shares do not vest, the after tax amount of the bonus provision will be transferred to equity and will not be released to earnings. If the performance targets based on earnings per share are not met and the shares do not vest, the after-tax amount of the bonus provision will be released to earnings. The shares will continue to be deducted from equity until they are disposed of by the trustee.

To the extent that the performance targets are met and the shares vest the bonus will be paid enabling repayment of the loan, and to the extent of this loan repayment paid up capital will increase.

Employee share purchase scheme – FBuShare

The global employee share purchase scheme, FbuShare, allows eligible group employees to regularly save up to NZ$5,000 per annum of their after-tax pay and purchase shares in the company (purchased shares) at market prices. At the end of rolling three year qualification periods, and provided they remain employed by a group company, employees will be awarded one free award share for every two purchased shares acquired in the first year of each three year qualification period and still held at the end of those periods.

Dividends payable will be re-invested in additional shares. Employees will receive award shares on any additional shares, subject to the same conditions set out above. The employees are responsible for any income tax liability payable on dividends and on the value of any award shares.

At the end of each three year qualification period, employees may continue to hold any purchased, additional and award shares or they may sell some or all of the shares. The group accrues the liability to pay for award shares over the three year qualification periods.

1 Changes in accounting policies

NZ IAS 19 Employee Benefits has been revised with an effective date of 30 June 2014 for the group. The group decided to adopt this early for the year ended 30 June 2013. This resulted in the unrecognised loss in respect of its retirement plans at 30 June 2011 of $87 million ($72 million net of tax) being written off to the pension other comprehensive income reserve (the pension reserve). In addition the actuarial loss of $95 million ($79 million net of tax) incurred during the year ended 30 June 2012 has been written off to the pension reserve. Therefore the total write-off at 30 June 2012 is $182 million ($151 million net of tax) and this has been written off to the pension reserve. The group has recalculated its pension expense for the current and prior year and this has not changed materially. Going forward the adoption of the revised standard is not expected to have a material impact on the group's earnings.

The International Accounting Standards Board has issued a number of other standards, amendments and interpretations which are not yet effective. The group has not yet applied these in preparing these financial statements although the application of these standards, amendments and interpretations would require further disclosures, but they are not expected to have a material impact on the group's earnings. There have been no other changes in accounting policies in the year ended 30 June 2013, however certain comparatives have been restated to conform with the current year's presentation.

2 Acquisitions

During the 2013 year the group acquired subsidiaries for a total consideration of $11 million (2012: $86 million).

The following values are recognised in the financial statements:

	Final fair value NZ$M
Fixed assets	**8**
Goodwill on acquisition	**3**
Current assets	**1**
Current liabilities	**(1)**
Enterprise value	**11**
Consideration paid	**11**

During the year to 30 June 2013 these acquisitions contributed sales of $5 million and an operating earnings loss of $1 million.
As these acquisitions occurred at the beginning of the year, the above contributions are the same as the annualised results.
A formal fair value exercise of the assets and liabilities for the above acquisitions has been completed.

The major acquisition during the prior year was the purchase of the remaining half of Homapal on 2 April 2012 for a consideration of $52 million, having previously held a 50 percent investment. From that date Homapal has been accounted for as a subsidiary of the group, having previously been equity accounted as an associate.

The following values are recognised in the financial statements in respect of this acquisition:

	Final fair value NZ$M
Fixed assets	**13**
Brands	**14**
Goodwill on acquisition	**85**
Inventories	**7**
Receivables	**3**
Current liabilities	**(6)**
Deferred taxation liability	**(1)**
Enterprise value	**115**
Less debt acquired	**(10)**
Gain recognised in respect of investment previously held	**(4)**
Adjustment to derecognise investment previously held	**(49)**
Consideration paid	**52**

3 Specific disclosures

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
The following items are specific disclosures required to be made and are included within the earnings statement:				
Net periodic pension cost	**14**	12		
Employee related short term costs [1]	**1,436**	1,429		
Other long term employee related benefits	**67**	68		
Research and development	**3**	2		
Bad debts written off	**7**	7		
Donations and sponsorships	**2**	1		
Maintenance and repairs	**169**	167		
Operating lease expense	**179**	180		
Other gains and (losses) [2]	**4**	1		
Auditors' fees and expenses payable for:				
Statutory audit – KPMG	**3**	3		
Other services – KPMG [3]	**1**	1		
Other professional services to other firms	**1**	2		
[1] Remuneration for the executive committee included in the above is disclosed in note 32.				
[2] Other gains and (losses) include the following:				
Sale of assets	**13**	8		
Acquisition costs		(3)		
Insurance proceeds		1		
Impairment of assets		(2)		
Net cost of repairs due to earthquake damage		(1)		
Net redundancies and restructuring costs	**(11)**	(3)		
Other	**2**	1		
	4	1		

[3] Fees paid to the auditors during the year for other services are mainly with respect to the half year review, other assurance services and tax compliance work.

4 Restructuring and impairment charges – significant items (previously referred to as Unusual items)

There are no items or transactions that the company believes should be separately disclosed as significant items in the year ended June 2013. In the prior year, significant items were as follows:

	Fletcher Building Group – June 2012					
	Acquisition income and expenses[1] NZ$M	Restructuring costs [2] NZ$M	Intangibles impairment [3] NZ$M	Write-off of fixed assets [4] NZ$M	Write-off of stock [5] NZ$M	Total NZ$M
Building Products division			75		4	79
Laminates & Panels division	(1)	45		20	10	74
Total restructuring and impairment charges – EBIT	(1)	45	75	20	14	153
Tax benefit on above items [6]		(7)	(4)	(6)	(4)	(21)
Total restructuring and impairment charges – net earnings	(1)	38	71	14	10	132

Fletcher Building Group 2012

[1] The group recorded a gain of $4 million arising from the revaluation of its existing 50 percent share in Homapal. In addition the group incurred $3 million of acquisition costs.

[2] The group incurred $45 million of restructuring costs in the Laminates & Panels division. $21 million is attributable to the decision to close the Formica factory in Bilbao, Spain and consolidate operations at the Valencia site. The remaining $24 million was incurred in restructuring the Laminex Australia and New Zealand businesses.

[3] A strategic review of the Australian insulation business was completed during the year ended 30 June 2012. The review identified that medium term earnings prospects had deteriorated, necessitating a reduction in the carrying value of the business. As a result the group wrote off $62 million of goodwill and $13 million of brands.

[4] The group decided to write off a further $3 million of fixed assets for The O'Brien Group Limited and $17 million for Laminex Australia. The Laminex Australia write-offs were a result of product rationalisation initiatives.

[5] The group also wrote off $10 million of stock in Laminex Australia as a result of product rationalisation initiatives, and incurred a further $4 million in disposing of surplus stock in Fletcher Insulation Australia.

[6] Tax benefit, see note 7.

5 Discontinued operations

There were no discontinued operations in the current or the comparative year.

6 Funding costs

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Interest expense				
Loans and derivatives	**97**	101	23	15
Capital notes	**38**	39		
Other		2		
Interest income				
Subsidiary companies			(163)	(62)
Cash and deposits	**(1)**	(2)	(1)	2
	134	140	(141)	(45)
Plus bank fees, registry and issue expenses	**13**	12	5	5
	147	152	(136)	(40)

Included in interest expense is the net settlement of the group's interest derivatives. This consisted of $100 million of interest income and $110 million of interest expense (2012: $80 million interest income; $86 million interest expense).

For items applying fair value hedges the gains or losses on the hedging instrument and on the hedged item net off to zero.

7 Taxation expense

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Earnings before taxation	**422**	251	278	719
Taxation at 28 cents per dollar	**118**	70	78	201
Adjusted for:				
Higher tax rate in overseas jurisdictions	**1**			
Non assessable income	**(9)**	(3)	(39)	(190)
Non deductible expenses	**3**	19		
Tax losses not recognised	**3**	11		
Benefit of tax losses recognised	**(5)**			
Tax in respect of prior years	**(2)**	(17)		
Other permanent differences	**(24)**	(22)		
	85	58	39	11
Tax on operating profits pre restructuring and impairment charges	**85**	79	39	11
Tax benefit on restructuring and impairment charges		(21)		
	85	58	39	11
Total current taxation expense	**104**	47	39	11
Total deferred taxation expense	**(19)**	11		
	85	58	39	11

8 Shareholder tax credits

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Imputation credit account				
Imputation credits at the beginning of the year		3		1
Taxation paid	**34**	29		
Imputation credits received	**1**	1	35	32
Imputation credits attached to dividends paid	**(34)**	(33)	(34)	(33)
	1		1	

Fletcher Building's practice is to attach imputation credits to the final dividend and the company has until 31 March 2014 to fund any deficiency in its imputation credit account.

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 A$M	Year ended June 2012 A$M	Year ended June 2013 A$M	Year ended June 2012 A$M
Franking credit account				
Franking credits at the beginning of the year	**49**	25	40	
Taxation paid		56		
Franking credits received	**4**	7	6	79
Franking credits attached to dividends paid	**(41)**	(39)	(41)	(39)
	12	49	5	40

9 Net earnings per share

The diluted net earnings per share calculation uses the weighted average number of shares as determined for basic net earnings per share, adjusted for dilutive securities. Capital notes and options are convertible into the company's shares and may therefore result in dilutive securities for purposes of determining the diluted net earnings per share. Fletcher Building may, at its option, purchase or redeem the capital notes for cash at the principal amount plus any accrued but unpaid interest.

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Numerator				
Net earnings	**326**	185		
Numerator for basic earnings per share	**326**	185		
Dilutive capital notes distribution	**12**			
Numerator for diluted net earnings per share	**338**	185		
Denominator (millions of shares)				
Denominator for basic net earnings per share	**685**	681		
Conversion of dilutive capital notes	**26**			
Denominator for diluted net earnings per share	**711**	681		

10 Dividends

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Dividends paid to shareholders	**233**	231	233	231
	233	231	233	231

On 21 August 2013 the directors declared a dividend of 17 cents per share, payable on 16 October 2013.

11 Capital

Reported capital at the beginning of the year	**2,603**	2,573	2,603	2,573
Issue of shares	**25**	30	25	30
Reported capital at the end of the year including treasury stock	**2,628**	2,603	2,628	2,603
Treasury stock	**(22)**	(21)		
	2,606	2,582	2,628	2,603

All ordinary shares are issued and fully paid, and carry equal rights in respect of voting, dividend payments and distribution upon winding up. Costs directly attributable to the issue of new shares are shown as a deduction from the proceeds. Shares held by the trustee of the Fletcher Building executive long-term share scheme are deducted from the group's capital until the shares vest, are reissued or otherwise disposed of. When such shares do vest, are reissued or otherwise disposed of, any consideration received is included in the group's equity.

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013	Year ended June 2012	Year ended June 2013	Year ended June 2012
Number of ordinary shares:				
Number of shares on issue at the beginning of the year	**682,866,936**	678,573,570	682,866,936	678,573,570
Shares issued under the dividend reinvestment plan	**3,229,491**	4,293,366	3,229,491	4,293,366
Total number of shares on issue	**686,096,427**	682,866,936	686,096,427	682,866,936
Less accounted for as treasury stock	**(2,998,233)**	(2,696,181)		
	683,098,194	680,170,755	686,096,427	682,866,936

Share options:

On 1 September 2009, the Company issued 500,000 share options under the executive option scheme. As at 30 June 2013, the exercise price of the share options is $9.72 and is increased annually by the company's cost of capital, less actual dividends paid. The restrictive period was until 1 September 2012 and the final exercise date is 1 September 2015. On 1 October 2012 the Company issued a further 500,000 options under the executive option scheme. At 30 June 2013 the exercise price of these share options is $6.50. The restrictive period is until 1 October 2015 and the final exercise date is 1 October 2018.

The options carry no dividend or voting rights. The company has calculated the fair value of granting these options and has expensed $0.5 million in respect of the 2009 share options and $0.1 million in respect of the 2012 options to a share option reserve.

12 Reserve balances

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Reserves comprise:				
Retained earnings	**1,078**	985	441	435
Share option reserve	**1**	1	1	1
Cashflow hedge reserve	**(31)**	(53)	(34)	(37)
Currency translation reserve	**(55)**	56		
Pension reserve	**(80)**	(151)		
	913	838	408	399

13 Reserve movements

	Fletcher Building Group		Fletcher Building Limited	
	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M	Year ended June 2013 NZ$M	Year ended June 2012 NZ$M
Retained earnings				
Retained earnings at the beginning of the year	**985**	1,031	435	(42)
Net earnings for the year – parent interest	**326**	185	239	708
Dividends paid during the year	**(233)**	(231)	(233)	(231)
	1,078	985	441	435
Share option reserve				
Share option reserve at the beginning of the year	**1**	1	1	1
Arising in the year				
	1	1	1	1
Cashflow hedge reserve				
Cashflow hedge reserve at the beginning of the year	**(53)**	(14)	(37)	(14)
Arising in the year	**22**	(39)	3	(23)
	(31)	(53)	(34)	(37)
Currency translation reserve				
Currency translation reserve at the beginning of the year	**56**	95		
Arising in the year	**(111)**	(39)		
	(55)	56		
Pension reserve				
Pension reserve at the beginning of the year	**(151)**	(72)		
Arising in the year	**73**	(79)		
Currency translation	**(2)**			
	(80)	(151)		

14 Minority equity

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Share capital	**21**	20		
Reserves	**14**	12		
	35	32		

15 Cash and deposits

Cash and bank balances	**90**	89	9	11
Short-term deposits	**33**	79	29	66
	123	168	38	77

16 Debtors

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Trade debtors	**1,071**	1,168		
Contract debtors	**95**	89		
Contract retentions	**18**	27		
Less provision for doubtful debts	**(41)**	(47)		
Trade and contract debtors	**1,143**	1,237		
Other receivables	**203**	223	26	27
	1,346	1,460	26	27
Current	**815**	906		
0 – 30 days over standard terms	**255**	267		
31 – 60 days over standard terms	**43**	42		
61+ days over standard terms	**71**	69		
Provision	**(41)**	(47)		
Trade and contract debtors	**1,143**	1,237		

17 Stocks

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Raw materials	**300**	338		
Work in progress	**138**	126		
Finished goods	**856**	912		
Consumable stores and spare parts	**59**	58		
	1,353	1,434		
Stock held at cost	**1,252**	1,351		
Stock held at net realisable value	**101**	83		
	1,353	1,434		

The group also has conditional commitments for the purchase of land to be used for residential construction totalling $192 million (June 2012: $42 million). Delivery of this land is expected to take place in the period to September 2017.

18 Fixed assets

	Fletcher Building Group						
	Land NZ$M	Buildings NZ$M	Plant & machinery NZ$M	Fixtures & equipment NZ$M	Resource extraction NZ$M	Leased assets NZ$M	Total NZ$M
Gross value at 1 July 2012	**354**	**475**	**2,385**	**410**	**114**	**4**	**3,742**
Acquisitions during the year	**1**	**4**	**3**				**8**
Additions		**24**	**105**	**98**	**6**		**233**
Disposals	**(4)**	**(6)**	**(72)**	**(14)**	**(3)**		**(99)**
Acquisition restatement during the year			**(14)**				**(14)**
Currency translation	**(16)**	**(14)**	**(57)**	**(5)**	**(4)**		**(96)**
Gross value at 30 June 2013	**335**	**483**	**2,350**	**489**	**113**	**4**	**3,774**
Accumulated depreciation at 1 July 2012		**(100)**	**(987)**	**(285)**	**(20)**	**(2)**	**(1,394)**
Disposals		**3**	**43**	**15**	**4**		**65**
Depreciation expense		**(17)**	**(158)**	**(38)**	**(4)**	**(1)**	**(218)**
Currency translation		**2**	**27**	**5**			**34**
Accumulated depreciation at 30 June 2013		**(112)**	**(1,075)**	**(303)**	**(20)**	**(3)**	**(1,513)**
Net book value at 30 June 2013	**335**	**371**	**1,275**	**186**	**93**	**1**	**2,261**
Gross value at 1 July 2011	297	478	2,244	388	110	5	3,522
Acquisitions during the year			41				41
Additions	3	10	197	44	7		261
Disposals	(10)	(18)	(100)	(18)	(2)	(1)	(149)
Acquisition restatement during the year	87	11	27	15			140
Transfer of quarry assets to inventory	(19)						(19)
Impairments in the income statement			(3)	(17)			(20)
Currency translation	(4)	(6)	(21)	(2)	(1)		(34)
Gross value at 30 June 2012	354	475	2,385	410	114	4	3,742
Accumulated depreciation at 1 July 2011		(101)	(924)	(271)	(19)	(1)	(1,316)
Disposals		14	97	22	4		137
Depreciation expense		(14)	(173)	(37)	(5)	(1)	(230)
Currency translation		1	13	1			15
Accumulated depreciation at 30 June 2012		(100)	(987)	(285)	(20)	(2)	(1,394)
Net book value at 30 June 2012	354	375	1,398	125	94	2	2,348

As at 30 June 2013, fixed assets includes $117 million of assets under construction (June 2012: $195 million).

19 Goodwill

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Goodwill acquired at cost	**1,373**	1,362		
Accumulated currency translation	**19**	54		
Accumulated impairment	**(173)**	(173)		
Goodwill at the end of the year	**1,219**	1,243		
Goodwill at the beginning of the year	**1,243**	1,424		
Acquired during the year	**3**	102		
Acquisition restatement during the year	**8**	(220)		
Goodwill in subsidiaries sold during the year		(1)		
Impaired during the year		(62)		
Currency translation	**(35)**			
	1,219	1,243		
Formica Asia	**234**	232		
Tradelink	**223**	238		
The Laminex Group	**178**	190		
Stramit Corporation	**108**	116		
Iplex New Zealand	**105**	105		
Homapal Plattenwerk GmbH	**85**	77		
Forman Insulation	**46**	46		
Mico Plumbing	**44**	44		
Tasman Insulation New Zealand	**43**	43		
Tasman Sinkware	**42**	45		
Iplex Australia	**37**	40		
Roof Tile Group	**23**	23		
Other subsidiaries	**51**	44		
Goodwill by major subsidiaries	**1,219**	1,243		

Impairment of goodwill

Goodwill has been tested for impairment in June 2013. Each business unit which carries goodwill has prepared a discounted cashflow on a value-in-use basis. They have used their past experience of sales growth, operating costs and margin, and external sources of information where appropriate, to determine their expectations for the future. These cashflow projections are based on the group's three year strategic plan approved by the directors which has been extended for a further two years. Cashflows beyond the five year period have been extrapolated using estimated terminal growth rates which do not exceed the long term average growth rate for the industries in which the business units operate. The growth rates used range from 2 percent to 3 percent, with the majority of the business units using 2 percent. The cashflows are discounted using a nominal rate of 10 percent after tax, with the exception of Formica which has used 9 percent. This adjustment to the standard rate of 10 percent reflects the risk profile for the countries in which Formica operates. The valuation models used are most sensitive to changes in the terminal year earnings and cashflows.

The group operates in cyclical markets and currently faces uncertain market conditions that make it difficult to predict future profitability. Residential markets are still below long-term averages in many jurisdictions, however, there has been a recent improvement in New Zealand and USA.

The group has identified certain business units where the review indicated the recoverable amount was only marginally in excess of the carrying amount. Management have identified a number of strategies and initiatives to achieve an appropriate improvement in their operating earnings. If this improvement does not eventuate there would be a need for an impairment.

The impairment review confirmed that, for all other business units, there is clear headroom over the carrying value and as such there are no impairment issues necessitating a write-down of goodwill.

20 Intangibles

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Brands	**504**	511		
Intangible assets	**6**	8		
	510	519		
Brands				
Brands at the beginning of the year	**511**	396		
Acquisition restatement during the year	**14**	135		
Brands in subsidiaries sold during the year	**(1)**			
Impaired during the year		(13)		
Currency translation	**(20)**	(7)		
	504	511		
The Laminex Group	**145**	155		
Formica Corporation including Homapal	**140**	124		
Tradelink	**57**	61		
Stramit Corporation	**47**	50		
Iplex Australia	**40**	44		
Other subsidiaries	**75**	77		
Brands by major subsidiaries	**504**	511		

Brands are considered to have an indefinite useful life as there are no factors which indicate that there is a limit on their capacity to generate foreseeable cashflows. Factors considered before arriving at this conclusion are whether the businesses which own the brands are going concerns, whether there is any evidence of obsolescence due to changes in either technology or regulatory conditions, whether the businesses are trading profitably and whether there are any other market based indications. Brands have been tested for impairment in June 2013 on a value-in-use basis. This exercise confirmed that there are no impairment issues necessitating a write-down.

Intangible assets				
Intangible assets acquired at cost	**25**	25		
Currency translation	**(1)**	(1)		
Accumulated amortisation	**(18)**	(16)		
Intangible assets at the end of the year	**6**	8		
Intangible assets at the beginning of the year	**8**	8		
Charged to earnings	**(2)**			
	6	8		

21 Investments

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Investment in associates	**137**	150		
Retirement plan surplus – see note 34	**42**			
Other investments	**1**			
Investment in subsidiary companies[1]			5,447	5,429
	180	150	5,447	5,429

[1] The principal subsidiaries included within investment in subsidiary companies are disclosed in note 33, principal operations.

	June 2013 NZ$M	June 2012 NZ$M
Carrying amount of associates:		
Carrying amount at the beginning of the year	**150**	209
Acquisition of associates		6
Loans to associates	**1**	(1)
Equity accounted earnings of associates	**21**	26
Purchase of controlling interest of Homapal investment		(49)
Acquisition restatement during the year		(5)
Sale of investment in associates	**(9)**	
Currency translation	**(7)**	(4)
Dividends from associates	**(19)**	(32)
Investment in associates	**137**	150
Investment by associate:		
Wespine Industries Pty Limited	**61**	67
Dynea Industries WA Pty Limited	**19**	20
Sims Pacific Metals Limited	**20**	19
Mt Marrow Blue Metal Quarries Pty Limited	**11**	10
Mitchell Water Australia Pty Limited		7
Mittagong Sands Pty Limited	**6**	6
Regional Resources NW Quarrying	**4**	5
Other	**16**	16
	137	150
Associate information:		
Balance sheet information for associates – 100%		
Assets	**310**	351
Liabilities	**162**	175
Equity	**148**	176
Equity – Fletcher Building share	**64**	71
Goodwill acquired at cost	**56**	63
Plus loans to associates at the end of the year	**17**	16
Investment in associates	**137**	150
Equity accounted earnings comprise:		
Sales – 100%	**525**	535
Earnings before taxation – 100%	**53**	64
Earnings before taxation – Fletcher Building share	**26**	32
Taxation expense	**(5)**	(6)
Earnings after taxation – Fletcher Building share	**21**	26

22 Provisions

	Restructuring NZ$M	Construction claims NZ$M	Warranty & environmental NZ$M	Other NZ$M	Total NZ$M
June 2013			**Fletcher Building Group**		
Carrying amount at the beginning of the year	**37**	**2**	**43**	**34**	**116**
Currency translation			**(1)**	**(1)**	**(2)**
Charged to earnings	**8**		**16**	**20**	**44**
Settled or utilised	**(33)**	**(1)**	**(15)**	**(16)**	**(65)**
Released to earnings	**(3)**		**(4)**	**(3)**	**(10)**
	9	**1**	**39**	**34**	**83**
June 2012			**Fletcher Building Group**		
Carrying amount at the beginning of the year	25	2	43	31	101
Currency translation	(1)				(1)
Acquired				2	2
Charged to earnings	42	1	19	17	79
Settled or utilised	(23)		(15)	(14)	(52)
Released to earnings	(6)	(1)	(4)	(2)	(13)
	37	2	43	34	116
June 2013			**Fletcher Building Limited**		
Carrying amount at the beginning of the year				2	2
Released to earnings				(2)	(2)
June 2012			**Fletcher Building Limited**		
Carrying amount at the beginning of the year				2	2
				2	2

During the year the group utilised $33 million (30 June 2012: $23 million) in respect of restructuring obligations at certain businesses. The remaining balance of restructuring claims are expected to be utilised in the next two years. Construction claims relate to disputes on jobs and provisions in regard to the wind-down of overseas operations and are expected to be utilised over the next two years. Warranty and environmental provisions relate to products sold and services provided and are expected to be utilised over the next three years. Other provisions relate to miscellaneous matters with no individual amounts being significant.

	Fletcher Building Group		**Fletcher Building Limited**	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Current portion	**63**	95		2
Non current portion	**20**	21		
Carrying amount at the end of the year	**83**	116		2

23 Creditors and accruals

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Trade creditors	**811**	890		
Contract retentions	**31**	25		
Accrued interest	**31**	31		
Other liabilities	**128**	131	1	1
Employee entitlements	**248**	244		
Workers' compensation schemes	**19**	20		
	1,268	1,341	1	1
Current portion	**1,181**	1,249	1	1
Non current portion	**87**	92		
Carrying amount at the end of the year	**1,268**	1,341	1	1

The non current portion of creditors and accruals relates to long service employee entitlement obligations.

24 Contracts

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Gross construction work in progress plus margin to date	**2,699**	1,956		
Progress billings	**(2,801)**	(2,071)		
Work in progress/(money received in advance)	**(102)**	(115)		
Construction contracts with net work in progress	**18**	3		
Construction contracts with net money received in advance of cost and margin	**(120)**	(118)		
Carrying amount at the end of the year	**(102)**	(115)		

Included in sales is $972 million of contract revenue (June 2012: $845 million).

25 Taxation

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Provision for current taxation asset/(liability)				
Included within the Balance sheet as follows:				
Current tax assets	**30**	46		
Current tax liabilities	**(15)**	(18)	(38)	(12)
	15	28	(38)	(12)
Opening provision for current taxation asset/(liability)	**28**	(27)	(12)	55
Taxation in the earnings statement	**(104)**	(47)	(39)	(11)
Transfer from deferred taxation	**17**	(19)	1	
Intercompany payment			12	(56)
Acquisitions and restatement of acquisitions	**(3)**	(6)		
Minority share of taxation expense	**4**	3		
Taxation in reserves	**13**	1		
Net taxation payments	**60**	123		
	15	28	(38)	(12)
Provision for deferred taxation asset/(liability)				
Included within the Balance sheet as follows:				
Deferred tax assets	**32**	38	13	15
Deferred tax liabilities	**(40)**	(20)		
	(8)	18	13	15
Opening provision for deferred taxation asset/(liability)	**18**	21	15	6
Taxation in the earnings statement	**19**	(11)		
Transfer to current taxation	**(17)**	19	(1)	
Acquisitions and restatement of acquisitions	**(1)**	(43)		
Taxation in reserves	**(27)**	32	(1)	9
	(8)	18	13	15
Composed of:				
Provisions	**132**	149		
Inventory	**16**	25		
Debtors	**11**	12		
Fixed assets	**(72)**	(71)		
Brands	**(151)**	(156)		
Tax losses	**35**	28		
Pensions	**14**	33		
Other	**7**	(2)	13	15
	(8)	18	13	15

There are no significant deferred tax liabilities in respect of the undistributed profits of subsidiaries and associates.

The group has recognised tax losses available in USA, Germany and the UK on the basis that the respective companies will have future assessable income. The tax losses have been recognised on the basis of the forecasted operating earnings set out in the companies strategic plans approved by the directors and the discounted cashflows prepared for the purposes of impairment testing. The group will review this situation annually and will consider further opportunities to assist the companies to generate the required taxable income should it be necessary.

Formica has not recognised tax losses in France, Spain and Sweden of $95 million representing $337 million of gross tax losses (June 2012: $92 million, $316 million gross losses).

26 Borrowings

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Bank loans		317		52
Other loans	**39**	71	15	10
Capital notes	**112**	75		
Foreign currency revaluation on debt derivatives	**(7)**	(7)	(6)	(7)
Current borrowings	**144**	456	9	55
Bank loans	**136**	23		23
Private placements	**1,246**	1,338	37	45
Other loans	**57**	4	4	
Capital notes	**322**	420		8
Foreign currency revaluation on debt derivatives	**(6)**	(14)	(7)	(14)
Non current borrowings	**1,755**	1,771	34	62
Borrowings	**1,899**	2,227	43	117
Less fair value adjustment included in borrowings	**(28)**	(81)	(41)	(53)
Borrowings excluding fair value adjustment	**1,871**	2,146	2	64
Total available funding	**2,690**	2,928		
Unutilised banking facilities	**819**	782		

The undrawn facilities have a weighted average maturity of 2.4 years (June 2012: 2.9 years).

Negative pledge
The group borrows certain funds based on a negative pledge arrangement. The negative pledge includes a cross guarantee between a number of wholly owned subsidiaries and ensures that external senior indebtedness ranks equally in all respects and includes the covenant that security can be given only in very limited circumstances. At 30 June 2013 the group had debt subject to the negative pledge of $1,394 million (June 2012: $1,614 million).

Bank loans
At 30 June 2013, the group had a syndicated revolving credit facility on an unsecured, negative pledge and borrowing covenant basis, with ANZ Bank New Zealand, Bank of Tokyo Mitsubishi UFJ, Bank of New Zealand, Commonwealth Bank of Australia, Citibank N.A., The Hong Kong and Shanghai Banking Corporation and Westpac Banking Corporation. The funds under this facility can be borrowed in United States, Australian and New Zealand dollars. The borrowing covenants relate to net debt to EBITDA and interest cover, and at 30 June 2013, and throughout the year, the group was in compliance with the covenants.

Private placements
The group has borrowed funds from private investors (primarily US & Japanese based) on an unsecured, negative pledge and borrowing covenant basis. These borrowings comprise NZ$144 million, AU$231 million, US$525 million and YEN10,000 million with maturities between 2015 and 2027. The borrowing covenants relate to net debt to EBITDA and interest cover and at 30 June 2013, and throughout the year, the group was in compliance with the covenants.

Other loans
At 30 June 2013, the group had $31 million (June 2012: $45 million) of loans which are secured against the subsidiaries' own balance sheet or against specific assets and had unsecured loans at 30 June 2013 of $32 million (June 2012: $30 million) some of which are subject to the negative pledge. Other loans includes bank overdrafts, short-term loans, working capital facilities, financial leases, PlaceMakers joint venture funding, amortising loans and discounted receivables.

Foreign currency revaluation on debt derivatives
This is the foreign currency revaluation of derivatives that have been specifically taken out to convert the various borrowings to the required currencies. The majority of these instruments have the benefit of the negative pledge and includes cross currency interest rate swaps and foreign exchange forwards.

Capital notes
Capital notes are long-term fixed rate unsecured subordinated debt instruments. On each election date, the coupon rate and term to the next election date of that series of the capital notes is reset. Holders may then choose either to keep their capital notes on the new terms or to convert the principal amount and any interest into shares, at approximately 98 percent of the current market price. Instead of issuing shares to holders who choose to convert, Fletcher Building may, at its option, purchase or redeem the capital notes for cash at the principal amount plus any interest. Under the terms of the capital notes, nonpayment of interest is not an act of default although unpaid interest is accrued and is interest bearing at the same rate as the principal of the capital notes. Fletcher Building Limited has covenanted not to pay dividends to its shareholders while interest that is due and payable on these capital notes has not been paid.

The capital notes do not carry voting rights and do not participate in any change in value of the issued shares of Fletcher Building Limited. If the principal amount of the capital notes held at 30 June 2013 were to be converted to Fletcher Building shares, 51 million shares (June 2012: 83 million) would be issued at the share price as at 30 June 2013, of $8.43 (June 2012: $5.87).

As at 30 June 2013 the group held $102 million (30 June 2012: $45 million) of capital notes as treasury stock.

Fair value adjustment included in borrowings
This is the revaluation of certain borrowings that have been designated in fair value hedge relationships for changes in benchmark interest rates.

Credit rating
The company has not sought and does not hold a credit rating from an accredited rating agency.

27 Financial instruments

Financial risk management overview

Exposures to credit, liquidity, currency, interest rate and commodity price risks arise in the normal course of the group's business. The principles under which these risks are managed are set out in policy documents approved by the board. The policy documents identify the risks and set out the group's objectives, policies and processes to measure, manage and report the risks. The policies are reviewed periodically to reflect changes in financial markets and the group's businesses. Risk management is carried out in conjunction with the group's central treasury, which ensures compliance with the risk management policies and procedures set by the board.

The group enters into derivative financial instruments to assist in the management of the identified financial risks. The group does not enter into derivative financial instruments for trading or speculative purposes. All derivative transactions entered into are to hedge underlying physical positions arising from normal business activities.

Risks and mitigation

(a) Credit risk

To the extent the group has a receivable from another party there is a credit risk in the event of nonperformance by that counterparty and arises principally from receivables from customers, derivative financial instruments and the investment of cash.

(i) Trade receivables

The group has a credit policy in place under which customers are individually analysed for credit worthiness and assigned a purchase limit. If no external ratings are available, the group reviews the customers' financial statements, trade references, bankers' references and/or credit agencies' reports to assess credit worthiness. These limits are reviewed on a regular basis. Due to the group's industry and geographical spread at balance date there were no significant concentrations of credit risks in respect of trade receivables. Please refer to note 16 for debtor aging analysis.

Most goods are sold subject to retention of title clauses, so that in the event of non-payment the group may have a secured claim. The group does not require collateral in respect of trade receivables.

(ii) Derivative financial instruments and the investment of cash

The group enters into derivative financial instruments and invests cash with various counterparties in accordance with established limits as to credit rating and dollar value but does not require collateral or other security except in limited circumstances. In accordance with the established counterparty restrictions, there are no significant concentrations of credit risk in respect of the financial instruments and no loss is expected.

The group has not renegotiated the terms of any financial assets which would otherwise be overdue or impaired. The carrying amount of non-derivative financial assets represents the maximum credit exposure. The carrying amount of derivative financial assets are at their current fair value.

(b) Liquidity risk

Liquidity risk is the risk that the group will encounter difficulty in meeting its financial commitments as they fall due. The group manages its liquidity risk by maintaining a target level of undrawn committed credit facilities and a spread of the maturity dates of the group's debt facilities. The group reviews its liquidity requirements on an on going basis.

The following maturity analysis table sets out the remaining contractual undiscounted cashflows, including estimated interest payments for non-derivative financial liabilities and derivative financial instruments. Creditors and accruals are excluded from this analysis as they are not part of the group's assessment of liquidity risk.

	Fletcher Building Group – June 2013				
	Contractual cashflows NZ$M	Up to 1 year NZ$M	1-2 years NZ$M	2-5 years NZ$M	Over 5 years NZ$M
Bank loans	136			136	
Capital notes	430	112	74	226	18
Private placements	1,223			549	674
Other loans	95	39	3	52	1
Non-derivative financial liabilities – Principal cashflows	1,884	151	77	963	693
Gross settled derivatives – To pay	617	236			381
Gross settled derivatives – To receive	(630)	(243)			(387)
Debt derivatives financial instruments – Principal cashflows	(13)	(7)			(6)
Total principal cashflows	1,871	144	77	963	687
Contractual interest cashflows	650	120	109	215	206
Total contractual cashflows	2,521	264	186	1,178	893

27 Financial instruments continued

(b) Liquidity Risk continued

	Fletcher Building Group – June 2012				
	Contractual cashflows NZ$M	Up to 1 year NZ$M	1-2 years NZ$M	2-5 years NZ$M	Over 5 years NZ$M
Bank loans	340	317		23	
Capital notes	487	75	112	236	64
Private placements	1,265			389	876
Other loans	75	71	1	3	
Non-derivative financial liabilities – Principal cashflows	2,167	463	113	651	940
Gross settled derivatives – To pay	788	349	32		407
Gross settled derivatives – To receive	(809)	(356)	(39)		(414)
Debt derivatives financial instruments – Principal cashflows	(21)	(7)	(7)		(7)
Total principal cashflows	2,146	456	106	651	933
Contractual interest cashflows	797	127	112	251	307
Total contractual cashflows	2,943	583	218	902	1,240

	Fletcher Building Limited – June 2013				
	Contractual cashflows NZ$M	Up to 1 year NZ$M	1-2 years NZ$M	2-5 years NZ$M	Over 5 years NZ$M
Other loans	15	15			
Non-derivative financial liabilities – Principal cashflows	15	15			
Gross settled derivatives – To pay	1,150	236		146	768
Gross settled derivatives – To receive	(1,166)	(243)		(155)	(768)
Debt derivatives financial instruments – Principal cashflows	(16)	(7)		(9)	
Total principal cashflows	(1)	8		(9)	
Contractual interest cashflows	(6)	8	2	(10)	(6)
Total contractual cashflows	(7)	16	2	(19)	(6)

	Fletcher Building Limited – June 2012				
	Contractual cashflows NZ$M	Up to 1 year NZ$M	1-2 years NZ$M	2-5 years NZ$M	Over 5 years NZ$M
Bank loans	75	52		23	
Other loans	10	10			
Non-derivative financial liabilities – Principal cashflows	85	62		23	
Gross settled derivatives – To pay	1,254	348	32	52	822
Gross settled derivatives – To receive	(1,267)	(355)	(40)	(50)	(822)
Debt derivatives financial instruments – Principal cashflows	(13)	(7)	(8)	2	
Total principal cashflows	72	55	(8)	25	
Contractual interest cashflows	25	9	2	(24)	38
Total contractual cashflows	97	64	(6)	1	38

27 Financial instruments continued

(c) Foreign currency risk

(i) Currency translation risk

Currency translation risk arises from net investments in foreign operations. It is the group's policy to hedge this foreign currency translation risk by borrowing in the currency of the asset in proportion to the group's long term debt to debt plus equity ratio. This reduces the variability in the debt to debt plus equity ratio due to currency translation. Where the underlying debt in any currency does not equate to the required proportion of total debt, debt derivatives such as foreign exchange forwards, swaps and cross currency interest rate swaps are entered into for up to fifteen years. Net investment, cashflow and fair value hedge accounting is applied to these instruments.

In addition, the group has entered into foreign exchange derivatives to hedge the taxation exposure arising from the translation of certain assets for a period of up to five years. Cashflow hedge accounting is applied to these instruments.

The group's exposure to foreign currency risk on foreign currency borrowings after hedging is summarised as follows:

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Australian dollars	**925**	1,113	173	187
Euro's	**68**	69	10	10
British pounds	**20**	29	115	16
New Zealand dollars	**619**	723	14	62
United States dollars	**207**	212	(313)	(203)
Indian Rupee	**3**			
Chinese Renminbi	**29**			
Currency translation risk – Foreign currency borrowings	**1,871**	2,146	(1)	72

(ii) Currency transaction risk

Currency transaction risk arises from committed or highly probable trade and capital expenditure transactions that are denominated in currencies other than the operation's functional currency. The objective in managing this risk is to reduce the variability from changes in currency exchange rates on the operation's income and cashflow to acceptable parameters. It is group policy that no currency exchange risk may be entered into or allowed to remain outstanding should it arise on committed transactions. In addition the group hedges some highly probable forecast transactions for up to five years. When exposures are incurred by operations in currencies other than their functional currency, foreign exchange forwards, swaps and options are entered into to eliminate the exposure. The majority of these transactions have maturities of less than one year. Cashflow hedge accounting is applied to forecast transactions. The main currencies hedged are the Australian dollar, the United States dollar, the Japanese yen, the Euro and the British pound. The gross value of these foreign exchange derivatives is $357 million (June 2012: $313 million).

27 Financial instruments continued

(d) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument or cashflows associated with the instrument will change due to changes in market interest rates and arises primarily from the group's interest bearing borrowings. The group manages the fixed interest rate component of its debt and capital notes obligations and aims to maintain this ratio between 40 to 70 percent, and at 30 June 2013, the group was slightly above the upper limit at 74% fixed (June 2012: 67% fixed). The position in this range is managed depending upon underlying interest rate exposures and economic conditions. Cross currency interest rate, interest rate swaps, forward rate agreements and options are entered into to manage this position. The financial instruments entered into are in Australian dollars, United States dollars, Euros, Japanese Yen and New Zealand dollars, and will mature over the next fourteen years.

Hedge accounting is applied on these instruments for floating-to-fixed instruments as cashflow hedges or for fixed-to-floating as fair value hedges.

Interest rate repricing

The following tables set out the interest rate repricing profile of interest bearing financial assets and liabilities. The group's overall weighted average interest rate excluding fees is 6.65% (June 2012: 6.65%).

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Floating	**495**	702	(377)	(343)
Fixed up to 1 year	**254**	70	143	(5)
Fixed 1-2 years	**428**	268	354	156
Fixed 2-5 years	**491**	850	(17)	366
Fixed over 5 years	**203**	256	(104)	(102)
Total financial liabilities	**1,871**	2,146	(1)	72
Floating financial assets	**(123)**	(168)	(39)	(77)

(e) Commodity price risk

Commodity price risk arises from committed or highly probable trade and capital expenditure transactions that are linked to traded commodities. Where possible the group manages its commodity price risks through negotiated supply contracts and, for certain commodities, by using commodity price swaps and options. The group manages its commodity price risk depending on the underlying exposures, economic conditions and access to active derivatives markets. Currently the group's guideline is to hedge up to 100 percent of the New Zealand business units' electricity requirements for up to five years. Cashflow hedge accounting is applied to commodity derivative contracts.

At balance date, the notional value of fixed electricity exposure was as follows:

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Fixed up to 1 year	**8**	5	8	5
Fixed 1-2 years	**34**	35	34	35
Fixed 2-5 years	**18**	36	18	36
Total	**60**	76	60	76
	NZ$/MWh	NZ$/MWh	NZ$/MWh	NZ$/MWh
Average hedge price	**92**	96	92	96

Aluminium and copper are also hedged but the volume and values are not material.

27 Financial instruments continued

(f) Sensitivity analysis

The numbers in the sensitivity analysis for foreign currency risk, interest rate risk and commodity price risk have not been adjusted for tax and are based only on the group's financial instruments held at balance date and assumes that all other variables remain constant, except for the change in the chosen risk variable.

(i) Foreign currency risk

It is estimated a 10 percent weakening of the New Zealand dollar against the major foreign currencies the group is exposed to through financial instruments would result in a decrease to equity of approximately $194 million (June 2012: $150 million) and no material impact on earnings. If the translation of the net assets of the foreign operations were included this would result in an increase to equity of approximately $273 million (June 2012: $256 million).

(ii) Interest rate risk

It is estimated a 100 basis point increase in interest rates would result in an increase in the group's interest costs in a year by approximately $3.7 million on the group's debt portfolio exposed to floating rates at balance date (June 2012: $7.0 million).

(iii) Commodity price risk

It is estimated a 10 percent increase in the New Zealand electricity spot price at balance date would not materially impact the Group's earnings but this would result in an increase in equity of $4 million (June 2012: $7 million).

(g) Fair values

The estimated fair values measurements for financial assets and liabilities are compared to their carrying values in the balance sheet, are as follows:

		Fletcher Building Group			
		June 2013 NZ$M		June 2012 NZ$M	
	Classification	Carrying value	Fair value	Carrying value	Fair value
Bank loans	Amortised cost	**136**	**136**	340	340
Private placements	Amortised cost	**1,246**	**1,297**	1,338	1,342
Other loans	Amortised cost	**96**	**96**	75	75
Capital notes	Amortised cost	**434**	**449**	495	513
Foreign currency revaluation on debt derivatives – cashflow hedge	Fair value through P&L	**(12)**	**(12)**	6	6
Foreign currency revaluation on debt derivatives – net investment hedge	Fair value through P&L	**5**	**5**	(21)	(21)
Foreign currency revaluation on debt derivatives – fair value hedge	Fair value through P&L	**(6)**	**(6)**	(6)	(6)
Borrowings		**1,899**	**1,965**	2,227	2,249
Forward exchange contracts – net investment hedge	Fair value through P&L			(8)	(8)
Forward exchange contracts – fair value hedge	Fair value through P&L	**2**	**2**		
Forward exchange contracts – cashflow hedge	Fair value through P&L	**(1)**	**(1)**		
Cross currency interest rate swaps – cashflow hedge	Fair value through P&L	**(3)**	**(3)**	23	23
Cross currency interest rate swaps – net investment hedge	Fair value through P&L			1	1
Cross currency interest rate swaps – fair value hedge	Fair value through P&L	**12**	**12**	(28)	(28)
Interest rate swaps – fair value hedge	Fair value through P&L	**(40)**	**(40)**	(53)	(53)
Interest rate swaps – cashflow hedge	Fair value through P&L	**24**	**24**	37	37
Electricity price swaps – cashflow hedge	Fair value through P&L	**15**	**15**	8	8
Derivatives		**9**	**9**	(20)	(20)
Creditors and accruals	Amortised cost	**1,274**	**1,274**	1,341	1,341
Trade and other receivables	Loans and receivables	**(1,352)**	**(1,352)**	(1,460)	(1,460)
Cash and liquid deposits	Loans and receivables	**123**	**123**	168	168
Total financial instruments		**1,953**	**2,019**	2,256	2,278

The borrowings hedge adjustment fair value is included in the fair value of the borrowings.
Fletcher Building Limited's fair values are materially the same as the carrying values.

27 Financial instruments continued

(g) Fair values continued

Fair value measurement

Financial instruments measured and recognised at fair value are derivatives and borrowings that are designated in hedge relationships. The fair value of base metal price swaps is based on the quoted market prices of those instruments and are measured under level 2. All other derivatives are level 2 valuations are based on accepted valuation methodologies. Forward exchange fair value is calculated using quoted forward exchange rates and discounted using yield curves derived from quoted interest rates matching maturity of the contract. The fair value of electricity price swaps are measured using a derived forward curve and discounted using yield curves derived from quoted interest rates matching the maturity of the contract. Interest rate derivatives are calculated by discounting the future principal and interest cashflows at current market interest rates that are available for similar financial instruments.

(Level 1) Quoted prices (unadjusted) in active markets for identical assets or liabilities.
(Level 2) Inputs that are observable for the asset or liability, either directly (as prices) or indirectly (derived from prices) other than quoted prices included within level 1.
(Level 3) Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

Fair value disclosures

The fair values of borrowings used for disclosure are measured by discounting future principal and interest cashflows at the current market interest rate plus an estimated credit margin that are available for similar financial instruments. The interest rates across all currencies used to discount future principal and interest cashflows are between 1.2% and 11.12% (June 2012: 0.2% and 10.9%) including margins.

(h) Capital risk management

The group's objectives when managing capital are to safeguard the group's ability to continue as a going concern in order to provide returns to shareholders, benefits for other stakeholders and to maintain an optimal capital structure to reduce the cost of capital. In order to maintain or adjust the capital structure, the group may adjust the amount of dividends paid to shareholders, return capital to shareholders, issue new shares or sell assets to reduce debt. The group monitors capital on the basis of debt to debt plus equity and aims to maintain this ratio between 40% to 50% in the long term but currently is targeting 30% to 40% in the current economic environment.

28 Capital expenditure commitments of plant and investments

	Fletcher Building Group	
	June 2013 NZ$M	June 2012 NZ$M
Committed at year end	**70**	85
Approved by the directors but uncommitted at year end	**66**	62
	136	147

29 Lease commitments

The expected future minimum rental payments required under operating leases that have initial or remaining non-cancellable lease terms in excess of one year are at year end:

	Fletcher Building Group	
	June 2013 NZ$M	June 2012 NZ$M
Within one year	**173**	198
Within two years	**153**	153
Within three years	**118**	113
Within four years	**88**	83
Within five years	**71**	64
After five years	**162**	185
	765	796

Operating lease commitments relate mainly to occupancy leases of buildings.

30 Contingent liabilities

Provision has been made in the ordinary course of business for all known and probable future claims but not for such claims as are considered remote. Contingent liabilities arise in respect of the following categories:

	Fletcher Building Group	
	June 2013 NZ$M	June 2012 NZ$M
Contingent liabilities with respect to guarantees extended on trading transactions, performance bonds and other transactions	**184**	151
Letters of credit	**1**	11

31 Insurance

The company monitors its capacity to retain otherwise insurable losses. The directors believe that the group's risk management programmes are adequate to protect its assets and earnings against losses incurred. Based on past experience, the company does not anticipate that future losses within these levels would have a significant impact on the group's financial position or performance. In general terms, the group-wide insurance policies are with insurers having a Standard & Poor's A- grade rating (or equivalent) or better.

	June 2013 $M	June 2012 $M
The following risks are insured at 1 July 2013 in respect of each event up to a maximum of:		
Public and product liability	**US$150**	US$150
Loss or damage to group property including business interruption	**NZ$1,000**	NZ$1,000
Marine public liability	**NZ$50**	NZ$50
Public liability resulting from construction activities	**NZ$100**	NZ$100
Contract works – separate covers are arranged for each contract where the insured value exceeds NZ$20M; annual policy is in place for lower value contracts.	**NZ$20**	NZ$20

32 Related party transactions

	Fletcher Building Group		Fletcher Building Limited	
	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
Fletcher Building group				
Trading activities with related parties:				
Purchase of scrap metal from Sims Pacific Metals Limited	**112**	124		
Amounts owing relating to the purchase of scrap metal from Sims Pacific Metals Limited, and is included within creditors	**4**	4		
Purchase of raw materials from Wespine Industries Pty Limited and Dynea Industries WA Pty Limited	**32**	49		
Amounts owing relating to the purchase of raw materials from Wespine Industries Pty Limited and Dynea Industries WA Pty Limited, and is included within creditors	**2**	3		
Purchase of materials from Dongwha Pattina NZ Limited	**14**	14		
Sale of materials to Dongwha Pattina NZ Limited		1		
Purchase of materials from Mt Marrow Blue Metal Quarries Pty Limited	**2**	2		
Key management personnel compensation				
Directors fees	**2**	2		
Executive committee remuneration paid, payable or provided for:				
Short term employee benefits	**15**	11		
Termination benefits	**2**			
Long term incentive payments	**2**	3		
Fletcher Building Limited				
Dividend income received from subsidiary companies			140	677
Term receivable owing from subsidiary companies [1]			864	781
Liability owing to subsidiary companies [2]			7	148
Liability owing to subsidiary companies [3]			955	838
Liability owing to subsidiary company [4]			2,300	2,222

[1] These unsecured advances represent long term funding even though they are for no fixed term and bear interest at 10.2 percent.
[2] These unsecured advances represent long term funding even though they are for no fixed term and bear interest at 7.5 percent.
[3] These unsecured advances represent long term funding even though they are for no fixed term and bear interest at 6.7 percent.
[4] The unsecured advance represents long term funding even though it is for no fixed term and is non interest bearing.

Fletcher Building Limited is the holding company of the Fletcher Building group. Fletcher Building Limited has a relationship with each of its subsidiaries, associates and joint ventures. A full list of all the subsidiaries of the group is included in the Regulatory Disclosures section of the annual report.

Fletcher Building Retirement Plan

As at 30 June 2013, Fletcher Building Nominees Limited (the New Zealand retirement plan) held $7,300,000 of shares and $13,500,000 of capital notes in Fletcher Building, (June 2012: $6,000,000 of shares; $18,500,000 of capital notes) in respect of economic interests that members of the retirement plan have in Fletcher Building shares and capital notes.

33 Principal operations

Fletcher Building Limited is the holding company of the Fletcher Building group. The principal subsidiaries and associates, as at 30 June 2013, are outlined below:

	Country of domicile	% Holding	Principal activity
Principal subsidiaries			
Fletcher Building Holdings Limited	NZ	100	Holding company
Fletcher Building Holdings New Zealand Limited	NZ	100	Holding company
Fletcher Building Products Limited	NZ	100	Building products
Fletcher Concrete and Infrastructure Limited	NZ	100	Concrete products
Fletcher Distribution Limited	NZ	100	Merchandising
Fletcher Steel Limited	NZ	100	Steel production
Fletcher Residential Limited	NZ	100	Housing
The Fletcher Construction Company Limited	NZ	100	Construction
Winstone Wallboards Limited	NZ	100	Gypsum plasterboard
Fletcher Property Limited	NZ	100	Property management
PlaceMakers subsidiaries – wholly owned	NZ	100	Retail
PlaceMakers subsidiaries – joint venture ownership	NZ	50.1	Retail
Fletcher Building Industries Limited	NZ	100	Holding company
Tasman Insulation New Zealand Limited	NZ	100	Insulation
AHI Roofing Limited	NZ	100	Roofing
Forman Group Limited	NZ	100	Insulation
Crane Distribution NZ Limited	NZ	100	Retail
Fletcher Building (Fiji) Limited	Fiji	100	Infrastructure
Laminex Group Limited	Australia	100	Building products
Fletcher Building (Australia) Pty Limited	Australia	100	Holding company
Tasman Insulation Pty Limited	Australia	100	Insulation
Tasman Sinkware Pty Limited	Australia	100	Sinks
Rocla Pty Limited	Australia	100	Concrete products
Stramit Corporation Pty Limited	Australia	100	Steel production
Insulation Solutions Pty Limited	Australia	100	Insulation
Crane Group Limited	Australia	100	Holding company
Crane Distribution Limited	Australia	100	Retail
Hudson Building Supplies Pty Limited	Australia	100	Retail
Iplex Pipelines Australia Pty Limited	Australia	100	Building products
Kingston Bridge Engineering Pty Limited	Australia	100	Building products
Australian Construction Products Pty Limited	Australia	100	Construction
Fletcher Construction (Solomon Islands) Limited	Solomon Islands	100	Construction
Fletcher Morobe Construction Pty Limited	PNG	100	Construction
Fletcher Building Netherlands B.V.	Netherlands	100	Finance

33 Principal operations continued

	Country of domicile	% Holding	Principal activity
Tasman Investments (Netherlands Antilles) N.V.	Neth Antilles	100	Finance
Decra Roofing Systems Inc.	United States	100	Roofing
Formica Corporation	United States	100	Building products
Formica Canada Inc.	Canada	100	Building products
Formica Limited	United Kingdom	100	Building products
Formica S.A.	Spain	100	Building products
Shanghai Formica Decorative Material Co. Ltd	China	100	Building products
Formica IKI Oy	Finland	100	Building products
Formica Scandinavian AB	Sweden	100	Building products
Formica (Thailand) Co., Ltd	Thailand	100	Building products
Homapal Plattenwerk GmbH & Co. KG.	Germany	100	Building products
Formica Laminates (India) Pte Limited	India	100	Building products
Associates			
Wespine Industries Pty Limited	Australia	50	Saw miller
Dynea Industries WA Pty Limited	Australia	50	Building products
Mt Marrow Blue Metal Quarries Pty Limited	Australia	50	Quarrying
Mittagong Sands Pty Limited	Australia	50	Quarrying
Regional Resources NW Quarrying	Australia	50	Quarrying
Sims Pacific Metals Limited	NZ	50	Metal recycling
Dongwha Pattina NZ Limited	NZ	20	Building products

34 Retirement plans

Fletcher Building Limited is the principal sponsoring company of a plan that provides retirement and other benefits to employees of the group in New Zealand. Participation in this plan has been closed for a number of years, although defined contribution savings plans have been made available. Various defined benefit and defined contribution plans exist in Australia following the acquisition of Crane, Amatek, Tasman Building Products, and the Laminex groups which companies contribute to on behalf of their employees. Various defined benefit plans and medical plans exist in other countries as a result of the acquisition of the Formica group, which companies contribute to on behalf of their employees. All of the Formica plans have a deficit in their funded status and the companies are making additional contributions, as recommended by the trustees of the plans, to improve the funded status.

The calculation of the defined benefit obligations are based on years of service and the employees' compensation during their years of employment. Contributions are intended to provide not only for benefits attributed to service to date but also for those expected to be earned in the future. These obligations are accounted for in accordance with NZ IAS 19 Employee Benefits, which has the effect of recognising the volatility in the returns earned by the plans straight to the pension reserve.

Fletcher Building Limited has an obligation to ensure that the funding ratio of the New Zealand plan's assets is at least 115% of the plan's actuarial liability. This is based upon any two consecutive annual actuarial valuations as calculated by the plan's actuary. This calculation is done on the plan's funding basis which differs from the calculation under NZ IAS 19. At 31 March 2013 the value of the assets was 129% of the actuarial liability and the funded surplus was $62 million (31 March 2012: 122.1%, $49 million).

During the year the company contributed $4 million in respect of its Australian defined benefit plans and $20 million in respect of its Formica defined benefit and medical plans. It contributed $43 million in respect of its defined contribution plans worldwide, including Kiwisaver.

	Fletcher Building Group	
	June 2013 NZ$M	June 2012 NZ$M
Net periodic pension cost		
Service cost	**10**	9
Net interest cost	**4**	3
Net periodic pension cost – recognised in operating earnings	**14**	12
Recognised net asset/(liability)		
Assets of plans	**743**	663
Projected benefit obligation	**(785)**	(800)
Funded surplus/(obligation)	**(42)**	(137)
Recognised net asset/(liability) by jurisdiction:		
New Zealand plan	**37**	
Australian plans	**5**	
Retirement plan surplus – recognised within note 21, Investments	**42**	
New Zealand plan		(14)
Australian plans		(17)
Other overseas plans	**(84)**	(106)
Retirement plan liability – recognised within non current liabilities	**(84)**	(137)
Recognised net asset/(liability)	**(42)**	(137)

34 Retirement plans continued

	Fletcher Building Group	
	June 2013 NZ$M	June 2012 NZ$M
Movement in recognised net asset		
Recognised net asset/(liability) at the beginning of the year as previously reported	**45**	35
Change in accounting policy	**(182)**	(87)
Recognised net asset/(liability) at the beginning of the year as restated	**(137)**	(52)
Currency translation		(1)
Actuarial movements for the year	**85**	(95)
Net periodic pension cost	**(14)**	(12)
Employer contributions	**24**	23
Recognised net asset/(liability)	**(42)**	(137)
Assets of the plans		
Assets of plans at the beginning of the year	**663**	690
Actual return on assets	**113**	1
Total contributions	**29**	29
Benefit payments	**(53)**	(55)
Settlements and curtailments		(5)
Currency translation	**(9)**	3
	743	663
Assets of the plans consist of:		
Australasian equities	**80**	76
International equities	**307**	257
Property	**35**	34
Bonds	**282**	261
Cash and short term deposits	**14**	9
Other assets	**25**	26
	743	663
Projected benefit obligation		
Projected benefit obligation as at the beginning of the year	**(800)**	(742)
Service cost	**(10)**	(9)
Interest cost	**(28)**	(34)
Member contributions	**(5)**	(6)
Actuarial gain/(loss) arising on movements in the discount rate	**(15)**	(79)
Actuarial gain/(loss) arising on changes in financial assumptions	**15**	
Actuarial gain/(loss) arising on other assumptions – experience adjustments	**(4)**	13
Benefit payments	**53**	55
Settlements and curtailments		5
Currency translation	**9**	(3)
	(785)	(800)

34 Retirement plans continued

Assumptions used

The following table provides the weighted average assumptions used to develop the net periodic pension cost and the actuarial present value of projected benefit obligations for the group's plans:

	Fletcher Building Group	
	2013 %	2012 %
Assumed discount rate on benefit obligations	**4.14**	3.36
Annual rate of increase in future compensation levels	**2.70**	3.26

Expected returns on plan assets have been determined by the independent actuaries as the weighted average of the expected return after tax and investment fees for each asset class by the target allocation of assets to each class.

The group expects to contribute $21 million to its Australian and other overseas defined benefit plans during the year to 30 June 2014.

35 Share based payments

Executive share schemes

The group has implemented a long-term cash based incentive scheme targeted at the executives most able to influence the results of the group, with an agreed percentage of any cash received to be invested in purchasing the company's shares.

The executive long-term share scheme introduced in 2008 allows group executives to acquire shares in the company at market price. Payment of half of any benefit under the executive performance share scheme is dependent upon the group's total shareholder return exceeding the 51st percentile of the total shareholder return of a comparative group of companies over a three year restricted period. Payment of the other half of any benefit is dependent upon the group achieving an earnings per share target. In addition, in respect of the benefit which is dependant on total shareholders return, the three year restricted period is automatically extended for up to one year if total shareholders return is less than the 51st percentile. Executives can elect to extend the restricted period for up to one year if total shareholders return is between the 51st and 75th percentile. No extension is permitted for the benefit which is dependant upon achieving an earnings per share target.

The group provides interest free loans to executives, who instruct the trustee to purchase shares on their behalf. The shares purchased by executives are held by the trustee with executives entitled to vote and receive dividends, the proceeds of which are used to repay the interest free loan.

At the end of the restricted period the group will pay a bonus to the executives to the extent the performance targets have been met, sufficient for the executives to repay the balance of the interest free loan on those shares which vest. The shares upon which performance targets have been met will then fully vest to the executives. The loan owing on shares upon which performance targets have not been met (the forfeited shares) will be novated from the executives to the trustee and will be fully repaid by the transfer of the forfeited shares. The receivable from the executives, which is secured only against the shares held in the company, has been accounted for under the treasury stock method and deducted from paid up capital.

The following are details in regards to the share schemes:

	2012 Scheme	2011 Scheme	2010 Scheme	2009 Scheme
Grant date	1 October 2012	1 October 2011	1 October 2010	1 October 2009
Number of shares granted	1,542,549	1,340,033	1,019,011	811,927
Market price per share at grant date	$6.87	$7.43	$8.32	$8.23
Total consideration paid	$10,597,312	$9,956,445	$8,478,172	$6,682,159
Vesting date	30 September 2015	30 September 2014	30 September 2013	30 September 2012
Maximum bonus payable – expensed over three years	$19,317,505	$17,962,298	$15,305,364	$13,063,404
Number of shares:				
Number of shares originally granted	1,542,549	1,340,033	1,019,011	811,927
Less forfeited over life of scheme	(96,834)	(397,499)	(350,871)	(536,758)
Less vested over life of scheme	(13,224)	(2,186)	(55,700)	(262,665)
Number of shares held at 30 June 2013	**1,432,491**	**940,348**	**612,440**	**12,504**

	Fletcher Building Group	
	June 2013 NZ$	June 2012 NZ$
Total amount expensed in year for executive performance share schemes	**13,617,241**	12,133,319
Liability recognised at year end for bonus payable	**26,290,102**	20,002,557

36 Segmental information

Industry segments
Year ended

	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
	Gross sales	Gross sales	External sales	External sales
Building Products	**1,474**	1,517	**1,350**	1,390
Construction	**1,201**	1,046	**1,193**	1,040
Distribution	**2,161**	2,300	**2,141**	2,261
Infrastructure	**2,373**	2,514	**2,095**	2,299
Laminates & Panels	**1,761**	1,882	**1,738**	1,849
Other	**7**	6		
Group	**8,977**	9,265	**8,517**	8,839
less intersegment sales	**(460)**	(426)		
Group external sales	**8,517**	8,839	**8,517**	8,839

	Operating earnings (EBIT)	Operating earnings (EBIT)	Significant items in operating earnings	Significant items in operating earnings
Building Products	**122**	30		(79)
Construction	**87**	50		
Distribution	**50**	65		
Infrastructure	**222**	209		
Laminates & Panels	**120**	65		(74)
Other	**(32)**	(16)		
Group	**569**	403		(153)

	Depreciation and amortisation expense	Depreciation and amortisation expense	Capital expenditure including acquisitions	Capital expenditure including acquisitions
Building Products	**37**	38	**24**	38
Construction	**8**	11	**5**	11
Distribution	**21**	21	**17**	14
Infrastructure	**90**	91	**77**	131
Laminates & Panels	**60**	66	**118**	162
Other (including debt and taxation)	**4**	3	**5**	7
Group	**220**	230	**246**	363

	Funds*	Funds*
Building Products	**770**	789
Construction	**69**	109
Distribution	**703**	816
Infrastructure	**1,841**	1,974
Laminates & Panels	**1,788**	1,743
Other (including debt and taxation)	**(1,617)**	(1,979)
Group	**3,554**	3,452

* Funds represent the external assets and liabilities of the group and are used for internal reporting purposes.

36 Segmental information continued

Geographic segments Year ended	June 2013 NZ$M	June 2012 NZ$M	June 2013 NZ$M	June 2012 NZ$M
	External sales	External sales	Funds*	Funds*
New Zealand	**3,832**	3,642	**1,682**	1,730
Australia	**3,640**	4,139	**2,541**	2,740
North America	**396**	396	**238**	234
Asia	**255**	256	**436**	372
Europe	**307**	318	**291**	238
Other (including debt and taxation)	**87**	88	**(1,634)**	(1,862)
Group	**8,517**	8,839	**3,554**	3,452

	Operating earnings (EBIT)	Operating earnings (EBIT)	Significant items in operating earnings	Significant items in operating earnings
New Zealand	**286**	198		(9)
Australia	**203**	135		(124)
North America	**40**	26		
Asia	**40**	40		
Europe	**(8)**	(7)		(20)
Other	**8**	11		
Group	**569**	403		(153)

* Funds represent the net external assets and liabilities of the group and are used for internal reporting purposes.

During the year the Steel division was reorganised, with the long steel and distribution businesses incorporated into the Infrastructure Products division, and the coated steel businesses incorporated into the Building Products division.

Additionally, the Crane division was reorganised, with the Iplex pipelines and Crane Copper Tube businesses incorporated into the Infrastructure Products division. The Crane distribution businesses, Tradelink, Hudson and Mico have been consolidated with the PlaceMakers business as a Distribution division.

Prior period data has been restated.

KPMG

TO THE SHAREHOLDERS OF FLETCHER BUILDING LIMITED

Report on the company and group financial statements

We have audited the accompanying financial statements on pages 38 to 76 of Fletcher Building Limited (''the company'') and the group, comprising the company and its subsidiaries. The financial statements comprise the balance sheets as at 30 June 2013, the earnings statements and statements of comprehensive income, movements in equity and cashflows for the year then ended, and a summary of significant accounting policies and other explanatory information, for both the company and the group.

Directors' responsibility for the company and group financial statements

The directors are responsible for the preparation of company and group financial statements in accordance with generally accepted accounting practice in New Zealand that give a true and fair view of the matters to which they relate, and for such internal control as the directors determine is necessary to enable the preparation of company and group financial statements that are free from material misstatement whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these company and group financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing (New Zealand). Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the company and group financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the company and group financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the company and group's preparation of the financial statements that give a true and fair view of the matters to which they relate in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the company and group's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates, as well as evaluating the presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Our firm has also provided other services to the company and group in relation to taxation and other assurance services. Partners and employees of our firm may also deal with the company and group on normal terms within the ordinary course of trading activities of the business of the company and group. These matters have not impaired our independence as auditor of the company and group. The firm has no other relationship with, or interest in, the company and group.

Opinion

In our opinion the financial statements on pages 38 to 76:

- comply with generally accepted accounting practice in New Zealand;
- give a true and fair view of the financial position of the company and the group as at 30 June 2013 and of the financial performance and cashflows of the company and the group for the year then ended.

Report on other legal and regulatory requirements

In accordance with the requirements of sections 16(1)(d) and 16(1)(e) of the Financial Reporting Act 1993, we report that:

- we have obtained all the information and explanations that we have required; and
- in our opinion, proper accounting records have been kept by Fletcher Building Limited as far as appears from our examination of those records.

KPMG

21 August 2013
KPMG Auckland, New Zealand

Trend statement

	June 2013	June 2012	June 2011	June 2010	June 2009	June 2008	June 2007	June 2006	June 2005	June 2004
Notes		5	4			3			2	1
	NZ$M	NZ$M	NZ$M	NZ$M	NZ$M	NZ$M	NZ$M	NZ$M	NZ$M	NZ$M
Financial performance										
Operating sales/revenue	**8,517**	8,839	7,416	6,799	7,103	7,091	5,926	5,520	4,636	3,958
Operating earnings (EBIT)	**569**	403	492	521	159	768	703	675	612	460
Net earnings	**326**	185	283	272	(46)	467	484	379	347	240
Cashflow from operations	**559**	448	402	522	533	434	483	560	479	424
Earnings per share – basic (cents per share)	**47.6**	27.2	45.0	44.9	(8.7)	93.2	101.9	81.3	77.6	55.7
Dividends for the period (cents per share)	**34.0**	34.0	33.0	29.0	38.0	48.5	45.0	40.0	32.0	25.0
Balance sheet										
Current assets	**2,862**	3,112	3,104	2,317	2,255	2,549	2,074	1,699	1,484	1,171
Non current assets	**4,241**	4,367	4,388	3,397	3,550	3,686	2,359	2,400	2,173	1,611
Total assets	**7,103**	7,479	7,492	5,714	5,805	6,235	4,433	4,099	3,657	2,782
Current liabilities	**1,517**	1,936	1,700	1,384	1,313	1,436	1,187	1,207	1,239	818
Non current liabilities	**2,032**	2,091	2,092	1,307	1,508	2,043	950	1,092	991	918
Total liabilities	**3,549**	4,027	3,792	2,691	2,821	3,479	2,137	2,299	2,230	1,736
Capital	**2,606**	2,582	2,553	1,912	1,895	1,364	1,325	970	929	754
Reserves	**913**	838	1,113	1,077	1,057	1,351	926	786	455	252
Minority equity	**35**	32	34	34	32	41	45	44	43	40
Total equity	**3,554**	3,452	3,700	3,023	2,984	2,756	2,296	1,800	1,427	1,046
Total liabilities and equity	**7,103**	7,479	7,492	5,714	5,805	6,235	4,433	4,099	3,657	2,782
Other financial data										
Return on average funds (%) [6]	**10.8**	7.4	10.6	12.7	3.4	19.0	24.8	26.1	29.3	24.7
Return on average equity (%) [7]	**9.4**	5.2	8.2	9.1	(1.6)	19.0	26.0	24.6	29.5	24.3
Gearing (%) [8]	**33.3**	37.4	34.3	26.8	31.1	40.1	22.2	37.1	44.4	43.1
Net tangible assets per share ($)	**2.61**	2.65	2.71	2.90	2.80	2.90	3.25	2.47	2.11	1.68
Market capitalisation (NZ$M)	**5,784**	4,009	5,850	4,763	3,967	3,197	6,166	4,296	3,207	1,987
Total shareholders return (%) [9]	**51**	(27)	14	24	14	(43)	42	40	61	33

[1] The Tasman Building Products group was acquired on 30 September 2003. The balance sheet at June 2004 has been restated under NZ IFRS.

[2] The Amatek Holdings group was acquired on 1 March 2005. The results for June 2005 have been restated under NZ IFRS.

[3] The Formica Corporation group was acquired on 2 July 2007.

[4] The Crane group was acquired with an effective acquisition date of 28 March 2011.

[5] The June 2012 balance sheet has been restated following revisions to IAS 19 Employee Benefits adopted by the group.

[6] EBIT to average funds (net debt and equity less deferred tax asset).

[7] Net earnings to average shareholders' funds.

[8] Net debt (borrowings less cash and deposits) to net debt and equity.

[9] Share price movement in year and gross dividend received, to opening share price.

Directors' relevant interests in equity securities at 30 June 2013

	Ordinary shares		Capital notes	
	Directly held	Held by associated persons	Directly held	Held by associated persons
M D Adamson [1]	587,675	146,288		
A J Carter		32,409		150,000
A T Jackson	20,000			
J F Judge		88,275		200,000
K D Spargo	25,000			
C Tarrant	18,242	1,810		
G T Tilbrook	18,000			
R G Waters		1,000,093		
	668,917	**1,268,875**		**350,000**

[1] Includes 500,000 options over ordinary shares.

Securities dealings by directors

During the year, directors disclosed in respect of section 148(2) of the Companies Act 1993 that they (or their associated persons) acquired or disposed of a relevant interest in securities as follows:

Director	Number of securities acquired	Number of securities disposed	Consideration $	Date
J F Judge [3]	30		$212	17/10/12
M D Adamson	2,261		$15,969	17/10/12
A J Carter	710		5,015	17/10/12
A T Jackson	2,000		$14,360	7/11/12
M D Adamson	500,000		Nil	20/11/12
M D Adamson	146,288		$1,005,000	20/11/12
C Tarrant	1,000		$7,944	28/11/12
C Tarrant	2,000		$17,220	25/02/13
M D Adamson		9,700	$88,561	8/03/13
K D Spargo	5,000		$45,875	6/03/13
G T Tilbrook	6,000		$52,009	19/03/13
J F Judge [3]	19		$161	16/04/13
M D Adamson	1,162		$9,851	16/04/13
C Tarrant	242		$2,052	16/04/13
J F Judge [3]	65,663		N/A	1/05/13
J F Judge [2,3]	200,000		N/A	1/05/13
A J Carter		2,928	$23,411	6/05/13
C Tarrant [3]	1,810		N/A	24/06/13

[2] Fletcher Building Industries capital notes.

[3] Non-beneficial interest.

Directors' interests register

Directors' certificates to cover entries in the interests register in respect of remuneration, dealing in the company's securities, insurance and other interests have been disclosed as required by the Companies Act 1993.

In accordance with Section 140(2) of the Companies Act 1993, directors have advised changes in their interests during the year ended 30 June 2013 of:

G T Tilbrook	Resigned as a director of NBN	5/08/12
R G Waters	Appointed as a director of Asciano	23/08/12
R G Waters	Resigned as a director of Westpac New Zealand	1/09/12
A T Jackson	Appointed as a director of Delegat's Group	15/10/12
R G Waters	Appointed as chairman of Woolworths	22/11/12
C Tarrant	Appointed as a director of Shopping Centres Australasia Property Group Trustee NZ	18/12/12
A T Jackson	Resigned as chairman of the NZ Racing Board	19/02/13
G T Tilbrook	Resigned as a director of Transpacific Industries Group	1/03/13
R G Waters	Appointed as chairman of the ICC Cricket World Cup 2015	1/04/13
R G Waters	Resigned as a director of Fonterra Co-operative Group	18/04/13
A J Carter	Appointed as chairman of Air New Zealand (effective 27 September 2013)	14/05/13
A J Carter	Appointed as chairman of the Blues LLP	17/05/13
A T Jackson	Resigned as chairman of Housing NZ Corporation	6/06/13
C Tarrant	Appointed as deputy chair of the Government Superannuation Fund Authority	27/06/13

Stock exchange listings

The company's shares are listed on the New Zealand (NZX) and Australian (ASX) stock exchanges.

20 largest shareholders as at 31 July 2013

Name	Number of shares	% of shares
New Zealand Central Securities Depository Limited	315,721,598	46.02
National Nominees Limited	40,237,542	5.86
JP Morgan Nominees Australia Limited	37,883,726	5.52
HCBC Custody Nominees (Australia) Limited	24,023,090	3.50
RBC Dexia Investor Services Australia Nominees PTY Limited	18,431,837	2.69
Custodial Services limited	15,879,339	2.31
Citicorp Nominees PTY Limited	12,148,050	1.77
BNP Paribas Nominees PTY Limited	9,944,806	1.45
FNZ Custodians Limited	6,906,297	1.01
Forsyth Barr Custodians Limited	5,852,211	0.85
Investment Custodial Services Limited	4,852,572	0.71
Southern Steel Group PTY Limited	3,876,365	0.56
Fletcher Building Share Schemes Limited	2,958,878	0.43
Masfen Securities Limited	2,587,898	0.38
AMP Life Limited	2,252,116	0.33
Fletcher Building Educational Fund Limited	2,069,462	0.30
New Zealand Depository Nominee Limited	1,698,594	0.25
Argo Investments Limited	1,350,701	0.20
UBS Nominees PTY Ltd	1,330,000	0.19
Australian Foundation Investment Company Limited	1,096,631	0.16

Stock exchange listings continued

New Zealand Central Securities Depository Limited provides a custodial depository service that allows electronic trading of securities to its members and does not have a beneficial interest in these shares. Its major holders of Fletcher Building shares are:

Name	Number of shares	% of shares
JP Morgan Chase Bank NA	92,043,388	13.42
HSBC Nominees (New Zealand) Limited	75,278,566	10.98
BNP Paribas Nominees (NZ) Limited	24,901,508	3.62
Accident Compensation Corporation	22,926,632	3.34
Citibank Nominees (New Zealand) Limited	22,293,881	3.25
National Nominees New Zealand Limited	19,801,871	2.89
New Zealand Superannuation Fund Nominees Limited	18,149,208	2.65
Tea Custodians Limited	15,245,235	2.22
Premier Nominees Limited	11,141,270	1.62
Westpac NZ Shares 2002 Wholesale Trust	4,229,075	0.62

Substantial security holders

According to notices given to the company under the Securities Markets Act 1988, as at 31 August 2013, the substantial security holders in the company and their relevant interests are noted below. The total number of issued voting securities of Fletcher Building Limited as at that date was 686,096,427.

Substantial security holders	Number of voting securities	Date of notice
The Capital Group Companies, Inc	42,945,596	12/07/13

Distribution of shareholders and holdings as at 31 July 2013

Size of holdings	Number of shareholders	%	Number of shares	%
1 to 999	17,058	37.50	6,958,490	1.01
1,000 to 4,999	20,803	45.74	46,017,580	6.71
5,000 to 9,999	4,487	9.87	29,876,429	4.35
10,000 to 49,999	2,822	6.20	48,947,018	7.13
50,000 to 99,999	153	0.34	10,139,697	1.48
100,000 to 499,999	104	0.23	17,849,699	2.60
500,000 and over	54	0.12	526,307,514	76.72
Total	**45,481**	**100.00**	**686,096,427**	**100.00**

Geographic distribution	Number of shareholders	%	Number of shares	%
New Zealand	34,850	76.62	498,538,478	72.67
Australia	9,981	21.95	184,791,327	26.93
Rest of the World	650	1.43	2,766,622	0.40
Total	**45,481**	**100.00**	**686,096,427**	**100.00**

All shares issued are fully paid and have full voting rights. The number of shareholders holding less than the marketable parcel of A$500 under the listing rules of the ASX is 1,000.

The other equity securities on issue are 531 million of Fletcher Building Industries Limited capital notes, which can convert to Fletcher Building Limited ordinary shares on the basis of 98 percent of the then current value of the shares. There were 8,278 holders of the capital notes at 31 July 2013. These equity securities are quoted on the NZX but are unquoted on the ASX.

Distribution of capital noteholders and holdings as at 31 July 2013

Fletcher Building Industries Limited				
Size of holding	Number of noteholders	%	Number of capital notes	%
1 to 4,999	1,110	13.41	3,192,166	0.60
5,000 to 9,999	1,346	16.26	8,569,666	1.61
10,000 to 49,999	4,396	53.11	90,103,000	16.96
50,000 to 99,999	885	10.69	52,323,500	9.85
100,000 to 499,999	477	5.76	76,920,750	14.48
500,000 and over	64	0.77	300,210,918	56.50
Total	**8,278**	**100.00**	**531,320,000**	**100.00**

Limitations on the acquisition of the company's securities

The terms of the company's admission to the ASX and ongoing listing require the following disclosures.

The company is incorporated in New Zealand. As such it is not subject to Chapters 6, 6A, 6B and 6C of the Australian Corporations Act dealing with the acquisition of shares (such as substantial holdings and takeovers). Limitations on acquisition of the securities are, however, imposed on the company under New Zealand law:

(a) Securities in the company are in general freely transferable and the only significant restrictions or limitations in relation to the acquisition of securities are those imposed by New Zealand laws relating to takeovers, overseas investment and competition.

(b) The New Zealand Takeovers Code creates a general rule under which the acquisition of more than 20 percent of the voting rights in the company or the increase of an existing holding of 20 percent or more of the voting rights in the company can only occur in certain permitted ways. These include a full takeover offer in accordance with the Takeovers Code, a partial takeover offer in accordance with the Takeovers Code, an acquisition approved by an ordinary resolution, an allotment approved by an ordinary resolution, a creeping acquisition (in certain circumstances) or compulsory acquisition if a shareholder holds 90 percent or more of the shares in the company.

(c) The New Zealand Overseas Investment Act and Overseas Investment Regulations regulate certain investments in New Zealand by overseas persons. In general terms, the consent of the New Zealand Overseas Investment Office is likely to be required where an "overseas person" acquires shares or an interest in shares in the company that amount to more than 25 percent of the shares issued by the company or, if the overseas person already holds 25 percent or more, the acquisition increases that holding.

(d) The New Zealand Commerce Act 1986 is likely to prevent a person from acquiring shares in the company if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market.

(e) On 31 March 2009, ASX granted the company an ongoing waiver from ASX Listing Rule 7.1 which regulates the circumstances where companies listed on ASX are required to seek shareholder approval for the issue of securities. One of the conditions of the waiver is that the company remains subject to, and complies with, the listing rules of NZX with respect to the issue of new securities.

In accordance with the requirements of the ASX waiver, the company certifies that during the 12 months to 30 June 2013 it has been subject to, and has complied with, the requirements of the NZX with respect to the issue of new securities and that it continues to comply with those requirements.

NZX waiver

The company has been granted a waiver from NZX Listing Rule 7.6.6(a), to allow its chief executive officer and managing director, Mr Mark Adamson, to participate in the Fletcher Building Limited Executive Long-Term Share Scheme (the Scheme) and to receive financial assistance as part of that Scheme, for as long as Mr Adamson remains an employee of the company and a participant in the scheme.

This waiver was granted subject to the following conditions:

(a) the company obtains shareholder approval for the provision of financial assistance to Mr Adamson in connection with his participation in the Scheme at its annual shareholders' meeting (the meeting); and

(b) the notice of meeting contains the precise terms and conditions of Mr Adamson's participation in the Scheme, and a description of the waiver and its implications, being that financial assistance may continue to be provided to Mr Adamson for the period for which he is a participant in the Scheme, which approval was given at the 2012 meeting.

SUBSIDIARY COMPANY DIRECTORS

Section 211(2) of the New Zealand Companies Act 1993 requires the company to disclose, in relation to its subsidiaries, the total remuneration and value of other benefits received by directors and former directors and particulars of entries in the interests registers made during the year ended 30 June 2013.

Apart from some overseas subsidiaries which have independent directors or are required to have a specific number of local residents as directors, no wholly owned subsidiary has directors who are not full-time employees of the group. The company had 256 subsidiaries worldwide at 30 June 2013.

No employee of Fletcher Building Limited appointed as a director of Fletcher Building Limited or its subsidiaries receives, or retains any remuneration or other benefits, as a director. The remuneration and other benefits of such employees, received as employees, are included in the relevant bandings for remuneration disclosed previously under Employee remuneration. Except where shown below, no other director of any subsidiary company within the group receives director's fees or other benefits as a director.

The following persons respectively held office as directors of subsidiary companies at the end of the year, or in the case of those persons with the letter (R) after their name ceased to hold office during the year. Alternate directors are indicated by the letter (A) after their name.

Companies placed in liquidation during the year are indicated by the letter (L) after their name.

AHI Roofing (Malaysia) SDN BHD
Z Bin Mat Desa (R), P Binti Mohamad (R), T Richards, W Roest (R), P Wilson, I Bin Harun, P Lamb

AHI Roofing (Middle East) Limited
T Richards, W Roest (R), N Olson

AHI Roofing Gyarto Es Kereskedelmi Korlatolt Felelossegu Tarasag
M Adamson, O Pascutiu, P Wilson

AHI Roofing Limited
T Richards, W Roest (R), N Olson

AHI Roofing Proizvodnja In Distribucija Stresnih Sistemov D.O.O.
M Adamson (R), O Pascutiu, T Richards, P Wilson

AHI Roofing Pty Limited
D Le Quesne, T Richards

Aickin Timber Limited
J Beveridge, W Roest (R), N Olson

Amatek Holdings Limited
M Farrell, N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Amatek Industries Pty Limited
N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Amatek Investments Limited
M Farrell, N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Amtel Pty Limited
N Gleeson (R), M Negri, T Richards, W Roest (R), P Zuckerman (R)

Andy Sellar Building Supplies Limited
J Beveridge, V Grant (A), A Sellar

Anson Building Supplies Limited
J Beveridge

Associated Water Equipment Pty. Ltd.
D Worley (R), W Roest (R), N Olson, L Mayne

Austral Bronze Crane Copper Limited
S Robertson, W Roest (R), D Worley (R), N Olson, L Mayne

Australian Construction Products Pty Limited
S Baker, M Malpass

Australian Fibre Glass Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Bandelle Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Baron Insulation Pty Ltd
T Richards, C Zeitlyn, S McKay (R)

Boden Building Supplies Limited
J Beveridge, P Boden, V Grant (A)

Builders Hardware Company Limited
J Beveridge

Building Choices Limited
J Beveridge, D Close, V Grant (A)

Building Prefabrication Solutions Limited
J Beveridge, N Olson

Building Products Superannuation Fund Pty Limited
S Hart, W Roest (R), L Box

Burford Building Supplies Limited
J Beveridge

Calvert Building Supplies Limited
J Beveridge

Cameron Building Supplies Limited
J Beveridge, D Cameron, V Grant (A)

Caravan Components Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Charmac Industries Proprietary Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Cleaver Building Supplies Limited
J Beveridge, M Cleaver, V Grant (A)

Cloudguard No 96 Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Collier Building Supplies Limited
J Beveridge

Consort Laminates Limited
M Adamson (R), P Hall, N Mason

Crane Distribution Limited
L Mayne, W Roest (R), D Worley (R), N Olson, T Hickey

Crane Distribution NZ Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Crane Distribution Properties Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Crane Employee Services Pty Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Crane Enfield Metals Pty Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Crane Group Limited
D Le Quesne, W Roest (R), D Worley (R), N Olson, L Mayne

Creeks Metal Industries Pty Limited
D Le Quesne, N Gleeson (R), L Huynh

Crevet Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Crevet Pipelines Pty Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

CTCI Pty Limited
W Roest (R), P Sackville (R), D Surveyor, E Woldhuis, N Olson, A Webster (A)

Cullen Building Supplies Limited
J Beveridge, R Cullen, V Grant (A)

Cullity Timber Holdings Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Dale King Building Supplies Limited
J Beveridge, V Grant (A), D King

Davis & Casey Building Supplies Limited
J Beveridge, T Davis, V Grant (A)

Deavoll Building Supplies Limited
J Beveridge, V Grant (A)

Decra Roofing Systems, Inc.
W Hudson, T Richards, W Roest (R), N Olson

Delcon Holdings (No. 1) Limited
W Roest (R), P Zuckerman, N Olson

Delcon Holdings (No. 2) Limited
W Roest (R), P Zuckerman, N Olson

Delcon Holdings (No. 3) Limited
A Cadman, W Roest (R), N Olson

Delcon Holdings (No. 8) Limited
T RIchards, W Roest (R), N Olson

Delcon Holdings (No. 10) Limited
M Farrell, W Roest (R), N Olson

Delcon Holdings (No. 11) Limited
M Farrell, W Roest (R), N Olson

Delcon Holdings (No. 15) Limited
G Darlow, W Roest (R), N Olson

Delcon Holdings (No. 16) Limited
M Farrell, W Roest (R), N Olson

EE-Fit Pty Limited
T Richards, C Zeitlyn, S McKay (R)

EFA Technologies Pty Limited
D Le Quesne, M Malpass

Engineered Timber Solutions Ltd
J Beveridge

Evans Building Supplies Limited
J Beveridge, M Evans, V Grant (A)

FBHS (Aust) Pty Limited
W Roest (R), P Zuckerman, T Richards, N Gleeson (R), M Negri

FBSOL Pty Limited
W Roest (R), P Zuckerman, T Richards (R), N Gleeson (R), M Negri

FDL No. 28 Limited
J Beveridge

FDL No. 29 Limited
J Beveridge

FDL No. 30 Limited
J Beveridge

Fletcher Building (Australia) Finance Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Fletcher Building (Australia) Pty Limited
M Farrell, N Gleeson (R), D Le Quesne, W Roest (R), N Olson, L Huynh

Fletcher Building (Fiji) Limited
A Kumar, P Thumath (R), C White, A Brown, M Malpass

Fletcher Building Holdings Limited
M Farrell, W Roest (R), J Ling (R), N Olson

Fletcher Building Holdings New Zealand Limited
M Farrell, M Adamson, W Roest (R), J Ling (R), N Olson

Fletcher Building Holdings USA Inc.
W Hudson (R), W Roest (R), M Quint, N Olson

Fletcher Building Industries Limited
A Carter, H Fletcher (R), A Jackson, J Judge, J Ling (R), K Spargo, C Tarrant, G Tilbrook, R Waters, M Adamson

Fletcher Building Netherlands Antilles B.V.
S Coeriel (R), M Farrell, E Rakers (US $3,865), W Roest (R), N Olson, J Mol-Rozema

Fletcher Building Netherlands B.V.
M Farrell, W Roest (R), P Ruoff (R), N Olson, D Slob, A Van De Werken (EUR 2,500)

Fletcher Building (New Zealand) Limited
M Farrell, W Roest (R), N Olson

Fletcher Building Nominees Limited
J McDonald, G Niccol, M Farrell, W Roest (R), C Munkowits, K Daly, N Olson

Fletcher Building Products Limited
T Richards, W Roest (R), N Olson

Fletcher Building Share Schemes Limited
G Niccol, J McDonald

Fletcher Challenge Building Bolivia S.A.
M Binns, K Cowie, H Ritchie

Fletcher Challenge Building UK Limited
J Ollard, D Wood

Fletcher Challenge Finance Investments Limited
M Farrell, W Roest (R), N Olson

Fletcher Challenge Forest Industries Limited
M August, J Ollard, D Wood

Fletcher Challenge Industries S.A.
M Binns, K Cowie, H Ritchie

Fletcher Challenge Investments Overseas Limited
M Farrell, W Roest (R), N Olson

Fletcher Challenge Overseas Holdings Limited
M Farrell, W Roest (R), N Olson

Fletcher Composite Research Limited
W Roest (R), P Zuckerman, N Olson

Fletcher Concrete (Fiji) Limited
P Thumath (R), A Kumar, A Brown, M Malpass, C White

Fletcher Concrete & Infrastructure Limited
M Malpass, W Roest (R), N Olson

Fletcher Construction (Nouvelle Caledonie) S.A.R.L.
A Brown

Fletcher Construction (Solomon Islands) Limited
A Brown, L Gray

Fletcher Construction Australia Pty Limited
N Gleeson (R), C Munkowits, L Huynh

Fletcher Construction Company (Fiji) Limited
A Brown, L Gray, J Matthews

Fletcher Construction Pty Limited
N Gleeson (R), C Munkowits, L Huynh

Fletcher Distribution Limited
J Beveridge, W Roest (R), N Olson

Fletcher Insulation (Vic) Pty Limited
T Richards, C Zeitlyn, S McKay (R)

Fletcher Insulation Pty Limited
T Richards, C Zeitlyn, S McKay (R)

Fletcher Morobe Construction Pty Limited
A Brown, K Fletcher, L Gray, L Mathias

Fletcher Pacific Steel (Fiji) Limited
D Hargovind (FJ $2,500), I Jones, W Roest (R), P Zuckerman

Fletcher Property Developments UK Limited
M August, J Ollard, D Wood

Fletcher Property Investments UK Limited
M August, J Ollard, D Wood

Fletcher Property Limited
G Darlow, W Roest (R), N Olson

Fletcher Residential Limited
G Darlow, W Roest (R), N Olson

Fletcher Steel Limited
W Roest (R), P Zuckerman (R), M Malpass, T Richards, N Olson

Fletcher Wood Panels (Australia) Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

FM Holdings Inc.
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

FMB Comércio Importacão e Exportacão de Laminados Decorativos Ltda
G Pikielny

Forman Building Systems Limited
T Richards, W Roest (R), N Olson

Forman Building Systems Pty Limited
T Richards, C Zeitlyn

Forman Commercial Interiors Limited
T Richards, W Roest (R), N Olson

Forman Group Limited
T Richards, W Roest (R), N Olson

Forman Insulation Limited
T Richards, W Roest (R), N Olson

Forman Manufacturing Limited
T Richards, W Roest (R), N Olson

Formica (Asia) Ltd
C Wang, D Wang

Formica (China) Trading Co., Ltd
C Wang, C Kao, C Gray

Formica (Malaysia) Sdn. Bhd.
K Leong, C Wang, J Yang

Formica (N.Z.) Limited
M Adamson (R), W Roest (R), N Olson, P Zuckerman

Formica (Nederland) B.V.
J Ruurd de Pater, N Mason

Formica (Singapore) Pte. Ltd
C Wang, C Chang, DH Wang

Formica (Thailand) Co., Ltd
W Kunanantakul, S Mahacharoenkeat, DH Wang, C Wang

Formica Canada Inc.
M Adamson (R), L Box, C Sarrazin, M Quint

Formica Corporation
M Adamson, L Box, W Roest (R), M Quint

Formica Danmark A/S
I Delen, U Hector, R Pollington

Formica de Mexico SA DE CV
M Adamson (R), L Box, M Quint, B Strobel

Formica Decorative Materials (China) Co., Ltd
P Foreman (R), C Kao, C Wang, C Gray

Formica Finance Limited
M Adamson (R), P Hall, W Roest (R), N Mason, R Pollington

Formica Global LLC
M Adamson (R), R Bollman (R), L Box, M Vernon, M Quint, B Strobel

Formica Holdco UK Limited
M Adamson (R), P Hall, N Mason, R Pollington

Formica Holding Corp.
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

Formica Holding GmbH
M Adamson, E Hoernisch, T Ruhnke

Formica Holdings Limited
M Adamson (R), P Hall, N Mason, R Pollington

Formica II Corporation
M Adamson R), L Box, W Roest (R), M Quint, P Zuckerman

Formica Iki Oy
M Adamson (R), I Delen, R Pollington, P Zuckerman

Formica International LLC
M Adamson (R), R Bollman (R), L Box, M Vernon, M Quint, B Strobel

Formica Korea Corporation
T Ren, C Wang

Formica Laminates (India) Private Limited
M Adamson (R), S Badri, L Box, N Mason, R Pollington, P Zuckerman

Formica Limited
M Adamson (R), L Box, P Foreman, P Hall, N Mason, D Pallas, R Pollington, W Roest (R), P Zuckerman

Formica LLC
I Delen, N Mason, R Pollington, A Tsvetov

Formica Middle East B.V.
M Adamson

Formica Norge A/S
I Delen, U Hector

Formica PSM Limited
M Adamson (R), P Hall

Formica S.A. (Spain)
M Adamson (R), P Hall, H Ruloffs

Formica S.A.S (France)
M Adamson (R), P Hall (R), N Mason, R Pollington, P Zuckerman

Formica Skandinavien AB
M Adamson (R), I Delen, R Pollington

Formica SP.zo.O.
N Mason

Formica Taiwan Corporation
T Ren, C Wang, DH Wang

Gatic Pty Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

G E Crane Investments Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

G E Crane Securities Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

G. E. Crane N.Z. Holdings Ltd
M Farrell, W Roest (R), D Worley (R), N Olson

G. E. Crane N.Z. Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Geoff Brown Building Supplies Limited
J Beveridge, G Brown, V Grant (A)

Geraldton Independant Building Supplies Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Graeme Joy Building Supplies Limited
J Beveridge, V Grant (A), G Joy

Gravure et Polissage de Surfaces Metalliques
M Adamson, P Hall, N Mason

Homapal GmbH
T Ruhnke

Home&Dry Limited (formerly DVS Limited)
T Richards, W Roest (R), N Olson

Hudson Building Supplies Pty Limited
W Roest (R), D Worley (R), N Olson, L Mayne

Icon Industries National Administration Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Insulation Solutions Holdings Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Iplex Pipelines Australia Pty Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Iplex Pipelines NZ Limited
M Farrell, W Roest (R), D Worley (R), N Olson

Iplex Properties Pty. Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

John Cockburn Building Supplies Limited
J Beveridge, J Cockburn, V Grant (A)

Ken Jones Building Supplies Limited
J Beveridge, V Grant (A), K Jones

Kenna Building Supplies Limited
J Beveridge, V Grant (A), L Kenna

Kevin Jarvis Building Supplies Limited
J Beveridge

Key Plastics Distribution Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Key Plastics Pty. Ltd.
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

KH Consolidated Industries (Canberra) Pty Limited
D Le Quesne, P Zuckerman (R), T Richards

Kimura Building Supplies Limited
J Beveridge, V Grant (A), J Kimura

Kingston Bridge Engineering Pty Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Kinsey Kydd Building Supplies Limited
J Beveridge, V Grant (A), S Kinsey

Kusabs Building Supplies Limited
J Beveridge, V Grant (A), G Kusabs

Laminates Acquisition Co.
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

Laminates Holdings Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Laminex (Australia) Pty. Ltd.
W Roest (R), D Surveyor, N Olson, P Zuckerman

Laminex Finance Pty Limited
N Gleeson (R), D le Quesne, L Huynh

Laminex Group (N.Z.) Limited
M Adamson (R), W Roest (R), N Olson, P Zuckerman

Laminex Group Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Laminex Overseas Holdings Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Laminex US Holdings Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Macready Building Supplies Limited
J Beveridge, V Grant (A), J MacReady

McDonald Building Supplies Limited
J Beveridge, R Callon (A)

McGill Building Supplies Limited
J Beveridge

Meleccio Enterprises Limited
G Darlow, W Roest (R), N Olson

Milnes-Gatic Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Milnes Holdings Limited
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Minnell Building Supplies Limited
J Beveridge, V Grant (A), D Minnell

Morinda Australia Pty Limited
W Roest (R), P Zuckerman (R), T Richards, M Negri

Mount Timber & Hardware Limited
J Beveridge, W Roest (R), N Olson

New Zealand Ceiling & Drywall Supplies Limited
D Jones

Nick Letica Building Supplies Limited
J Beveridge, V Grant (A), N Letica

Nock Building Supplies Limited
J Beveridge

Northern Iron and Brass Foundry Pty. Ltd.
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

NZ Insulation Services Limited (formerly DVS Healthy Homes Limited)
T Richards, W Roest (R)

Pacific Trade & Export Limited
G Darlow, W Roest (R), N Olson

Perstorp Warerite Limited
M Adamson (R), P Hall, N Mason

PinkFit Limited
T Richards, W Roest (R), N Olson

Placemakers Limited
J Beveridge, W Roest (R), N Olson

Polymer Fusion Education Pty Ltd
R McLeod, W Roest (R), D Worley (R), N Olson, L Mayne

Raoul Holdings Limited
M Malpass, W Roest (R), N Olson

Rocla Australia Pty Limited
D Le Quesne, M Malpass

Rocla Concrete Pipes Pty Limited
D Le Quesne, M Malpass

Rocla Drilling Pty Limited
D Le Quesne, M Malpass

Rocla Group Superannuation Fund Pty Limited
J Gardiner, W Roest (R), L Box

Rocla Industries Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Rocla Masonry Pty Limited
D Le Quesne, M Malpass

Rocla Materials Pty Limited
D Cilento, M Malpass

Rocla NSW Pty Limited
D Le Quesne, M Malpass

Rocla Pty Limited
S Baker, D Cilento, M Malpass

Rocla SA Pty Limited
D Le Quesne, M Malpass

Rocla Vic Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Rolleston Building Supplies Limited
J Beveridge, V Grant (A), R Rolleston

S Cubed Pty Limited
W Roest (R), P Zuckerman (R), T Richards, N Gleeson (R), M Negri

Seabar Holdings (No 16) Limited
G Darlow, W Roest (R), N Olson

Servicios Formica de Mexico SA DE CV
M Adamson (R), L Box, M Quint, B Strobel

Shanghai Fletcher Building Materials Trading Company Limited
W Roest (R), C Wang, P Wilson

Shanghai Formica Decorative Material Co., Ltd
P Foreman (R), J Hu, C Kao, C Wang, C Gray

Shed Boss NZ Limited
M Farrell, W Roest (R), N Olson

Sisalation Pty Limited
T Richards, S McKay (R), C Zeitlyn

Southbound Building Supplies Limited
J Beveridge, V Grant (A), A Rance

Steven Marshall Building Supplies Limited
J Beveridge, V Grant (A), S Marshall

Stickland Building Supplies Limited
J Beveridge, V Grant (A), L Stickland

Stramit (Preston) Pty Limited
D Le Quesne, P Zuckerman (R), T Richards

Stramit Corporation Pty Limited
W Roest (R), P Zuckerman (R), T Richards, M Negri

Stramit Pty Limited
D Le Quesne, P Zuckerman (R), T Richards

Sullivan & Armstrong Building Supplies Limited
J Beveridge, V Grant (A), J Sullivan

Surface Materials Iki Oy
M Adamson, P Alderson, J Kerbs

TAF Building Systems Pty Limited
D Le Quesne, T Richards

Tasman Australia Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Tasman Building Products Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Tasman Insulation New Zealand Limited
T Richards, W Roest (R), N Olson

Tasman Investments (Netherlands Antilles) N.V.
S Coeriel (R), M Farrell, E Rakers (US $3,675), W Roest (R), J Mol-Rozema, N Olson

Tasman Sinkware North America, Inc.
W Roest (R), N Olson

Tasman Sinkware Pty Limited
J Bayer, T Richards, W Roest (R), L Mayne

TBP Group Pty Limited
N Gleeson (R), D Le Quesne, L Huynh

Ted Harper Building Supplies Limited
J Beveridge, V Grant (A), E Harper

Tenedora Formica Mexico, S.A. de C.V.
M Adamson (R), L Box, M Quint, B Strobel

Terrace Insurances (PCC) Limited
J Crowder, M Eades (£2,500), M Farrell, W Roest (R), N Olson

Terry Mellsop Building Supplies Limited
J Beveridge

The Diller Corporation
M Adamson (R), L Box, W Roest (R), M Quint, P Zuckerman

The Fletcher Construction Company Cook Islands Limited
A Brown, L Gray

The Fletcher Construction Company Limited
G Darlow, W Roest (R), N Olson

The Fletcher Organisation (Vanuatu) Limited
A Brown, L Gray, Diract Limited, Lotim Limited

The Fletcher Trust and Investment Company Limited
G Darlow, W Roest (R), N Olson

Thomas Street Pty Limited
D Le Quesne, M Malpass

Thor Plastics Pty Ltd
W Roest (R), D Worley (R), N Olson, L Mayne

Trade Mart Limited
J Beveridge, W Roest (R), N Olson

Trademates Limited
J Beveridge, W Roest (R), N Olson

Unidur GmbH
M Adamson

Ward Building Supplies Limited
J Beveridge

Wesfi Limited
D Le Quesne (R), W Roest (R), D Surveyor, N Olson, P Zuckerman

Wesfi Manufacturing Pty Limited
W Roest (R), D Surveyor, N Olson, P Zuckerman

Winstone Wallboards Limited
T Richards, W Roest (R), N Olson

COMPANIES LIQUIDATED:

Laminex Inc
W Roest (R), M Quint

Waterman Building Supplies Limited
J Beveridge

COMPANIES AMALGAMATED:

Auckland Frame and Truss Supplies Limited
J Beveridge, B Bibbie, R Grimmer, D King, O Lyttleton, S Marshall, L Stickland, J Sullivan, R Spiers, B Deavoll (R)

Christchurch Frame & Truss Limited
J Beveridge, B Bibbie, M Cleaver, D Close, M Evans, R Grimmer (A), O Lyttelton (A), R Callon (R)

Decorative Surfaces Holding AB
M Adamson, I Delen, U Hector

Formica Vertriebs GmbH
M Adamson, E Hoernisch, T Ruhnke

Homapal Plattenwerk Beteiligungs-GmbH
T Ruhnke

Homapal Plattenwerk GmbH & Co KG
T Ruhnke, M Adamson (R), F Homann (R)

Waikato/BOP Frame & Truss Limited (formerly Tango Warkworth Limited)
J Beveridge

Wellington Frame & Truss Limited
J Beveridge

The O'Brien Group Limited
M Adamson, W Roest (R), D Worley (R)

Annual shareholders' meeting

The Annual Shareholders' Meeting of Fletcher Building Limited will be held in the Level 4 Lounge, South Stand, Eden Park, Reimers Avenue, Auckland, at 10.30am on Wednesday 16 October 2013.

Final dividend information

The company has declared a final dividend for the year of 17 cents per share payable on 16 October 2013. This is in addition to the interim dividend of 17 cents per share paid in April 2013. The final dividend has imputation credits attached at a 28 percent tax rate. There are no Australian franking credits attached.

Dividend Reinvestment Plan

Fletcher Building shareholders (excluding those in jurisdictions where the issue of shares is not permitted by law) can participate in a Dividend Reinvestment Plan, under which they have the opportunity to reinvest their dividends in additional shares. To participate, please contact the share registry.

Further information online

Details on Fletcher Building, its governance policies, and its operations for the year ended 30 June 2013 can be viewed on the Fletcher Building website at **fbu.com**.

This website contains all news releases to the NZX and ASX financial presentations made by the company.

Shareholder communications

The company is not required to send printed copies of the annual report and half year review to shareholders. Instead, Fletcher Building sends an annual review which is a summary of the company's operational and financial activities for the year, although holders can view the reports on the company's website. In addition, they have a right to receive a copy of these reports on request.

Direct crediting of interest and dividends

To minimise the risk of fraud and misplacement of dividend cheques shareholders are strongly recommended to have all payments made by way of direct credit to their nominated New Zealand or Australian bank account. This can be done by simply giving the share registry written notice.

Share registries

Details of the company's share registries are given in the Directory on the inside back cover of this report.

Shareholders with enquiries about share transactions, changes of address or dividend payments should contact the share registry in the country in which their shares are registered.

DIRECTORY

Registered offices

New Zealand
Fletcher Building Limited
Private Bag 92 114
Auckland 1142
New Zealand

Fletcher House
810 Great South Road
Penrose, Auckland 1061
New Zealand
T. +64 9 525 9000

Australia
Fletcher Building Australia
Locked Bag 7013,
Chatswood DC 2067
NSW 2067, Australia

Level 11, Tower B, Zenith Centre
821 Pacific Highway
Chatswood, NSW 2067, Australia
T. +61 2 8986 0900
ARBN 096 046 936

Shareholder enquiries

Changes of address, payment instructions and investment portfolios can be viewed and updated online: **investorcentre.co/nz**. Enquiries may be addressed to the Share Registrar, Computershare Investor Services:

New Zealand
Computershare Investor Services Limited
Private Bag 92 119
Auckland 1142
New Zealand

Level 2, 159 Hurstmere Road
Takapuna, Auckland 0622
New Zealand
T. +64 9 488 8777
F. +64 9 488 8787
E. enquiry@computershare.co.nz

Australia
Computershare Investor Services Pty Limited
GPO Box 3329
Melbourne, VIC 3001, Australia

Yarra Falls, 452 Johnston Street
Abbotsford, VIC 3067, Australia
T. 1800 501 366 (within Australia)
T. +61 3 9415 4083 (outside Australia)
F. +61 3 9473 2009

Other investor enquiries

Fletcher Building Limited
Private Bag 92 114
Auckland 1142, New Zealand
T. +64 9 525 9000
F. +64 9 525 9032
E. moreinfo@fbu.com

Other information

fbu.com

New Zealand
Auckland
Bay of Plenty
Canterbury
Central North Island
Hawkes Bay
Nelson & Marlborough
Northland
Otago & Southland
Taranaki & Manawatu
Waikato
Wellington

Australia
ACT
New South Wales
Northern Territory
Queensland
South Australia
Tasmania
Victoria
Western Australia

Asia
Europe
North America
South Pacific

Olivéri®

2013 Collection

At Oliveri we believe that paying attention to the small details leads to lasting satisfaction. Changing the ordinary into enduring style.

With over a half-century of designing and engineering sinks in Australia, Oliveri is more than just a trusted brand name - Oliveri combines innovative sink solutions with everyday practicality to suit your kitchen.

Oliveri

Oliveri Interactive Brochure
This interactive PDF allows you to navigate the content within this brochure using the below buttons which are located in the top left corner of each spread.

Contents — **Contents button**
Opens a drop down menu of the brochure content.

✕ — **Close button**
Closes the content menu.

Home — **Home button**
Returns you to this interactive content page.

facebook.com/OliveriAU

twitter.com/OliveriAU

www.oliverisinks.com

Oliveri.
For the good life, the high life and everything in between.


Oliveri

Professional Series

Sometimes all that divides the passionate amateur from the professional is the workspace.

INSET SINKS

PR1111 LH Bowl (PR1112 RH Bowl) incl. ACP141, ACPSQ3, ACPSQ8

PR1121 LH Bowl (PR1122 RH Bowl) incl. ACP141, ACPSQ8
Shown with optional TN2010 tap

PR1181 incl. ACP141, ACPSQ8

PR1131 incl. ACP141, ACPSQ3

UNDERMOUNT SINKS

PR1160U incl. ACPSQ6

PR1130U incl. ACPSQ3

PR1190U incl. ACPSQ9

PR1163U incl. 2 x ACPSQ5

Additional sinks in this range available. See pages 30-31.
These hand fabricated sinks are not suitable for flushmount installation.

ACCESSORIES More accessories are available. See page 29.

RECOMMENDED TAPWARE

FEATURES

Large capacity bowls
For soaking a feast of baking dishes or oven trays, with bowls up to 78 litres in capacity.

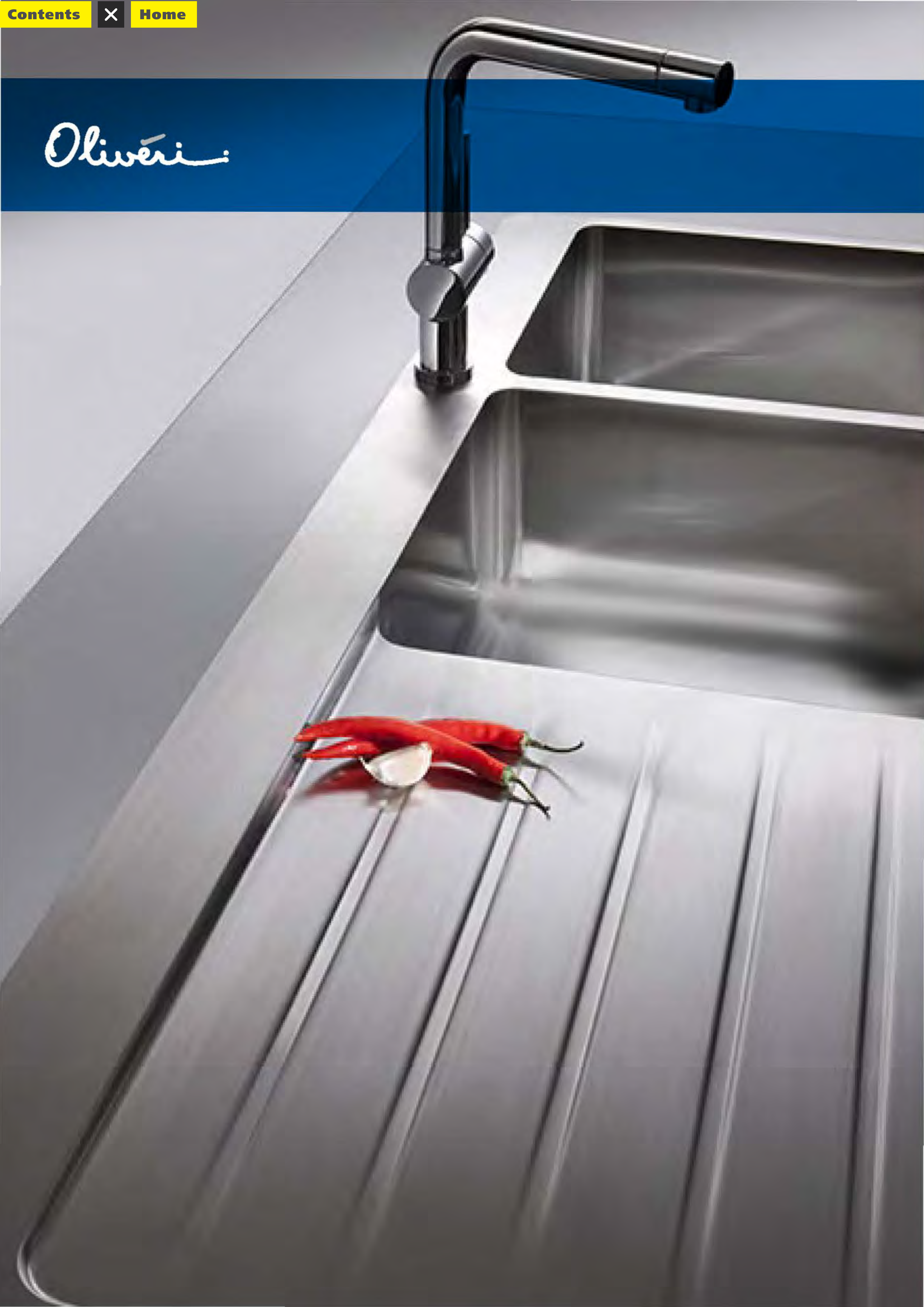
1.5mm brushed stainless steel
Provides a low profile edge and creates a streamlined look that integrates with modern kitchen appliances.

Softtone® and sound proofing
Ensures improved heat retention with a sound deadening finish.

Waste adaptor (Optional ACSWDK)
Allows the square waste of the Professional Series to connect with waste disposal units.

Easy clean corners
Softly squared 10mm radius corners are hygienic and easy to clean.

International collection™
Designed and engineered to our specifications and quality standards. Sourced from our international supplier.


Oliveri

Sonetto

Like hidden treasure, the joy is in its discovery.
Embrace a seamless designer look.

INSET SINKS

SN1011 LH Bowl (SN1012 RH Bowl) incl. ACP101

SN1071 LH Bowl (SN1072 RH Bowl) incl. ACP101
Shown with optional SS913 tap

SN1021 LH Bowl (SN1022 RH Bowl) incl. ACP101

SN1051 incl. ACP101, ACP103

UNDERMOUNT SINKS

SN1020U

SN1030U incl. ACP103

SN1050U incl. ACP103

SN1063U incl. ACP103

Additional sinks in this range available. See pages 30-31.
These hand fabricated sinks are not suitable for flushmount installation.

ACCESSORIES More accessories are available. See page 29.

RECOMMENDED TAPWARE

FEATURES

Softtone® and sound proofing
Ensures improved heat retention with a sound deadening finish.

1.2mm brushed stainless steel
Provides a low profile edge and creates a streamlined look that integrates with modern kitchen appliances.

Easy clean corners
Softly squared 25mm radius corners are hygienic and easy to clean.

Undermount installation
Delivers a modern, minimalist look. Ideal for solid surfaces.

Bamboo accessory kit
Creates a handy work station for rinsing, chopping, mixing and much more.

International collection™
Designed and engineered to our specifications and quality standards. Sourced from our international supplier.

Oliveri. For a stylish home filled with family and friends.


Oliveri

Nu-Petite®

Beautiful and practical in every way. From apartment living to family home.

INSET SINKS

NP611 LH Bowl (NP612 RH Bowl) incl. AC62, AC65

NP671 LH Bowl (NP672 RH Bowl) incl. AC62, AC65
Shown with optional AC63 and SQ107 tap

NP621 LH Bowl (NP622 RH Bowl) incl. AC62, AC65

NP663 incl. AC62, AC63, AC65

UNDERMOUNT SINKS

NP650U

NP61U LH Bowl (NP62U RH Bowl) incl. AC62, AC63, AC65

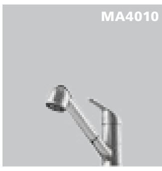
NP63U incl. AC62, AC63, AC65

NP60U incl. AC62, AC63, AC65

Additional sinks in this range available. See pages 30-31.

ACCESSORIES More accessories are available. See page 29.

RECOMMENDED TAPWARE



FEATURES

Undermount installation
Delivers a modern, minimalist look. Ideal for solid surfaces.

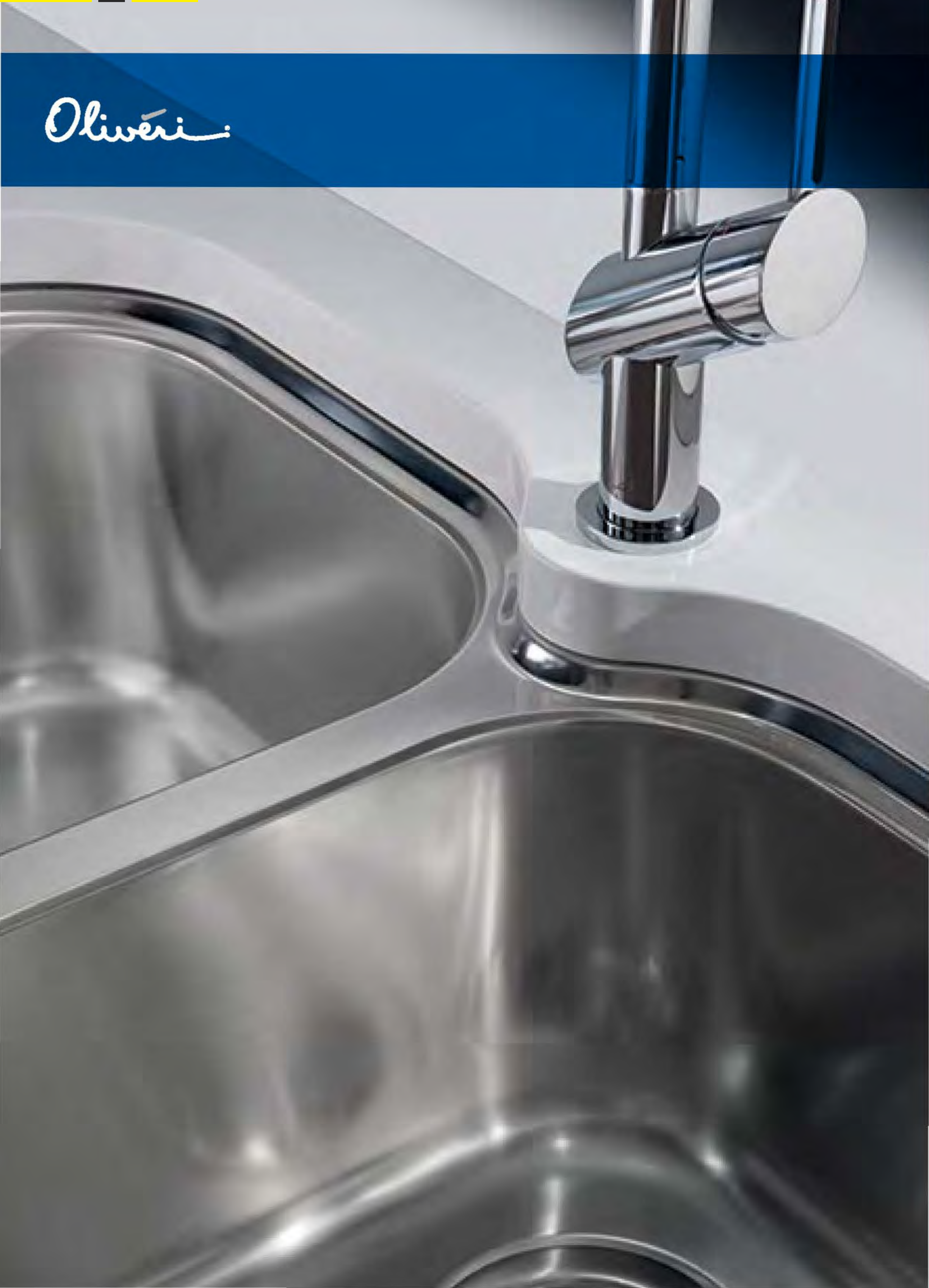
Generous bowl capacity
Holds 30 litres in the main bowl to accommodate the biggest pots and pans.

Custom made accessories
Transforms the sink into a streamlined food preparation area.

Rear waste outlets
Allows the maximum amount of usable space in cupboards below.

Solid supporting bridge
Joining the bowls this way means no weak areas are created between the bowls.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.



Monet®

A modern masterpiece. Beautiful, soft curves complement contemporary design.

UNDERMOUNT SINKS

MO71U LH Bowl (MO72U RH Bowl) incl. AC72, AC73, AC74

MO70U incl. AC72, AC73, AC74
Shown with optional HB2030 tap

INSET SINKS

MO763 incl. AC72, AC73, AC74

MO711 LH Bowl (MO712 RH Bowl) incl. AC72, AC74

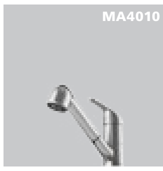
MO771 LH Bowl (MO772 RH Bowl) incl. AC72, AC74

MO753 incl. AC72, AC74

Additional sinks in this range available. See pages 30-31.

ACCESSORIES More accessories are available. See page 29.

RECOMMENDED TAPWARE



FEATURES

Extra capacity main bowl
The D-shaped design allows for a larger main bowl without compromising drainer space.

Undermount installation
Delivers a modern, minimalist look. Ideal for solid surfaces.

Rear waste outlets
Allows the maximum amount of usable space in cupboards below.

Custom made accessories
Transforms the sink into a streamlined food preparation area.

Solid supporting bridge
Joining the bowls this way means no weak areas are created between the bowls.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.


Oliveri

Diaz

When elegant minimalism meets practical design.
Sleek, square lines for modern living.

INSET SINKS

DZ121 LH Bowl (DZ122 RH Bowl) incl. AC15, AC18

DZ163 incl. AC15, AC18, AC33
Shown with optional KE2030 tap

DZ101 LH Bowl (DZ102 RH Bowl) incl. AC15, AC18

DZ111 LH Bowl (DZ112 RH Bowl) incl. AC15, AC18

DZ171 LH Bowl (DZ172 RH Bowl) incl. AC15, AC18

UNDERMOUNT SINKS

DZ150U

DZ10U incl. AC15, AC18, AC33

Additional sinks in this range available. See pages 30-31.

ACCESSORIES More accessories are available. See page 29.


AC18


AC33


AC15


AC03


AC16


AC29

RECOMMENDED TAPWARE


KE2030


TN2010

FEATURES

Unique drainer design
With flat topped flutes that don't just look beautiful, they also reduce surface scratching.

Large tap landing
Included on some models to accommodate a filtered water tap or soap dispenser.

18/10 Stainless utility tray
Creates a space for draining dishes and is included standard with double bowl-only sinks.

Custom made accessories
Transforms the sink into a streamlined food preparation area.

Rear waste outlets
Allows the maximum amount of usable space in cupboards below.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.


Oliveri

Petite

To change your world, change its design.
The original classic that set new world standards.

PE353 incl. AC15, AC18

PE341 incl. AC15, AC18
Shown with optional MA4010 tap

PE371 LH Bowl (PE372 RH Bowl) incl. AC15, AC18

PE311 LH Bowl (PE312 RH Bowl) incl. AC15, AC18

PE301 LH Bowl (PE302 RH Bowl) incl. AC15, AC18

PE321 LH Bowl (PE322 RH Bowl) incl. AC15, AC18

Additional sinks in this range available. See pages 30-31.

ACCESSORIES

More accessories are available. See page 29.


AC18


AC33

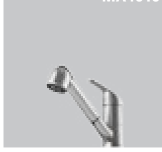

AC15


AC03


AC16


AC29

RECOMMENDED TAPWARE


MA4010


PA113/2

FEATURES

Large capacity bowls
Accommodate even the biggest pot, pan or wok.

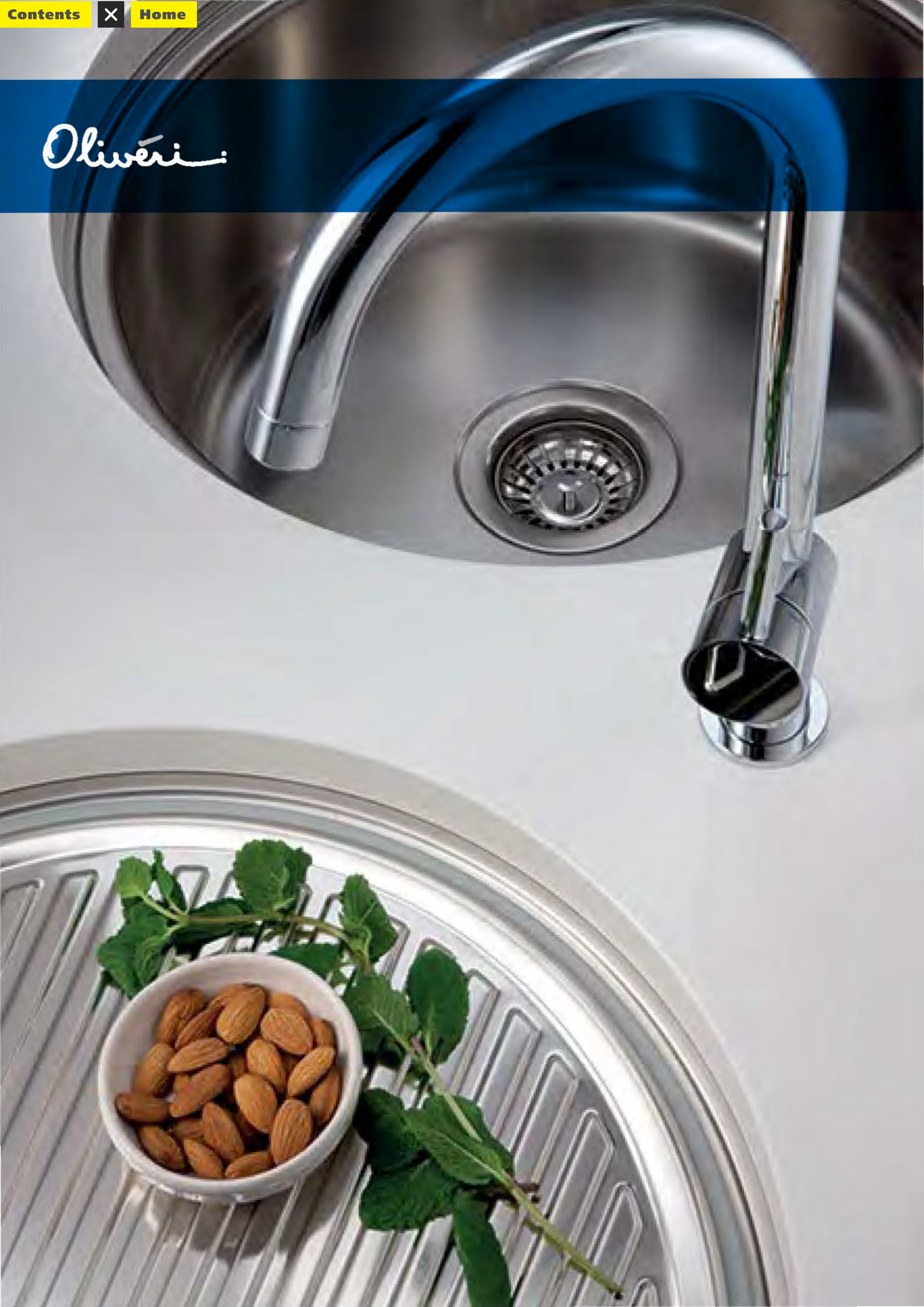
Custom made accessories
Transforms the sink into a streamlined food preparation area.

Rear waste outlets
Allows the maximum amount of usable space in cupboards below.

Flat tap landing
Included on some models to accommodate a filtered water tap or soap dispenser.

Practical combinations
Create the ideal working space with a choice of bowl combinations and accessories.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.


Olivéri

Solitaire®

A change in thinking to change a space.
The elegant and versatile all-rounder.

UNDERMOUNT SINKS

LR510

LR510 (x2)
Shown with optional AC50, AC53 and HB2030 tap

INSET SINKS

LR521 LH Bowl incl. AC50

LR510

LR522 RH Bowl incl. AC50

LR515

ACCESSORIES More accessories are available. See page 29.

RECOMMENDED TAPWARE

FEATURES

Eye-catching design
As a stand alone bowl or in combination with another sink or drainer.

Low profile edge
Provides a smooth transition from sink to benchtop.

Custom made accessories
Transforms the sink into a streamlined food preparation area.

24 Litre, extra deep bowl
Perfect as a butler's or laundry sink, the bowl holds most tall buckets or vases when installed with a gooseneck tap.

Teardrop tap landing
Keeps the wet area within the sink on the LR515 model.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.

Oliveri. For every generation and every celebration.

LakeLand

Made by Australians for Australians.
Smart, sensible design.

INSET SINKS

LL136 LH Bowl (LL137 RH Bowl)

LL156 LH Bowl (LL157 RH Bowl)
Shown with optional LP02 and NW7310 tap

LL116 LH Bowl (LL117 RH Bowl)

LL126 LH Bowl (LL127 RH Bowl)

ACCESSORIES More accessories are available. See page 29.

RECOMMENDED TAPWARE

FEATURES

Custom made accessories
Transforms the sink into a streamlined food preparation area.

Embossed drainer
Drains water efficiently into the sink.

Practical combinations
Create the ideal working space with a selection of bowl combinations.

Stylish design
Rounded corners suit any design style, from country charm to contemporary.

18/10 Stainless steel
Engineered for good looks, strength and long life with genuine, 304 grade stainless steel.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.

Ultraform
Perfection in unlikely places.
Intelligent space saving design.

Perle
Affordable.
Beautiful. Practical.

INSET SINKS

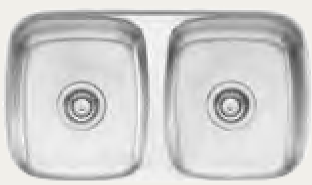
UF01 LH Bowl (UF02 RH Bowl)

UF13D

PL811 LH Bowl (PL812 RH Bowl)
Shown with optional AC02, LP02 and PA113/2 tap

UNDERMOUNT SINKS

PL80U



ACCESSORIES More accessories are available. See page 29.

LP01


LP02

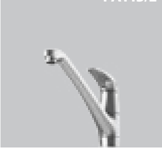

AC01

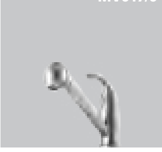

AC02


AC16


AC29


RECOMMENDED TAPWARE

PA113/2


MV617/6


FEATURES

Undermount installation
The double bowl undermount incorporates modern design and maximises bench space.

Custom made accessories
Transforms the sink into a streamlined food preparation area.

Embossed drainer
Drains water efficiently into the sink.

Large tap landing
Included on the UF01 to accommodate a filtered water tap or soap dispenser.

Oliveri signature
Representing over sixty years of world class engineering in Australia.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.

Martini
Small is beautiful and practical in every way. Ideal for a compact kitchen.

Duoform and Titan
A generous capacity for growing families. And large baking dishes.

INSET SINKS

MR501 LH Bowl (MR502 RH Bowl) incl. AC02
Shown with optional MA4010 tap

440

UNDERMOUNT SINKS

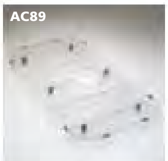
DU490U

TN890U incl. AC89

ACCESSORIES More accessories are available. See page 29.

AC02

AC16

AC89

LP01


RECOMMENDED TAPWARE

KE2030

HB2030

MA4010

PS113/1


FEATURES

DU490U 45 litre bowl
The Duoform's main bowl is extra large and accommodates the largest roasting dish or wok.

Titan TN890U 65 litre bowl
Titan's extra wide, deep bowl allows you to fully immerse baking trays and pans.

Martini MR501 slim width
The Martini's elegant design and narrow width is perfect for small spaces, such as a bar, boat or caravan.

Custom made accessories
Transforms the sink into a streamlined food preparation area.

18/10 Stainless steel
Engineered for good looks, strength and long life with genuine, 304 grade stainless steel.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.

Elan
From first home to fab home.
Style that's at home where you are.

INSET SINKS

EL011 LH Bowl (EL012 RH Bowl)

EL001 LH Bowl (EL002 RH Bowl)
Shown with optional AC04, AC18 and PS113/1 tap

EL021 LH Bowl (EL022 RH Bowl)

UNDERMOUNT SINKS

EL030U

EL063U

Additional sinks in this range available. See pages 30-31.

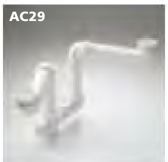
ACCESSORIES More accessories are available. See page 29.

AC18

AC04

AC16

AC29



RECOMMENDED TAPWARE

KE2030

NW7310

PS113/1

MA4010

FEATURES

Brushed stainless steel
Creates a streamlined look that integrates with modern kitchen appliances.

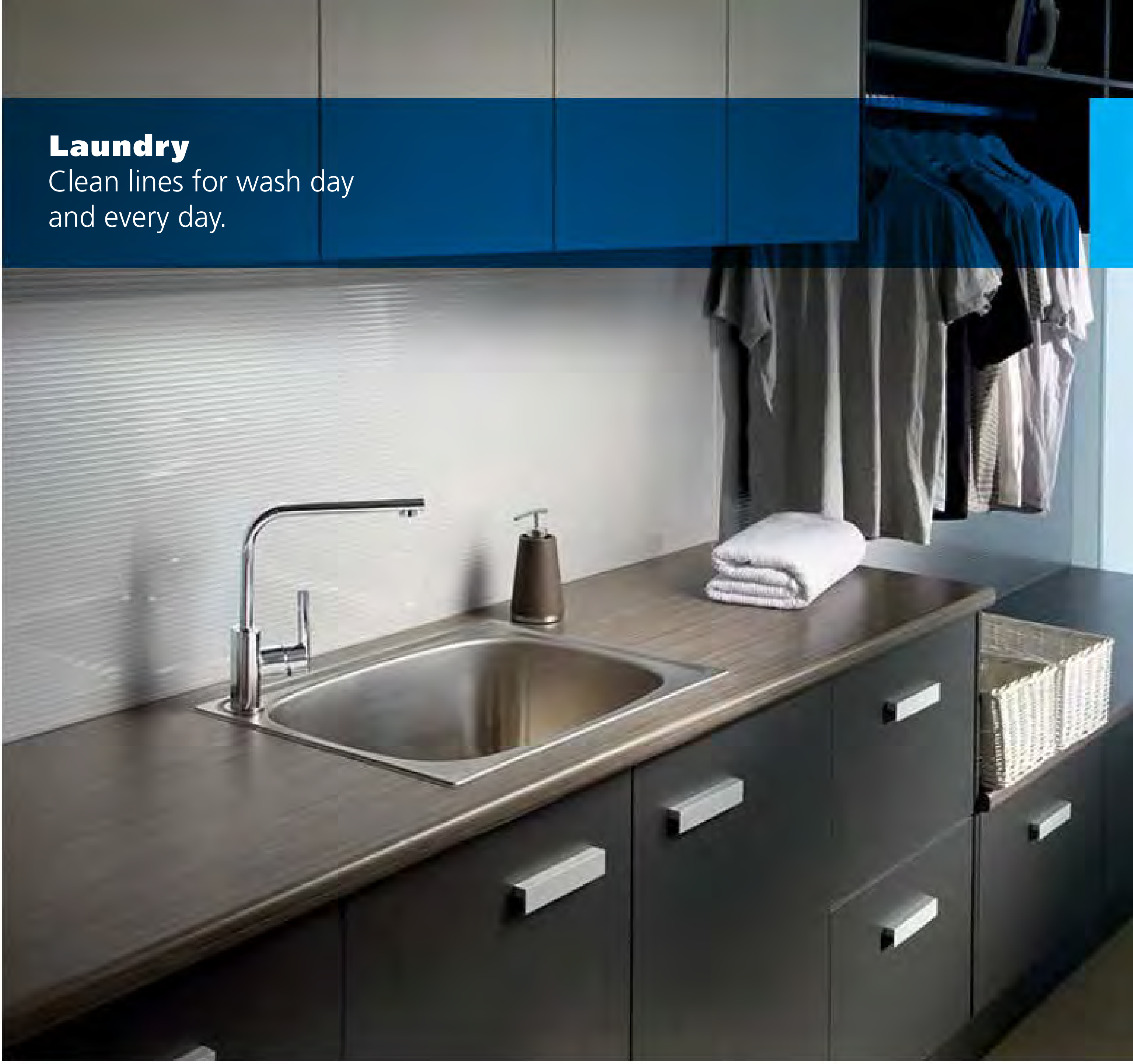
Custom made accessories
Transforms the sink into a streamlined food preparation area.

Rear waste outlets
Allows the maximum amount of usable space in cupboards below.

18/10 Stainless steel
Engineered for good looks, strength and long life with genuine, 304 grade stainless steel.

Oliveri signature
Representing over sixty years of world class engineering in Australia.

International collection™
Designed and engineered to our specifications and quality standards. Sourced from our international supplier.



Laundry
Clean lines for wash day and every day.

TI45
Shown with optional NW7310 tap

45 litre tub bowl

TI70

70 litre tub bowl

FEATURES

Low profile rim
For a near seamless fit to the bench top and makes cleaning easier.

Small and large tubs
Available in 45 or 70 litre capacity and designed to accommodate mixer taps.

Rinse bypass
The TI series tubs are available with bypass plumbing to allow washing machine overflow to drain while the tub is being used.

Overflow option
Safeguards against accidental overfilling and is discreetly located high on the bowl wall to maximize capacity.

18/10 Stainless steel
Engineered for good looks, strength and long life with genuine, 304 grade stainless steel.

Australian Made
Oliveri has designed and manufactured sinks in Australia since 1948.

Tapware

Our signature range – sourced from the world's best manufacturers.

SQ107

HB2030
WELS 4 / 7.0

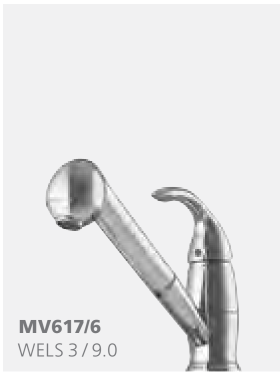
IP2030
WELS 3 / 8.0

SQ107
WELS 4 / 7.5

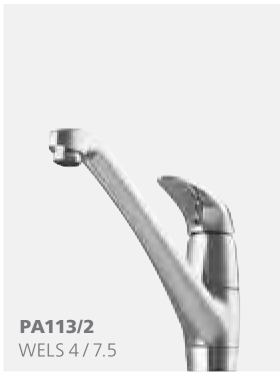
KE2030
WELS 4 / 7.0

TN2010
WELS 4 / 7.0

MA4010
WELS 4 / 7.5



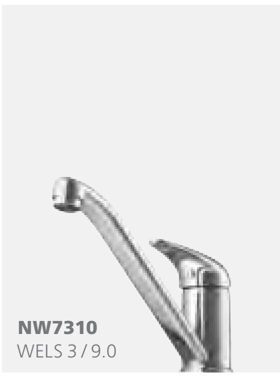
MV617/6
WELS 3 / 9.0



PA113/2
WELS 4 / 7.5

SS913
WELS 4 / 7.5

PS113/1
WELS 4 / 7.5



NW7310
WELS 3 / 9.0

FEATURES

International collection™
A collaboration producing the best available products.

Designed and engineered to our specifications and quality standards. Sourced from our international suppliers.

10 year warranty
All Oliveri tapware has a 10 year warranty against manufacturing defects. For terms and conditions, please see the individual installation instructions.

WELS star rating / litres per minute.

Accessories

For a streamlined food preparation area.

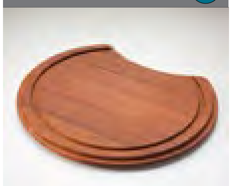
Timber preparation boards
Fits into bowl for chopping and dicing vegetables.

AC15

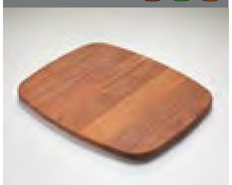
AC65

AC74

AC50

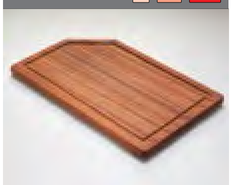


AC01

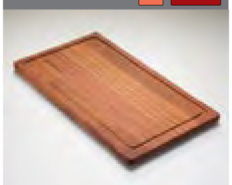


AC04

ACP126



ACP128



Colanders
Fits into bowl and is the perfect place to strain pasta or rinse vegetables .

AC18

AC62

AC72

AC06

AC02

ACP136

ACP138

ACP103

Stainless steel bowl protectors
Protects the bowl from scratching and provides extra defrosting area.

ACPSQ6

ACPSQ3

ACPSQ5

ACPSQ8

ACPSQ9

AC89

Stainless steel drainer baskets
Drain, rinse or stack. Can be used inside the bowl or on the drainer.

AC03

AC61

AC71

AC51

LP01

Adaptor flange
Connects a modern square waste sink to waste disposal units.

ACSWDK

Professional Series

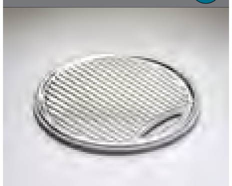
Stainless steel utility trays
Extends the versatility of your sink by providing extra space.

AC33

AC63

AC73

AC53



Basket wastes
Push down to seal, pull up to drain and strain. Remove to empty.

AC14 All sinks

Except Professional Series

AC17SQ

Professional Series

Bamboo multi use accessories
A complete food preparation kit with board and colander.

ACP141

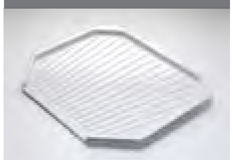
ACP101

Synthetic multi use accessories
A complete food preparation kit with board and colander.

LP02

Bench top drainer tray
Protects your benchtop when draining dishes or defrosting food.

AC16 All sinks



Except Solitaire & Martini

Opti-space connector kit
Improves cupboard space below double and triple bowl sinks.

AC29

How to choose your Oliveri sink

Step 1
Decide if an inset or undermount sink best suits your needs

Inset sinks are recommended for laminate bench tops, while undermount sinks are most often chosen for solid work surfaces such as granite.

U = Undermount sink

Step 2
Consider the cabinet size

Make sure the cabinet space below the bench is wide enough to accommodate the sink's bowls.

8 = Cabinet size (e.g. 8=800mm)

Step 3
What is the bench top depth

Standard bench tops are 600mm front to back; some of our larger sinks require a minimum bench depth of 720mm. These sinks are well suited for island bench tops.

+ = 720mm minimum bench depth

Step 4
Accessories

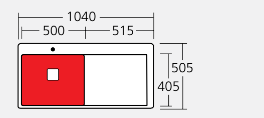
A range of quality, innovative accessories to transform the sink into a hygienic food preparation area are available for every range. Integrated accessories come standard with most Oliveri sinks.

Step 5
Tapware

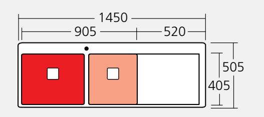
Oliveri's WELS approved tapware are sourced from world class manufacturers. Combine square style taps with straight line sinks, and round corner sinks with smooth, curved taps to get the most out of your kitchen's aesthetics.

Professional Series

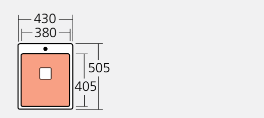
PR1121 (PR1122) 6
ACCS: ACP141, ACPSQ8



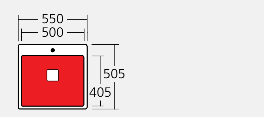
PR1111 (PR1112) 10
ACCS: ACP141, ACPSQ3, ACPSQ8



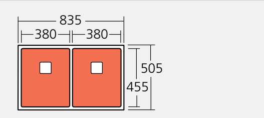
PR1131 5
ACCS: ACP141, ACPSQ3



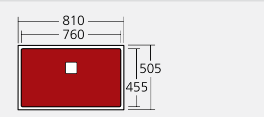
PR1181 6
ACCS: ACP141, ACPSQ8



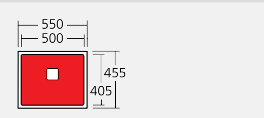
PR1163U + U 9
ACCS: 2 x ACPSQ5



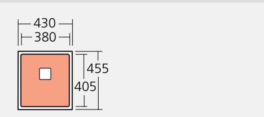
PR1190U + U 9
ACCS: ACPSQ9



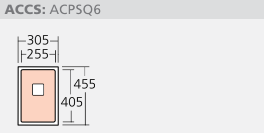
PR1180U U 6
ACCS: ACPSQ8



PR1130U U 5
ACCS: ACPSQ3



PR1160U U 5
ACCS: ACPSQ6



Mega Bowl 760W x 455H x 225D / 78Litre

Grand Bowl 500W x 405H x 225D / 46Litre

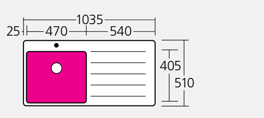
Standard Bowl 380W x 455H x 225D / 39Litre

3/4 Bowl 380W x 405H x 225D / 35Litre

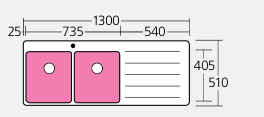
1/2 Bowl 255W x 405H x 190D / 20Litre

Sonetto

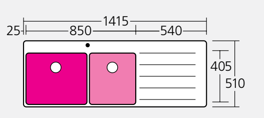
SN1021 (SN1022) 6
ACCS: ACP101



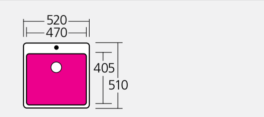
SN1071 (SN1072) 8
ACCS: ACP101



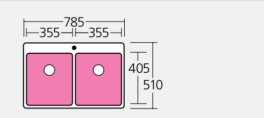
SN1011 (SN1012) 9
ACCS: ACP101



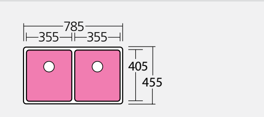
SN1051 6
ACCS: ACP101, ACP103



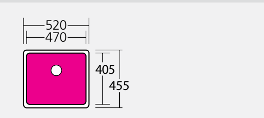
SN1064 8
ACCS: ACP101, ACP103



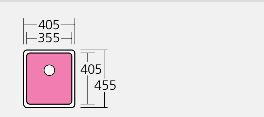
SN1063U U 8
ACCS: ACP103



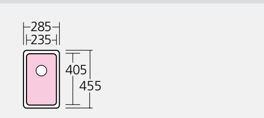
SN1050U U 6
ACCS: ACP103



SN1030U U 5
ACCS: ACP103



SN1020U U 5



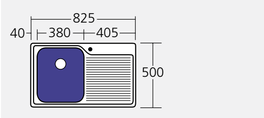
Large Bowl 470W x 405H x 205D / 39Litre

3/4 Bowl 355W x 405H x 205D / 30Litre

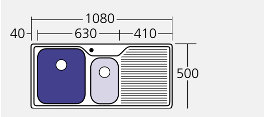
1/2 Bowl 235W x 405H x 170D / 16Litre

Nu-Petite®

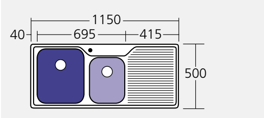
NP621 (NP622) 5
ACCS: AC62, AC65



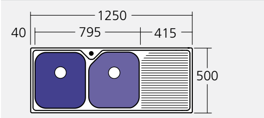
NP601 (NP602) 7
ACCS: AC62, AC65



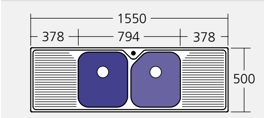
NP611 (NP612) 8
ACCS: AC62, AC65



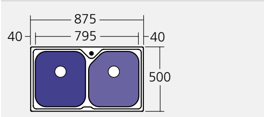
NP671 (NP672) 9
ACCS: AC62, AC65



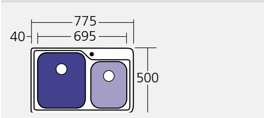
NP653 9
ACCS: AC62, AC65



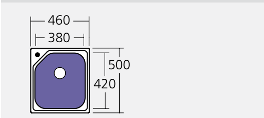
NP663 9
ACCS: AC62, AC63, AC65



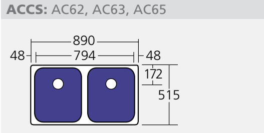
NP615 (NP616) 8
ACCS: AC62, AC63, AC65



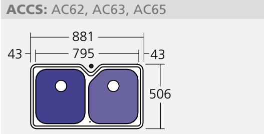
NP610 5
ACCS: AC62, AC65



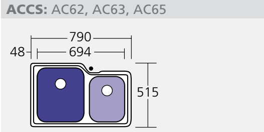
NP60U + U 9
ACCS: AC62, AC63, AC65



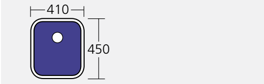
NP63U U 9
ACCS: AC62, AC63, AC65



NP61U (NP62U) U 8
ACCS: AC62, AC63, AC65



NP650U U 5



5 Side Bowl 380W x 420H x 200D / 28Litre

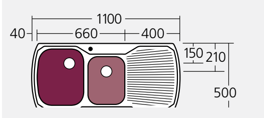
Main Bowl 380W x 420H x 200D / 30Litre

3/4 Bowl 280W x 350H x 130D / 11Litre

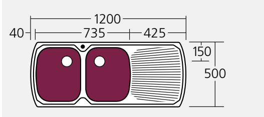
1/2 Bowl 215W x 350H x 130D / 9Litre

Monet®

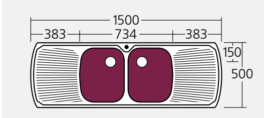
MO711 (MO712) 7
ACCS: AC72, AC74



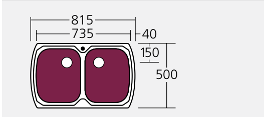
MO771 (MO772) 8
ACCS: AC72, AC74



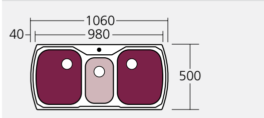
MO753 8
ACCS: AC72, AC74



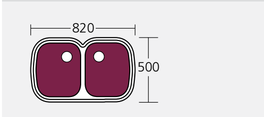
MO763 8
ACCS: AC72, AC73, AC74



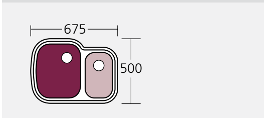
MO793 11
ACCS: AC72, AC73, AC74



MO70U U 9
ACCS: AC72, AC73, AC74



MO71U (MO72U) U 7
ACCS: AC72, AC73, AC74



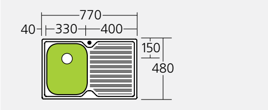
Main Bowl 350W x 420H x 180D / 24Litre

3/4 Bowl 280W x 350H x 130D / 11Litre

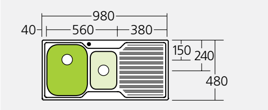
1/2 Bowl 215W x 350H x 130D / 9Litre

Diaz

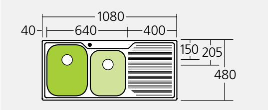
DZ121 (DZ122) 5
ACCS: AC15, AC18



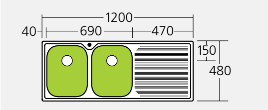
DZ101 (DZ102) 6
ACCS: AC15, AC18



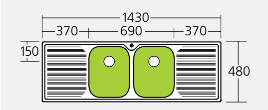
DZ111 (DZ112) 7
ACCS: AC15, AC18



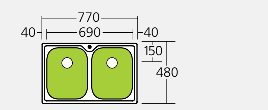
DZ171 (DZ172) 8
ACCS: AC15, AC18



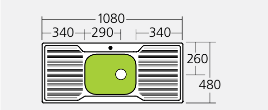
DZ153 8
ACCS: AC15, AC18



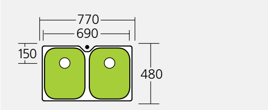
DZ163 8
ACCS: AC15, AC18, AC33



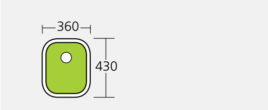
DZ133 5
ACCS: AC15, AC18



DZ10U U 8
ACCS: AC15, AC18, AC33



DZ150U U 5



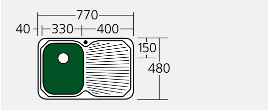
Main Bowl
330W x 400H x 180D / 21Litre

3/4 Bowl
280W x 350H x 130D / 11Litre

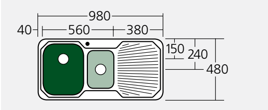
1/2 Bowl
200W x 290H x 130D / 7Litre

Petite

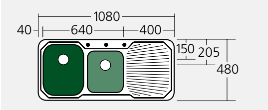
PE321 (PE322) 5
ACCS: AC15, AC18



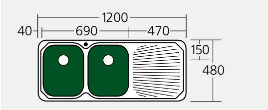
PE301 (PE302) 6
ACCS: AC15, AC18



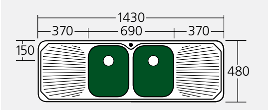
PE311 (PE312) 7
ACCS: AC15, AC18



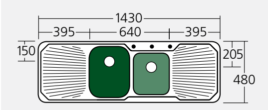
PE371 (PE372) 8
ACCS: AC15, AC18



PE353 8
ACCS: AC15, AC18



PE341 7
ACCS: AC15, AC18



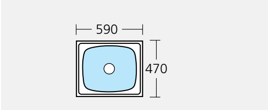
Main Bowl
330W x 400H x 180D / 21Litre

3/4 Bowl
280W x 330H x 130D / 11Litre

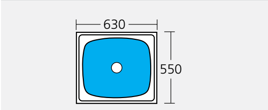
1/2 Bowl
200W x 290H x 130D / 7Litre

Laundry

T145 6



T170 7

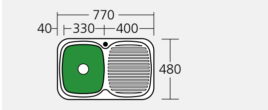


70 Litre Tub
560W x 480H x 305D / 70Litre

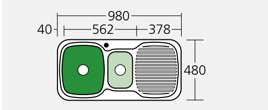
45 Litre Tub
520W x 400H x 235D / 45Litre

LakeLand

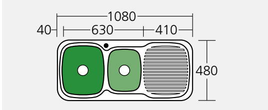
LL116 (LL117) 5



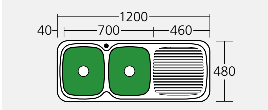
LL126 (LL127) 6



LL136 (LL137) 7



LL156 (LL157) 8



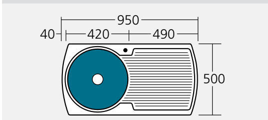
Main Bowl
330W x 385H x 155D / 17Litre

3/4 Bowl
270W x 330H x 155D / 12Litre

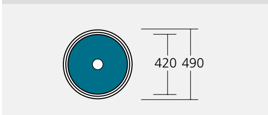
1/2 Bowl
200W x 290H x 130D / 7Litre

Solitaire®

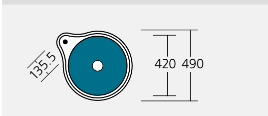
LR521 (LR522) 5
ACCS: AC50



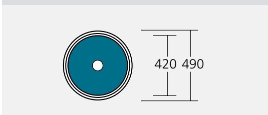
LR510 5



LR515 5



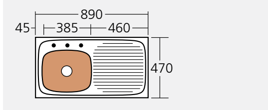
LR510 U 5



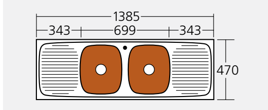
Round Bowl
420 x 180D / 24Litre

Ultraform / Perle

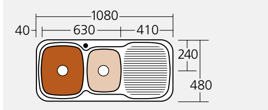
UF01 (UF02) 5



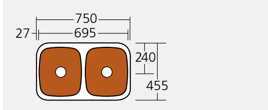
UF13D 8



PL811 (PL812) 7



PL80U U 8



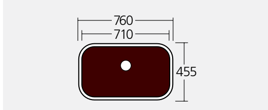
Deep Bowl
330W x 385H x 190D / 21Litre

Main Bowl
385W x 330H x 155D / 17Litre

3/4 Bowl
270W x 330H x 155D / 12Litre

Titan

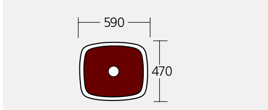
TN890U U 8
ACCS: AC89



Titan Bowl
710W x 405H x 255D / 65Litre

Duoform

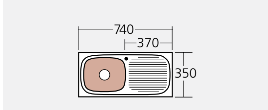
DU490U U 7



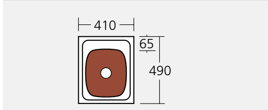
45 Litre Mega Bowl
520W x 400H x 235D / 45Litre

Martini

MR501 (MR502) 5
ACCS: AC02



440 5

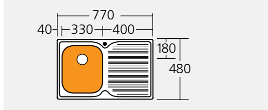


Deep Bowl
330W x 385H x 190D / 21Litre

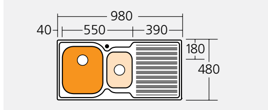
3/4 Bowl
330W x 270H x 155D / 12Litre

Elan

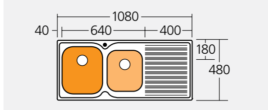
EL021 (EL022) 5



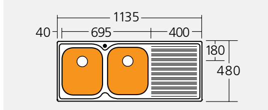
EL001 (EL002) 6



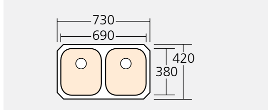
EL011 (EL012) 7



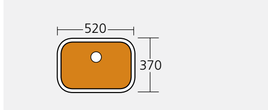
EL071 (EL072) 8



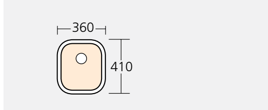
EL063U U 8



EL050U U 6



EL030U U 5



Large bowl
480W x 330H x 165D / 26Litre

Main bowl
330W x 380H x 180D / 23Litre

3/4 Bowl
280W x 330H x 155D / 14Litre

Undermount bowl
330W x 380H x 165D / 21Litre

1/2 Bowl
190W x 290H x 155D / 9Litre

Tasman Sinkware

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Warranty

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Refer to www.oliverisinks.com for warranty details.

Oliveri

2013 Price List

PR1121 LH Bowl (PR1122 RH Bowl) incl. ACP141, ACPSQ8
Shown with optional TN2010 tap

SN1071 LH Bowl (SN1072 RH Bowl) incl. ACP101
Shown with optional SS913 tap

MO70U incl. AC72, AC73, AC74
Shown with optional HB2030 tap

LR510 (x2)
Shown with optional AC50, AC53 and HB2030 tap

How to choose your Oliveri sink

Step 1
Decide if an inset or undermount sink best suits your needs
Inset sinks are recommended for laminate bench tops, while undermount sinks are most often chosen for solid work surfaces such as granite.

 = Undermount sink

Step 2
Consider the cabinet size
Make sure the cabinet space below the bench is wide enough to accommodate the sink's bowls.

 = Cabinet size (e.g. 8=800mm)

Step 3
What is the bench top depth
Standard bench tops are 600mm front to back; some of our larger sinks require a minimum bench depth of 720mm. These sinks are well suited for island bench tops.

 = 720mm minimum bench depth

Step 4
Accessories
A range of quality, innovative accessories to transform the sink into a hygienic food preparation area are available for every range. Integrated accessories come standard with most Oliveri sinks.

Step 5
Tapware
Oliveri's WELS approved tapware are sourced from world class manufacturers. Combine square style taps with straight line sinks, and round corner sinks with smooth, curved taps to get the most out of your kitchen's aesthetics.

Oliveri®

World Class Manufacturing

Over the years, the Oliveri signature has earned its reputation as a mark of excellence in design, function and durability. Overseas markets have also been impressed by the quality and innovative accessories that complement every Oliveri sink. Export sales continue to grow, further establishing Oliveri as one of the world's best stainless steel sinks.

The company began life as a general, domestic and metal fabricator in 1948. The founders pioneered the deep drawing technology in Australia, creating seamless, deep drawn stainless steel bowls.

Oliveri will continue to develop designs and styles suitable for any application where the highest standards are demanded.

Minimum Invoice Value

A $20.00 (pre-GST) surcharge will apply to all invoices that have NETT value of less than $100.00 (pre- GST).

FIS Delivery Areas

Victoria	Metropolitan Melbourne Area
South Australia	Metropolitan Adelaide Area
Queensland	Metropolitan Brisbane Area, Toowoomba, Gold Coast & Sunshine Coast
New South Wales	Metropolitan Sydney Area, Wollongong, Central Coast, Newcastle & Wagga Wagga
ACT	Canberra Area
Western Australia	Metropolitan Perth Area
Tasmania	Hobart, Launceston, Burnie & Devonport
Northern Territory	Metropolitan Darwin Area

All other areas are freight added on at cost.

Returns of Goods Policy

1. Only goods returned in saleable condition can be accepted.
2. Special manufactured goods cannot be returned or credited.
3. The seller is not obligated to accept return of goods unless such a return is authorised by the seller. Freight costs for returned goods will be at buyers expense.
4. All requests for credit shall include the invoice number and date.
5. Goods returned for credit must be received by the Tasman Sinkware within 30 days of original invoice date.
6. The Seller reserves the right to impose at least a 20% restocking fee.

Sustainable Green Print

Environmental Statement
This catalogue was printed using vegetable based inks on paper sourced from sustainable forests.

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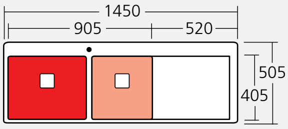
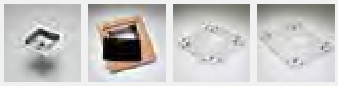
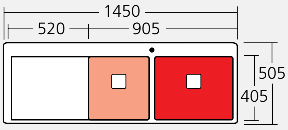
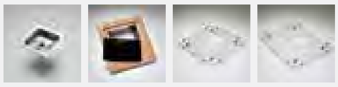
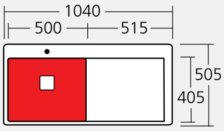
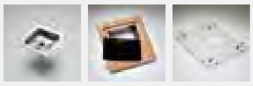
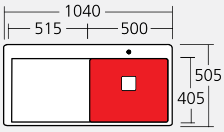
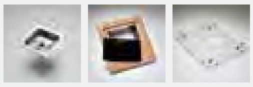
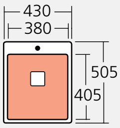
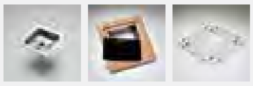
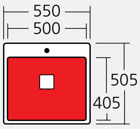
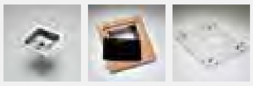
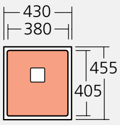
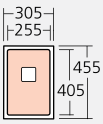
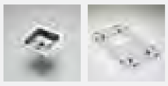
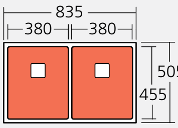
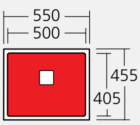
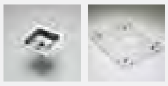
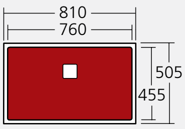
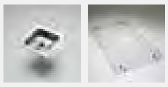
www.oliverisinks.com

Sinks

Professional Series		Included Accessories	EAN Number	Price	GST	Total
PR1111 10		 AC17SQ ACP141 ACPSQ3 ACPSQ8	1TH: 9324974007157	2300.00	230.00	**2530.00**
PR1112 10		 AC17SQ ACP141 ACPSQ3 ACPSQ8	1TH: 9324974007164	2300.00	230.00	**2530.00**
PR1121 6		 AC17SQ ACP141 ACPSQ8	1TH: 9324974007119	1400.00	140.00	**1540.00**
PR1122 6		 AC17SQ ACP141 ACPSQ8	1TH: 9324974007126	1400.00	140.00	**1540.00**
PR1131 5		 AC17SQ ACP141 ACPSQ3	1TH: 9324974007089	850.00	85.00	**935.00**
PR1181 6		 AC17SQ ACP141 ACPSQ8	1TH: 9324974007096	900.00	90.00	**990.00**
PR1130U U 5		 AC17SQ ACPSQ3	9324974007041	750.00	75.00	**825.00**
PR1160U U 5		 AC17SQ ACPSQ6	9324974007300	600.00	60.00	**660.00**
PR1163U + U 9		 AC17SQ ACPSQ5 ACPSQ5	9324974007072	1250.00	125.00	**1375.00**
PR1180U U 6		 AC17SQ ACPSQ8	9324974007058	800.00	80.00	**880.00**
PR1190U + U 9		 AC17SQ ACPSQ9	9324974007065	1050.00	105.00	**1155.00**

Mega Bowl 760W x 455H x 225D / 78Litre

Grand Bowl 500W x 405H x 225D / 46Litre

Standard Bowl 380W x 455H x 225D / 39Litre

3/4 Bowl 380W x 405H x 225D / 35Litre

1/2 Bowl 255W x 405H x 190D / 20Litre

International collection™
Designed and engineered
to our specifications and quality standards.
Sourced from our international supplier.

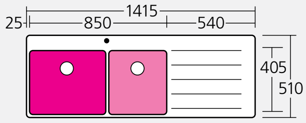
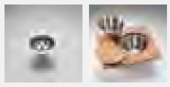
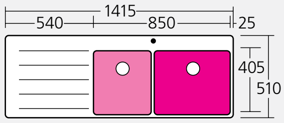
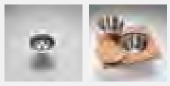
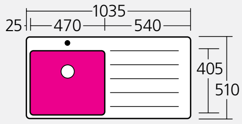
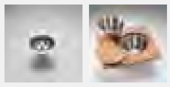
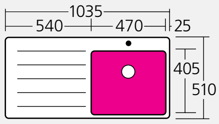
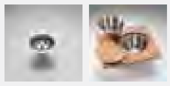
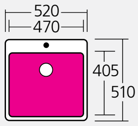
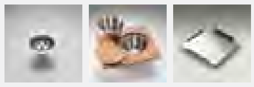
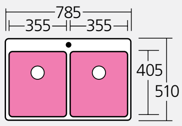
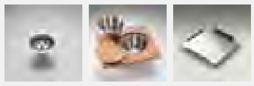
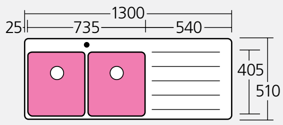
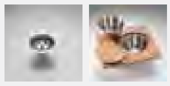
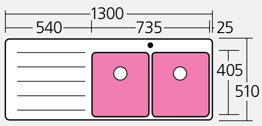
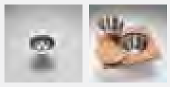
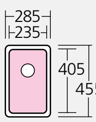
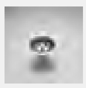
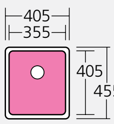
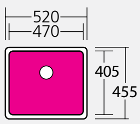
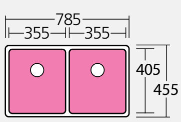
U = Undermount sink

8 = Cabinet size (e.g. 8=800mm)

+ = 720mm minimum bench depth

= Australian made sink

Included accessories shown. **More Accessories are available (See pages 14-17)**

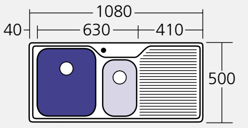
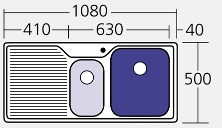
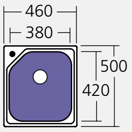
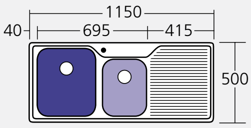
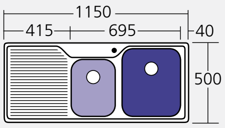
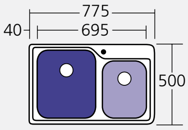
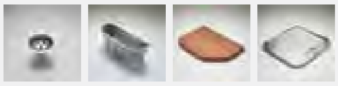
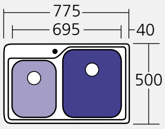
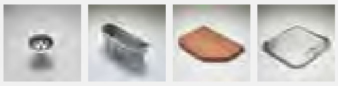
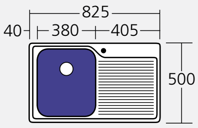
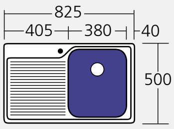
Sonetto		Included Accessories	EAN Number	Price	GST	Total
SN1011 9		 AC14 ACP101	1TH: 9324974007584	1400.00	140.00	**1540.00**
SN1012 9		 AC14 ACP101	1TH: 9324974007591	1400.00	140.00	**1540.00**
SN1021 6		 AC14 ACP101	1TH: 9324974007621	800.00	80.00	**880.00**
SN1022 6		 AC14 ACP101	1TH: 9324974007638	800.00	80.00	**880.00**
SN1051 6		 AC14 ACP101 ACP103	1TH: 9324974007560	650.00	65.00	**715.00**
SN1064 8		 AC14 ACP101 ACP103	1TH: 9324974007577	900.00	90.00	**990.00**
SN1071 8		 AC14 ACP101	1TH: 9324974007607	1100.00	110.00	**1210.00**
SN1072 8		 AC14 ACP101	1TH: 9324974007614	1100.00	110.00	**1210.00**
SN1020U U 5		 AC14	9324974007386	350.00	35.00	**385.00**
SN1030U U 5		 AC14 ACP103	9324974007393	400.00	40.00	**440.00**
SN1050U U 6		 AC14 ACP103	9324974007409	450.00	45.00	**495.00**
SN1063U U 9		 AC14 ACP103	9324974007416	700.00	70.00	**770.00**

Large Bowl 470W x 405H x 205D / 39Litre

3/4 Bowl 355W x 405H x 205D / 30Litre

1/2 Bowl 235W x 405H x 170D / 16Litre

International collection™
Designed and engineered
to our specifications and quality standards.
Sourced from our international supplier.

Nu-Petite®		Included Accessories	EAN Number	Price	GST	Total
NP601 7		 AC14 AC62 AC65	1TH: 9324974004675 NTH: 9324974004668	740.00	74.00	**814.00**
NP602 7		 AC14 AC62 AC65	1TH: 9324974004699 NTH: 9324974004682	740.00	74.00	**814.00**
NP610 5		 AC14 AC62 AC65	1TH: 9324974005771 NTH: 9324974005733	440.00	44.00	**484.00**
NP611 8		 AC14 AC62 AC65	1TH: 9324974004712 3TH: 9324974000295 NTH: 9324974004705	760.00	76.00	**836.00**
NP612 8		 AC14 AC62 AC65	1TH: 9324974004736 3TH: 9324974000301 NTH: 9324974004729	760.00	76.00	**836.00**
NP615 8		 AC14 AC62 AC65 AC63	1TH: 9324974004750 NTH: 9324974004743	690.00	69.00	**759.00**
NP616 8		 AC14 AC62 AC65 AC63	1TH: 9324974004774 NTH: 9324974004767	690.00	69.00	**759.00**
NP621 5		 AC14 AC62 AC65	1TH: 9324974004798 NTH: 9324974004781	530.00	53.00	**583.00**
NP622 5		 AC14 AC62 AC65	1TH: 9324974004811 NTH: 9324974004804	530.00	53.00	**583.00**

5 Side Bowl 380W x 420H x 200D / 28Litre

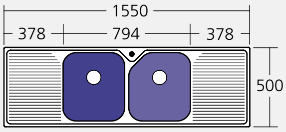
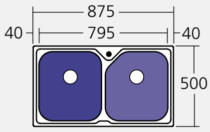
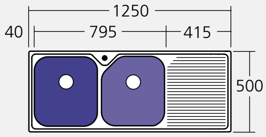
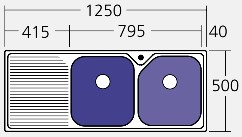
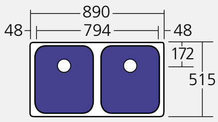
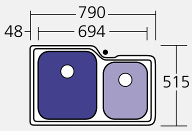
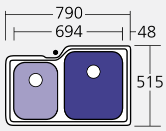
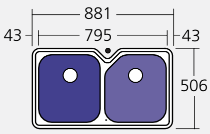
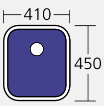
Main Bowl 380W x 420H x 200D / 30Litre

3/4 Bowl 280W x 350H x 130D / 11Litre

1/2 Bowl 215W x 350H x 130D / 9Litre

U = Undermount sink
8 = Cabinet size (e.g. 8=800mm)
+ = 720mm minimum bench depth
= Australian made sink

Included accessories shown. **More Accessories are available (See pages 14-17)**

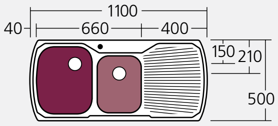
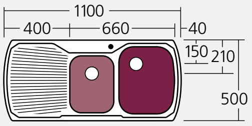
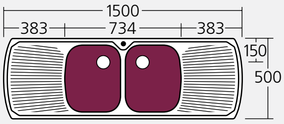
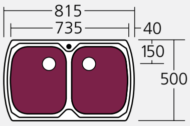
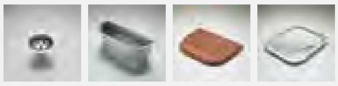
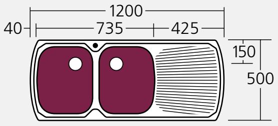
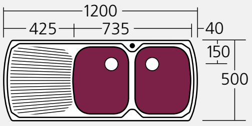
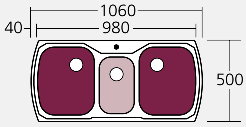
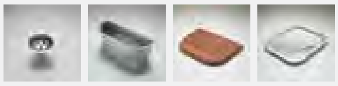
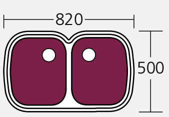
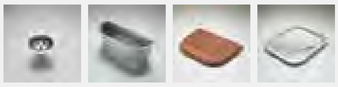
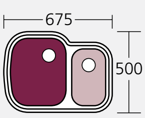
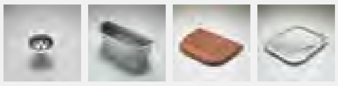
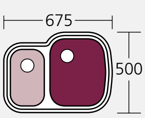
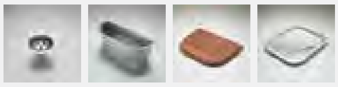
Nu-Petite®		Included Accessories	EAN Number	Price	GST	Total
NP653 9		AC14 AC62 AC65	1TH: 9324974004835 NTH: 9324974004828	780.00	78.00	**858.00**
NP663 9		AC14 AC62 AC65 AC63	1TH: 9324974004859 NTH: 9324974004842	750.00	75.00	**825.00**
NP671 9		AC14 AC62 AC65	1TH: 9324974004873 NTH: 9324974004866	770.00	77.00	**847.00**
NP672 9		AC14 AC62 AC65	1TH: 9324974004897 NTH: 9324974004880	770.00	77.00	**847.00**
NP60U + U 10		AC14 AC62 AC65 AC63	9324974004644	750.00	75.00	**825.00**
NP61U U 9		AC14 AC62 AC65 AC63	9324974004927	690.00	69.00	**759.00**
NP62U U 9		AC14 AC62 AC65 AC63	9324974004934	690.00	69.00	**759.00**
NP63U U 10		AC14 AC62 AC65 AC63	9324974004941	750.00	75.00	**825.00**
NP650U U 5		AC14	9324974004651	400.00	40.00	**440.00**

5 Side Bowl 380W x 420H x 200D / 28Litre

Main Bowl 380W x 420H x 200D / 30Litre

3/4 Bowl 280W x 350H x 130D / 11Litre

1/2 Bowl 215W x 350H x 130D / 9Litre

Monet®		Included Accessories	EAN Number	Price	GST	Total
MO711 7		 AC14 AC72 AC74	1TH: 9324974001865 3TH: 9324974001872 NTH: 9324974001858	695.00	69.50	**764.50**
MO712 7		 AC14 AC72 AC74	1TH: 9324974001896 3TH: 9324974001902 NTH: 9324974001889	695.00	69.50	**764.50**
MO753 8		 AC14 AC72 AC74	1TH: 9324974001926 NTH: 9324974001919	720.00	72.00	**792.00**
MO763 8		 AC14 AC72 AC74 AC73	1TH: 9324974002848 NTH: 9324974002831	665.00	66.50	**731.50**
MO771 8		 AC14 AC72 AC74	1TH: 9324974001940 NTH: 9324974001933	710.00	71.00	**781.00**
MO772 8		 AC14 AC72 AC74	1TH: 9324974001964 NTH: 9324974001957	710.00	71.00	**781.00**
MO793 11		 AC14 AC72 AC74 AC73	1TH: 9324974003166 NTH: 9324974003159	790.00	79.00	**869.00**
MO70U U 9		 AC14 AC72 AC74 AC73	9324974002800	665.00	66.50	**731.50**
MO71U U 8		 AC14 AC72 AC74 AC73	9324974002817	615.00	61.50	**676.50**
MO72U U 8		 AC14 AC72 AC74 AC73	9324974002824	615.00	61.50	**676.50**

Main Bowl 350W x 420H x 180D / 24Litre

3/4 Bowl 280W x 350H x 130D / 11Litre

1/2 Bowl 215W x 350H x 130D / 9Litre

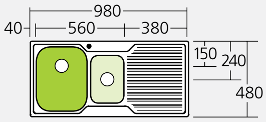
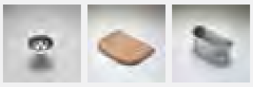
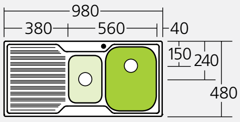
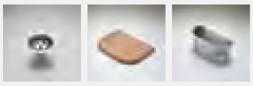
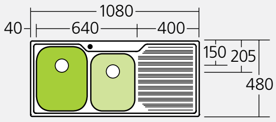
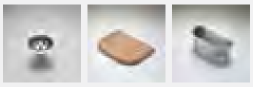
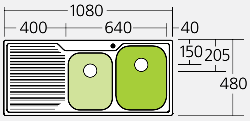
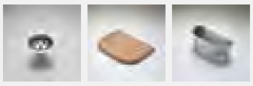
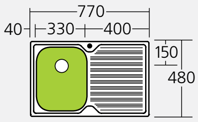
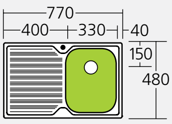
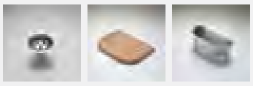
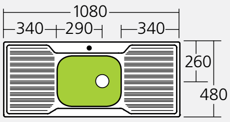
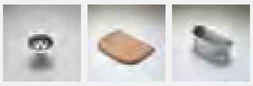
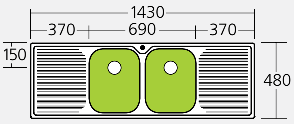
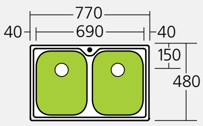
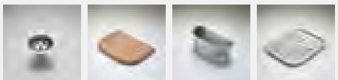
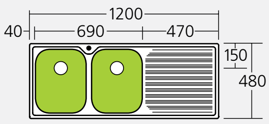
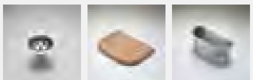
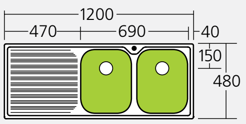
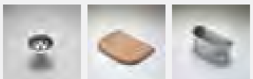
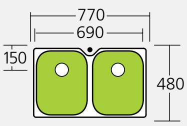
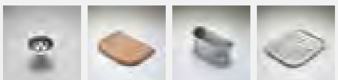
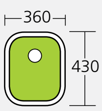
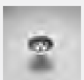
U = Undermount sink

8 = Cabinet size (e.g. 8=800mm)

= 720mm minimum bench depth

= Australian made sink

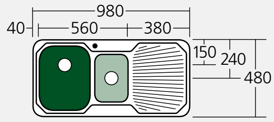
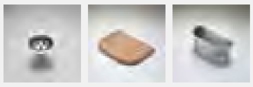
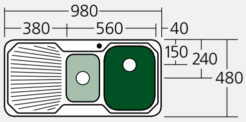
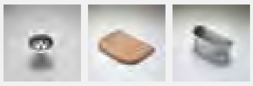
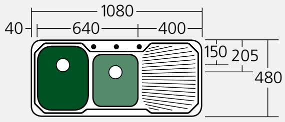
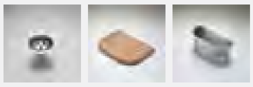
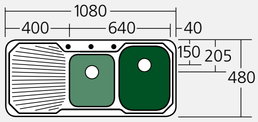
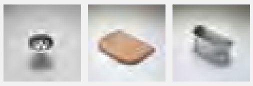
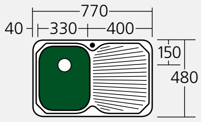
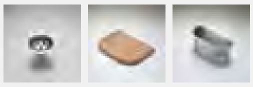
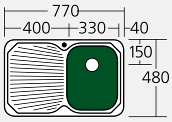
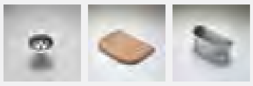
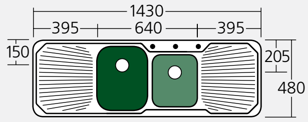
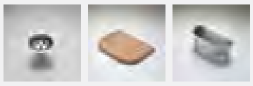
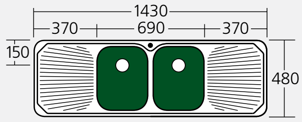
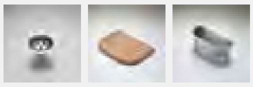
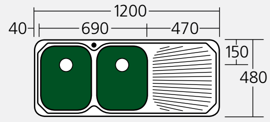
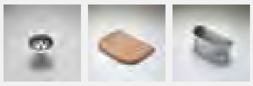
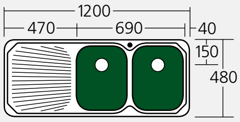
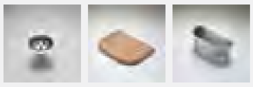
Included accessories shown. More Accessories are available (See pages 14-17)

Diaz		Included Accessories	EAN Number	Price	GST	Total
DZ101 6		 AC14 AC15 AC18	1TH: 9324974006273 NTH: 9324974006266	525.00	52.50	**577.50**
DZ102 6		 AC14 AC15 AC18	1TH: 9324974006297 NTH: 9324974006280	525.00	52.50	**577.50**
DZ111 7		 AC14 AC15 AC18	1TH: 9324974006327 3TH: 9324974006303 NTH: 9324974006310	545.00	54.50	**599.50**
DZ112 7		 AC14 AC15 AC18	1TH: 9324974006358 3TH: 9324974006334 NTH: 9324974006341	545.00	54.50	**599.50**
DZ121 5		 AC14 AC15 AC18	1TH: 9324974006372 NTH: 9324974006365	360.00	36.00	**396.00**
DZ122 5		 AC14 AC15 AC18	1TH: 9324974006396 NTH: 9324974006389	360.00	36.00	**396.00**
DZ133 5		 AC14 AC15 AC18	1TH: 9324974006426 3TH: 9324974006402 NTH: 9324974006419	415.00	41.50	**456.50**
DZ153 8		 AC14 AC15 AC18	1TH: 9324974006440 NTH: 9324974006433	590.00	59.00	**649.00**
DZ163 8		 AC14 AC15 AC18 AC33	1TH: 9324974006464 NTH: 9324974006457	560.00	56.00	**616.00**
DZ171 8		 AC14 AC15 AC18	1TH: 9324974006488 NTH: 9324974006471	570.00	57.00	**627.00**
DZ172 8		 AC14 AC15 AC18	1TH: 9324974006501 NTH: 9324974006495	570.00	57.00	**627.00**
DZ10U U 9		 AC14 AC15 AC18 AC33	9324974006518	560.00	56.00	**616.00**
DZ150U U 5		 AC14	9324974006525	295.00	29.50	**324.50**

Main Bowl 330W x 400H x 180D / 21Litre

3/4 Bowl 280W x 350H x 130D / 11Litre

1/2 Bowl 200W x 290H x 130D / 7Litre

Petite		Included Accessories	EAN Number	Price	GST	Total
PE301 6		 AC14 AC15 AC18	1TH: 9324974000875 NTH: 9324974000868	545.00	54.50	**599.50**
PE302 6		 AC14 AC15 AC18	1TH: 9324974000899 NTH: 9324974000882	545.00	54.50	**599.50**
PE311 7		 AC14 AC15 AC18	1TH: 9324974000912 3TH: 9324974000059 NTH: 9324974000905	575.00	57.50	**632.50**
PE312 7		 AC14 AC15 AC18	1TH: 9324974000936 3TH: 9324974000257 NTH: 9324974000929	575.00	57.50	**632.50**
PE321 5		 AC14 AC15 AC18	1TH: 9324974000950 NTH: 9324974000943	400.00	40.00	**440.00**
PE322 5		 AC14 AC15 AC18	1TH: 9324974000974 NTH: 9324974000967	400.00	40.00	**440.00**
PE341 7		 AC14 AC15 AC18	1TH: 9324974001018 3TH: 9324974000288 NTH: 9324974001001	585.00	58.50	**643.50**
PE353 8		 AC14 AC15 AC18	1TH: 9324974001032 NTH: 9324974001025	585.00	58.50	**643.50**
PE371 8		 AC14 AC15 AC18	1TH: 9324974001070 NTH: 9324974001063	580.00	58.00	**638.00**
PE372 8		 AC14 AC15 AC18	1TH: 9324974001094 NTH: 9324974001087	580.00	58.00	**638.00**

Main Bowl 330W x 400H x 180D / 21Litre

3/4 Bowl 280W x 330H x 130D / 11Litre

1/2 Bowl 200W x 290H x 130D / 7Litre

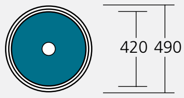
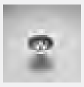
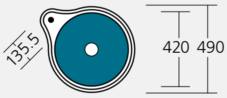
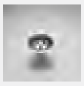
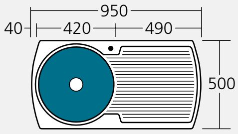
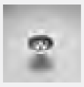
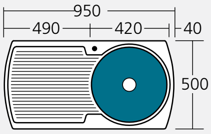
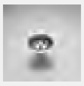
U = Undermount sink

8 = Cabinet size (e.g. 8=800mm)

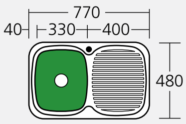
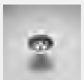
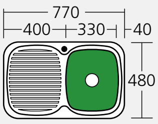
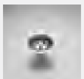
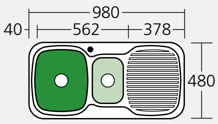
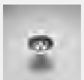
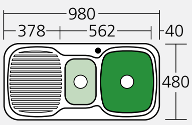
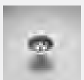
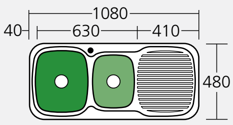
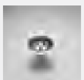
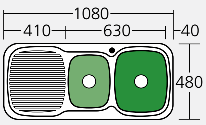
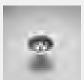
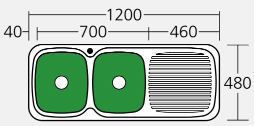
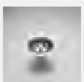
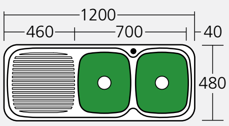
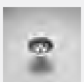
+ = 720mm minimum bench depth

= Australian made sink

Included accessories shown. More Accessories are available (See pages 14-17)

Solitaire®		Included Accessories	EAN Number	Price	GST	Total
LR510 6		 AC14	NTH: 9324974002893 inset or undermount	350.00	35.00	**385.00**
LR515 5		 AC14	1TH: 9324974002909	400.00	40.00	**440.00**
LR521 5		 AC14  AC50	1TH: 9324974004187 NTH: 9324974004170	530.00	53.00	**583.00**
LR522 5		 AC14  AC50	1TH: 9324974004194 NTH: 9324974004170	530.00	53.00	**583.00**

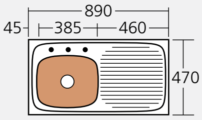
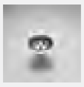
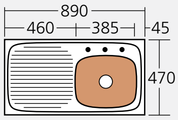
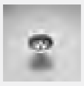
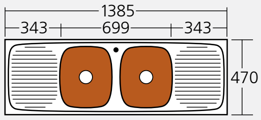
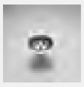
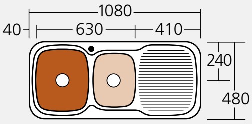
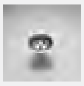
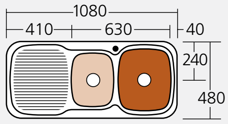
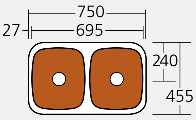
Round Bowl
420 x 180D / 24Litre

LakeLand		Included Accessories	EAN Number	Price	GST	Total
LL116 5		 AC14	1TH: 9324974002718 NTH: 9324974002701	215.00	21.50	**236.50**
LL117 5		 AC14	1TH: 9324974002725 NTH: 9324974002701	215.00	21.50	**236.50**
LL126 6		 AC14	1TH: 9324974002749 NTH: 9324974002732	265.00	26.50	**291.50**
LL127 6		 AC14	1TH: 9324974002756 NTH: 9324974002732	265.00	26.50	**291.50**
LL136 7		 AC14	1TH: 9324974002770 NTH: 9324974002763	275.00	27.50	**302.50**
LL137 7		 AC14	1TH: 9324974002787 NTH: 9324974002763	275.00	27.50	**302.50**
LL156 8		 AC14	1TH: 9324974003258 NTH: 9324974003241	325.00	32.50	**357.50**
LL157 8		 AC14	1TH: 9324974003265 NTH: 9324974003241	325.00	32.50	**357.50**

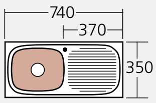
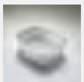
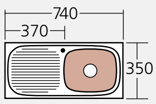
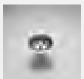
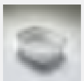
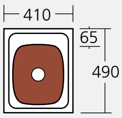
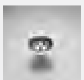
Main Bowl
330W x 385H x 155D / 17Litre

3/4 Bowl
270W x 330H x 155D / 12Litre

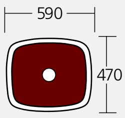
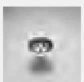
1/2 Bowl
200W x 290H x 130D / 7Litre

Ultraform / Perle		Included Accessories	EAN Number	Price	GST	Total
UF01 5		 AC14	1TH: 9324974001186 3TH: 9324974001193 NTH: 9324974001179	295.00	29.50	**324.50**
UF02 5		 AC14	1TH: 9324974001216 3TH: 9324974001223 NTH: 9324974001209	295.00	29.50	**324.50**
UF13D 8		 AC14	1TH: 9324974001452 NTH: 9324974001445	510.00	51.00	**561.00**
PL811 7		 AC14	1TH: 9324974000646 NTH: 9324974000639	395.00	39.50	**434.50**
PL812 7		 AC14	1TH: 9324974000653 NTH: 9324974000639	395.00	39.50	**434.50**
PL80U U 8		 AC14	9324974000691	390.00	39.00	**429.00**

Main Bowl 385W x 330H x 155D / 17Litre
Deep Bowl 330W x 385H x 190D / 21Litre
3/4 Bowl 270W x 330H x 155D / 12Litre

Martini		Included Accessories	EAN Number	Price	GST	Total
MR501 5		  AC14 AC02	1TH: 9324974003432 NTH: 9324974003425	380.00	38.00	**418.00**
MR502 5		  AC14 AC02	1TH: 9324974003449 NTH: 9324974003425	380.00	38.00	**418.00**
440 5		 AC14	NTH: 9324974000035	265.00	26.50	**291.50**

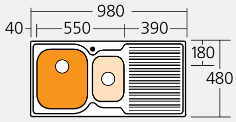
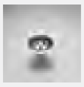
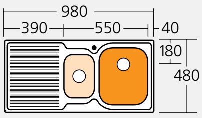
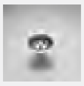
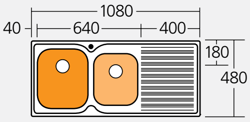
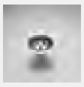
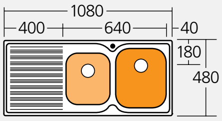
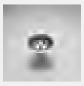
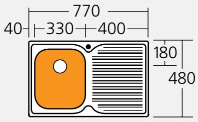
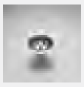
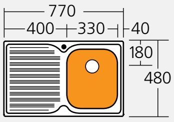
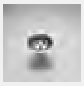
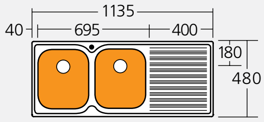
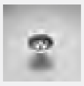
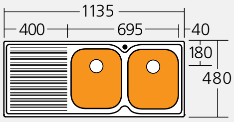
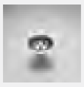
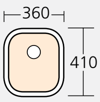
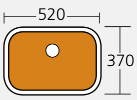
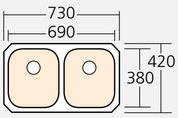
Deep Bowl 330W x 385H x 190D / 21Litre
3/4 Bowl 330W x 270H x 155D / 12Litre

Duoform		Included Accessories	EAN Number	Price	GST	Total
DU490U U 7		 AC14	9324974003838	395.00	39.50	**434.50**

45 Litre Mega Bowl 520W x 400H x 235D / 45Litre

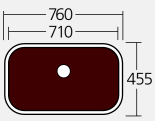
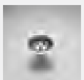
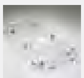
U = Undermount sink 8 = Cabinet size (e.g. 8=800mm) + = 720mm minimum bench depth = Australian made sink

Included accessories shown. **More Accessories are available (See pages 14-17)**

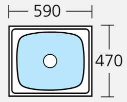
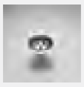
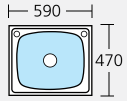
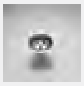
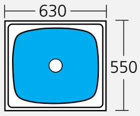
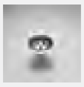
Elan		Included Accessories	EAN Number	Price	GST	Total
EL001 6		 AC14	1TH: 9324974006907	240.00	24.00	**264.00**
EL002 6		 AC14	1TH: 9324974006914	240.00	24.00	**264.00**
EL011 7		 AC14	1TH: 9324974006822	250.00	25.00	**275.00**
EL012 7		 AC14	1TH: 9324974006839	250.00	25.00	**275.00**
EL021 5		 AC14	1TH: 9324974006921	185.00	18.50	**203.50**
EL022 5		 AC14	1TH: 9324974006938	185.00	18.50	**203.50**
EL071 8		 AC14	1TH: 9324974006945	290.00	29.00	**319.00**
EL072 8		 AC14	1TH: 9324974006952	290.00	29.00	**319.00**
EL030U U 5		 AC14	9324974006969	190.00	19.00	**209.00**
EL050U U 6		 AC14	9324974006976	205.00	20.50	**225.50**
EL063U U 8		 AC14	9324974006983	295.00	29.50	**324.50**

Large bowl 480W x 330H x 165D / 26Litre
Main bowl 330W x 380H x 180D / 23Litre
Undermount bowl 330W x 380H x 165D / 21Litre
3/4 Bowl 280W x 330H x 155D / 14Litre
1/2 Bowl 190W x 290H x 155D / 9Litre

International collection™ Designed and engineered to our specifications and quality standards. Sourced from our international supplier.

Titan		Included Accessories	EAN Number	Price	GST	Total
TN890U U 8		  AC14 AC89	9324974003845	820.00	82.00	**902.00**

Titan Bowl 710W x 405H x 255D / 65Litre

Laundry		Included Accessories	EAN Number	Price	GST	Total
TI45 **TI45S*** 6		 AC14	9324974001117 9324974001124	225.00 230.00	22.50 23.00	**247.50** **253.00**
TI45S*/OF^ 6		 AC14	9324974003562	290.00	29.00	**319.00**
TI70 **TI70S*** 7		 AC14	9324974001131 9324974001148	325.00 330.00	32.50 33.00	**357.50** **363.00**

70 Litre Tub
560W x 480H x 305D / 70Litre

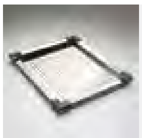
45 Litre Tub
520W x 400H x 235D / 45Litre

U = Undermount sink
8 = Cabinet size (e.g. 8=800mm)
+ = 720mm minimum bench depth
= Australian made sink

* Rinse Bypass Kit Included
^ Overflow Included

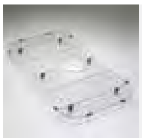
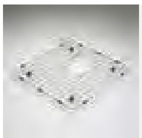
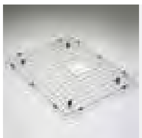
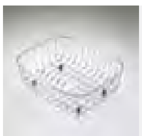
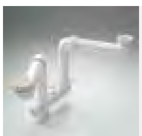
Accessories

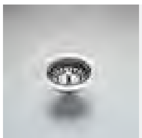
	Model	EAN Number	Price	GST	Total
Timber preparation boards Fits into bowl for chopping and dicing vegetables.					
	**AC01** Suits Ultraform, Perle and LakeLand main bowls Supplied with N/A	9324974001681	82.00	8.20	**90.20**
	**AC04** Suits Elan main bowls Supplied with N/A	9324974001780	77.00	7.70	**84.70**
	**AC15** Suits Diaz and Petite main bowls Supplied with Diaz, Petite sinks (except DZ150U)	9324974001735	77.00	7.70	**84.70**
	**AC50** Suits Solitaire round bowl Supplied with LR521/2	9324974002961	83.00	8.30	**91.30**
	**AC65** Suits Nu-Petite main and 5-side bowl Supplied with Nu-Petite sinks (except NP650U)	9324974005672	77.00	7.70	**84.70**
	**AC74** Suits Monet main bowl Supplied with Monet sinks	9324974001995	77.00	7.70	**84.70**
	**ACP126** Suits Professional Series grand, 3/4 and 1/2 bowls Supplied with N/A	9324974006006	95.00	9.50	**104.50**
	**ACP128** Suits Professional Series mega and standard bowls Supplied with N/A	9324974005948	95.00	9.50	**104.50**

	Model	EAN Number	Price	GST	Total
Colanders Fits into bowl and is the perfect place to strain pasta or rinse vegetables .					
	**AC02** Suits Perle, LakeLand and Martini 3/4 bowls Supplied with MR501/2	9324974001698	41.00	4.10	**45.10**
	**AC06** Suits Diaz, Petite and LakeLand 1/2 bowls Supplied with N/A	9324974001711	41.00	4.10	**45.10**
	**AC18** Suits Diaz, Petite and Elan main bowls Supplied with Diaz, Petite sinks (except DZ150U)	9324974001766	41.00	4.10	**45.10**
	**AC62** Suits Nu-Petite main and 5-side bowl Supplied with Nu-Petite sinks (except NP650U)	9324974004972	42.00	4.20	**46.20**
	**AC72** Suits Monet main bowl Supplied with Monet sinks	9324974001971	41.00	4.10	**45.10**
	**ACP103** Suits Sonetto large and 3/4 bowls Supplied with Sonetto bowl only sinks (except SN1020U)	9324974007720	110.00	11.00	**121.00**
	**ACP136** Suits Professional Series grand, 3/4 and 1/2 bowls Supplied with N/A	9324974006617	135.00	13.50	**148.50**
	**ACP138** Suits Professional Series mega and standard bowls Supplied with N/A	9324974006624	150.00	15.00	**165.00**

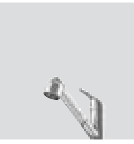
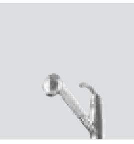
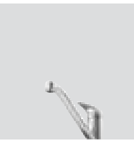
Bamboo multi use accessories A complete food preparation kit with board and colander.					
	**ACP101** Suits Sonetto large and 3/4 bowls Supplied with Sonetto inset sinks	9324974007256	210.00	21.00	**231.00**
	**ACP141** Suits Professional Series grand and 3/4 bowls Supplied with Professional Series inset sinks	9324974007003	240.00	24.00	**264.00**

Synthetic multi use accessories A complete food preparation kit with board and colander.					
	**LP02** Suits Ultraform, Perle and LakeLand main bowls Supplied with N/A	9324974005856	55.00	5.50	**60.50**

	Model	EAN Number	Price	GST	Total
	Stainless steel bowl protectors Protects the bowl from scratching and provides extra defrosting area.				
	**AC89** Suits Titan bowl Supplied with TN890U	9324974003647	115.00	11.50	**126.50**
	**ACPSQ3** Suits Professional Series 3/4 bowl Supplied with PR1111/2, PR1131, PR1130U	9324974007423	105.00	10.50	**115.50**
	**ACPSQ5** Suits Professional Series standard bowl Supplied with PR1163U	9324974007430	115.00	11.50	**126.50**
	**ACPSQ6** Suits Professional Series 1/2 bowl Supplied with PR1160U	9324974007447	100.00	10.00	**110.00**
	**ACPSQ8** Suits Professional Series grand bowl Supplied with PR1121/2, PR1111/2, PR1181, PR1180U	9324974007454	120.00	12.00	**132.00**
	**ACPSQ9** Suits Professional Series mega bowl Supplied with PR1190U	9324974007461	130.00	13.00	**143.00**
	Stainless steel drainer baskets Drain, rinse or stack. Can be used inside the bowl or on the drainer.				
	**AC03** Suits Diaz and Petite main bowls Supplied with N/A	9324974003579	89.00	8.90	**97.90**
	**AC51** Suits Solitaire round bowl Supplied with N/A	9324974003593	104.00	10.40	**114.40**
	**AC61** Suits Nu-Petite main bowl Supplied with N/A	9324974004965	102.00	10.20	**112.20**
	**AC71** Suits Monet main bowl Supplied with N/A	9324974003609	100.00	10.00	**110.00**
	**LP01** Suits Ultraform, Perle and LakeLand main bowls Supplied with N/A	9324974005849	65.00	6.50	**71.50**
	Opti-space connector kit Improves cupboard space below double and triple bowl sinks.				
	**AC29** Suits All double and triple bowl sinks Supplied with N/A	9324974005559	71.00	7.10	**78.10**

	Model	EAN Number	Price	GST	Total
Stainless steel utility trays Extends the versatility of your sink by providing extra space.					
	**AC33** Suits Diaz and Petite main bowls Supplied with DZ10U, DZ163	9324974006129	110.00	11.00	**121.00**
	**AC53** Suits Solitaire round bowl Supplied with N/A	9324974003852	110.00	11.00	**121.00**
	**AC63** Suits Nu-Petite main bowl Supplied with Nu-Petite bowl only sinks (except NP610 / NP650U)	9324974004989	110.00	11.00	**121.00**
	**AC73** Suits Monet main bowl Supplied with Monet bowl only sinks	9324974001988	110.00	11.00	**121.00**
Bench top drainer tray Protects your benchtop when draining dishes or defrosting food.					
	**AC16** Suits All sinks (except Solitaire and Martini) Supplied with N/A	9324974001742	47.00	4.70	**51.70**
Basket wastes Push down to seal, pull up to drain and strain. Remove to empty.					
	**AC14** Suits All sinks (except Professional Series) Supplied with All sinks (except Professional Series)	9324974001728	49.00	4.90	**53.90**
	**AC17SQ** Suits Professional Series Supplied with Professional Series	9324974007294	49.00	4.90	**53.90**
Adaptor flange Connects a modern square waste sink to waste disposal units.					
	**ACSWDK** Suits Professional Series Supplied with N/A	9324974007492	80.00	8.00	**88.00**
Spare Parts					
	SP-08S Basket Waste Seals (Pack of 10)	9324974005528	21.00	2.10	**23.10**
	SP-08B Basket Waste Drainer (Replacement)	9324974005511	13.00	1.30	**14.30**
	AC12 Rinse Bypass Kit	9324974005665	50.00	5.00	**55.00**

Tapware

	Model	EAN Number	Price	GST	Total
	Tapware Our signature range – sourced from the world's best manufacturers.				
	**HB2030** WELS 4 Star water efficiency rating 7.0 L/min Not recommended for use with triple bowl sinks	9324974006044	420.00	42.00	**462.00**
	**IP2030** WELS 3 Star water efficiency rating 8.0 L/min Not recommended for use with triple bowl sinks	9324974006136	350.00	35.00	**385.00**
	**KE2030** WELS 4 Star water efficiency rating 7.0 L/min	9324974006051	400.00	40.00	**440.00**
	**MA4010** WELS 4 Star water efficiency rating 7.5 L/min	9324974006068	270.00	27.00	**297.00**
	**MV617/6** WELS 3 Star water efficiency rating 9.0 L/min	9324974003890	400.00	40.00	**440.00**
	**NW7310** WELS 3 Star water efficiency rating 9.0 L/min	9324974004064	95.00	9.50	**104.50**
	**PA113/2** WELS 4 Star water efficiency rating 7.5 L/min	9324974006563	400.00	40.00	**440.00**
	**PS113/1** WELS 4 Star water efficiency rating 7.5 L/min	9324974002930	199.00	19.90	**218.90**
	**SQ107** WELS 4 Star water efficiency rating 7.5 L/min	9324974006587	750.00	75.00	**825.00**
	**SS913** WELS 4 Star water efficiency rating 7.5 L/min	9324974006570	480.00	48.00	**528.00**
	**TN2010** WELS 4 Star water efficiency rating 7.0 L/min	9324974006167	450.00	45.00	**495.00**

International collection™
A collaboration producing the best available products. Designed and engineered to our specifications and quality standards. Sourced from our international suppliers.

10 year warranty
All Oliveri tapware has a 10 year warranty against manufacturing defects. For terms and conditions, please see the individual installation instructions.

Tasman Sinkware Pty Ltd
ABN 12 007 551 886
ACN 007 551 886

Terms and Conditions of Sale

These Terms and Conditions of Sale shall apply to all sales made by the Seller and are deemed to be incorporated in any contract for sale of goods entered into by the Seller whether arising from an order received from the Buyer or resulting from a Quotation or arising from oral acceptance of repeat or further orders for the same or similar goods and shall terminate, cancel and supersede any previous written or oral agreements and understandings entered into between the Buyer and the Seller.

These Terms and Conditions of Sale, including any credit limits set by the Seller are effective from the date of initial trading and may be amended or superseded from time to time by notice given by the Seller by any means.

1. Interpretation:

(a) "Buyer" or "You" means the person or company named in the Tax Invoice or Quotation and, in the case of an individual, his executors, administrators and assigns, and of a company its successors and assigns.

(b) "Seller" means Tasman Sinkware Pty Ltd.

(c) "Quotation" means the form of quotation submitted by the Seller to the Buyer.

(d) "Tax Invoice" means the document called the Tax Invoice issued by the Seller to the Buyer, as compliant with current legislation.

(e) Any special conditions set forth in the Quotation shall be read and constructed so as to vary these printed Terms and Conditions but only to the extent of any inconsistency.

2. Quotations:

(a) A Quotation is not an offer. A Quotation shall be valid for a period of 30 days from the date of issue otherwise agreed to in writing.

(b) An order placed by the Buyer pursuant to a Quotation is not binding on the Seller (including any purported variation to these Terms and Conditions contained in that Order) unless and until such Order and such conditions are accepted in writing by the Seller.

3. Contingencies:

(a) GST or any other value added taxes, duties, or impost which may be applicable, shall be to the Buyer's account and added to the price. The Buyer's ABN and other required information must be provided prior to or at the time of ordering. GST is based on the rate and method of assessment ruling at the date of invoice and/or delivery, whichever is applicable.

(b) Between the date of order and delivery if there is an increase in the cost to the Seller of supplying the goods which is beyond the control of the Seller, then this shall be to the account of the Buyer.

4. Shipment and Delivery:

(a) The Seller shall have the right to nominate the means of and the date of delivery.

(b) If the Seller is prevented by circumstances beyond its control from shipping or delivering within the stipulated time, such time will be extended for a reasonable period after such circumstance have ceased to operate and the Seller shall not be liable for any loss or damage (including loss or damage) whether direct or indirect, arising from delays in shipping or delivery.

(c) The Buyer is responsible for all freight costs outside of our nominated Free Instore Store (FIS) delivery areas, as stated in the current printed price list. If the Buyer nominates a carrier, this must be advised to the Seller in writing.

5. Part Deliveries:

(a) Unless agreed to the contrary in writing, the Seller reserves the right to make part deliveries of any order. Failure to make the delivery of the total order shall not invalidate the sale. Where delivery is effected by part delivering the goods then Seller shall be entitled to invoice the customer for the goods delivered.

(b) The Buyer shall be responsible for and shall indemnify the Seller for loss of or damage to the goods from the time of delivery until paid for in full.

6. Passing of Property and Risk:

(a) While risk in the goods shall pass on delivery, legal and equitable title shall remain with the Seller until it has received payment in full for all goods supplied. Pending such payment the Buyer shall hold the goods as bailee for the Seller and shall return the goods to the Seller if so requested. Also, pending such payment the seller will hold the proceeds of sale on trust for the buyer and must account to buyer for the proceeds of any sale of the goods.

(b) Should the Buyer fail to make due payment for the goods or services supplied by the Seller or commit an act of bankruptcy or by act or omission enable the appointment of a scheme manager, trustee, official manager, receiver, receiver manager, administrator, liquidator or any other person authorised to enter into possession or assume control of any property of the Buyer pursuant to a mortgage or other security, the Seller, may without prejudice to any other rights it may have, do any or all of the following:

(i) withdraw any credit facilities which may have been extended to the Buyer and demand immediate payment of all monies owing to the Seller;

(ii) withhold any further deliveries of goods or performance of services required under the contract whether in transit or not;

(iii) in respect of goods already delivered, enter onto the Buyer's premises to recover those goods and re-sell those goods for its own benefit. This may involve removal of screws, bolts or other non-permanent fasteners. Where goods have already been on-sold the Seller shall be entitled to the proceeds of the sale of those goods;

(iv) suspend and/or terminate performance of any other contracts (without penalty) which the Seller has with the Buyer.

(c) This passing of property and risk clause is a term and condition of sale which will not be varied by the Seller except pursuant to an agreement in writing between the Buyer and the Seller.

7. Personal Property Securities Act 2009:

(a) You acknowledge that the Agreement constitutes a security agreement for the purpose of section 20 of the Personal Property Securities Act 2009 ("PPSA") and that a security interest exists in all Goods (and their proceeds) previously supplied by us to you (if any) and in all future Goods (and their proceeds).

(b) You will execute documents and do such further acts as may be required by us to register the security interest granted to us under the Agreement under the PPSA.

(c) Until ownership of the Goods passes, you waive your rights under the following provision of Part 4 of the PPSA:

(i) to receive a notice of intention of removal of an accession (section 95);

(ii) to receive a notice that we decide to enforce our security interest in accordance with land law (section 118);

(iii) to receive a notice of enforcement action against liquid assets (section 121(4));

(iv) our obligation to dispose of or retain collateral (section 125);

(v) to receive a notice of disposal of goods by us purchasing the Goods (section 129);

(vi) to receive a notice to dispose of Goods (section 130);

(vii) to receive a statement of account following disposal of Goods (section 132(2));

(viii) to receive a statement of account if no disposal of Goods for each 6 month period(section132(4));

(ix) to receive notice of any proposal of ours to retain Goods (section 135(2));

(x) to object to any proposal of ours to either retain or dispose of Goods (section 137(2));

(xi) to redeem to Goods (section 142);

(xii) to reinstate the security agreement (section 143);

(xiii) to receive a notice of any verification statement (section 157(1) and section 157(3);

(d) You further agree that where we have the rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

(e) Until ownership of the Goods passes, you must not give to us a written demand or allow any other person to give us a written demand requiring us to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.

(f) You acknowledge that you have received value as at the date of first delivery of the Goods and have not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to us under these Terms and Conditions.

(g) You irrevocably grant to us the right to enter upon your property or premises, without notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under sections 123 and/or 128 of the PPSA, and you shall indemnify us from any claims made by any third party as a result of such exercise.

8. Charge:

You hereby charge in favour of us:

8.1 any interest in land that you own (or acquire after the date hereof) as security for any and all monies owing to us and hereby authorize us to register a caveat over the land if you default in making payment of any amount due to us;

8.2 all your personal property including, without limitation, all the stock, motor vehicles, plant equipment and debtors that you own (or acquire after that date hereof) as security for any and all monies owing to us and hereby authorize us to register, with any competent authority, including the register of personal property securities pursuant to the PPSA, the charge over the property if you default in making payment of any amount due to us.

9. Cancellation of Contract:

(a) Unless expressly provided in writing the Buyer shall have no right to cancel the contract. If a right of cancellation is expressly reserved to the Buyer it must be exercised by the notice in writing to the Seller not later than seven (7) days prior to the estimated date of delivery by the Seller.

(b) Without prejudice to any other rights the Seller may have, the Buyer shall indemnify the Seller for any loss, damage or expense incurred by the Seller should the Buyer cancel any order or part of an order.

10. Dimensions, Performance Data and Other Descriptive Details:

As the goods are the subject of continuous evaluation and the production methods subject to change the Seller reserves the right to change without notice the construction, design, dimensions and performance data of the goods.

11. Warranty:

(a) All implied conditions, warranties and undertakings other than those implied by Schedule 2 of the Competition and Consumer Act 2010 are expressly excluded.

(b) Where the goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then the Seller's liability for breach of a condition, term or warranty implied by Section 64A of Schedule 2 of the Competition and Consumer Act 2010 is limited, at its option, to any one or more of the following:

(i) the replacement or repair of the goods or the supply of equivalent goods;

(ii) the payment of the cost of the goods or repairing the goods or of acquiring equivalent goods;

12. Acceptance:

(a) The Buyer shall be deemed to have accepted the goods to be of the description, quality and quantity ordered unless particulars of any claim to the contrary are notified to the Seller in writing within forty-eight (48) hours after delivery.

(b) The Seller shall not be obligated to accept return of goods unless such return is authorised by the Seller in writing. The Seller reserves the right to apply and you agree to pay a handling fee and/or restocking fee.

(c) Goods specifically manufactured or altered from standard specifications are not returnable.

(d) Only goods returned in saleable condition can be accepted.

(e) Freight costs for returned goods (excluding warranty work) are at the Buyer's expense.

(f) All requests for credits shall include the invoice number and date.

(g) Goods returned for credit must be received by the Seller within 30 days of original invoice date.

13. Liabilities:

Subject to any legislation to the contrary:

(a) to the fullest extent permitted by law, we are not liable for any injury to or death of any person or loss (including loss of profits or consequential loss) or damage to property arising from any act or omission by Buyer, Seller or any other person (including any loss or damage arising from our negligence);

(b) you indemnify us against:

(i) any claims made against us by any third party in respect of any loss, damage, death or injury as is set out in clause 11(b)(ii) and

(ii) all losses and expenses which we may suffer or incur due to your failure to observe fully your obligation under the Agreement incorporating the terms of the application

14. Outside Interference:

The Seller shall not be liable to the Buyer for any defect, loss, damage or delay caused by strikes, lock-outs, damage to or breakdown of plant, Government interference, acts of God, earthquake, civil commotion, war, fire, force majeure or any other cause beyond the control of the Seller.

15. Terms of Payment:

The Buyer agrees that until the Seller confirms the credit terms have been granted, all goods are supplied on a CBD basis.

Payment for all goods purchased shall be made on or before the last day of the month following the date of delivery, unless otherwise agreed in writing between the Seller and Buyer.

16. Discount:

The Seller reserves the right to cancel all trade discounts or rebates in the event that the Buyer fails to comply with these Terms and Conditions of Sale.

17. Default by Buyer:

If a Buyer should default then:

(a) Credit facilities may be withdrawn at the Seller's sole discretion, without notice.

(b) In the event that the Buyer fails to make payment of any monies due under any invoice issued by the Seller within the due time for payment specified therein, the Buyer agrees to pay interest at the rate of 2% per month on any overdue amount on the account; to pay any debt collectors' expenses incurred, or to be incurred, up to 20% of any amount entrusted to a collector and that all monies are due and payable and are calculated and charged on daily rests from the due date until payment is made in full.

18. Credit Enquiries:

The Buyer hereby permits the Seller to make enquiries of whomever is deemed necessary for the purpose of assessing the application for credit and further permits those giving the information to the Seller, in accordance with the Privacy Amendment Act 1990.

19. Applicable law:

The contract shall in all respects be construed in accordance with the laws in force from time to time in the state of South Australia. The clause headings shall not affect the construction. If any of the provisions are found to be unlawful or invalid under any applicable statute or rule of law, they are to the extent deemed omitted.

20. Confidentiality:

20.1 Except as required by law, this Agreement and subject to the PPSA, we and you agree to treat the terms of this agreement as confidential.

20.2 We and you acknowledge and agree that sub-clauses 20.1, 20.3 and this sub clause 20.2 constitute a confidentiality agreement pursuant to section 275(6) of the PPSA.

20.3 Neither we or you will disclose, send or make available any of the information referred to in Section 275 (1) of the PPSA to any person except as required by law, this Agreement and subject to the PPSA.

21. Account Application and Agreement:

These Terms and Conditions embody the whole agreement between the parties unless the Seller has amended any clauses expressly in writing, and take precedence over any other Terms and Conditions to the extent of any inconsistency.

The Buyer agrees to notify the Seller in writing within seven (7) days of any change whatsoever in ownership structure and further, indemnifies the Seller against any loss or damage that may result from the Buyer's failure to notify the Seller of any such change.

Schedule of Fees and Charges

Minimum Invoice Value
A $20.00 (pre-GST) surcharge will apply to all invoices that have Nett value of less than $100.00 (pre-GST)

Restocking Fee
The Seller reserves the right to impose at least a 20% restocking fee.

Returned Cheque or Dishonored Payment Fee
Where a cheque is issued or electronic banking transaction for payment of Goods or payment of a credit account is dishonored by a customer's bank, a returned transaction fee for an amount to be determined by us from time to time (exclusive of GST) will apply.

Logistics Fee
A Logistic fee may be charged on orders for an amount to be determined by us from time to time – details are available from branch of despatch.

The Seller reserves the right to set and alter a credit limit from time to time. I/We have read and accept the above terms and condition and hereby declare the particulars on Page 1 to be true and accurate.

For sales enquiries in your state call **1300 13 7465**

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(Head Office & Exports)
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P (08) 8348 6444
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sa-sinksales@tasbuildpro.com.au

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F (08) 8947 1892
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F (02) 9602 2355
nsw-sinksales@tasbuildpro.com.au

Wagga Wagga
KJ Warden Agencies Pty Ltd
6 Edison Road
Wagga Wagga NSW 2650
P (02) 6922 8600
F (02) 6922 8611
act-sinksales@tasbuildpro.com.au

Warranty
Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Refer to www.oliverisinks.com for warranty details.

Oliveri

For more information call **1300 13 7465** or visit **www.oliverisinks.com**

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OliveriAU

twitter.com/
OliveriAU

ENQUIRIES

Tasman Sinkware Pty Ltd
ABN 12 007 551 886
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P 61 8 8348 6444
F 61 8 8348 6495
E sinkware@tasbuildpro.com.au

New Zealand*
Dux Industries Ltd
P 0800 FORDUX
(0800 367 389)
E dux@dux.co.nz

For further information scan this code with your smart phone.

A member of the Fletcher Building Group.

*Ranges, specifications and accessory options may vary outside Australia.

See pages XX-XX for Accessories. Refer minimum ... (page XX)

TS120 salmonstudio.com.au

NON-CONFIDENTIAL ATTACHMENT B-4.2.3(a)

MEPS - ASIAN STAINLESS STEEL PRICES

(US$/tonne)

All tables are updated monthly.

Month	Hot Rolled Coil (304)	Hot Rolled Coil (316)	Hot Rolled Plate (304)	Hot Rolled Plate (316)	Cold Rolled Coil (304)	Cold Rolled Coil (316)	Cold Rolled Coil (430)	Drawn Bar (304)	Drawn Bar (316)
Aug-2012	2455	3841	2978	4475	2609	4067	2069	3030	4345
Sep-2012	2469	3813	3013	4459	2634	4042	2068	3021	4208
Oct-2012	2567	3896	3108	4567	2727	4145	2090	3185	4315
Nov-2012	2505	3793	3038	4432	2697	4052	2081	3179	4304
Dec-2012	2458	3737	3007	4378	2683	4014	2068	3194	4318
Jan-2013	2466	3724	2985	4340	2673	3987	2044	3245	4373
Feb-2013	2422	3649	2921	4243	2622	3903	1995	3211	4321
Mar-2013	2446	3668	2950	4255	2633	3894	2009	3190	4315
Apr-2013	2403	3608	2892	4188	2575	3826	1994	3093	4199
May-2013	2324	3517	2790	4090	2481	3732	1951	2997	4090
Jun-2013	2251	3454	2700	3987	2384	3623	1913	2883	3923
Jul-2013	2166	3360	2623	3890	2308	3528	1900	2834	3857
Aug-2013	2221	3389	2693	3915	2376	3552	1908	2852	3881
Sep-2013	2254	3391	2725	3947	2419	3599	1915	2935	3924
Oct-2013									
Nov-2013									
Dec-2013									
Jan-2014									
Feb-2014									
Mar-2014									
Apr-2014									
May-2014									
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Aug-2014									
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EAR FORECAST UPDATED MONTHLY VAILABLE ON SUBSCRIPTION
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Oct-2014	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A
Nov-2014							
Dec-2014							

Note:- Asian Stainless Steel Prices are computed from a arithmetic average of the low values identified in Japan, Taiwan, South Korea and China for each product in the relevant period - collected in national currencies and converted into US dollars at a specified date each month to provide a basis for comparisons.

Stainless Steel transaction prices are also available in MEPS Stainless Steel Review

Click here for product and price definitions

All price and market data is researched by MEPS staff and our local correspondents. The data in this table has been calculated from prices obtained from respondents who we consider provide accurate intelligence on relevant steel markets. We make our best endeavors to be assured that the information is correct and that our analysis is reliable. MEPS (INTERNATIONAL) LTD cannot be made liable for any loss resulting from the use of the pricing information on this website however it may arise.

Our predictions are based on a wide experience of steel consumption patterns. The econometric models we have constructed take into account raw material costs, macro-economic factors, past price trends and the dynamics of the market. However, steel prices can be influenced by a number of other factors. These include currency exchange rates, trade regulations including import safeguard measures, anti-dumping actions and other government interference in normal trade patterns. More than one third of all steel produced is sold outside the country of manufacture. Accordingly, changes in market conditions in one country can impact on pricing in other parts of the world. Consequently, these forecasts should be used only as a guide to future tendencies. MEPS (INTERNATIONAL) LTD cannot be made liable for any loss resulting from the use of these price forecasts however it may arise. **(See License Terms and Conditions)**

NON-CONFIDENTIAL ATTACHMENT B-4.2.3(b)

MEPS - NORTH AMERICAN STAINLESS STEEL PRICES

(US$/tonne)

All tables are updated monthly.

Month	Hot Rolled Coil (304)	Hot Rolled Coil (316)	Hot Rolled Plate (304)	Hot Rolled Plate (316)	Cold Rolled Coil (304)	Cold Rolled Coil (316)	Cold Rolled Coil (430)	Drawn Bar (304)	Drawn Bar (316)	Peeled Bar (304)	Peeled Bar (316)
Aug-2012	2640	3810	3790	4965	2830	3995	2020	3300	4585	4040	5270
Sep-2012	2520	3620	3670	4775	2710	3805	1910	3260	4455	4000	5140
Oct-2012	2540	3665	3690	4840	2730	3870	1875	3320	4555	4060	5240
Nov-2012	2600	3750	3750	4905	2790	3935	1810	3380	4620	4120	5305
Dec-2012	2710	3805	3615	4715	2890	3980	1850	3245	4430	3985	5115
Jan-2013	2810	3950	3715	4860	2990	4125	1840	3345	4570	4085	5255
Feb-2013	2635	3810	3540	4720	2815	3985	1800	3365	4625	4105	5310
Mar-2013	2690	3860	3595	4770	2870	4035	1795	3420	4680	4160	5365
Apr-2013	2600	3720	3505	4630	2780	3895	1830	3380	4665	4120	5350
May-2013	2540	3635	3225	4325	2720	3810	1815	3315	4575	4055	5260
Jun-2013	2415	3490	3100	4180	2595	3665	1795	3135	4405	3875	5100
Jul-2013	2370	3425	3055	4115	2470	3520	1790	3085	4330	3825	5025
Aug-2013	2305	3285	2990	3975	2405	3380	1825	3025	4185	3765	4880
Sep-2013	2340	3305	3025	3995	2520	3480	1870	3060	4210	3800	4905
Oct-2013											
Nov-2013											
Dec-2013											
Jan-2014											
Feb-2014											
Mar-2014											
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May-2014											
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Sep-2014											

Oct-2014	ONE YEA	ONE YEA	ONE YEA	ONE YEA	ONE YEA	ONE YEA	ONE YEA	ONE YEA	ONE YEA	ONE YEA	ONE YEA
Nov-2014											
Dec-2014											

Note:- North American Stainless Steel Prices are computed from the low prices identified in the US (midwest) collected in US Dollars for each product in the relevant period.

Stainless Steel transaction prices are also available in MEPS Stainless Steel Review

Click here for product and price definitions

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MEPS - EU STAINLESS STEEL PRICES

(Euro/tonne)

All tables are updated monthly.

Month	Hot Rolled Coil (304)	Hot Rolled Coil (316)	Hot Rolled Plate (304)	Hot Rolled Plate (316)	Cold Rolled Coil (304)	Cold Rolled Coil (316)	Cold Rolled Coil (430)	Drawn Bar (304)	Drawn Bar (316)	Peeled Bar (304)	Peeled Bar (316)
Aug-2012	2211	3303	2610	3693	2360	3451	1525	2965	4264	2659	3862
Sep-2012	2133	3155	2540	3553	2282	3303	1517	2854	4048	2556	3668
Oct-2012	2167	3234	2573	3632	2315	3382	1502	2865	4101	2565	3716
Nov-2012	2201	3232	2607	3630	2349	3380	1458	2898	4106	2593	3729
Dec-2012	2076	3055	2480	3452	2224	3202	1444	2719	3859	2434	3510
Jan-2013	2139	3147	2544	3543	2287	3294	1449	2783	3959	2499	3610
Feb-2013	2156	3176	2560	3573	2304	3324	1453	2777	3964	2494	3611
Mar-2013	2168	3169	2567	3561	2314	3314	1448	2799	3979	2519	3618
Apr-2013	2117	3099	2514	3470	2264	3247	1462	2769	3904	2496	3576
May-2013	2098	3068	2488	3431	2244	3215	1496	2713	3821	2434	3488
Jun-2013	2005	2963	2387	3318	2152	3110	1476	2609	3693	2340	3371
Jul-2013	1943	2863	2325	3218	2089	3011	1452	2514	3566	2255	3242
Aug-2013	1856	2728	2236	3083	2002	2875	1425	2393	3391	2147	3085
Sep-2013	1868	2714	2246	3065	2014	2862	1415	2375	3330	2129	3028
Oct-2013											
Nov-2013											
Dec-2013											
Jan-2014											
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Aug-2014											
Sep-2014											

Oct-2014	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A	ONE YE A
Nov-2014											
Dec-2014											

Note:- EU Stainless Steel Prices are computed from a arithmetic average of the low values identified in the top five consuming countries (Germany, France, Italy, UK, Spain) for each product in the relevant period - collected in national currencies and converted into Euro's at a specified date each month to provide a basis for comparisons.

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Click here for product and price definitions

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HARDWARE JOURNAL

Article

Manufacturing in China: Costs Uncovered

Sean O'Sullivan, owner of Empower Productivity Consultancy, gives AHJ readers valuable insight into the differences between the Australian and Chinese manufacturing and the opportunities in both countries.

His case study is based on real world figures, with costings verified by a manufacturing firm based in Shanghai, China with 25 years experience. The case study reveals how, where and why Chinese manufacturers are so cost and price competitive. The comparative profit and loss statements are presented in this Table.

2008 profit and loss statement samples

	Australian manufacturers	Chinese manufacturers
Revenue	$1,000,000	$1,000,000
Cost of goods sold		
Wages (5 direct & 2 indirects)	259,000	77,500(*1)
Subcontract	37,000	6,290(*2)
Purchases/materials	431,000	215,500(*3)
	$727,000	$299,290
Gross profit	$273,000	$700,710
Admin/overhead costs		
Admin	40,000	11,900 (*4)
ACC	23,000	1,550 (*5)
Rent	23,000	5,750 (*6)
Depreciation	20,000	20,000
	$106,000	$39,200
Net profit **(before tax)**	$167,000	$661,510

NOTES

1 Chinese manufacturers' cost of goods sold is 2.5 times less expensive – than Australian manufacturers.

2 Chinese manufacturers' profit is approximately four times higher – than Australian manufacturers.

Chinese manufacturers costs expanded (all costs outlined in Australian dollars)*

(*1) Chinese wages approximate the following:

Factory staff $1.90 per hour (including productivity bonus)

Administration staff $2.50 per hour

Middle management $12.50 per hour

(*2) Chinese manufacturers pay their subcontractors a charge out rate that approximates $10.00 per hour. This is approximately 83% less than Australian sub contractors' charge out rate of approximately $60 per hour.

(*3) Chinese material costs approximate 50% to 66% less than Australian material costs. The conservative 50% less is allowed for in the Chinese P and L above.

(*4) Chinese administration costs approximate 15% of their wage costs which is $11,900. Chinese administration cost is low because their wage cost is low.

(*5) Chinese ACC equivalent cost approximates 2% of their low wage which is $1,550 per year. Chinese ACC equivalent costs are low because their wage costs are low.

How Australian Manufacturers can Compete

Seven key initiatives outlined below will help Australian manufacturers maximise their competitiveness and profitability – enabling them to compete with China:

1 Carry out a full 'business audit' of the engineering and manufacturing business. Consider this as a business 'health check'. The audit should ideally be carried out with the assistance of a professional advisor. A template form of key issues manufacturers need to audit can be downloaded free of charge from

www.empowersoftware.biz/productivitytemplates.htm (Template 6).

2 To be as cost competitive as you can, ensure your labour rate and overhead cost is current and highly accurate. Use a manufacturers overhead cost calculation template form free of charge from www.empowersoftware.biz/productivitytemplates.htm (Template 4). Also use professional costing and quoting software to ensure that you are thorough in listing all your costs. Stop using spreadsheets – which have significant limitations when costing and quoting.

3 Ensure all factory staff are highly productive (not 'some' factory staff). Use Labour Management software including PCs on the factory floor to time track all jobs and all staff. These systems can be shown to help increase manufacturers' productivity by 15 to 160%. Stop using job cards that factory staff fill out at the end of the day – they are highly inaccurate and misleading. And immediately stop any 'casual approach to business' where the times factory staff take on jobs is not recorded.

4 Job cost (or 'back cost') every job completed. This is critically important to profitability - both at the end of a job and at each stage. This job costing needs to be carried out and determined in time tracking software (not carried out in finance software as the actual labour times, the greatest and most variable cost, in Financial systems are derived from 'cheat sheets' and 'lie sheets' that your factory staff fill in at the end of the day). Ensure all actual labour times on jobs always equals or betters budgeted (ie quoted) labour times on jobs. Only through this review process can continued improvement of core business be achieved – which in manufacturing is managing labour costs.

5 Maximise sales by ensuring all prospective clients, including those jobs which have only recently been quoted for, are always followed up proficiently. Use only professional contact database and quote management software. Stop using manual systems and listing of prospective customers solely on Word or Excel as these methods have significant limitations.

6 Target your marketing. Know your target market well - and truly tailor products and services to meet the target markets' needs).

7 Ensure the 'unique selling propositions' (USPs) of

(*6) Chinese factory rent costs approximate 75% less than Australian factory rent costs. The Chinese Government determines the geographical areas in which they require their manufacturing and population to expand – and as a consequence the Chinese Government has been building factories for manufacturers free of charge. The conservative 75% less has been allowed for in the Chinese P and L above.

Other significant cost advantages that Chinese manufacturers have:

When factory orders drop off, factory staff are told not to come in for a given period and no wages are paid to factory staff for that period. The $1.90 per hour factory staff wage rate is comprised of approximately 63c per hour base wage rate (1/3) and approximately $1.27 per hour productivity bonus (2/3). So, when productivity is not achieved bonus is not paid and the wage cost drops from $1.90 per hour to 63 cents per hour.

Many Chinese manufacturers are very large operations which have substantial purchasing power to gain volume discounts on materials costs. Government export incentives are also available up to approx 9% of the export value. And at one stage, companies were costing at zero profit and receiving the Government export incentive as their profit.

A key price advantage for Chinese Manufacturers' is that many are very large operations with substantial production capacity that services both national and worldwide export markets. Their substantial production capacity allows them to operate on low profit margins per product and per order and, as a direct result of this, they are able to capture new markets and maintain a competitive edge through significantly lower prices.

all products and services are professionally projected – and clearly conveyed.

Sean O'Sullivan B Com (Hons) Otago University, Managing Director, Empower Software NZ Ltd

Sean O'Sullivan has been involved in a long term business advisory capacity assisting 250+ manufacturers for over 17 years to date.

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OTTAWA, May 9, 2012

STATEMENT OF REASONS

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

CERTAIN STAINLESS STEEL SINKS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

On April 24, 2012, pursuant to paragraph 41(1)(*a*) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made final determinations of dumping and subsidizing respecting stainless steel sinks with a single drawn bowl having a volume between 1,600 and 5,000 cubic inches (26,219.30 and 81,935.32 cubic centimetres) or with multiple drawn bowls having a combined volume between 2,200 and 6,800 cubic inches (36,051.54 and 111,432.04 cubic centimetres), excluding sinks fabricated by hand, originating in or exported from the People's Republic of China.

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

Canada

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SUMMARY OF EVENTS

[1] On September 6, 2011, the Canada Border Services Agency (CBSA) received a written complaint from Novanni Stainless Inc. (Novanni) of Coldwater, Ontario, and Franke Kindred Canada Limited (FKC) of Midland, Ontario (hereafter, "the complainants"), alleging that imports of certain stainless steel sinks originating in or exported from the People's Republic of China (China) are being dumped and subsidized and causing injury to the Canadian industry.

[2] On September 27, 2011, pursuant to paragraph 32(1)(*a*) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainants that the complaint was properly documented. On the same date, the CBSA notified the Government of China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy portion of the complaint, which excluded sections dealing with normal value, export price and margin of dumping.

[3] On October 24, 2011, consultations were held with the GOC in Ottawa, pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*. During these consultations, China made representations with respect to its views on the accuracy and adequacy of the evidence presented in the non-confidential version of the subsidy portion of the complaint. On October 26, 2011, the CBSA received written representations from the GOC with respect to its views. The CBSA considered these written representations in its analysis of whether there was sufficient evidence of subsidization to warrant a subsidy investigation.

[4] On October 27, 2011, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated the investigations respecting the dumping and subsidizing of certain stainless steel sinks from China.

[5] On October 28, 2011, the Canadian International Trade Tribunal (Tribunal) 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 certain stainless steel sinks from China have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods.

[6] On December 28, 2011, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain stainless steel sinks have caused injury or are threatening to cause injury to the domestic industry.

[7] On January 25, 2012, the CBSA made preliminary determinations of dumping and subsidizing with respect to certain stainless steel sinks originating in or exported from China pursuant to subsection 38(1) of SIMA, and began imposing provisional duties on imports of the subject goods pursuant to subsection 8(1) of SIMA.

[8] On January 26, 2012, the Tribunal initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry.

[9] The CBSA continued its investigations and, on the basis of the evidence, the President is satisfied that certain stainless steel sinks originating in or exported from China have been dumped and subsidized and that the margins of dumping and the amounts of subsidy are not insignificant. Consequently, on April 24, 2012, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(*a*) of SIMA.

[10] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duties will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal has announced that it will issue its finding by May 24, 2012.

PERIOD OF INVESTIGATION

[11] Each of the two investigations has its own separate Period of Investigation (POI). The POI with respect to dumping (dumping POI), covered all subject goods imported into Canada from September 1, 2010 to August 31, 2011.

[12] The POI with respect to subsidy (subsidy POI), covered all subject goods imported into Canada from January 1, 2010 to August 31, 2011.

INTERESTED PARTIES

Complainant

[13] The complainants account for a major proportion of the production of like goods in Canada. The complainants' goods are produced at manufacturing facilities located in Coldwater, Ontario, and Midland, Ontario.

[14] The name and address of the complainants are:

Novanni Stainless Inc.
2978 Southorn Road, P.O. Box 189
Coldwater, Ontario L0K 1E0

Franke Kindred Canada Limited
1000 Franke Kindred Road
Midland, Ontario L4R 4K9

[15] There are no other known producers of like goods in Canada.

Exporters

[16] At the initiation of the investigations, the CBSA identified 199 potential exporters of the goods under investigation. The CBSA sent a dumping Request for Information (RFI) to all identified potential exporters in China and other countries and a subsidy RFI to each identified potential exporter in China.

[17] The CBSA received seven exporter responses to the exporter dumping RFI, along with six responses from vendors by the deadline of December 5, 2011. One further exporter response was received after the due date.

[18] At the time of the preliminary determination, only two exporter responses were sufficiently complete to allow for the calculation of a preliminary margin of dumping.

[19] During the final phase of the investigation, the CBSA received additional information, and three additional exporters were considered to have submitted a substantially complete response to the dumping RFI.

[20] As a result, substantially complete responses were received from five exporters for purposes of the final determination of dumping.

[21] The CBSA considered substantially complete responses from seven exporters and two producers for purposes of the final determination of subsidy.

Importers

[22] At the initiation of the investigations, the CBSA identified 287 potential importers of subject goods based on a review of CBSA import documentation. The CBSA sent an importer RFI to all potential importers of the goods.

[23] The CBSA received 30 RFI responses from importers, with varying degrees of completeness. Sixteen importers provided a substantially complete response to the importer RFI.

Government of China

[24] For the purposes of these investigations "Government of China" 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.

[25] At the initiation of the investigations, the CBSA sent a subsidy RFI to the GOC. The CBSA received a response to the subsidy RFI from the GOC on December 5, 2011, and a second filing of additional information on December 15, 2011. The CBSA reviewed these responses and while some of the information requested was provided, the GOC's responses were limited. As a result, on December 19, 2011[1], the GOC was notified of the incomplete status of its submission.

PRODUCT DEFINITION

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

> Stainless steel sinks with a single drawn bowl having a volume between 1,600 and 5,000 cubic inches (26,219.30 and 81,935.32 cubic centimetres) or with multiple drawn bowls having a combined volume between 2,200 and 6,800 cubic inches (36,051.54 and

[1] Subsidy Exhibit S134 (NC)

111,432.04 cubic centimetres), excluding sinks fabricated by hand, originating in or exported from the People's Republic of China (hereafter referred to as certain stainless steel sinks).

Additional Product Information

[27] For purposes of the definition of the subject goods, volume is calculated as the product of the length, width and depth of the bowl, regardless of the taper and radius of the bowl, where length and width are measured from front to back and left to right of the bowl rim and where depth is measured from the bowl rim to the bottom of the sink at the point closest to the drain.

[28] For purposes of the definition of the subject goods, "sinks fabricated by hand" refers to the process by which sinkware is formed by hand. The sink stock is notched and folded, and sides are then welded and hand-polished to form a box-like shape. Hand-fabricated sinks may also be referred to as handcrafted or handmade sinks.

[29] The subject goods may be supplied with seals, strainer or strainer sets, mounting clips, fasteners, sound-deadening pads, cut-out templates, and additional accessories such as rinsing baskets and bottom grids.

[30] Stainless steel sinks are commonly used in residential and non-residential installations including in kitchens, bathrooms, utility and laundry rooms. Stainless steel sinks sold in Canada are required to be manufactured in accordance with *ASME A112.19.3-2008/CSA B45.4.08*[2]. However, the complainants believe it is possible that some of the subject goods from China do not meet these standards. Stainless steel sinks are available in a variety of shapes and configurations. They may have single or multiple bowls, and may be undermount, top mount, or designed as work tops.

[31] Stainless steel sinks are generally made from grades 301, 304 and 316 cold-rolled stainless steel sheet that is 16, 18 or 20 gauge. The subject goods may be made of additional stainless steel grades and thinner or thicker gauges. Indeed, the complaint states that 15 and 22 gauge stainless steel sinks and grade 202 and 416 stainless steel sinks from China have been observed in the Canadian market. Gauge refers to the nominal thickness of steel. Typically, the lower the number, the thicker the material (e.g. 16 gauge = 0.060 inches, 18 gauge = 0.046 inches, 20 gauge = 0.035 inches). Grade identifiers such as T301, T304 and T316 are American Iron and Steel Institute (AISI) designations for the chemical composition of stainless steel. Each designation has a specific chemical makeup that provides the steel with its unique properties (e.g. mechanical properties, weldability and corrosion resistance). Terms such as 18-8 and 18-10 are commonly used to describe the chemical composition of the stainless steel. The first number defines the nominal percentage of chromium in the steel and the second number defines the nominal percentage of nickel in the steel.

[2] Manufacturing standard established by the American Society of Mechanical Engineers (ASME) and the Canadian Standards Association (CSA).

Production Process[3]

[32] The process begins with sheets of stainless steel that are sheared into pieces, referred to as "blanks". The blanks undergo a series of forming, shearing, welding and finishing operations.

[33] A sink bowl is formed through a combination of two forming operations: deep drawing and stretch-forming. In the first operation, the blanks are conveyed through mechanical or hydraulic presses that punch the blanks into rough sink shapes. For each different bowl shape, there is a unique punch and die set that is interchangeable with the press. At this stage, the depth and diameter of the bowl are slightly less than the required dimensions. The early forms are placed through further equipment that uses a re-draw process to stretch the sink bowl to its final depth.

[34] Following the stretch-forming step, the edges of the bowl are trimmed and a drain hole is punched. Hold-downs (metal clips) are then spot-welded to the sides of the sink bowl.

[35] In some cases, double and triple bowl sinks are made by taking single drawn bowls, shearing them so that the ledges are straight, then tig-welding the ledges.

[36] At this stage, the bottom and sides of the sink bowl are buffed. The deck of the sink is also buffed to produce a mirror-type finish.

[37] A ring-form operation trims the sink to its final form and creates decorative edging. The sinks may be further buffed and washed following this operation. Sound dampening pads are then added to the sink and the finished sinks are packaged for market.

Classification of Imports

[38] The subject goods are usually classified under Harmonized System (HS) classification code 7324.10.00.11.

[39] The subject goods may also be classified under the following HS classification codes:

7324.10.00.19
7324.10.00.21
7324.10.00.29

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

[3] Dumping Exhibit 2 (NC) - Complaint narrative, pages 10 and 11.

CANADIAN INDUSTRY

[41] As previously stated, the complainants account for the major proportion of domestic production of like goods. There are no other known producers of certain stainless steel sinks in Canada.

[42] Novanni is a privately held company with its production facility located in Coldwater, Ontario. Novanni produces stainless steel sinks and strainers and is a distributor of stainless steel faucets and water coolers.

[43] FKC is a manufacturing company under Franke Holdings AG, with its production facility located in Midland, Ontario. FKC produces stainless steel sinks and distributes an extensive line of kitchen and bath sinkware.

IMPORTS INTO CANADA

[44] During the final phase of the investigations, the CBSA refined the total volume of imports based on data from its internal information system, CBSA import documentation and information received from cooperative exporters and importers.

[45] The following tables present the CBSA's calculation of the volume of imports of certain stainless steel sinks for purposes of the dumping and subsidy final determinations, respectively:

Imports of Certain Stainless Steel Sinks (September 1, 2010 – August 31, 2011)

Imports into Canada	Volume (units)	% of Total Imports
China	392,651	86.4%
All Other Countries	61,975	13.6%
Total Imports	**454,626**	**100%**

Imports of Certain Stainless Steel Sinks (January 1, 2010 – August 31, 2011)

Imports into Canada	Volume (units)	% of Total Imports
China	618,506	84.4%
All Other Countries	114,015	15.6%
Total Imports	**732,521**	**100%**

INVESTIGATION PROCESS

[46] Regarding the dumping investigation, information was requested from known and potential exporters, vendors and importers, concerning shipments of subject stainless steel sinks released into Canada during the dumping POI of September 1, 2010 to August 31, 2011.

[47] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters located in China, as well as the GOC

concerning financial contributions made to exporters or producers of subject stainless steel sinks released into Canada during the subsidy POI of January 1, 2010 to August 31, 2011.

[48] After reviewing the exporters' responses to the RFIs, supplemental RFIs were sent to each of the responding exporters to clarify information submitted by the respective companies. In addition, on-site verification visits were conducted during the final phase of the dumping and subsidy investigations.

[49] As previously explained, the CBSA advised the GOC that its original subsidy response and its one additional filing were incomplete. No further information was received during the final phase of the investigation.

[50] Further details regarding the GOC's subsidy response can be found in the "Subsidy Investigation" section of this *Statement of Reasons*.

[51] In summary, at initiation 86 subsidy programs were reviewed. Of these 86 subsidy programs, six were determined to be conferring benefits to the cooperative exporters during the subsidy POI. In addition, the CBSA identified nine new subsidy programs through examination and on-site verification of exporter and producer submissions. As a result, the CBSA has identified in total 15 programs that were found to be conferring benefits to the cooperative exporters.

DUMPING INVESTIGATION

Normal Value

[52] Normal values of goods sold to importers in Canada are generally determined based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or 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 pursuant to paragraph 19(*b*) of SIMA. Where, in the opinion of the President, sufficient information has not been furnished or is not available, normal values are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

Export Price

[53] The export price of goods sold to importers in Canada is generally determined as the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price pursuant to section 24 of SIMA. 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. Where, in the opinion of the President, 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.

[54] For purposes of the final determination, export prices of goods of the cooperative exporters were determined using their reported export price of the goods. For goods of all other

exporters, import pricing information available from the CBSA's internal information systems and, where applicable, importer RFI responses, were used for the purposes of determining export prices.

Results of Dumping Investigation

[55] The CBSA determined a margin of dumping of goods for each cooperative exporter by comparing the total normal value with the total export price of the goods. When the total export price is less than the total normal value, the difference is the margin of dumping for that specific exporter.

[56] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter has been determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e. 100%) is considered dumped. Similarly, where a given exporter's net aggregate dumping results are zero, then the total quantity of exports considered to be dumped by that exporter is zero.

[57] In determining the weighted average margin of dumping for the country, the overall margins of dumping found in respect of each exporter were weighted according to each exporter's volume of subject stainless steel sinks exported to Canada during the dumping POI.

[58] Based on the preceding, 100% of certain stainless steel sinks from China were dumped by a weighted average margin of dumping of 71.1%, expressed as a percentage of the export price.

[59] Under paragraph 41(1)(*a*) of SIMA, the President shall make a final determination of dumping when he is satisfied that the goods have been dumped and that the margin of dumping of the goods of a country is not insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. The margin of dumping of certain stainless steel sinks from China is not less than 2% of the export price of the goods and is, therefore, not insignificant.

[60] For purposes of a preliminary determination of dumping, the President is responsible for determining whether the actual and potential volume of dumped goods is negligible. After a preliminary determination of dumping, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, if the Tribunal determines the volume of dumped goods from a country is negligible, the Tribunal is required to terminate its injury inquiry in respect of those goods.

[61] A summary of the margins of dumping determined for each exporter is found in **Appendix 1**.

Dumping Results by Exporter

[62] Specific margin of dumping details relating to each of the cooperative exporters are as follows:

Gacor Kitchenware (Ningbo) Co., Ltd.

[63] Gacor Kitchenware (Ningbo) Co., Ltd. (Gacor) is a producer and exporter of certain stainless steel sinks to Canada. Gacor also has domestic sales of goods of the same general category.

[64] For the purposes of the final determination, normal values could not be determined under section 15 because there were not sufficient sales of like goods domestically to permit a proper comparison with the sales of the goods to the importer in Canada. Therefore, the normal values of the goods were determined pursuant to paragraph 19(*b*) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[65] The cost of production was determined in accordance with paragraph 11(1)(*a*) of the *Special Imports Measures Regulations* (SIMR), based on the verified cost data relating to the exported goods. The amount for profits was the weighted average profit made on Gacor's domestic sales of goods of the same general category during the dumping POI, in accordance with subparagraph 11(1)(*b*)(ii) and section 13 of the SIMR. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(*c*)(i) of the SIMR.

[66] Gacor exported the subject goods to unrelated importers in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[67] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Gacor were dumped by a weighted average margin of dumping of 57.7%, expressed as a percentage of the export price.

Guangdong Dongyuan Kitchenware Industrial Co., Ltd.

[68] Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) is a producer and exporter of certain stainless steel sinks to Canada. Dongyuan also has domestic sales of goods of the same general category.

[69] For the purposes of the final determination, normal values could not be determined under section 15 because there were not sufficient sales of like goods domestically to permit a proper comparison with the sales of the goods to the importer in Canada. Therefore, the normal values of the goods were determined pursuant to paragraph 19(*b*) of SIMA, as the aggregate of the cost

of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[70] The cost of production was determined in accordance with paragraph 11(1)(*a*) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was the weighted average profit made on Dongyuan's domestic sales of goods of the same general category during the dumping POI, in accordance with subparagraph 11(1)(*b*)(ii) and section 13 of the SIMR. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(*c*)(i) of the SIMR.

[71] Dongyuan exported the subject goods to unrelated importers in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[72] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Dongyuan were dumped by a weighted average margin of dumping of 4.4%, expressed as a percentage of the export price.

Guangdong Yingao Kitchen Utensils Co. Ltd.

[73] Guangdong Yingao Kitchen Utensils Co. Ltd. (Yingao) is a producer and exporter of certain stainless steel sinks to Canada. Yingao also has domestic sales of goods of the same general category.

[74] For the purposes of the final determination, normal values could not be determined under section 15 because there were not sufficient sales of like goods domestically to permit a proper comparison with the sales of the goods to the importer in Canada. Therefore, the normal values of the goods were determined pursuant to paragraph 19(*b*) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[75] The cost of production was determined in accordance with paragraph 11(1)(*a*) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was the weighted average profit made on Yingao's domestic sales of goods of the same general category during the dumping POI, in accordance with subparagraph 11(1)(*b*)(ii) and section 13 of the SIMR. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(*c*)(i) of the SIMR.

[76] Yingao exported the subject goods to unrelated importers in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[77] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Yingao were dumped by a weighted average margin of dumping of 9.5%, expressed as a percentage of the export price.

Guangzhou Komodo Kitchen Technology Co., Ltd.

[78] Guangzhou Komodo Kitchen Technology Co., Ltd. (Komodo) is an exporter of certain stainless steel sinks to Canada. Komodo is a privately held limited liability company.

[79] Komodo has a formal business agreement with Zhongshan Xintian Hardware Co., Ltd. (ZXH), which is a privately held limited liability company. All subject goods sold to Canada by Komodo are produced by ZXH under the terms of this agreement. Given this arrangement and other details of this agreement, Komodo and ZXH are considered associated parties in accordance with subsection 2(2) of SIMA.

[80] Komodo, the exporter for SIMA purposes, does not sell stainless steel sinks in its domestic market. For the purposes of the final determination, normal values could not be determined under section 15 because the exporter of the goods does not have domestic sales. Therefore, the normal values of the goods were determined pursuant to paragraph 19(*b*) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[81] The cost of production was determined in accordance with paragraph 11(1)(*a*) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was determined in accordance with subparagraph 11(1)(*b*)(iv) and section 13 of the SIMR, based on the weighted average profit during the POI made on sales of goods that are of the same general category as the goods sold to the importer in Canada and are for use in the country of export by producers other than Komodo. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(*c*)(ii) of the SIMR.

[82] Komodo exported the subject goods to an unrelated importer in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[83] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Komodo were dumped by a weighted average margin of dumping of 43.4%, expressed as a percentage of the export price.

Jiangmen New Star Hi-Tech Enterprise Ltd.

[84] Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star) is a producer and exporter of certain stainless steel sinks to Canada. The company is a privately held, Chinese-foreign equity joint venture.

[85] For the purposes of the final determination, normal values could not be determined under section 15 because New Star does not have acceptable sales to more than one customer at a given trade level that satisfy the terms and conditions of this section, taking into account paragraph 16(2)(*a*) of SIMA. Therefore, the normal values of the goods were determined pursuant to paragraph 19(*b*) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[86] The cost of production was determined in accordance with paragraph 11(1)(*a*) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was determined in accordance with subparagraph 11(1)(*b*)(iv) and section 13 of the SIMR, based on the weighted average profit during the POI made on sales of goods that are of the same general category as the goods sold to the importer in Canada and are for use in the country of export by producers other than New Star. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(*c*)(i) of the SIMR.

[87] New Star exported the subject goods to an unrelated importer in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[88] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by New Star were dumped by a weighted average margin of dumping of 40.4%, expressed as a percentage of the export price.

Other Exporters

[89] Four other exporters provided a response to the CBSA's RFI that could not be used for purposes of this investigation.

[90] In the case of one exporter, Zhongshan Superte Kitchenware Co., Ltd. (Superte), the information submitted to the CBSA contains inconsistencies, despite repeated attempts to obtain clarifications. Their submission, therefore, remains incomplete.

[91] Another exporter, Bonke Kitchen & Sanitary Industrial Co., Ltd., provided an extremely limited response which was unusable by the CBSA.

[92] As for Zoje Holding Group Co., Ltd. (Zoje Holdings) and its related factory, Jiangxi Offidun Industry Co., Ltd. (Offidun), their submissions remain incomplete as they did not provide all of the information requested by the CBSA in a supplemental RFI.

[93] Finally, Jiangxi Zoje Kitchen and Bath Co., Ltd. (Zoje Kitchen), a producer of stainless steel sinks whose parent company is Zoje Holdings, submitted a response to the CBSA's RFI, but their single sale to Canada was not imported into Canada until after the POI. Despite a

representation from Zoje Kitchen's counsel requesting that the sale be considered for the purposes of this investigation, the POI is defined by the date the subject goods are imported into Canada, and thus, Zoje Kitchen's information cannot be used.

[94] Accordingly, import pricing information available from the CBSA's internal information systems was used for the purposes of determining the export price for these companies. The normal values and related margins of dumping were determined by advancing export prices by the highest amount by which the normal value exceeded the export price on an individual transaction (103.1%) for a cooperating exporter in accordance with the ministerial specification.

[95] For all other exporters, import pricing information available from the CBSA's internal information systems was used for the purposes of determining the export price. The normal values and related margins of dumping were determined by advancing export prices by the highest amount by which the normal value exceeded the export price on an individual transaction (103.1%) for a cooperating exporter in accordance with the ministerial specification.

SUMMARY OF RESULTS – DUMPING

Period of Investigation – September 1, 2010 to August 31, 2011

Country	Volume of Dumped Goods as Percentage of Country Imports	Country Margin of Dumping*	Volume of Country Imports as Percentage of Total Imports	Volume of Dumped Goods as Percentage of Total Imports
China	100%	71.1%	86.4%	86.4%

* as a percentage of export price

SUBSIDY INVESTIGATION

[96] 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, which confers a benefit.

[97] 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.

[98] 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.

[99] The following terms are defined in section 2 of SIMA. A "prohibited subsidy" is either an export subsidy or a subsidy or portion of 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 also including a group of enterprises, an industry and a group of industries.

[100] Notwithstanding that a subsidy is not specific pursuant to subsection 2(7.2) of SIMA, under subsection 2(7.3) a subsidy may also be considered specific when 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.

[101] 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.

[102] Financial contributions provided by State-Owned Enterprises (SOEs) may also be considered to be provided by the GOC 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.

[103] Prior to the initiation of the investigation, the complainants submitted documents alleging that the stainless steel sink producers and exporters in China benefited from actionable subsidies provided by the GOC.

[104] At initiation, the CBSA identified 86 potential subsidy programs in the following seven categories:

I. Special Economic Zones (SEZ) and other Designated Areas Incentives;
II. Grants;
III. Equity Programs;
IV. Preferential Loan Programs (Not Applicable);
V. Preferential Income Tax Programs;
VI. Relief from Duties and Taxes on Materials and Machinery;
VII. Reduction in Land Use Fees and Prices;
VIII. Goods/Services Provided by the Government at Less than Fair Market Value.

[105] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. This document is available through the CBSA Web site at the following address: www.cbsa-asfc.gc.ca/sima-lmsi.

Results of the Subsidy Investigation

[106] In conducting its investigation, the CBSA sent a subsidy RFI to the GOC, as well as to the 199 potential exporters located in China that had been identified through internal CBSA documentation. Information was requested in order to establish whether there had been financial contributions made by any level of government and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain stainless steel sinks; and whether any resulting subsidy was specific in nature. The GOC was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[107] As previously stated, the information submitted by the GOC for the purpose of the subsidy investigation was incomplete. The GOC did not provide the CBSA with sufficient information to enable a proper analysis of the programs for the final determination. Some of the major deficiencies included: information with respect to all exporters/producers of stainless steel sinks was not provided; information with respect to the ownership status of cold-rolled stainless steel sheet suppliers/producers was not provided; information with respect to subsidies conferred to responding exporters/producers was not provided; and statistical information with respect to amounts of benefits conferred, by industry or by company, was not provided.

[108] For the purpose of the final determination, the CBSA considered the substantially complete subsidy RFI responses received from seven exporters located in China. Two

producers, associated with their respective exporters, also provided substantially complete responses to the subsidy RFI, and were considered for the final determination.

[109] Due to the incomplete status of the GOC submission, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the level of cooperation received from the seven cooperative exporters and the two associated producers, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

[110] A summary of the findings for the named subsidy programs can be found in **Appendix 2**.

[111] Details regarding the amounts of subsidy for each of the seven cooperative exporters are provided in **Appendix 1**. For purposes of the final determination, the aggregate amount of subsidy for the seven cooperative Chinese exporters ranges from 0.21 to 40.84 Renminbi (RMB) per unit.

[112] Expressed as a percentage of export price, the amounts of subsidy, as determined by the CBSA for the cooperative exporters, range from 0.1% to 11.8%.

[113] With respect to calculations of amounts of subsidy for the non-responding exporters, the CBSA has no information, or incomplete information, regarding benefits received by these exporters. Therefore, the CBSA was unable to calculate specific amounts of subsidy for those exporters. As a result, for all other exporters, the CBSA has determined an amount of subsidy under a ministerial specification pursuant to subsection 30.4(2) of SIMA.

[114] For all other exporters, the amount of subsidy has been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:

(i) the highest amount of subsidy for each of the 15 programs, as found at the final determination, for the cooperative exporters located in China, plus
(ii) the average of the highest amounts of subsidy for the 15 programs in (i), applied to each of the remaining 78 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[115] Using the above methodology for all other exporters, the result is an amount of subsidy of 264.94 RMB per unit.

[116] In summary, 100% of the goods from China are subsidized and the amount of subsidy is 38.8%, expressed as a percentage of the export price.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - January 1, 2010 to August 31, 2011

Country	Volume of Subsidized Goods as Percentage of Country Imports	Weighted Average Amount of Subsidy*	Volume of Country Imports as Percentage of Total Imports	Volume of Subsidized Goods as Percentage of Total Imports
China	100%	38.8%	84.4%	84.4%

* as a percentage of export price

[117] In making a final determination of subsidizing under paragraph 41(1)(*a*) of SIMA, the President must be satisfied that the subject goods have been subsidized and that the amount of subsidy on the goods of a country is not insignificant. According to subsection 2(1) of SIMA, an amount of subsidy that is less than 1% of the export price of the goods is considered insignificant.

[118] However, according to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures* when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a product from a developing country should be terminated as soon as 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.

[119] SIMA does not define or provide any guidance regarding the determination of a "developing country" for purposes of Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance[4]. As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. As the preceding table illustrates, the amount of subsidy found during this investigation is not insignificant.

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

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[4] The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at October 2011. The document is available at www.oecd.org/document/45/0,3746,en_2649_34447_2093101_1_1_1_1,00.html.

REPRESENTATIONS

[121] Following the March 12, 2012 close of the record, representations were received from counsel for the complainants, the exporters Zoje Kitchen, Dongyuan and Yingao, as well as the GOC. Reply submissions were provided by counsel for the GOC, the vendor Blanco Germany and importer Blanco Canada, and the two exporters Dongyuan and Yingao.

[122] The issues raised by participants pertaining to the dumping and subsidy investigations, along with the CBSA's response to these issues, are provided in **Appendix 3**.

DECISIONS

[123] On the basis of the results of the investigation, the President is satisfied that certain stainless steel sinks originating in or exported from the People's Republic of China have been dumped and that the margin of dumping is not insignificant. Consequently, on April 24, 2012, the President made a final determination of dumping pursuant to paragraph 41(l)(*a*) of SIMA.

[124] Similarly, on the basis of the results of the investigation, the President is satisfied that certain stainless steel sinks originating in or exported from the People's Republic of China have been subsidized and that the amount of subsidy is not insignificant. As a result, the President also made a final determination of subsidizing pursuant to paragraph 41(l)(*a*) of SIMA on this same date.

[125] **Appendix 1** contains a summary of the margins of dumping and amounts of subsidy relating to the final determinations.

FUTURE ACTION

[126] The provisional period began on January 25, 2012, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by May 24, 2012. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available on the CBSA Web site at www.cbsa-asfc.gc.ca/sima-lmsi.

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

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

[129] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act*[5] 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.

[130] Normal values and amounts of subsidy have been provided to the cooperating exporters for future shipments to Canada in the event of an injury finding by the Tribunal. These normal values and amounts of subsidy will come into effect the day after the date of the injury finding, if there is one. Information regarding normal values of the subject goods should be obtained from the exporter.

[131] Exporters who did not provide a complete response in the dumping investigation will have normal values established by advancing the export price by 103.1% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters who did not provide a complete response in the subsidy investigation will be subject to a countervailing duty amount of 264.94 RMB per unit, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

Retroactive Duty on Massive Importations

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

[133] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the President 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. As defined in subsection 2(1) of SIMA, a "prohibited subsidy" is either an export subsidy or a subsidy or portion of 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.

[5] *Customs Act* R.S.C. 1985.

Publication

[134] 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

[135] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA Web site, in both English and French, at the address below. For further information, please contact the officers identified as follows:

Mail	SIMA Registry and Disclosure Unit Anti-dumping and Countervailing Directorate Canada Border Services Agency 100 Metcalfe Street, 11th Floor Ottawa, Ontario K1A 0L8 Canada	
Telephone	Danielle Newman Nalong Manivong	613-952-1963 613-960-6096
Fax	613-948-4844	
Email	SIMARegistry@cbsa-asfc.gc.ca	
Web site	www.cbsa-asfc.gc.ca/sima-lmsi	

Caterina Ardito-Toffolo
A/Director General
Anti-dumping and Countervailing Directorate

Attachments

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

Exporter	Margin of Dumping*	Amount of Subsidy (RMB/unit)	Amount of Subsidy*
Gacor Kitchenware (Ningbo) Co., Ltd.	57.7%	0.21	0.1%
Guangdong Dongyuan Kitchenware Industrial Co., Ltd.	4.4%	9.27	4.1%
Guangdong Yingao Kitchen Utensils Co. Ltd.	9.5%	6.76	2.9%
Guangzhou Komodo Kitchen Technology Co., Ltd.	43.4%	8.54	3.1%
Jiangmen New Star Hi-Tech Enterprise Ltd.	40.4%	9.97	5.5%
Zhongshan Superte Kitchenware Co., Ltd.	103.1%	5.10	1.9%
Zoje Holding Group Co., Ltd.	103.1%	40.84	11.8%
All Other Exporters (of subject goods originating in or exported from China)	103.1%	264.94	60.8%
China Overall	71.1%	123.87	38.8%

* Expressed as a percentage of the export price.

APPENDIX 2 – SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As noted in the body of this document, the information submitted by the GOC was considered to be incomplete. The GOC did not provide the CBSA with sufficient information to enable a proper analysis of the programs for the final determination. Due to the incomplete status of the GOC submission, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the level of cooperation received from the seven cooperative exporters and the two associated producers, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

At the time of initiation, the CBSA identified 86 programs for review. During the course of the subsidy investigation, the CBSA identified 12 new potential subsidy programs. The CBSA removed three of these new programs along with two of the programs from the original listing, as follows: Program 47 was removed because it was determined to be a duplicate of Program 55. Similarly, Program 92 was removed because it was determined to be a duplicate of Program 93. In addition, Program 86 was removed because it was determined that producers of stainless steel sinks are not eligible for this program. Program 87 was also removed because it was identified as two programs, specifically, Program 17 and Program 33. Furthermore, Program 96 was removed as it was determined not to be a financial contribution.

This appendix contains descriptions of the 15 subsidy programs used by the cooperative exporters in the current investigation, followed by a listing of the 78 subsidy programs investigated by the CBSA that were not found to have been used by the cooperative exporters. As such, there are 93 subsidy programs that were found to be available to the exporters of certain stainless steel sinks.

SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS

Without a complete response to the subsidy RFI from the GOC, the CBSA has used information available to describe the subsidy programs used by the cooperative exporters in the current investigation. This includes using information obtained from CBSA research on potential subsidy programs in China, information provided by the cooperative exporters and descriptions of programs that the CBSA has previously publicly published in recent *Statements of Reasons* relating to subsidy investigations involving China.

II. Grants

Program 17: Research & Development (R&D) Assistance Grant

During the POI, one of the cooperative exporters reported having received payments from the local government and recorded these in the company's subsidy income ledger. The funds were provided for Science and Technology Research. The exporter did not apply for these payments and, therefore, does not possess any other information about the program. The granting authority is the Foshan Shunde Finance Bureau.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 33: Grants for Export Activities

During the POI, one of the cooperative exporters reported having received payments from the local government and recorded these in the company's subsidy income ledger. The funds were provided for Foreign Trade Development. The exporter did not apply for these payments and, therefore, does not possess any other information about the program. The granting authority is the Foshan Shunde Finance Bureau.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 55: Grant – Special Fund for Fostering Stable Growth of Foreign Trade

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in 2009 and was valid for one year to help exporters survive the financial and economic crises in the world market. This program provided benefits in the form of marketing assistance. The granting authorities responsible for this program are the Department of Finance and the Department of Foreign Trade and Economic Cooperation of Guangdong Province. This program is implemented by the Municipal Bureau of Foreign Trade and Economic Cooperation and the Bureau of Finance.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 89: Allowance to Pay Loan Interest

During the POI, one of the cooperative exporters reported having received an allowance from the local government in support of small and medium sized businesses. According to the exporter, the program came into effect in 2010 and the funds were provided to help reduce interest payments on commercial bank loans. The program was provided and administered by the Economic and Trade Office of the Huangpu government in Zhongshan City, Guangdong Province. The granting authority is the Zhongshan Municipal government.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 90: Supporting Fund for Non-refundable Export Tax Loss on Mechanical & Electrical Product and High-tech Product

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in order to provide support to exporters adversely affected by the financial crisis. This program was administered by the Jiangmen Bureau of Foreign Economic & Trade Development in conjunction with the Finance Bureau of Jianghai District, Jiangmen City.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 91: International Market Fund for Export Companies

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in a document titled 'Measure JiangCaiWai [2010] No. 92' in order to provide support to companies that have export business. This program was administered by Local Finance Funds in Jianghai District, Jiangmen City.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 93: International Market Fund for Small and Medium-sized Export Companies

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in a document titled 'Measure CaiQi [2010] No. 87' in order to provide support for export companies identified as small and medium-sized enterprises. The funds are provided for developing international markets including overseas exhibitions, certification of enterprise management system, various product certifications, foreign patent applications, promotional activities in international markets, electronic business, foreign advertisement and trademark registration, international investigation, bids (negotiations) abroad, enterprise training, foreign technology and brand acquisition, etc. Benefits granted to an enterprise under this program shall not exceed 50% of the total expenditure paid by the enterprise. This program is administered jointly by the Ministry of Finance and Ministry of Commerce.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 94: Business Development Overseas Support Fund

During the POI, one of the cooperative exporters reported having received payments from the local government related to this fund. The exporter did not apply for these payments and, therefore, does not possess any information about the program. The granting authority is the Foshan Shunde Finance Bureau.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 95: Refund from Government for Participating in Trade Fair

During the POI, one of the cooperative exporters reported having received a refund for participating in the Canton Trade Fair. The funds are provided for booth modification fees. The granting authority is the Foshan Shunde Economic Promotion Bureau.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 97: Interim Measures of Fund Management of Allowance for Zhongshan Enterprises to Attend Domestic and Overseas Fair

One of the cooperative exporters reported having received an allowance to attend trade fairs during the subsidy POI. This program was issued by the Zhongshan Municipal People's Government office in Documents Zhongfuban [2009] No. 48. This program was established to promote the sustainable development of the economy, to encourage local enterprises to develop domestic and international markets, and to improve the implementation of market diversification strategies for enterprises. The program is administered by the Municipal Economic and Trade Bureau and Foreign Economic and Trade Bureau.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 98: Reimbursement of Foreign Affairs Services Expenses

During the POI, one of the cooperative exporters reported having received reimbursement for expenses incurred in 2004 and 2005. The funds are provided for privately owned businesses involved in export activities. The granting authority is the Foshan Shunde Treasury Payment Center.

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*a*) of SIMA, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

V. Preferential Income Tax Programs

Program 70: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period Not Less Than 10 Years

One of the cooperative exporters reported having received this benefit during the subsidy POI. This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investment. The granting authority responsible for this program is the State Administration of Taxation and is administered by local tax authorities.

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*b*) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 88: Tax Preference Available to Companies that Operate at a Small Profit

One of the cooperative exporters reported having received this benefit during the subsidy POI. This program was established in the Law of the People's Republic of China on Enterprise Income Tax (2007) and came into effect on January 1, 2008. This program was established in order to reduce the burden on enterprises making small profits and to maintain job opportunities. The granting authority responsible for this program is the Ministry of Finance and the State Administration of Taxation. It is administered by local tax authorities.

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*b*) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

VII. Reduction in Land Use Fees and Prices

Program 81: Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices

One of the cooperative exporters reported having received this benefit during the subsidy POI. This program was established according to the issue of a document titled '[2003] No.8 Preferential Supply of Land'. This program was established in order to offset costs for industrial companies in the Ninghai Economic Development Zone. The granting authority is the Ninghai government.

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*b*) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

VIII. Goods/Services Provided by Government at Less than Fair Market Value

Program 83: Raw Materials Provided by the Government at Less than Fair Market Value

This program relates to the acquisition cost of major raw materials from SOEs and subsequently used in the production of finished subject goods. When exporters or producers of subject goods acquire raw material inputs (in this case cold-rolled stainless steel sheet) at less than fair market value directly or indirectly from SOEs and those SOEs are considered to be possessing, exercising, or vested with governmental authority, a subsidy may be found to exist. This subsidy is equal to the difference between the fair market value of the goods and the price at which the goods were provided by the SOE.

For the purposes of this investigation, there are three key concepts to consider when determining whether this program is applicable. First, did the exporters or producers of subject goods to Canada acquire raw material inputs from SOEs? Second, are the SOEs that supplied these raw materials considered to be possessing, exercising, or vested with governmental authority? Third, what is the fair market value of the goods provided by SOEs?

Concept 1: Ownership Status of Suppliers/Producers of Material Inputs

In terms of the first concept, information submitted by the responding exporters contained purchases of input material (cold-rolled stainless steel sheet), the names of the suppliers/producers, and the ownership status of these parties, where known. Based on the information in the submissions, exporters have purchased from both SOEs and non-SOEs.

For purposes of the final determination, the CBSA determined the amount of subsidy for raw material inputs in instances where responding exporters identified they had purchased directly or indirectly from SOEs. The CBSA also determined the amount of subsidy for raw material inputs in instances where responding exporters were not able to clearly identify either their suppliers/producers or the ownership status of these parties.

Concept 2: Are SOEs Regarded as Public Bodies?

In terms of the second concept, the following analysis considers whether SOEs in the flat-rolled stainless steel sector could be regarded as "government" for the purpose of subsection 2(1) of SIMA. SOEs may be considered to constitute "government" if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

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

The CBSA requested that the GOC identify the suppliers/producers of cold-rolled stainless steel sheet it partially or wholly-owned and to describe the percentage of their ownership. The GOC was also requested to determine whether or not these suppliers/producers were under the authority of the State-owned Assets Supervision and Administration Commission of the State Council (SASAC). The GOC stated that it was unable to ascertain the ownership structure of suppliers/producers of cold-rolled stainless steel sheet and that it did not maintain a list of suppliers/producers that are under the authority of the SASAC. As such, the information requested by the CBSA was not provided.

The CBSA also requested information pertaining to SOEs and the GOC's role regarding these SOEs. The GOC replied in its submission:

- "The SOEs have their own internal governance structure independent of the GOC. The internal governing bodies perform their functions independently, and according to market conditions."[6]
- "No authority has been vested in SOEs in the cold-rolled stainless steel sheet sector under the relevant statute, law, regulation, direction, letter of incorporation or other legal instrument. An SOE shall be organized and operated the company law or other relevant enterprise law, just as non-SOE, except that the state-owned assets invested or share-hold by state are also governed by the law of state-owned assets in enterprise."[7] (sic)
- "According to Law of State-owned Assets in Enterprises: The State Council and the local people's governments shall, according to law, perform the capital contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises."[8]

[6] Subsidy Exhibit 107 (NC) – GOC Response D8(a)
[7] Subsidy Exhibit 107 (NC) – GOC Response D8(i)
[8] Subsidy Exhibit 107 (NC) – GOC Response D9

- "SOE does not perform any government functions. Under the Chinese law, general government functions differ legally and substantially from that of state-owned assets supervision. Please refer to Article 6 of the Law of State-owned Assets in Enterprise. Price regulation function vested with the NDRC and its local counterpart, instead of any SOEs. However, for those prices not under regulation, any enterprises in China, including SOEs, have right to bargain with their business counterparts or buyers at their commercial interests."[9]

At the initiation of the investigation, exporters were requested to forward a supplemental RFI to suppliers/producers of cold-rolled stainless steel sheet. The supplemental RFI contained similar questions to those found in the GOC subsidy RFI which requested information pertaining to ownership status of the suppliers/producers, their organizational hierarchy, performance and compensation, operations and control, and the role of the SASAC and the GOC. No responses were received from suppliers/producers identified as SOEs. Without information from the SOEs, the CBSA could not corroborate the explanation provided by the GOC. As such, the CBSA conducted an analysis based on the information in the GOC's submission and CBSA's own research.

This analysis considered information provided or discovered in the recent pup joints investigation conducted by the CBSA, which revealed that various industrial and economic policies and five-year plans are factors found to have influence in the Chinese steel industry *(e.g. The Development Policies for the Iron and Steel Industry – Order of the National Development and Reform Commission (No. 35), Blueprint for the Adjustment and Revitalization of the Steel Industry, and the 12th Five-Year Plan: Iron and Steel).* The major objectives of these policies and plans include:[10]

- The structural adjustment of the Chinese domestic steel industry;
- Industry consolidations through merger and acquisitions;
- Government supervision and management in the steel industry;
- Maintain the stability of the domestic market and improve the export environment;
- Enhance enterprise reorganization and improve the industrial concentration level;
- Spend more on technical transformation and promote technical progress;
- Optimize the layout of the steel industry and overall arrangements of its development;
- Maintain stable import of iron ore resources and rectify the market order;
- Develop domestic and overseas resources and guarantee the safety of the industry;
- Increased mergers and acquisitions to create larger, more efficient steel companies;
- GOC restrictions on steel capacity expansion;
- GOC directed relocation of iron and steel companies to coastal areas.

[9] Subsidy Exhibit 107 (NC) – GOC Response D10(f)
[10] Subsidy Exhibit 220 (NC) – Pup Joints Final Determination Statement of Reasons

As provided in Article 36 of the Law of State-Owned Assets of the Enterprises, state-invested enterprises[11] (SIEs) must comply with all national industrial policies.[12] On the basis of this information, these SOEs are effectively performing a public policy function through their pursuit of state plans and industrial and economic policies, thus supporting the indication that SOEs are in fact performing governmental functions.

A further analysis of the Law of State-Owned Assets reveals the following information:

- The GOC is responsible for appointing and removing the president, vice-presidents, person in charge of finance, other senior managers, chairman of the board of directors, vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and the supervisors of SOEs wholly-owned by the State.[13]

- The GOC is responsible for proposing the director and supervisor candidates to the general assembly of shareholders of an SIE, regardless of the size of the GOC's capital contribution to the entity, with the exception of employee representatives who are elected by the employees. In other words, the GOC, by contributing any amount of capital whatsoever to an entity, reserves to itself the right to select who is eligible to be a director/supervisor of that entity, although the candidates must still be approved by a majority of the shareholders.[14]

- The body performing the contributor's functions (i.e., the GOC) will assess, reward, or punish enterprise managers of SOEs wholly-owned by the State, and will decide on the standards of remuneration for them.[15]

- The GOC is directly responsible for establishing the criteria against which the performance of managers in an SIE is measured. In addition, the body performing the contributor's functions (i.e., the GOC) conducts assessments of individual managers according to these criteria, and determines the standards of remuneration for SIE managers.[16]

- The departments responsible for audit of the State Council and the local people's governments shall conduct audits of SIEs according to the provisions of the Audit Law of China.[17]

As can be seen from the above, the GOC is the only entity that may determine who is eligible to be a director or supervisor within SIEs in China, regardless of the extent of the GOC's ownership of the SIE. The GOC sets the criteria against which management of an SIE is evaluated,

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[11] State-invested Enterprise: An entity in which the GOC has an ownership stake, regardless of the size of that stake, but does not wholly-own the enterprise. These definitions are based upon those set out on Article 5, Law of State-Owned Assets of the Enterprises. Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 5

[12] Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 36

[13] Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 22

[14] Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 22

[15] Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 29

[16] Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 27

[17] Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 65

measures the performance of management against the criteria, and determines the standards of remuneration for management. SIEs must also submit to audits conducted directly by the GOC.

According to the Decree of the State Council of the People's Republic of China No. 378 - Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, Article 12[18] establishes that SASAC is directly a subordinate to the State Council. Article 13 establishes the main responsibilities of SASAC,[19] three of which are highlighted below:

- SASAC appoints and removes the top executives of the supervised enterprises, and evaluates their performances through legal procedures and either grants rewards or inflicts punishments based on their performances; establishes corporate executives' selection system in accordance with the requirements of the socialist market economy system and modern enterprise system, and improves incentives and restraints system for corporate management.

- In accordance with related regulations, SASAC dispatches supervisory panels to the supervised enterprises on behalf of the state council and takes charge of daily management of the supervisory panels.

- SASAC also drafts laws, administrative regulations of the management of the state-owned assets and draws up related rules; directs and supervises the management work of local state-owned assets according to law.

The CBSA views the ability to appoint and remove top executives of supervised enterprises as evidence that supports the indication that the GOC exercises meaningful control over the conduct of such entities. Furthermore, the power vested in SASAC to "take charge of daily management of the supervisory panels" and to "draft laws, administrative regulations" also indicate a significant level of control over SOEs. When the main functions and responsibilities of SASAC are examined more closely, evidence of the extent of the control of the GOC, albeit via SASAC, becomes apparent.

In light of the fact that the GOC did not provide information with respect to the ownership status of suppliers/producers and no information was received from SOEs with respect to the supplemental RFI, the CBSA performed an analysis based on the information available. The exercise of meaningful control by the GOC, examined in conjunction with the performance of government functions as discussed above, is sufficient to indicate that these SOEs possess, exercise or are vested with governmental authority. As such, the CBSA will consider SOEs in the flat-rolled steel sector to be included under the definition of "government" in subsection 2(1) of SIMA.

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[18] Subsidy Exhibit 220 (NC)

[19] Subsidy Exhibit 107 (NC) – GOC Response D9

Concept 3: Fair Market Value of Input Materials

The third concept relating to this program is the determination of the fair market value of the material inputs provided by the SOEs for the purposes of evaluating whether the purchase price from SOEs is below fair market value.

In past investigations involving China, the CBSA has determined that the Chinese steel industry is heavily dominated by SOEs. Of particular interest to this investigation is the re-investigation of certain steel plate (concluded on July 16, 2010) in which the CBSA found that domestic prices in the Chinese flat-rolled steel sector were not substantially the same as they would be if they were determined in a competitive market.[20] The Chinese flat-rolled steel sector includes the cold-rolled stainless steel sheet which is used in the production of stainless steel sinks. Accordingly, the CBSA has deemed that the domestic selling prices for cold-rolled stainless steel sheet in China are not appropriate for the purposes of determining the fair market value of these goods.

In the absence of appropriate domestic benchmark prices of cold-rolled stainless steel sheet in China and since none of the cooperative exporters reported acquiring cold-rolled stainless steel sheet from sources outside China, the CBSA determined that the monthly world composite 304 stainless steel prices reported by MEPS (International) LTD, a publisher of steel market prices around the world, are most appropriate for purposes of establishing the fair market value of cold-rolled stainless steel sheet in China. This composite price is a weighted average of the low transaction values for all grade 304 stainless steel products in the flat & long categories identified in three regions (European Union, Asia, and North America).[21]

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*b*) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS

The following 78 programs were also included in the current investigation. Questions concerning these programs were included in the RFI sent to the GOC and to all known exporters of the goods in China. None of the cooperative exporters reported using these programs during the subsidy POI. Without a complete response to the subsidy RFI from the GOC and all known exporters, the CBSA does not have sufficient information to determine that any of these programs do not constitute actionable subsidies. In other words, the CBSA does not have

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[20] Dumping Exhibit 102(Pro) – 4258-102 AD/1139

[21] Composite Stainless Steel Price & Index – Grade 304. Available at: www.meps.co.uk/composite%20stainless%20steel%20priceindex.html.

sufficient information to determine that any of the following programs should be removed from the investigation for purposes of the final determination.

I. Special Economic Zones (SEZ) and Other Designated Areas Incentives

Program 1:	Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)
Program 2:	Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
Program 3:	Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
Program 4:	Preferential Tax Policies in the Western Regions
Program 5:	Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
Program 6:	Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
Program 7:	Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas
Program 8:	Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas
Program 9:	Income Tax Refund where Profits Re-invested in SEZs and other Designated Areas
Program 10:	Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas
Program 11:	VAT Exemptions for the Central Region

II. Grants

Program 12:	The State Key Technology Renovation Projects
Program 13:	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
Program 14:	Repaying Foreign Currency Loan by Returned VAT
Program 15:	Government Export Subsidy and Product Innovation Subsidy
Program 16:	Export Assistance Grant
Program 18:	Innovative Experimental Enterprise Grant
Program 19:	Superstar Enterprise Grant
Program 20:	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
Program 21:	Export Brand Development Fund
Program 22:	Provincial Scientific Development Plan Fund
Program 23:	Technical Renovation Loan Interest Discount Fund
Program 24:	Venture Investment Fund of Hi-Tech Industry
Program 25:	National Innovation Fund for Technology Based Firms
Program 26:	Guangdong – Hong Kong Technology Cooperation Funding Scheme
Program 27:	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
Program 28:	Innovative Small and Medium-Sized Enterprise Grants

Program 29: Product Quality Grant
Program 30: 2009 Energy-saving Fund
Program 31: Energy-Saving Technique Special Fund
Program 32: Grants to Privately-Owned Export Enterprises
Program 34: Grants for International Certification
Program 35: Emission Reduction and Energy-saving Award
Program 36: Grant for Market Promotion and Trade Development
Program 37: Refund of Land Transfer Fee
Program 38: Grant – Assistance for Exhibition Booth Fees
Program 39: Grant – Patent Application Assistance
Program 40: Grant – State Service Industry Development Fund
Program 41: Grant – Changzhou Five Major Industries Development Special Fund
Program 42: Grant – Ecological Garden Enterprise Reward
Program 43: Grant – Municipal Construction Reward
Program 44: Grant – Cleaning-production Qualified Enterprise Reward
Program 45: Grant – Provisional Industry Promotion Special Fund
Program 46: Grant – Jiangsu Province Finance Supporting Fund
Program 48: Grant - Water Pollution Control Special Fund for Taihu Lake
Program 49: Grant – Provincial Foreign Economy and Trade Development Special Fund
Program 50: Grant – Subsidy from Water Saving Office
Program 51: Grant – Insurance Expense Compensation
Program 52: Grant – Industrial Science and Technology Breakthrough Special Fund
Program 53: Grant – Special Supporting Fund for Commercialization of Technological Innovation and Research Findings
Program 54: Grant – Changzhou City Key Supporting Industry Upgrading Special Fund
Program 56: Grant – Financial Subsidies from Wei Hai City Gao Cun Town Government
Program 57: Grant – Policy on Value-added Tax for Recyclable Resources
Program 58: Grant – Large Taxpayer Award
Program 59: Grant – Resources Conservation and Environment Protection Grant
Program 60: Grant – Wendeng Government (Shandong)
Program 61: Jiangdu City Industrial Economy Performance Award (Jiangsu)
Program 62: Changzhou Qishuyan District Environmental Protection Fund (Jiangsu)
Program 63: Changzhou Technology Plan (Jiangsu)
Program 64: Supportive Fund Provided by the Government of Xuyi County, Jiangsu
Program 65: Enterprise Innovation Award of Qishuyan District (Jiangsu)
Program 66: Environment Protection Award (Jiangsu)
Program 67: Enterprise Technology Centers

III. Equity Programs

Program 68: Debt-to-Equity Swaps
Program 69: Exemptions for SOEs from Distributing Dividends to the State

IV. Preferential Loan Programs

N/A

V. Preferential Income Tax Programs

Program 71: Preferential Tax Policies for Foreign Invested Export Enterprises
Program 72: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
Program 73: Preferential Tax Policies for the Research and Development of FIEs
Program 74: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment
Program 75: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose
Program 76: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
Program 77: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps
Program 78: Corporate Income Tax Reduction for New High-Technology Enterprises

VI. Relief from Duties and Taxes on Materials and Machinery

Program 79: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment
Program 80: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

VII. Reduction in Land Use Fees and Prices

Program 82: Deed Tax Exemptions for Land Transferred through Merger or Restructuring

VIII. Goods/Services Provided by Government at Less than Fair Market Value

Program 84: Utilities Provided by Government at Less than Fair Market Value
Program 85: Acquisition of Government Assets at Less than Fair Market Value

APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS

REPRESENTATIONS RELATED TO SUBSIDY

Representations from the Government of China

On January 11, 2012, counsel for the GOC submitted a representation addressing the completeness of its submission to the CBSA.[22] This representation was received subsequent to a letter of deficiency sent by the CBSA on December 19, 2011.[23] Refer to the *Statement of Reasons* issued for the preliminary determination for further details.

Counsel for the GOC submitted further representations regarding the subsidy investigation on Thursday, March 8, 2012.[24] The representations address the following issues:

Completeness of the GOC Submission

The GOC maintained its position that its response is complete based on the information that it currently has. The GOC also submitted that to reject the GOC's entire submission would be a denial of natural justice and a blatant disrespect and contempt of the GOC's efforts to fully cooperate with the CBSA in this investigation. The GOC further submitted that the CBSA does not have the right to reject the information it provided with regards to the program benefits received by the cooperating exporters.

Programs Not Identified by the GOC

With respect to additional programs identified by the CBSA during the preliminary phase of the investigation, the GOC submitted that it has no information regarding these programs. The GOC stated that some of these programs may have been identified by the CBSA in its initial subsidy RFI, but the program descriptions given by the CBSA were unclear and too broad, which made them impossible to identify. The GOC asserted that it is the responsibility of the CBSA to confirm that the subsidies received by the exporters are as reported by the GOC in its response to the RFI.

In addition, the GOC noted that it had reviewed the CBSA's research pertaining to these alleged subsidy programs but failed to find the factual and legal basis for investigating these alleged programs. As a result, it was unable to provide any information with respect to these alleged programs.

Request for Extension

The GOC disagreed with the CBSA that the reasons given for requesting their extension are to be considered part of "normal business activities". It argued that the CBSA has historically never

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22 Subsidy Exhibit 152 (NC)
23 Subsidy Exhibit 134 (NC)
24 Subsidy Exhibit 203 (NC)

explained what it considers to be "normal business activities," but uses the terminology indiscriminately in refusing to grant extensions requested by the GOC.

It also submitted that the reasons it had provided are not part of "normal business activities" since the GOC had to deal with an unprecedented number of investigations that were unforeseen and not planned for, all at the same time.

Representations from Franke Kindred Canada Limited and Novanni Stainless Inc.

Counsel for the complainants submitted a case brief on March 19, 2012, which addresses some of the issues raised by the GOC in its representations.[25] For the reasons provided below, the complainants requested that subsidy amounts for all exporters be determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA.

Counsel recalled that the deficiencies outlined in the preliminary determination SOR have not been resolved. Counsel also stated that the GOC's explanations for failing to provide a complete response are unjustified.

Counsel also noted that the GOC refused to release customs information to the CBSA under the grounds that disclosure of such information is prohibited. Counsel for the complainants also submitted that the GOC's position in this regard cannot be reconciled with the fact that it has disclosed this very type of information in previous cases. As such, the GOC's refusal to provide the requested information can be regarded as a gesture of non-cooperation.

Counsel further submitted that the GOC did not provide satisfactory information concerning its ownership of producers of stainless steel sinks or cold-rolled stainless steel sheet under the grounds that neither the GOC nor the SASAC maintain any comprehensive database of such companies. However, in response to question D.8(b)(i), the GOC had indicated that certain cold-rolled stainless steel sheet producers/suppliers may be SOEs. Furthermore, it asserts that the GOC's failure to maintain such databases is, in itself, a failure to fully co-operate with the CBSA in this investigation and with other investigating authorities in many other investigations.

In addition to the representations specific to the GOC, counsel disagreed with the response provided by an exporter with respect to the CBSA's supplemental RFI. The exporter stated that it had received subsidies for attending a trade show in the USA and therefore the subsidies should only apply to goods exported to the United States. Counsel for the complainants argued that the trade shows are attended by potential customers from the entire North American market. As such, the subsidies are applicable to Canadian exports.

Reply Submission from the GOC

On March 26, 2012, the GOC submitted a reply submission providing rebuttals to the arguments made by counsel to the complainants.[26]

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[25] Dumping Exhibit 224 (NC)
[26] Subsidy Exhibit 211(NC)

With regard to the release of customs information to the CBSA, the GOC submitted that each member state is a distinct customs territory with distinct and separate autonomy in the conduct of its business affairs. The GOC further submitted that given that the HS codes under which the subject goods are classified may contain non-subject goods, it would not be appropriate to disclose the exporters' information to the CBSA.

Regarding the complainants' claims that the GOC should maintain a database for companies in which it has an ownership interest, the GOC submitted that to consolidate and maintain a database of companies at the state, provincial and municipal levels in China would be an impossible task.

Further, the GOC submitted that the CBSA is obligated to verify and to use the GOC's information to confirm the information provided by the identified cooperating exporters. The GOC also claimed that information submitted with regard to the benefits received by the exporters known to the GOC is complete.

Reply Submissions from DongYuan and Yingao

On March 26, 2012, counsel representing Dongyuan and Yingao submitted reply submissions with respect to the subsidy investigations.[27]

Counsel indicated that there is no evidence in the record that the GOC withheld any information with respect to Dongyuan and Yingao. Information with respect to the ownership of Dongyuan and Yingao has been provided and verified and must be the basis of any subsidy margin attributed to the two exporters. Further, Dongyuan and Yingao disputed the suggestion that the failure on the part of the GOC (in the past) to maintain databases constituted failure to co-operate in the current investigation.

Counsel also noted that the CBSA's practice has been to accept verifiable company-specific subsidy evidence in establishing subsidy margins for co-operative and verified respondents.

CBSA Response

The GOC failed to provide a complete response to the CBSA's subsidy RFI. The information requested from the GOC would have enabled the CBSA to conduct a proper analysis for each of the alleged programs and determine amounts of subsidy in the manner prescribed by SIMA.

In respect of the representation from the GOC regarding the completeness of its subsidy response, the CBSA did notify the GOC, in a letter dated December 19, 2011, that their original response to the subsidy RFI was not sufficiently complete to be used for the investigation.[28] In that letter, the CBSA explained the most significant aspects of the submission that were found to be deficient, including the following:

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[27] Subsidy Exhibit 217(NC) and Subsidy Exhibit 219(NC)

[28] Subsidy Exhibit 134 (NC)

- Information with respect to the ownership status of cold-rolled stainless steel sheet suppliers/producers was not provided.
- The GOC limited its response to account for only seven "responding companies" instead of taking into account all 199 of the exporters identified by the CBSA.
- In many instances, the GOC did not answer the question posed by the CBSA and simply stated that none of the "responding companies" received benefits under the identified programs.
- In cases where "responding companies" received benefits under a program, the GOC failed to answer all of the CBSA's questions, and did not provide information concerning the number of industries and enterprises that received, applied for, or were denied benefits.
- Information with respect to subsidies conferred to responding exporters/producers was not provided.

Despite being informed of the above-noted deficiencies and given an opportunity to furnish this information, a complete response from the GOC was not received. The CBSA has nonetheless considered the information provided by the GOC in its subsidy response. Whenever information was not furnished by the GOC or found to be insufficient, the CBSA made determinations based on the information available. As a result, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. Moreover, in consideration of the level of cooperation received from the cooperative exporters, individual amounts of subsidy have been determined for those exporters where sufficient information has been furnished to enable the necessary calculations.

With respect to the additional subsidy programs identified during the course of the investigation, the CBSA requested further information from the cooperative exporters. The CBSA has provided descriptions of these programs based on the information submitted by the cooperative exporters. The CBSA maintains that the GOC is in the best position to confirm whether or not these programs are in operation and to provide detailed information on these programs.

Regarding the request for a deadline extension from the GOC, the CBSA maintains that its denial of the GOC's request in no way denied the GOC its right to meaningfully participate in the investigations. The CBSA notes that the GOC submitted its initial response on the due date and filed supplemental information subsequent to the deadline. The CBSA has endeavoured to take all of the information provided into consideration. In addition, the CBSA afforded the GOC the opportunity to provide information with respect to the deficiency letter after the RFI response deadline, provided there was sufficient time to properly analyze the information. This is consistent with the CBSA's handling of similar requests in other investigations involving the GOC.

With respect to subsidies received by an exporter for attending a trade show in the United States, the CBSA has considered the benefits received by the exporter in determining an amount of subsidy. The subsidy received is referenced in Program 97: Interim Measures of Fund Management of Allowance for Zhongshan Enterprises to Attend Domestic and Overseas Fair.

REPRESENTATIONS RELATED TO DUMPING

Representations from Franke Kindred Canada Limited and Novanni Stainless Inc.

In their case brief submitted on March 19, 2012, counsel for the complainants also submitted representations regarding the dumping investigation. These representations are summarized as follows:

- All costs of production should be accounted for when determining normal values under paragraph 19(*b*) of SIMA.
- Any sales made between associated persons should be subject to a reliability analysis, as envisaged by section 25 of SIMA.
- Dongyuan's domestic customers are not at the same trade level as its Canadian customers.
- Some of the exporters' domestic customers are in fact trading companies that sell for export.
- Dongyuan did not submit full cost information until verification and certain normal values should be determined in accordance with a ministerial specification.
- Yingao's costs are improperly allocated and the CBSA should reject the cost allocation as presented by Yingao.

Representations from Dongyuan and Yingao

Counsel for these exporters submitted case briefs to the CBSA on March 19, 2012. These case briefs are general in nature and provide a summary of each company's participation in the dumping and subsidy investigation. In addition, counsel for Dongyuan and Yingao has submitted that there is no basis for attributing third party or arbitrary costs to these companies, that there is nothing in the record which would dispute or challenge the evidence and submissions provided, nor is there anything in the record which would support using arbitrary, surrogate or so-called "market value" costs for inputs

Representations from Zoje Kitchen and Bath Co., Ltd. (Zoje Kitchen)

On March 6, 2012, counsel for Zoje Kitchen submitted a representation requesting the CBSA determine an individual margin of dumping and an amount for subsidy for Zoje Kitchen because the company exported the goods to Canada within the POI.[29]

Counsel for Zoje Kitchen noted that the company considers the purchase order date as the date of sale and that for anti-dumping practices found in other jurisdictions, the date of sale is also used as the basis of determining which sales to include within the POI. Counsel for this company submitted that the date of import shall not be used to determine whether relevant sales be included in the POI, because the exporter does not have knowledge of the exact date of importation, which is out of its control after the goods have been shipped.

[29] Dumping Exhibit 225 (NC)

Reply Submissions from BLANCO GmbH + Co. KG and BLANCO Canada Inc. ("Blanco")

On March 26, 2012, counsel representing Blanco submitted reply submissions with respect to case briefs filed by the complainants addressing costs of production and the proposed section 25 reliability test.[30]

Submissions Regarding Costs of Production

Regarding the cost of production, when normal values are determined in accordance with paragraph 19(*b*) of SIMA, counsel for Blanco stated that subparagraphs 19(*b*)(i), (ii) and (iii) refer to the costs and profits of the exporter/producer and not the purchaser/importer. In addition, counsel for Blanco argued that costs incurred by the exporter/producer in respect of domestic sales in China and not incurred by the manufacturer for export sales should be deducted from the normal value.

Submissions Regarding the Proposed Section 25 Reliability Test

Counsel for Blanco submitted that it is only once the export price has been determined under section 24 of SIMA that the question of unreliability under section 25 may be considered. Furthermore, counsel for Blanco submitted that it is only when the export price, as determined under section 24 of SIMA, is based on a transaction between associated persons that the potential issue of reliability under subparagraph 25(1)(*b*)(i) arises.

Reply Submissions from Yingao

On March 26, 2012, counsel for Yingao submitted reply submissions responding to the case brief filed by the complainants that addressed issues related to Yingao.

Domestic Customers

In response to counsel for the complainants' concern regarding Yingao's domestic customer base, counsel submitted that Yingao's domestic sales involve goods which are picked up at the factory by or delivered to these customers in China. Counsel further highlighted that this question was addressed at verification.

Accuracy and Allocation of Costs

In response to counsel for the complainants' concerns regarding the accuracy and allocation of Yingao's costs, counsel submitted that Yingao provided full details of their cost methodology, and that this data was verified by the CBSA. Counsel further noted that Yingao's financial statements have been audited and were reviewed by the CBSA at the time of verification.

[30] Dumping Exhibit 227(NC)

Counsel further stated that information on the record indicates that Yingao's costing methodology is consistent with Chinese generally accepted accounting principles and reflects the costs associated with the production and sales of the subject product. Additionally, counsel submitted that there is no basis for rejecting the cost information provided by Yingao and that the costs filed must be used in the normal value calculation.

In order to support its position, counsel for Yingao noted that Article 2.2.1.1 of the WTO Anti-Dumping Agreement provides the following:

> "costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration."

Reply Submissions from Dongyuan

On March 26, 2012, counsel for Dongyuan submitted reply submissions responding to the case brief filed by the complainants that addressed issues related to Dongyuan.

Trade Level of Domestic Customers

In response to counsel for the complainants' concern regarding the trade level of Dongyuan's domestic customers, counsel for Dongyuan highlighted that it has already explained to the CBSA that it did not perform different activities for customers who may be at different levels of trade. In addition, counsel noted that since there is no evidence on the record showing otherwise, the level of trade is not a factor affecting price comparison. Counsel also indicated that Dongyuan is not seeking a trade level adjustment. Dongyuan also explained that, for its purposes, the terms 'wholesalers' and 'distributors' have the same meaning.

Domestic Customers

In response to counsel for the complainants' concern regarding Dongyuan's domestic customers, counsel for Dongyuan stated that the complainants could not cite any evidence in the record illustrating that Dongyuan's domestic sales are not for domestic consumption, and further noted that the complainants' allegations regarding this issue are broad and unsupported.

Model-specific Monthly Costs

In response to counsel for the complainants' statement concerning costs, counsel for Dongyuan submitted that it has provided cost information and that it was verified by CBSA officers.

Submissions Regarding Reliability

With respect to counsel for the complainants' reference to section 25 of SIMA, counsel for Dongyuan submitted that this section of SIMA does not apply to Dongyuan's situation.

CBSA Response

The CBSA has used the information on the record to determine normal values, margins of dumping and amounts for subsidy and has done so in accordance with the provisions of SIMA.

The CBSA did not dispute the designation of the date of sale by Zoje Kitchen. The CBSA informed counsel that the POI with respect to the investigations covers all goods imported into Canada during the POI. The designation of the date of sale relates to the determination of normal values and export prices and does not relate to which sales to Canada will be used in determining margins of dumping and amounts of subsidy for purposes of these investigations. Since Zoje Kitchen's goods were not imported into Canada during the POI, a margin of dumping and amount of subsidy cannot be determined.

In regards to counsel for the complainants' submission that a reliability test under section 25 of SIMA should be conducted for sales between associated persons, the CBSA submits that section 25 refers to sales where there is no exporter's sale price or no price at which the importer in Canada has purchased or agreed to purchase the goods, or where the President is of the opinion that that the export price as determined under section 24 is unreliable for the following reasons:

- by reason that the sale of the goods for export to Canada was a sale between associated persons; or
- by reason of a compensatory arrangement between two parties that affects the price of the goods, the sale of the goods, the net return to the manufacturer, producer, vendor or exporter of the goods, or the net cost to the importer of the goods.

The CBSA submits that these conditions are not presently met, and therefore, a reliability analysis under section 25 is not required.

In response to the representations pertaining to the domestic sales used to determine amounts for profit, the CBSA submits that it has excluded any sales it considers to be ultimately destined for the export market. Additionally, when comparing the trade levels of domestic customers with Canadian importers, the CBSA not only gives consideration to the nominal trade level, but also considers the functions performed by the parties involved in the transaction.

Regarding Yingao's cost allocations, these costs have been verified and the CBSA is satisfied that all costs have been accounted for. With respect to Dongyuan's costs, the CBSA had sufficient information to determine normal values.

APPENDIX 7

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CHINESE GOVERNMENT SUBSIDIES

TO

THE STAINLESS STEEL INDUSTRY

April 2007

CHINESE GOVERNMENT SUBSIDIES TO
THE STAINLESS STEEL INDUSTRY
APRIL 2007

I. INTRODUCTION

The stainless steel industry in the People's Republic of China ("China") has undergone explosive growth in recent years, as the Government of China ("GOC") and foreign investors directed massive amounts of capital into the industry.[1] While the Chinese government continues to control through direct and indirect means a significant portion of China's stainless steel industry, joint ventures with foreign partners have become an important part of the industry. As set forth below, the Chinese government has implemented various policies at all levels of government to support the stainless steel industry and its foreign joint venture partners.

Specific information identifying the beneficiaries of subsidies granted by the Chinese government is unavailable due to a lack of publicly available information in China. This report, therefore, makes certain assumptions regarding the availability and use of subsidies to account for the missing public information. For instance, the report assumes that subsidies available to the Chinese steel industry generally are also available to the stainless steel industry in particular.

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[1] Government of China refers to all levels of government, including federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial levels. This definition is consistent with the Canadian government's approach in the context of Canadian CVD cases against imports from China. See, e.g., Statement of Reasons Concerning the Making of a Final Determination With Respect to the Dumping of Certain Carbon Steel and Stainless Steel Fasteners Originating in or Exported From the People's Republic of China and Chinese Taipei and the Making of a Final Determination With Respect to the Subsidizing of Certain Carbon Steel and Stainless Steel Fasteners Originating in or Exported From the People's Republic of China and Chinese Taipei, Nos. 4214-12, 4218-121, AD/1358, CVD/118, at ¶ 107 (Nov. 3, 2006) (hereinafter "Canada Statement, Nos. 4214-12, 4218-121, AD/1358, CVD/118 (Nov. 3, 2006)").

II. STRUCTURE OF THE CHINESE STAINLESS STEEL INDUSTRY

Last year, China became the world's largest stainless steel producer when its output exceeded five millions tons for the first time.[2] The 2006 stainless steel output figure represents an increase of more than 60 percent (or three million tons) from production levels in 2005. Id. Stainless steel capacity in China has also been climbing rapidly, with eight million tons of capacity built in 2005 and 2006 alone.[3] By the end of 2006, China had the ability to produce more than 12 million tons of stainless steel during a given period of time.[4]

Although China's consumption of stainless is growing at a rapid rate (approximately 15 percent per year), international trade data trends indicate that China's dependence on imports of stainless steel will end soon, as the country is likely to face an overcapacity situation in coming years. In January through August 2006, for instance, flat rolled stainless exports from China increased by 60 percent to 252,000 tons, while imports fell by 30 percent to 1.4 million tons. Mr. Chen Chuanping, Chairman of the Taiyuan Steel Group, stated recently that the production capacity of stainless steel in China should be controlled by restricting new plant building projects. Mr. Chen believes that, if the growth in China's stainless steel capacity is not controlled, the resulting overcapacity will cause strong side effects in the global marketplace within the next two years.[5]

The Chinese Government has done little to curb the explosive growth in its stainless steel industry. Indeed, as discussed below, China's National Development and Reform Commission

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[2] "World's Largest SS Producer," Stainless Steel World (Jan. 22, 2007) available at http:// http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12495.

[3] "SS output to rise in China," Stainless Steel World (Nov. 30, 2006) available at http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12299.

[4] "World's Largest SS Producer," Stainless Steel World (Jan. 22, 2007) available at http:// http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12495.

[5] "China to face excess SS," Stainless Steel World (Aug. 16, 2006) available at http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=11722.

approved numerous, significant new projects in 2005 and 2006, with no less than 20 new plants to commence production in 2007.[6] These new plants are certain to further swell China's export volume, which increase by 137 percent in 2006 to 852,000 tons.[7] China's growing stainless steel exports are, moreover, likely to adversely impact the U.S. market, where China became the largest foreign supplier of stainless steel in 2006.[8]

The Chinese stainless steel industry is largely state-owned. The Government of China owns a majority stake in numerous Chinese stainless steel producers, including two of the country's largest stainless steel producers, Shanghai Baosteel Group Corporation ("Baosteel Group") (85.41 percent) and Tangshan Iron and Steel (61.31 percent). These government-owned stainless steel producers have implemented ambitious expansion plans. For instance, Baosteel Group operates various subsidiaries involved in the production of stainless steel products. The primary stainless steel producer in the Group, Baosteel Group Shanghai No.1 Iron & Steel Co., Ltd., significantly increased its stainless steel production capacity in recent years by investing 11.78 billion Yuan (e.g., added stainless steel meltshops in 2003 and 2005 and downstream slab caster in 2005).[9] Similarly, Tangshan Stainless, a subsidiary of Tangshan Iron and Steel, plans to begin stainless production by the end of 2007 when it commissions a 600,000 tons per year hot rolling mill project.[10] "According to officials, a 300,000 tons per year cold rolling project is also scheduled to be launched by the end of 2007. The cold rolling project is owned by Hongwen

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[6] "World's Largest SS Producer," Stainless Steel World (Jan. 22, 2007) available at http:// http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12495.

[7] "China's SS exports up 137%," Stainless Steel World (Feb. 8, 2007) available at http:// http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12596.

[8] "China Creates SS Tension," Stainless Steel World (Dec. 8 2006) available at http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12344.

[9] See http://www.baosteel.com/group_e/e12steel_n/index.htm

[10] "Tangshan Targets HR Increase," Stainless Steel World (Dec. 6, 2006) available at http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12328.

Group, a private company based in Tangshan city, but was constructed by Tangshan Stainless as an auxiliary project for its hot rolling mill." Id.

Additionally, while the Government of China controls a substantial part of China's stainless steel industry, numerous projects have involved significant private and foreign participation. The Chinese government has used subsidies to attract foreign investment, which brings to China capital and modern production technologies. Examples of recent private or foreign projects in the Chinese stainless steel industry include:

- Zhangjiangang Posco Stainless Steel joint venture between Korean stainless flat-rolled producer, Posco (82.5 percent equity interest) and Jiangsu Shangang, as Chinese stainless producer, in Jiangsu province. In August 2006, the joint venture commissioned an integrated stainless steel mill possessing a hot rolled coil plant, with a 800,000 ton per year capacity and 1.4 million ton capacity electric furnace.[11]
- Terra Nostra Resources Corp. opened a 180,000 ton per year capacity stainless steel casting mill in Zibo City, Shandong Province. The facilities include three electric arc furnaces, two AOD furnaces and casting line, which presently produce 100 metric tons of stainless steel billet per day. Construction also remains on schedule for rolling mill production lines, including a 200,000 ton per year capacity strip line.[12]
- Japanese producers Nisshin Steel Corp. (30 percent equity interest), Hanwa Company Ltd. (20 percent equity interest) and Mitsui & Company (20 percent equity interest) and domestic Chinese companies (30 percent equity interest) joined to set up a new stainless steel cold rolled coil center in Shanghai, China.[13]

III. GOVERNMENT OF CHINA SUPPORT OF THE CHINESE STAINLESS STEEL INDUSTRY

The Chinese steel industry, including the stainless steel industry, benefits from substantial direct aid from the Government of China. Indeed, the Chinese government created the infrastructure for much of the industry and continues to provide substantial support directly

[11] "Posco Open SS Mill in China," Stainless Steel World (Aug. 2, 2006) available at http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=11657.
[12] "SS Unit Successful," Stainless Steel World (Mar. 9, 2006) available at http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=4116.
[13] "SS center in Shanghai," Stainless Steel World (Oct. 16, 2006) available at http://www.stainless-steel-world.com/news/newsdetail.aspx?newsID=12051.

to it. The subsidies are provided pursuant to general industrial policies that promote the production of exports and encourage favored industries, such as the stainless steel industry, as well as more specific subsidy programs. The subsidies, moreover, are provided to Chinese stainless steel producers in various forms of government assistance, such as grants and other direct payments to, tax incentives, loans provided on preferential terms, forgiven loans, noncommercial exchanges of unpaid debt for equity shares, the government provision of raw materials and energy at preferential prices, and an undervalued RMB.

a. <u>China's Steel Policy</u>

In July 2005, the National Development and Reform Commission ("NDRC") issued China's new Steel and Iron Industry Development Policy ("Steel Policy"), which outlines the government's comprehensive policy for the steel industry. As a whole, the policy provides for the government's management of China's steel industry, including its stainless steel industry, through resource and equipment utilization, regional concentration of output, quality improvements, technological innovation, investment management, and consolidation.

The Steel Policy also mandates direct government subsidization of the Chinese steel and stainless steel industries. For example, Article 16 specifically provides for government support in the form of "tax refunds, discounted interest rates, funds for research and other policy support for major iron and steel projects utilizing newly developed domestic equipment."[14] The policy also calls for indirect support by, among other things, restricting foreign investment, discriminating against foreign equipment and technology, and by providing various export credits. In short, China's Steel Policy is a primary example of the government's attempt to

[14] <u>See</u> <u>Steel and Iron Industry Development Policy, Order No. 25 of the National Reform and Development Commission, July 2005</u>, ("<u>Steel Policy</u>") at art. 17.

manipulate the steel market and dictate industry outcomes by involving itself in decisions that should be made by the market.

b. The Five-Year Plans

China's industrial development, including that of the stainless steel industry, is also directed and managed by the central government through its Five-Year Plans. Issued by the Central Committee of the Communist Party of China, the Five-Year Plans establish the broad parameters defining which industries, enterprises, and products should be targeted for preferential government support. According to the government, Five-Year Plans aim to "arrange national key construction projects, manage the distribution of productive forces and individual sector's contributions to the national economy, map the direction of future development, and set targets."[15] The 10th Five Year Plan for National Economic and Social Development, covering the period 2001-2005, calls for "energetically optimizing and improving [the] industrial sector" by, among other things, enhancing traditional industries with new technologies and intensifying construction of transportation, energy and other infrastructure facilities.[16]

According to the plan, these measures are "most important in the energy [and] metallurgy" industries. Id. The plan further calls for the "establishment of a number of large companies and enterprise groups through stock listing, merging, association and reorganization." Id. It also provides for the continued and pervasive role of the government in the economy, stating that the "state must hold a controlling stake in strategic enterprises that concern the national economy" and must also "uphold the dominance of the public sector of the economy [and] let the state-owned sector play the leading role." Id. China's new 11th Five Year Plan,

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[15] See What is the Five Year Plan, available at http://www.china.org.cn/english/MATERIAL/157595.htm.
[16] See The Tenth Five Year Plan for National Economic and Social Development-People's Republic of China, available at http://www.logos-net.net/ilo/195_base/en/init/chn_1.htm.

covering the period 2006-2010, offers more of the same and is designed to "optimize and upgrade industrial structures."[17]

c. Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State

The central government's National Planning Commission periodically issues a "Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State." This planning document identifies key industries and products which are favored by the central government and therefore eligible for preferential treatment. These favored industries include "stainless steel smelting" and "hot and cold rolling of stainless steel plates."[18]

As a result, stainless steel producers are eligible for various tax exemptions and reductions, including a 50 percent income tax reduction for companies that derive more than 70 percent of their revenues from manufacturing a product listed in the Catalogue. In addition, the Catalogue gives local authorities the discretion to issue policies that help promote the development of the stainless steel industry and its key products.

d. Catalogue for the Guidance of Foreign Investment Industries

The government also maintains a "Catalogue for the Guidance of Foreign Investment Industries" which is issued jointly by the NDRC and the Ministry of Commerce ("MOFCOM"). The catalogue distinguishes between encouraged and discouraged industries, with discouraged industries further broken down into those where foreign investment is restricted and those where foreign investment is prohibited. Industries that are discouraged are generally those that are not

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[17] See Key Points of the 11th Five-Year Guidelines, available at http://www.china.org.cn/english/20061h/160403.htm; see also Changes in Five-Year Plans' Economic Focus, available at http://www.china.org.cn/english/2005/Nov/148163.htm.

[18] See, e.g., Foreign Affairs Information Portal, Current Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State (Provisional) (Approved by the State Council on Dec. 31, 1997), http://www.bjfao.gov.cn/english/law/003C/144.html.

in line with the central government's national economic development goals. Encouraged industries include the "ferrous metallurgical industry" as well as products, such as "stainless steel smelting" and "hot and cold rolling of stainless steel plates."[19] Investors in encouraged industries are eligible for certain government benefits, including tax reductions and duty waivers.[20]

e. Grants Provided for Industry Restructuring, Export Performance, and Employing Common Workers

The Government of China continues to provide a number of direct government grants to the certain Chinese producers. For instance, the Chinese government announced in 2000 that it would spend $6 billion over several years to upgrade and transform its steel industry.[21] The actual amount spent is believed to be much greater.

Additionally, the Government of China confers significant grants upon state-owned enterprises operating at a loss.[22] In reports to the WTO, the Chinese government has identified the following industries as benefiting from these subsidies: metallurgic, ferrous-metal, machinery, coal, oil, chemical, textile, tobacco, and others.[23] Although China promised to eliminate these subsidies in 2000, pursuant to Annex 5B of the Protocol of Accession to the

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[19] See Catalogue for the Guidance of Foreign Investment Industries, Jan. 7, 2003, http://www.chinataiwan.org/web/webportal/W5029562/A5120231.html.

[20] See Revised Catalogue for the Guidance of Foreign Investment Industries, Jan. 2005, http://www.tdctrade.com/alert/cba-e0501a-5.htm.

[21] See U.S. Department. of Commerce, Report to the President, Global Steel Trade: Structural Problems and Future Solutions at 146 (2000). At the time of the announcement, the Chinese Ministry of Commerce stated that the central government – in administering key investment projects – would likely direct local and provincial governments to give the steel industry priority with respect to land use, raw materials, transport, equipment, and water and power supplies. Id.

[22] See World Trade Organization, Transitional Review Mechanism Pursuant to Section 18 of the Protocol of the Accession of the People's Republic of China, No. G/SCM/Q2/CHN/8 (Oct. 6, 2004) (hereinafter " WTO No. G/SCM/Q2/CHN/8 (Oct. 6, 2004)").

[23] Id.

WTO, it has yet to follow through on its commitment.[24] During China's 2002 transitional review, the Chinese representative informed the WTO that these subsidies had been eliminated in 2001. However, subsequent Chinese press reports indicate that the government was working to eliminate these subsidies by 2005 – with still no sign that these subsidies have ceased.

Lastly, the Chinese Government provides grants to promote the production of exports and to support employment. In a countervailing duty case brought against Chinese imports of Chinese carbon and stainless steel fasteners in 2004, Canadian authorities examined grants provided to producers by the Government of China to assist in expanding export sales and to provide employment to common workers. The Canadian government determined that the export-related grants constituted export subsidies contingent upon export performance because the benefits recipient industry was required to satisfy export criteria.[25]

f. <u>Equity and Debt-to-Equity Investments Made on Noncommercial Terms</u>

As part of its role in directing the consolidation and restructuring of the steel and stainless steel industries – as set out in China's <u>Steel Policy</u> – the Chinese government has encouraged and even induced various mergers and acquisitions within the steel industry through cash grants and grants of ownership interest. Debt-to-equity swaps are another tool utilized by the Chinese government to prop up state-owned enterprises through direct government infusions of cash. This tool serves essentially as a grant-giving operation. One of China's largest stainless steel producers, Shanghai Baosteel, benefited from this process, as non-performing loans to the company were transferred from state-owned banks to state-owned bank asset management companies ("BAMCs"). The BAMCs then exchanged the debt for shares in the companies. The

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[24] <u>Id.</u>
[25] <u>See</u> Canada Statement, Nos. 4243-38, 4218-17, AD/1308, CVD/103 (Dec. 24, 2004). While this case involved stainless steel fasteners, the subsidy programs found by the Government of Canada and cited in this paper are indicative of the types of subsidies granted to manufacturers of other stainless steel products.

OECD reported that these transactions involved "substantial reductions in debt loads in return for restructuring arrangements whose details have not been fully revealed."[26]

Importantly, recent press reports indicate that the government continues to provide the steel industry assistance in the form of cash grants and debt-to-equity swaps. The Asia Times Online reports that China's iron and steel companies have benefited in the amount of 11.19 billion yuan from debt-to-equity swaps as part of the government's plan to restructure and consolidate the steel industry in the years leading up to 2005.[27]

g. Debt Forgiveness and Inaction Regarding Non-Performing Loans by State-Owned Banks

Another form of direct government assistance to the steel industry is the forgiveness of or inaction regarding non-performing loans by China's state-owned banks. This provides a direct subsidy to the recipients in the amount of the debt forgiven. WTO members have raised concerns regarding China's "automatic roll-over of unpaid principal and interest, forgiven and non-performing loans, and the selective use of below market interest rates."[28] These forms of assistance were cited as direct financial contributions provided by China's state-owned banks to Chinese industry. The Government of China continues to channel financing to preferred industries based on policy considerations instead of market-based factors.

The result is a high level of non-performing loans and repeated bailouts of China's state-owned banks. Loans are generally classified as non-performing when the borrower fails to pay interest and principal according to the original terms of the loan.[29] Standard & Poor's estimates that 40 percent of China's state-owned banks' loans – or roughly $800 billion – are non-

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[26] Organization for Economic Cooperation and Development, Reforming China's Enterprises, at 78 (2000).
[27] China's Iron/Steel Industry to See M&A Activity, Asia Times Online, Aug. 24, 2005.
[28] WTO No. G/SCM/Q2/CHN/8, at 3 (Oct. 6, 2004).
[29] See Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government, June 1, 2005, available at http://knowledge.wharton.upenn.edu/index.cfm?fa=printArticle&ID=1202 (hereinafter "Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government").

performing.[30] Other estimates indicate that "borrowers may default on as much as half of [the] loans issued by state banks."[31] The high level of non-performing loans is evidence that state-owned banks continue to loan to enterprises, including steel companies, that are uncreditworthy and that would not meet normal market-based credit terms. The staggering level of non-performing loans has left the state-owned banks virtually insolvent.

As a result, the Chinese Government has been forced to repeatedly inject cash into these banks; in 2003, the government recapitalized the Bank of China and the China Construction Bank with an injection of $45 billion of reserves.[32] To date, the central government is estimated to have spent more than $250 billion since 1998 to bail out the four primary state-owned banks. Standard & Poor's estimates that these banks will require an additional $190 billion in the next several years just to stay afloat.[33] The stainless steel industry is not the only beneficiary of China's lax credit policies. As a favored industry, however, stainless steel producers were likely beneficiaries of massive loans that financed recently-added capacity in China. Without access to the records of the state-owned banks, asset management companies, and other lenders, it is impossible to know the full extent to which the Chinese stainless steel industry has benefited from the Chinese government's willingness to tolerate non-performing loans. Given the industry's growth, however, it is reasonable to conclude that the level of borrowing and benefit to the industry is substantial.

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[30] Id. Statistics released by China's Banking Regulatory Commission indicate that in the first half of 2004, China's major state-owned banks held more than $200 billion in non-performing loans – an undoubtedly conservative estimate given the unreliability of the Commission figures and because the figure likely does not include the billions of dollars of non-performing loans the state-owned banks have sold to state-owned asset management companies. See China Gov't Warns of Possible Rebound in Non-Peforming Loans, Asia Pulse, Sept. 20, 2004. For example, in June 2004, the Bank of China and the China Construction Bank sold nearly 280 billion yuan ($33.7 billion) in non-performing loans to a state-owned asset management company.

[31] Craig Simons, The People's Bank, Newsweek, Dec. 6, 2004, at 37.

[32] See Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government.

[33] Brian Bremmer, The Great Bank Overhaul: Can a Chinese Bank Be A Model for Heroic Reform?, Business Week, Aug. 22, 2005

h. **Preferential Loans and Directed Credit from State-Owned Banks**

China's banking system is dominated by the four state-owned banks – the Industrial and Commercial Bank of China, the Bank of China, the China Construction Bank, and the Agricultural Bank of China – which account for over 60 percent of all loans.[34] Traditionally, these banks have made loans based on political directives from the central or provincial governments, rather than creditworthiness or other market-based factors.

These "policy loans" generally have gone to state-owned enterprises and to industries favored by the government, which includes the stainless steel industry.[35] Currently, state-owned enterprises account for 25 percent of China's GDP, but receive over 65 percent of loans from state-owned banks.[36] Moreover, the government has channeled its finances to preferred industries at extremely low, non-market interest rates.[37] These preferential loans, granted on non-commercial terms to inefficient state-owned companies, have subsidized the steel industry and have given the industry an unfair advantage on the market.[38]

Today, both private and state-owned Chinese stainless steel companies continue to have access to subsidized financing from state-owned banks that have a strong incentive to lend to preferred industries such as steel. Indeed, China's Steel Policy specifically provides for export

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[34] Luo Ping, Challenges for China's Banking Sector and Policy Responses (Nov. 14-16, 2003).
[35] See Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government. A recent IMF report concludes that "banks remain exposed to several sectors that are likely over invested, such as steel, cement, aluminum, and construction and, are therefore vulnerable to an economic slowdown and/or consolidation in these sectors." Richard Podpiera, Progress in China's Banking Sector Reform: Has Bank Behavior Changed?, No. WP/06/71, at 11 (Mar. 1, 2006).
[36] See Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government.
[37] According to Morgan Stanley, "prices on a variety of financial instruments" – including interest rates, bank credit lines and bond prices – "are tightly controlled by leadership decisions made at the highest levels of the Chinese government." See Stephen S. Roach, Inside the China Debate, at 2 (Morgan Stanley 2006).
[38] These state-owned banks are, in essence, acting as the government when they provide loans. Indeed, according to the Working Party Report on China's accession to the WTO, "when state-owned enterprises, including banks, provide financial contribution they are doing so as government actors." Thus, to the extent that the loans are being provided on preferential or below market rates, they constitute a subsidy. See WTO No. G/SCM/118 (Nov. 9, 2005) at 12.

credits for steel companies. Article 27 of the policy states: The state encourages and will provide export credit and other support for enterprises engaged in the production of steel and related production equipment to trade or transfer technology by exporting superior domestic technologies and metallurgical equipment sets. Moreover, a WTO report issued in November 2005, summarizing the findings of member countries with respect to China's obligations under its accession agreement, identifies state support to various industries through the banking system, mainly "in the form of policy loans, the automatic roll-over of unpaid principle and interest, forgiven and non-performing loans and the selective use of below-market interest rates." Id.

Member countries concluded that China continues to provide "preferential bank financing to producers of agricultural and industrial goods, despite a clear commitment by China four years ago to eliminate all prohibited subsidies upon its accession to the WTO." Id. at 3. Since 1998, these banks collectively have reportedly benefited from repeated government capital injections and nonperforming loan purchases in excess of $250 billion.[39] The U.S. delegation further stated that:

> [S]tate-owned banks continue to make policy-driven loans that are not commercially justified, and when those loans fail, the loans are written-off and passed to the asset management companies to be dealt with. The recent inauguration of Huida Asset Management Ltd., set up to specifically deal with the non-performing loans of the state-owned People's Bank of China is one such example.

Id. In its 2005 report to the U.S. Congress, the U.S.-China Economic and Security Review Commission determined low and no-cost financing to be "one of the most pervasive forms of subsidies in the Chinese economy."[40] It stated: This system of 'policy lending' whereby capital is allocated for political or strategic reasons using subsidized interest rates and other

[39] WTO No. G/SCM/Q2/CHN/14, at 3 (Sept. 29, 2005).
[40] 2005 Report to Congress of the U.S.-China Economic and Security Review Commission, at 39.

noncommercial terms arguably amounts to a massive government subsidy for Chinese firms that is used both to bolster their operations and to fund acquisitions. Id.

Finally, in the recent stainless steel fasteners case, the Canadian government found actionable subsidies in the form of preferential loans and loan guarantees by the Government of China. Specifically, the Canadian authorities found the existence of preferential interest rates and financing terms provided, either directly by the Government of China or indirectly through financial institutions, to companies satisfying certain export contingent criteria. They also found that loans provided to certain manufacturers, including stainless steel companies, satisfying export-contingent or other criteria are being guaranteed by the Government of China or other state-run financial institutions.[41]

i. Subsidies to Firms in Special Economic Areas (SEA)

The Chinese Government provides various financial incentives to manufacturers operating in specified Special Economic Areas ("SEA"), such as Special Economic Zones ("SEZs"), High Technology Industrial Development Zones, Export Processing Zones, free ports, bonded zones, and the like. These SEAs promote investment with unique tax packages and other incentives, many of which benefit the stainless steel industry. The incentives generally include significant reductions or exemptions in national and local income taxes, land use fees, import and export duties, and priority treatment in obtaining basic infrastructure services.[42] The government has also created special incentives for projects involving export-oriented investments and for certain industries, including stainless steel. Id.

[41] Canada Statement, Nos. 4243-38, 4218-17, AD/1308, CVD/103, at 40-41 (Dec. 24, 2004).

[42] See U.S. & Foreign Commercial Service and U.S. Department of State, Doing Business in China: A Country Commercial Guide for U.S. Companies, ch. 6, Investment Climate (2005).

Indeed, Baosteel Group Shanghai Pudong Iron & Steel Co., Ltd., which produces stainless steel, is likely to benefit from subsidies provided pursuant to the SEZ of the Pudong New Area of Shanghai program given its location.[43] Under this program, non-wholly foreign owned FIEs established in SEZs, FEs (wholly foreign owned FIEs) established in SEZs, joint-venture Chinese firms, and single-investor Chinese firms established in the SEZ of the Pudong New Area of Shanghai pay income tax at a reduced rate of 15 percent.[44] The eligibility criteria for this program relating to DIEs located in the Pudong New Area of Shanghai can be found in the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*, which specifically identifies Chinese joint venture and single-investor Chinese firms established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15 percent.

Another example of SEA subsidies is the Jiangsu Yangtze International Metallurgical Industrial Park in Zhangjiagang City, an industrial park composed primarily of steel companies. It advertises the following tax incentives for foreign-funded manufacturing companies: a corporate income tax exemption in the first two profit-making years and a 50 percent reduction in the third-to-fifth profit-making year; local income tax exemptions; a VAT exemption for exported products; exemption of VAT and customs duties on equipment used in the manufacturing process; and a full refund of income taxes paid on profit which is reinvested in export-oriented enterprises.[45]

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[43] See http://www.baosteel.com/group_e/e12steel_n/index.htm.

[44] See Statement of Reasons Concerning the Making of a Final Determination With Respect to the Dumping of Certain Laminate Flooring Originating in or Exported From the People's Republic of China and France and the Making of a Final Determination With Respect to the Subsidizing of Laminate Flooring Originating in or Exported From the People's Republic of China, Nos. 4214-4, 4218-19 at Appendix 3 (Jun. 1, 2005) (hereinafter "Canada Statement, Nos. 4214-4, 4218-19 (Jun. 1, 2005)").

[45] See Investment Guide, Jiangsu Yangtze International Metallurgical Industrial Park.

Additionally, China's subsidies notification identifies preferential tax policies for enterprises recognized as high or new technology enterprises established in the high or new technology industrial development zones. Enterprises located in such areas pay a 15 percent income tax rate and are exempt from income tax for their first two years.[46]

The China Association of Development Zones cites additional tax incentives, including the following:

- Loss compensation schemes whereby any losses experienced by companies in development zones can be offset through reductions in income taxes for a period of 5 years after the loss is incurred. See National Development Zones.
- Regional tax incentives whereby companies in specified regions, including the "Middle Western Areas," are eligible for a 15 percent reduction in income tax after the original exemption-reduction period is over. Id.
- Export-oriented tax incentives whereby taxes are reduced by as much as 50 percent for export-oriented enterprises which export 70 percent or more of their total annual output. Id.

Finally, the Canadian government has identified Special Economic Area incentives as countervailable subsidies. It found that certain incentives were "[a]vailable to [steel] manufacturers operating in regions such as economic and technical development zones, export processing zones, bonded zones and high-technology industrial development zones."[47] It identified the following benefits, either granted outright or contingent on export performance: special land use and investment exemptions, and preferential costs of services and infrastructure provided by government agencies or state-owned enterprises. Id. For instance, the Canadian government found that certain companies located in Special Economic Areas pay reduced long-term land use fees for land on which factories are located. Id.

[46] China Subsidies Notification at 10.
[47] Canada Statement, Nos. 4243-38, 4218-17, AD/1308, CVD/103, at 40-41 (Dec. 24, 2004).

j. The Northeast Revitalization Program

The Government of China has undertaken an industrial revitalization program which provides "potentially unfair advantages to businesses locating to or operating in Northeast China."[48] Starting in 2003, China's central government has carried out a plan to resuscitate the old industrial base in the three northeastern provinces of Heilongjiang, Jilin, and Liaoning, aiming to build the region into a world-class industrial base.[49] Together, these provinces account for about 10 percent of China's steel production.

Under this program, China is executing a "strategic restructuring and technical transformation of key enterprises in the areas of oil, petrochemical, iron and steel, automotive, shipbuilding and aircraft products manufacturing sectors in Northeast China in a bid to establish production bases of advantage industries."[50] In support of the Northeast Revitalization Program, the central government has offered preferential policies and financial support to industry, including tax incentives and low-interest rate financing.[51] Indeed, in a November 2005 report WTO Member countries concluded that China's state-owned banks continue to extend "subsidized financing for large-scale investment projects in China which were designed to increase the competitiveness of state-owned enterprises, particularly in the Northeast, in industries such as oil and gas, petrochemicals, iron and steel, and ship-building."[52] Furthermore, the WTO cites a report on the MOFCOM website claiming that the Dalian Branch of the Export-Import Bank would provide RMB 5 billion in export credits to companies in northeast China to

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[48] WTO No. G/SCM/Q2/CHN/14, at 2 (Sept. 29, 2005).
[49] China's Old Industrial Base Eyes Bright Future With Ambitious Plan, People's Daily Online, http://english.peopledaily.com.cn/200401/09/print20040109_132185.html
[50] WTO No. G/SCM/Q2/CHN/14, at 2 (Sept. 29, 2005).
[51] See China's Old Industrial Base Eyes Bright Future With Ambitious Plan.
[52] See WTO No. G/SCM/118 (Nov. 9, 2005) at 12.

enter global markets. According to the report, MOFCOM states that, since November 2003, "low-cost credit provided by the bank has saved the enterprises [RMB] 150 million interest." Id.

k. Preferential Tax Programs

The central, provincial, and local Chinese governments provide a variety of tax exemptions, reductions, and credits which directly benefit the steel industry. As discussed above, China's general industrial policies mandate tax incentives for specified industries, including stainless steel. Article 16 of China's Steel Policy, for instance, specifically provides for government support in the form of "tax refunds … and other policy support for major iron and steel projects."[53] In addition to the general policies, the Government of China confers tax subsidies under the following programs.

i. Tax Benefits to Foreign Invested Enterprises ("FIE")

The Government of China provides various tax subsidies to foreign invested enterprises ("FIE") in China. These subsidies include:

- income tax exemption and income tax reductions pursuant to Decree No. 85
- reduced corporate tax rate for foreign invested enterprises
- income tax refund for FIEs who reinvest in Chinese businesses
- exemption of the business tax on technological transfers for FIEs
- VAT rebate on the purchases of domestic equipment by FIEs
- income tax exemption or reduction for dividends, interests, rentals, franchising fees and other forms of income earned by FIEs

ii. Preferential Consumption Tax Rates Applied to Producers in China Constitute Import Substitution Subsidies

China's consumption tax regulations, which first went into effect in 1993 and apply to a range of consumer products (e.g., spirits and alcoholic beverages, tobacco, cosmetics and skin and hair care preparations, jewelry, fireworks, rubber, motorcycles and automobiles), may

[53] See Steel Policy at art. 16.

operate as import substitution subsidies.[54] Specifically, under these regulations, China uses different tax bases to compute consumption taxes for domestic and imported products. The effect of the differing tax bases is that the effective consumption tax rate for imported products is substantially higher than for domestic products. These tax subsidies received by domestic products constitute import substitution subsidies because the receipt of the tax subsidy is contingent upon the use of domestic goods over imported goods.

iii. <u>Exemption of Customs Duty and VAT on Imported Capital Equipment</u>

Chinese firms that import capital equipment used exclusively to produce export products are eligible to receive a full refund of customs duties and VAT on the imported capital equipment.[55] The exemptions of tariffs and import-linked VAT are set forth in the Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment, which was established on December 29, 1997, and came into effect on January 1, 1998. This program was established in order to attract foreign advanced technology and equipment and encourage structural improvement and technological advancement in industry. The authorities responsible for administering this program are the Ministry of Finance and the Customs General Administration People's Republic of China in cooperation with local provincial and municipal customs branches.

Under this program, enterprises meeting the eligibility criteria set forth below may apply for exemption from tariffs and VAT on imported equipment and its related technologies, components and parts. The enterprise must receive approval of its application from the

[54] <u>See</u> USTR Report to Congress at 37.

[55] The Government of Canada determined that this program confers countervailable subsidies upon Chinese firms. <u>See</u> Canada Statement, Nos. 4214-4, 4218-19 (Jun. 1, 2005).

appropriate authority, and subsequently that approval documentation is submitted to the local customs officials who verify that the documents presented are adequate and that the imported items are not listed in the catalogues of commodities that are not eligible for tax exemptions. The program is also limited to investments by foreign parties in encouraged industrial areas defined by the "Industrial Catalogues for Foreign Direct Investment" and domestic investors investing in encouraged industrial areas defined by "Catalogues of Current Priorities of Industrial Sectors, Products and Technologies Encouraged by the State."

iv. Enterprise Income Tax Reduction for Purchase of Domestically-Made Machinery and Equipment

The Chinese government provides tax subsidies for the purchase of domestically-produced machinery and equipment. Specifically, pursuant to the Notice Concerning Some Issues on the Deduction of the Investment Made by Enterprises with Foreign Investment and Foreign Enterprises in Purchasing Domestic Equipment from Enterprise Income Tax, issued jointly by the Ministry of Finance and the State Administration of Taxation on 14 January 2000, "40 per cent of the investment made in purchasing domestic equipment can be deducted from the increment of enterprise income tax." Tax subsidies conferred under this program are countervailable, since the subsidies are contingent upon the use of domestic over imported goods and, therefore, provided on a de jure specific basis within the meaning of 19 U.S.C. § 1677(5A)(B).

IV. Government Provision of Goods and Services

i. Provision of Land and Equipment by the of Chinese Government

Chinese stainless steel companies continue to benefit from land grants or reduced land costs provided by the government. Specifically, much of the assets that comprise China's state-owned stainless steel producers were originally 100 percent state-owned and were "contributed" to these producers enterprises. Even after the economic reforms of the 1980s and 1990s, the enterprises were never required to pay for these assets. In this way, these stainless steel producers were essentially given China's stainless steel production capacity. This original gift continues to provide huge benefits to certain firms in the Chinese stainless steel industry, as they did not incur the significant capital costs associated with the development of complete stainless steel production facilities.

By law, all land in China remains the property of the state. Without a market for land, it is impossible to determine whether Chinese steel producers are paying market rates for their land. Shanghai Baosteel, one of the largest Chinese producers of stainless steel products, shows deferred expenses of 1.689 million RMB, or about $200,000, for "transfer price for land use rights & site formation fee."[56] The fee for 2004 was 187,724 RMB. Id. If this figure in fact represents the company's long-term cost for land, it would appear to be far below any market value. For the whole industry, below-market rents for land represent a substantial subsidy to the Chinese stainless steel industry each year.

ii. Provision of Energy Inputs by State-Owned and State-Invested Enterprises

"China's pricing structure for energy resources and utilities has been criticized for causing artificially-low prices …," and, thereby, subsidizing certain industries.[57] For instance, the Government of China acknowledges in Annex 5A, Section XV to China's Protocol of Accession to the WTO, that it provides subsidies in the form reduced prices on inputs (i.e., coal used for electricity generating and crude oil) consumed by "special industrial sectors."[58]

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[56] Shanghai Baosteel, Annual Report 75 (2004).
[57] China to Raise Retail Electricity Prices, Forbes, Mar. 2, 2006.
[58] It is important to note that while the GOC identifies coal and crude oil as subsidized inputs, it is possible that other inputs consumed by "special industrial sectors" are being provided by the government at subsidized prices.

Additionally, the National Development and Reform Council sets prices for both natural gas and electricity. Anecdotal evidence indicates that, for electricity in particular, local authorities, which control local utilities, may charge favored enterprises reduced rates for electricity, if indeed Chinese producers pay for utilities at all. Thus, encouraged industries, such as the Chinese stainless steel industry, benefit from low prices for both electricity and natural gas. Because energy accounts for a substantial portion of the cost of producing stainless steel, this subsidy represents a sizable benefit to Chinese producers.

iii. <u>Chinese Government Restrictions on Exports of Raw Materials</u>

The Chinese government also indirectly keeps the prices of certain key raw materials, such as scrap, for stainless steel production low by placing restrictions on the exportation of those materials. The best-known case involves coke, which is an essential input into making steel using the traditional blast furnace. In 2004 and 2005, China imposed a quota on exports of coke of 14.3 million metric tons. By contrast, China's coke production in 2004 was 208 million metric tons. This caused the price for coke exported from China to rise to artificially high levels[59] and had a "significant, adverse effect on U.S. integrated steel producers and their customers."[60]

The export restrictions provide a benefit to the Chinese steel industry in two distinct ways. First, as a matter of basic economics, increasing the supply of an input without increasing demand will cause the price of the input to drop. By keeping the domestic supply of the raw material artificially high, the Chinese government keeps its domestic price artificially low. At the same time, the export restrictions make the Chinese material more expensive for foreign steel

[59] World Trade Organization, China's Transitional Review Mechanism: Communication of the United States, No. G/MA/W/71, at 3 (Sept. 6, 2005)
[60] United States Trade Representative, 2004 Report to Congress on China's WTO Compliance 33 (2004).

producers, reducing their competitiveness vis-à-vis the Chinese industry. In late June 2005, for example, Chinese steel producers were paying only $139 per metric ton for coke, while foreign steel producers were paying $220 per metric ton for the same coke.[61] In this way, the Chinese government's control over raw material exports provides the Chinese industry with a double advantage.

The Chinese government has made it clear that it intends to continue to restrict exports of raw materials where this will benefit its domestic industries. Article 30 of the Steel Policy states specifically that "{t}he export of such preliminarily processed products as coke, iron alloy, pig iron, waste steel and steel base (ingot) with high energy consumption and serious pollution shall be restricted … ."[62] Despite complaints from its trading partners, China will continue to impose restrictions on the export of key raw materials to keep domestic prices low.

b. Currency Misalignment

It is impossible to overstate the benefit the Chinese government's manipulation of the value of the RMB provides to Chinese stainless steel producers. Although the U.S. government has thus far declined to make a formal finding of manipulation, there can be no doubt that China actively manages the value of the RMB to benefit Chinese exporters, including the stainless steel industry.

The Chinese government has manipulated the value of the RMB to minimize its fluctuation vis-à-vis the U.S. dollar. By comparison, the currencies of other major trading partners of the United States have fluctuated significantly. Between February 2002 and March 2006, for instance, the U.S. dollar fell in value by an average of 15 percent against all currencies. Over that period, the dollar declined by an average of 24 percent against the euro and other

[61] World Steel Dynamics, Steel Thermometer #24, at 15 (June 30, 2005).
[62] Steel Policy, art. 30

industrialized country currencies, but by only about 1.6 percent against the Chinese RMB.[63] This startling difference reflects the impact of currency manipulation by China.

China's vague promises to allow the RMB to float across a wider range have been too small to have a measurable effect on trade. Although China has raised the peg for the yuan and announced plans to value the RMB against a basket of currencies, the RMB has appreciated by only a small amount and still tracks the dollar quite closely.

To keep the RMB's value down, the Chinese government must make enormous purchases of U.S. dollars, usually in the form of U.S. government bonds. The Chinese government's purchases of U.S. dollars and other securities are currently averaging about $200 billion per year. These purchases amount to fully nine percent of China's GDP. Chinese government purchases of dollars and other securities create a significant subsidy of more than 20 percent on China's exports.[64] Thus, China's misalignment of its currency subsidizes the Chinese stainless steel industry and gives Chinese exports of stainless steel a huge advantage in world markets.

V. CONCLUSION

The Chinese stainless steel industry continues to benefit from massive direct and indirect subsidies. These subsidies are likely to continue unabated, as the Chinese government recently adopted an official policy that requires it to continue subsidizing its metallurgical industry, which includes stainless steel producers. The consequences of these actions have been profound. The growth of the Chinese stainless steel industry to the point of excess capacity has been at the expense of its international competitors. The economic stability of the international stainless

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[63] Federal Reserve Statistical Release, Foreign Exchange Rates, available at http://www.federalreserve.gov/releases/h10/Hist/.

[64] P. Morici, The Doha Round: No Help for America's Trade Deficit? 21 (2006), available at http://www.morici-dohareport.org/NoHelpForAmericasTradeDeficit.pdf.

steel market and the financial viability of U.S. stainless steel producers demand that the Government of China end its policy of subsidization of the Chinese stainless steel industry.

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China's Specialty Steel Subsidies: Massive, Pervasive, and Illegal

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CHINA'S SPECIALTY STEEL SUBSIDIES – MASSIVE, PERVASIVE, AND ILLEGAL

EXECUTIVE SUMMARY

In two previous reports, the Specialty Steel Industry of North America ("SSINA") has described how the Government of the People's Republic of China ("China") has been using a wide range of direct and indirect subsidies as well as other support measures to carry out the Chinese government's overarching plan to encourage the development of the Chinese specialty steel industry and to ensure its on-going viability. This report supplements SSINA's earlier studies by explaining how China has been protecting and fostering, on an enormous scale and contrary to China's international legal obligations at the World Trade Organization and at the International Monetary Fund, the long-term development of the primary downstream industries in China's specialty steel sector by means of a striking array of illegal subsidies and other interventionist measures. These downstream industries represent competitors of SSINA's customer base, which is struggling to compete with Chinese companies subsidized by their government.

- The Chinese government's industrial policies have encouraged and directed certain "pillar" industries, which the Chinese government considers to be essential to China's national economy and security. These favored industries – "the life-blood of the national economy" – include many of the specialty steel sector's primary downstream industries.

- State-owned enterprises in these "pillar" industries have been modernized and restructured to create large enterprises that are the principal actors or "national champions" in their industries and to displace imported products into China's domestic market.

- The Chinese government has implemented a raft of direct and indirect governmental support measures to carry out its industrial policies, many of which violate China's international legal obligations. These governmental support measures include:

    - massive amounts of direct subsidies that the Chinese government has conferred upon specialty steel mills and downstream industries in China's specialty steel sector, such as debt-to-equity swaps, subsidized financing, tax subsidies, export subsidies, and subsidies contingent on the use of Chinese goods in place of imports; and

- carefully-crafted indirect support measures, such as non-tariff barriers and other administrative procedures, that encourage the production and exportation of goods produced by downstream industries in China's specialty steel sector. The Chinese government, for instance, imposes stiff taxes to discourage Chinese steel producers from exporting raw materials or semi-finished specialty steel products, but excuses or rebates taxes to encourage exportation of downstream products subject to a greater degree of manufacturing and value-added in China by not imposing similar export taxes and by providing rebates of taxes upon exportation.

- The Chinese government's interventionist industrial policies to develop downstream industries in the specialty steel sector and the support measures used to carry out those policies have had a devastating impact on domestic industries and their workers in the United States by giving Chinese firms an unfair advantage when competing against U.S. domestic firms in the United States, in China, and in third counties. In 2007 alone, the Chinese government's industrial policies resulted in unfairly-traded exports that contributed to the United States' US$262.1 billion trade deficit with China and the loss or displacement of more than 366,000 jobs in the United States.

- China's interventionist industrial policies have also unduly influenced the investment decisions of U.S. domestic firms operating in downstream industries in the specialty steel sector by providing an incentive for U.S. firms to cease manufacturing and curtail research and development in the United States and to relocate their production facilities to China. The billions of dollars invested in China by U.S. automakers provide just one example of the benefits Chinese industries are reaping from their government's industrial policies and the harm caused by the policies to companies and workers in the United States. General Motors, for instance, plans to increase its investment in China by over US$1 billion in each year between 2007 and 2009 and has committed to purchase US$10 billion annually from Chinese auto parts producers by 2009.

- Perhaps the most critical component of China's overall plan and the Chinese government's single greatest subsidy is China's substantial undervaluation of its currency. Through protracted, large-scale interventions in the exchange markets, the Chinese government has kept the renminbi undervalued by an estimated 30 percent to 40 percent relative to the U.S. dollar for many years. This undervaluation is contributing to dangerous global imbalances in trade and investment and has enabled China to amass at least US$2 trillion in foreign reserves. It can reasonably be expected that some of this vast pool of funds will be applied to further protect and strengthen China's specialty steel sector.

I. INTRODUCTION

Since entry into force of the General Agreement on Tariffs and Trade in 1947 ("GATT"),[1] the global trading system has been structured to minimize and, to the extent possible, avoid mercantilism and "beggar-thy-neighbor" policies by the nations of the world against each other. Underlying this international economic structure has been the widely shared conviction that all countries stand to gain generally as tariff and non-tariff barriers to international trade are reduced. Today, however, the U.S. specialty steel industry and its downstream customers are being confronted by a striking array of illegal subsidies and other interventionist measures employed by the Chinese government to support downstream industries in China that use specialty steel.

Unlike their competitors in the United States, the downstream industries in China's specialty steel sector have not been forged by market forces. Rather, the Chinese government has implemented a comprehensive set of industrial policies to create industries and SOEs able to compete internationally following China's accession to the World Trade Organization ("WTO") in December 2001.[2]

The Chinese government's industrial policies have encouraged and directed certain "key" or "pillar" industries considered by the government to be essential to China's national economy and security. As described further in section II below, these favored industries include many of the specialty steel sector's primary downstream industries.[3] SOEs in these industries have been

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[1] General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194.

[2] See China Achieves Steel Import Substitution Plan, Asia Pulse (Mar. 20, 2000); Goal set for iron, steel, China Daily (Apr. 6, 1996).

[3] China has designated 14 "key" industries and seven "pillar" industries that largely overlap. The 14 key industries include the following: machinery; automotive; metallurgy; nonferrous metals;
(...continued)

modernized and restructured to create large-scale enterprises that are the principal actors or "national champions" in their industries and to displace imported products into China's domestic market. These policies are discussed in section III below.

Section IV of this report identifies a raft of direct and indirect governmental support measures that Chinese authorities have been using to carry out China's industrial policies.[4] As documented in the previous studies of China's specialty steel industry, the Chinese government has conferred massive amounts of subsidies upon specialty steel mills in China.[5] The same types of subsidies available to specialty steel mills also are available to downstream industries in China's specialty steel sector. In addition to direct subsidization, the Chinese government has employed carefully-crafted indirect support measures, such as non-tariff barriers and other administrative procedures, to encourage the production and exportation of goods produced by downstream industries in China's specialty steel sector. The Chinese government, for instance,

(...continued)
petroleum; petrochemical; chemicals; medicine; coal mining; building materials; light industry textiles; electric power; and gold. See Tenth 5-Year Plan of Industrial Structure Adjustment Published, People's Daily Online (Nov. 19, 2001), available at http://english.people.com.cn/200111/19/print20011119_84877.html. The seven "pillar" industries designated by China include the automotive, electronics, oil and gas, aviation and aerospace, construction, pharmaceutical, and machinery industries.

[4] Indeed, the Chinese government has been utilizing all of the basic policy tools at its disposal in implementing its industrial policies. Studies of the Chinese government's economic and industrial policies have confirmed that the government's policy tools fall into the following basic categories: (1) central governmental financing and planning; (2) empowering key industries with direct financing; (3) preferential interest and tax rates and favorable financing for target industries; (4) infant industry (trade) protection; (5) pricing policies; (6) administrative means; and (7) channeling of foreign direct investment into desired industries. See Lu Ding, Prospect of Industrial Policy Regime After the WTO, at 8-9 (2000).

[5] See, e.g., SSINA, Chinese Government Subsidies to the Stainless Steel Industry (April 2007) ("SSINA April Report"), at 8-23 available at http://www.ssina.com/news/releases/pdf_releases/chinese_govt_subsidies0407.pdf. See also SSINA, Chinese Government Subsidies to the Stainless Steel Industry – An Update (August 2007) ("SSINA August Report"), available at http://www.ssina.com/news/releases/pdf_releases/20070823_UnfairTradeAdvantages.pdf.

has altered its tax regime to provide differential tax treatment that discourages Chinese steel producers from exporting raw materials or semi-finished specialty steel products through the imposition of export taxes, while encouraging exportation of downstream products subject to a greater degree of manufacturing and value-added in China by not imposing similar export taxes and by providing rebates of taxes upon exportation.

The Chinese government's industrial policies to develop downstream industries in the specialty steel sector and the support measures used to carry out those policies have had a devastating impact on domestic industries in the United States and their workers. Chinese firms have been given an unfair advantage when competing against U.S. domestic firms in the U.S., Chinese, and third-country markets. In 2007 alone, the Chinese government's industrial policies resulted in unfairly-traded exports from China that contributed to the United States' US$262.1 billion trade deficit with China and the loss or displacement of more than 366,000 jobs in the United States.[6]

China's industrial policies also have provided an incentive for U.S. domestic firms to cease manufacturing in the United States and relocate their production facilities to China. In addition to weakening U.S. manufacturing, these actions on the part of the Chinese government have resulted in the loss of many skilled jobs in the United States. Recent investments by U.S. carmakers in China provide evidence of the effectiveness of China's industrial policies and the harm caused by the policies to companies and workers in the United States. General Motors

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[6] See Robert E. Scott, The China trade toll: Widespread wage suppression, 2 million jobs lost in the U.S., Economic Policy Institute Briefing Paper No. 219, at 1 (Jul. 30, 2008). See also Charles W. McMillion, China's Soaring Financial, Industrial and Technological Power, at 26 (Sept. 2007) (explaining that the U.S. trade deficit with China in high-tech, value-added products manufactured by downstream industries in the Chinese specialty steel sector was US$109.3 billion in 2006).

("GM"), for instance, plans to increase its investment in China by over US$1 billion in each year between 2007 and 2009 and has committed to purchase US$10 billion annually from Chinese auto parts producers by 2009.[7] In addition to the hundreds of millions of dollars that Ford Motor Company has spent already in China, the company is planning to invest US$1billion on a new engine plant in Nanjing and a new production line at an existing factory in Chongqing and has also made substantial commitments to purchase approximately US$3 billion in Chinese-produced auto parts for its automobile manufacturing plants worldwide.[8] As discussed below, the investment decisions of these U.S. automakers and many other U.S. firms operating in downstream industries in the specialty steel sector have been unduly influenced by China's interventionist industrial policies.

II. THE CHINESE GOVERNMENT CONSIDERS DOWNSTREAM INDUSTRIES IN CHINA'S SPECIALTY STEEL SECTOR TO BE "PILLAR" INDUSTRIES THAT ARE "THE LIFE-BLOOD OF THE NATIONAL ECONOMY"

While China has taken deliberate steps since the late 1970s to reform China's economy, such as allowing certain foreign investment into the country and allowing SOEs a small degree of autonomy, a fundamental element in China's drive to become a leading international economic power has been the Chinese government's extensive industrial policies that direct and manage the country's economic and industrial development by defining which industries, enterprises, and products should be targeted for preferential support and controlled by the

[7] Id. at 35; China ups auto parts to U.S., but Mexico is top shipper, Automotive News (Feb. 27, 2007), available at http://www.plasticsnews.com/china/english/automotive/headlines-arc2.html?id=1172276211.

[8] See GM and VW: How not to succeed in China, Business Week (May 9, 2005), available at http://www.businessweek.com/magazine/content/05_19/b3932010_mz001.htm; Ford Motor, Asian Automotive Newsletter, No. 84, at 2 (Dec. 2006).

government.[9] The overarching objective of China's industrial policies has been to foster the growth of certain industrial sectors that the Chinese government considers are essential to the country's overall economic prosperity and social stability, while maintaining control of those sectors by encouraging the expansion of SOEs in the industries and protecting them from foreign competition.

The Chinese government has identified 14 "key" industries and seven "pillar" industries that are the "life-blood industries of the national economy."[10] These favored industries are supported by the Chinese government through its industrial policies.[11] The industries designated by China as "pillar" industries, for instance, include the automotive, electronics, oil and gas, aviation and aerospace, construction, pharmaceutical, and machinery industries. Id.

Primary downstream consumers of specialty steel are among the seven "pillar" industries supported by the Chinese government through its industrial policies.[12] Indeed, given specialty steel's resistance to corrosion, fire, and heat, hygienic qualities, aesthetic appearance, strength-to-weight advantage, ease of fabrication, and impact resistance, it is an essential material consumed by a broad range of industries in numerous applications:[13]

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9 See The First China International Auto Parts Expo to be Held in Beijing this November, available at http://bj2.mofcom.gov.cn/aarticle/chinanews/200708/20070804955333.html.

10 See Tenth 5-Year Plan of Industrial Structure Adjustment Published, People's Daily Online (Nov. 19, 2001), available at http://english.people.com.cn/200111/19/print20011119_84877.html.

11 See, e.g., As a pillar industry in the national economy, China's petroleum industry faces unprecedented opportunities and challenges, PRinside.com (May 5, 2008), available at http://www.pr-inside.com/as-a-pillar-industry-in-the-r585530.htm (explaining that China's petroleum industry is a pillar industry in the national economy).

12 See Stainless Steel Information Center, Specialty Steel Industry of North America, available at http://www.ssina.com/overview/features.html.

13 The importance of specialty steel is also demonstrated through its use in the ten broadly-defined fields for advanced technology products identified by the U.S. Census Bureau, which (...continued)

- Automotive Industry – cars are using more specialty steel than previously, primarily for exhaust system parts, gaskets, air bag inflator housings, windshield wipers and blades, fuel systems, fasteners, powertrain, structural parts, and many other critical components. Austenitic specialty steels are used by truck manufacturers to produce tanks for food and dairy containment, cryogenic applications, chemicals, and acids.

- Electronics Industry – electronics and communications equipment, including computers, mobile phones, and personal electronic devices, use alloys that have unique electrical, magnetic and corrosion-resistant properties.

- Oil and Gas Industry – specialty steel is used in offshore, down-hole, and refinery applications. Other material applications support the production of LNG, biofuels, ethanol, gas-to-liquid technology, and oil sands recovery. On oil platforms, specialty steel is used for blast walls, cable ladders, and walkways, and also is used in down-hole gas and oil flow systems, including tanks, pipes, pumps and valves.

- Aviation and Aerospace Industry – specialty steel is used in commercial, military, business, and general aviation aircraft, jet engines, and space vehicles (including satellites, rockets, and missiles). Certain nickel-based alloys and specialty steels are necessary to support the high-temperature effects of oxidation and stress present in critical aerospace environments.

- Construction Industry – architecture, building, and construction are growing markets for specialty steel as more buildings are using specialty steel for cladding, roofing, and facades.

- Pharmaceutical Industry – specialty steel meets the stringent specifications this industry requires for internal cleanliness, surface quality, mechanical properties, chemistry control, and corrosion properties. Specialty steel is used by pharmaceutical companies for pill funnels and hoppers and for piping creams and solutions.

- Machinery and Equipment Industry – specialty steel is used by general purpose machine shops with multi-axis computerized machine centers to produce intricately machined parts for the oil and gas, aerospace, and power-generation markets, among others.

In addition to encouraging and guiding the growth of downstream industries in China's specialty steel sector, China's governmentally-issued industrial policies also have been used to maintain ownership and control of these key industries. The Chinese government's position in opposition to ceding control of these industries was explained succinctly by former Party

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include biotechnology, life sciences, opto-electronics, information and communications, electronics, flexible manufacturing and equipment, advanced materials, aerospace, weapons, and nuclear technology. See U.S. Census Bureau List of Advanced Technology Products.

General Secretary Jiang Zemin in 1997 at the 15th National Congress of the Communist Party Central Committee:

> The dominant position of public ownership should manifest itself mainly as follows: Public assets dominate in the total assets in society; the state-owned sector controls the life-blood of the national economy and plays a leading role in economic development. This is the case for the country as a whole. … We should make a strategic readjustment of the layout of the state-owned sector of the economy. <u>The state-owned sector must be in a dominant position in major industries and key areas that concern the life-blood of the national economy</u>. But in other areas, efforts should be made to reorganize assets and readjust the structure so as to strengthen the focal points and improve the quality of the state assets as a whole. <u>On the premise that we keep public ownership in the dominant position, that the state controls the life-blood of the national economy and that the state-owned sector has stronger control capability and is more competitive</u>, even if the state-owned sector accounts for a smaller proportion of the economy, this will not affect the socialist nature of our country.[14]

The central, provincial, and local governments in China have heeded Former Party General Secretary Jiang Zemin's call for the continued and pervasive role of the Chinese government in the economy. The Tenth Five-Year Plan, for instance, stipulated that the "[s]tate must hold a controlling stake in strategic enterprises that concern the national economy" and must also "uphold the dominance of the public sector of the economy {and} let the state-owned sector play the leading role."[15]

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[14] <u>See</u> Jiang Zemin's Report at the 15th National Congress of the Communist, <u>available at</u> http://www.fas.org/news/china/1997/970912-prc.htm (emphasis added). The Chinese government has also ruled out privatizing SOEs as contrary to China's national interest. Former Party General Secretary Jiang Zemin stated that, "[p]racticing privatization in [China's] reform efforts is tantamount to digging at the base of the socialist system on which it depends for its very existence." <u>See</u> <u>Focus of State-Owned Enterprise Reform: State-Owned Enterprises Reform Seeks Breakthrough but Will Never Engage in Privatization</u>, Zhonggua Xinwen She (Sept. 22, 1999).

[15] <u>See</u> <u>The Tenth Five Year Plan for National Economic and Social Development-People's Republic of China</u>, <u>available at</u> http://www.logos-net.net/ilo/195_base/en/init/chn_1.htm.

With respect to downstream industries in China's specialty steel sector, in particular, the Chinese government maintains control over these industries through direct and indirect means. The government directly controls these key industrial sectors through the large, internationally-competitive SOEs that dominate many of the industries and continue to function as extensions of China's government and instruments of its industrial policies. For example, "national champions" in the principal, downstream specialty-steel-consuming industries include the following:[16]

Industry	**National Champions**
Automotive	Shanghai Auto Industrial Corp. and First Automobile Works
Electronics	Legend, Panda Group, and Changhong Group
Oil and Gas	China Petroleum and Chemical Corp. (Sinopec) and China National Petroleum Corp. (CNPC)
Aviation and Aerospace	Aviation Industries of China and Shanghai Aviation Industrial Corporation
Construction	China State Construction Engineering Corp. (CSCEC) and China National New Building Materials Group (CNNBMG)
Pharmaceutical	Sanjiu Group and Shandong Xinhua
Machinery and Equipment (including Electric Power)	First Tractor and Construction Machinery Group, Harbin Power Equipment Co., and Dongfang Electric Power Group

Another means of effectively controlling these key industries is exercised indirectly by the Chinese government through its ownership and control of vital, upstream raw materials. Specifically, the Chinese government can restrict the flow of essential specialty steel raw materials (such as stainless steel ingots and blooms) to downstream consumers through its ownership of a significant portion of the initial stage of the specialty steel supply chain, the "Meltshop" stage.[17] In China, there are 12 "Meltshop" producers, each possessing a production

[16] See Peter Nolan, China and the Global Business Revolution, at 101-135 (2001).

[17] See Study to Prepare Various South African Manufacturing Sectors for Effective Negotiations for the Proposed SACU/China and SACU/India Trade Negotiations – Report No. 8 (China (...continued)

capacity of greater than 50,000 tons per year. Id. at 89. The two largest producers, Taiyuan Iron & Steel Co. (Group) ("TISCO") and Baosteel Co., Ltd. ("Baosteel"), are SOEs that together account for 42 percent of China's "Meltshop" production capacity. Id. Because small-scale downstream consumers are largely dependent upon TISCO and Baosteel for stainless steel billets and similar raw materials, the Chinese government can control the output of ostensibly non-state-owned enterprises.

China's control of upstream raw materials also gives it considerable influence over foreign producers that have been lured (or compelled) to relocate their production facilities to China. Chinese governmental regulations and other direct administrative measures provide further leverage over these foreign enterprises. Many of these interventionist measures, such as conditioning investment approval upon technology transfer, are discussed below along with China's industrial policies and support measures that have encouraged the development of downstream industries in the specialty steel sector while, at the same time, ensuring that the government maintains control of these industries. Absent these Chinese governmental policies and measures, these key industries in China would likely be a fraction of their current size.

III. THE CHINESE GOVERNMENT'S INDUSTRIAL POLICIES SUPPORT DOWNSTREAM INDUSTRIES IN CHINA'S SPECIALTY STEEL SECTOR

The primary tools for setting long-term industrial strategy in China are the Five-Year Plans and other national policies issued by the Chinese government. The national Five-Year Plans guide long-term industrial policies of China's provincial and local governments as well as sector-specific industrial policies.

(...continued)
Stainless Steel), at 84 (April 2006) ("NEDLAC Report"). In the "Meltshop" stage, raw materials are processed into stainless steel ingots, rods, bars, wire, and sheets. Id.

As set forth below, the industrial policies implemented in China since the early 1990s have been following four basic objectives: (a) fostering industries that are critical to China's overall economic prosperity and social stability ("key," "pillar," or "life-blood" industries); (b) reforming and modernizing SOEs operating within those industries to withstand foreign competition and to secure the government's control of those industries; (c) expanding indigenous production to eliminate imported products in China's domestic market; and (d) progressing up the value-added production chain – from mass-production of low-quality products, to the manufacture of high-quality products, and finally to the development of proprietary technologies through independent innovation. The Chinese government's efforts to encourage downstream industries in China's specialty steel sector have followed this blueprint.

A. The Chinese Government's Overarching Five-Year Plans and Other Long-Term Industrial Policies

China's means to achieve its objective of becoming a leading international economic power are set forth principally in the Five-Year Plans issued by the Central Committee of the Communist Party of China. According to the Chinese government, Five-Year Plans aim to "arrange national key construction projects, manage the distribution of productive forces and individual sectors' contributions to the national economy, map the direction of future development, and set targets."[18] Thus, the Five-Year Plans are long-term industrial blueprints that direct and manage China's economic and industrial development by defining which

[18] See What is the Five Year Plan, available at http://www.china.org.cn/english/MATERIAL/157595.htm.

industries, enterprises, and products should be targeted for preferential support and controlled by the government.[19]

Under "the Ninth Five-Year Plan and 2010 Long-Term Program for National Economic and Social Development," China created a guide for industrial development during the period 1996 through 2000.[20] The Plan called for the Chinese government to promote the growth of industries considered to be critical for economic development, important to the survival of other industries, and significant contributors to social employment and welfare.[21] These industries include the pillar industries (machinery, electronics, petrochemical, automotive, and construction), high-technology industries, and certain basic industries (such as the steel industry) upon which other industries depend. Id. In order to protect these strategic industries and direct resources toward these key industries, China implemented various support measures, such as controlling foreign investment, discriminating against foreign products, and promoting exports.[22]

Another important industrial policy implemented during the Ninth Five-Year Plan was "SOE reform and development," reflecting China's view of SOEs as pillars of the national economy and critical to China's long-term peace and stability and the consolidation of China's

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19 See The First China International Auto Parts Expo to be Held in Beijing this November, available at http://bj2.mofcom.gov.cn/aarticle/chinanews/200708/20070804955333.html.

20 See Lu Ding, Prospect of Industrial Policy Regime After the WTO, at 7 (2000).

21 See The First China International Auto Parts Expo to be Held in Beijing this November, available at http://bj2.mofcom.gov.cn/aarticle/chinanews/200708/20070804955333.html.

22 See Guoyong Liang, New Competition: Foreign Direct Investment and Industrial Development in China, at 187 (2004). The Chinese government also has managed investments in "projects of a foundation nature" by serving as the primary financier or the leading fundraiser for such projects. The "projects of a foundation nature" primarily have related to infrastructure and basic industry (e.g., energy supplies, steel production). See also Lu Ding, Prospect of Industrial Policy Regime After the WTO, at 7 (2000).

socialist system.[23] The Chinese government has employed a series of strategies to make SOEs in the key industries internationally competitive. Among the development strategies implemented during the Ninth Five-Year Plan were the modernization of production facilities ("technological progress and industrial upgrading"), the restructuring and/or consolidation of SOEs to develop large enterprise groups, the adjustment of product mix to emphasize quality rather than increasing output, and the imposition of stricter controls on imports while promoting exports.[24]

China also has encouraged SOE reform and development through various support measures. In urging the financial sector to play a greater role in supporting China's SOE reforms, Vice Premier Wen Jiabao stressed

> that preferences should be given to key SOEs in terms of credit and loans and more financial support for high-tech enterprises and upgrading technology. . . . Wen also called for further improvement of export credit insurance and active support in increasing exports for SOEs.[25]

Additionally, the Chinese government implemented a "three-year SOE bailing plan" between 1998 and 2000.[26] Under this "bailing plan," key medium- and large-sized SOEs benefited from various support measures (such as debt-to-equity swaps and preferential loans discussed in section IV below). As explained in section IV, specialty steel producers in China received

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[23] See Providing Theoretical Support for SOE Reform and Development, People's Daily Online (Nov. 18, 1999).

[24] Id. See also Liang, New Competition: Foreign Direct Investment and Industrial Development in China, at 187 (2004); Lu Ding, Prospect of Industrial Policy Regime After the WTO, at 7 (2000).

[25] See Vice-Premier Urges Financial Sector to Further Support SOEs Reform, China People's Daily Online (Nov. 3, 1999).

[26] See Chinese Economy Takes Turn for Significant Improvement, China People's Daily Online (Mar. 6, 2001).

various direct and indirect benefits from the Chinese government under the steel-specific industrial policy of the Ninth Five-Year Plan.

The Tenth Five-Year Plan for National Economic and Social Development, covering the period 2001-2005, extended many of the industrial policies implemented under the Ninth Five-Year Plan that provided for the continued and pervasive role of the Chinese government in the economy through industry-related and SOE-related policies.[27]

Another important industrial policy emphasized by China under the Tenth Five-Year Plan followed the government's slogan of *zhua da fang xiao* ("grasp the large, let go the small"). Specifically, the Chinese government called for the "establishment of a number of large companies and enterprise groups through stock listing, merging, association and reorganization."[28] Identified as the "national champions," these large-scale SOEs operate primarily in capital-intensive industries with the potential to benefit from economies of scale and scope.[29] The Chinese government considers the "national champions" to be "the backbone of the national economy and the country's main force to participate in international competition."[30]

"National champions" have been established in the industries that the Chinese government deems to be essential to the success of China's industrial policies: automotive;

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[27] See Tenth 5-Year Plan of Industrial Structure Adjustment Published, People's Daily Online (Nov. 19, 2001), available at http://english.people.com.cn/200111/19/print20011119_84877.html.

[28] See The Tenth Five Year Plan for National Economic and Social Development-People's Republic of China, available at http://www.logos-net.net/ilo/195_base/en/init/chn_1.htm.

[29] See Sutherland, Policies to Build National Champions: China's "National Team" of Enterprise Groups (China and Global Business Revolution), at 72 (2005). China has provided less support for the development of large SOEs in industries in which economies of scale are not as important. "A minister responsible for light industry, for instance, commented in 1997 that 'to develop state sectors is critical to the economy but not to light industry because light industry isn't influential enough to national security and the economy.'" Id.

[30] Jiang Qiangui, Vice-Minister of SETC, China Daily, Business Weekly (Jan. 17, 2000).

electronics; machinery; energy supply; iron and steel; pharmaceuticals; aviation and aerospace; and oil and gas.[31] All of these industries are important downstream consumers of specialty steel. Thus, national champion SOEs were created in many of the primary downstream industries in the specialty steel industry, including Sinopec and CNPC in oil and petrochemicals; Sanjiu, Dongbei, and Shandong Xinhua in pharmaceuticals; Harbin, Shanghai, and Dongfang in power equipment; Yiqi, Erqi, and Shanghai in automobiles.[32]

China's new Eleventh Five-Year Plan, covering the period 2006-2010, has extended many of the policies begun under the Ninth and Tenth Five-Years Plans, such as retaining control of key industries and modernizing its SOEs to make them globally competitive.[33] Consistent with its continuous drive to produce higher-value-added products, the Chinese government is implementing industrial policies that emphasize progress in China's science and technology ("S&T") and "coordinative development." These areas have been designated as priority national development strategies under the Eleventh Five-Year Plan, with the Chinese government playing a leading role in this endeavor. Id.

One of China's primary objectives under the Eleventh Five-Year Plan is to improve the capability of independent innovation in China through a comprehensive science-and-technology industrial policy that is infused with economic nationalism. The policy stems in part from the

[31] See Sutherland, Policies to Build National Champions: China's "National Team" of Enterprise Groups (China and Global Business Revolution), at 72 (2005).

[32] See Peter Nolan, Evaluation of the World Bank's Contribution to Chinese Enterprise Reform, at 8 (2005), available at http://lnweb18.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/115BD744564229F85256FF000590B8C/$file/china_cae_enterprise_reform.pdf.

[33] See Guideline for the National Medium- and Long-Term Science and Technology Development Plan (2006-2020), available at http://www.gov.cn/english/2006-02/09/content_184426.htm. See also Changes in Five-Year Plans' Economic Focus, available at http://www.china.org.cn/english/2005/Nov/148163.htm; Key Points of the 11th Five-Year Guidelines, available at http://english.hanban.edu.cn/english/2006/Mar/160397.htm.

Chinese government's criticism of foreign investors for abusing intellectual property laws, which allegedly stymies Chinese enterprises' capacity for independent innovation.[34] In response, China plans to increase value-added production by directing foreign investment to certain areas, such as research and development as well as sophisticated design.[35] According to China's plan, "by 2020, China will invest more than 2.5% of its GDP in R&D, with the contribution of S&T to economic development exceeding 60% and with dependence on foreign technologies reduced to below 30%."[36]

The Chinese government is implementing numerous plans and policies to achieve these objectives.[37] For instance, according to China's national development plan for S&T through 2020, the Guideline for the National Medium- and Long-Term Science and Technology Development Plan (2006-2020) ("S&T Development Plan (2006-2020)"), China will advance "into the rank of innovative countries" by centralizing and increasing spending on research and development ("R&D") and by fostering a group of globally-competitive companies with

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[34] See, e.g., China's Laws, Regulations and Practices in the Areas of Technology Transfer, Trade-Related Investment Measures, Subsidies and Intellectual Property Protection Which Raise WTO Compliance Concerns, Trade Lawyers Advisory Group, at 22 (September 2007).

[35] See New Policy Stresses Quality of Foreign Investment, Chinese Government's Official Web Portal (Nov. 9, 2006), available at http://english.gov.cn/2006-11/09/content_437842.htm.

[36] See China's Industrial Subsidies Study: High Technology, Trade Law Advisory Group, at 6 (April 2007). Additionally, in the 11th Five-Year Plan on Promoting Trade through Science and Technology, the Chinese government explains its plan to improve China's export structure by implementing various measures, including expanding exports of high-tech products, fostering export innovation bases for high-tech products, and reinforcing independent innovation. Id. at 6-7.

[37] See, e.g., Comments for Construction of National S&T Infrastructure Platforms in the 11th Five-Year Period (2006-2010), Chinese Ministry of Science and Technology, State Development and Reform Commission, Ministry of Finance, and Ministry of Education (explaining that the Chinese government will establish important S&T infrastructure platforms to provide effective support for S&T advancement and proprietary innovations in China).

autonomously-controlled, intellectual property ("IP") and well-known brands.[38] By committing the government to significant expenditures directed at creating market-viable products and enterprises, this S&T development plan represents the Chinese government increasing its involvement in product innovation.[39] "Thus, it is not simply a matter of the government investing in knowledge creation, a pure public good whose benefits will spill over into a range of related activities. Instead, the government is to step up its investment in particular high-technology projects." Id.

The Chinese government provides a summary of the measures to be implemented during the period of the 11th Five-Year Plan in order to achieve its S&T-related policies in Article 4 of Opinions of the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Science and Technology, the Ministry of Finance, the General Administration of Customs, the State Administration of Taxation, State Intellectual Property Office and the State Administration of Foreign Exchange on Encouraging Technology Importing and Innovation and Promoting Changes in Pattern of Trade Growth:[40]

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[38] See Guideline for the National Medium- and Long-Term Science and Technology Development Plan (2006-2020), available at http://www.gov.cn/english/2006-02/09/content_184426.htm. See also China's Industrial Subsidies Study: High Technology, Trade Law Advisory Group, at 6 (April 2007);

[39] See "China's State Sector, Industrial Policies and the 11th Five Year Plan," Testimony of Barry Naughton, Professor, before the US-China Economic and Security Review Commission Hearing on the "Extent of the Government's Control of China's Economy, and Implications for the United States" (May 24, 2007) available at http://www.uscc.gov/hearings/2007hearings/written_testimonies/07_05_24_25wrts/07_05_24_25_naughton_statement.php.

[40] See Opinions of the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Science and Technology, the Ministry of Finance, the General Administration of Customs, the State Administration of Taxation, State Intellectual Property Office and the State Administration of Foreign Exchange on Encouraging Technology Importing and Innovation and Promoting Changes in Pattern of Trade Growth, Shang Fu Mao Fa [2006] No. 13, at Article 4 (Jul. 14, 2006) ("Plan on Technology Importing and Innovation"), available
(...continued)

> General Objectives: to optimize the technology importing structure and improve its quality and efficiency, for the purpose of raising the proportion of the contracts of proprietary and patented technologies to about 50% of the total by 2010, increasing the counterpart funds for the imported technologies absorption, establishing a technology importing and innovation promoting system which has enterprises as the main body and is oriented towards the market, steered and promoted by the government and supported by the scientific forces of all parties concerned, and achieving a benign cycle in this regard, i.e. "importing the technologies - absorbing them - re-innovating and developing of new technologies - improving the international competitiveness.

China, moreover, identifies numerous downstream consumers of its specialty steel industry as among the favored industries that will receive “special assistance … in importing technologies with market potential and possible advantages in future competitions or with great significance to national well-being and the people's livelihood, such as those in biology, civil aerospace industry, machine building, petrochemical industry, clean power generation, new materials, energy saving and environmental protection.” Id. at Article 6.

With respect to supporting China’s SOEs, in September 2005 Li Rongrong, the Chairman of the State-owned Assets Supervision and Administration Commission of the State Council (SASAC), outlined specific S&T-related, industrial-policy measures that the Chinese government is implementing to ensure that its “SOEs play a better role as the leading force in the national economy.”[41] Among the measures identified by the Chairman of SASAC that “energetically spur technological advances as well as scientific and technological innovation” in China’s SOEs were the following:

(...continued)
at http://www.asianlii.org/cn/legis/cen/laws/ootmoctndarctmosattmoftgaoctsaotsipoatsaofeoetiaiapcipotg3749/.

[41] See Promoting the Structural Adjustment and the Scientific and Technological Innovation and Enhancing the Core Competitiveness of State-owned Enterprises, Speech by Li Rongrong at the International Investment Forum 2005 of the 9th China International Fair for Investment and Trade, (Sept. 8, 2005).

- control the direction of investment and promote structural adjustment to improve the R&D capabilities of SOEs in S&T;

- adopt hi-tech, advanced, and key technologies to renovate traditional industries;

- enhance SOEs' level of technologies and equipment;

- increase investments in R&D, foster R&D talents, establish and perfect technological centers, and create a vital technological development system;

- form as quickly as possible China's innovation capacity in dominant products, key technologies, and integrated technologies;

- master a series of core technologies, possess a set of independent intellectual property rights, and create a group of internationally renowned brand names; and

- intensify the efforts in industrializing R&D.

Id.

As discussed in section IV below, the Chinese government is putting in place numerous measures to reinforce the development of China's high-tech industries. [42] For example, China has pledged to "[p]rovide domestic enterprises with necessary financial support for importing advanced technologies and their re-innovating" and has authorized its policy banks and commercial banks to "grant loans for technology importing, absorbing and re-innovating . . .." [43]

The Chinese government also is supporting the development of downstream industries in China's specialty steel sector through another fundamental policy guiding China's economic

[42] See China's Industrial Subsidies Study: High Technology, Trade Law Advisory Group, at 7 (April 2007).

[43] See Opinions of the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Science and Technology, the Ministry of Finance, the General Administration of Customs, the State Administration of Taxation, State Intellectual Property Office and the State Administration of Foreign Exchange on Encouraging Technology Importing and Innovation and Promoting Changes in Pattern of Trade Growth, Shang Fu Mao Fa [2006] No. 13, at Article 16 (Jul. 14, 2006), available at http://www.asianlii.org/cn/legis/cen/laws/ootmoctndarctmosattmoftgaoctsaotsipoatsaofeoetiaiapcipotg3749/.

development, "coordinative development."[44] Pursuant to the policy of "coordinative development," the Chinese government plans, inter alia, to: (1) reorganize and upgrade the energy and raw materials industries for purposes of "improving their international competitive power, and creating conditions for the downstream industries to participate in the international competition" and (2) to "enable the industries in the eastern, the central and the western regions to develop coordinately." Id. at 3 (emphasis added).

The industrial policies set forth in China's Five-Year Plans and other governmental decrees from the early 1990s to the present have had the objectives of (1) improving the international competitiveness of China's key industries and "national champion" SOEs and (2) reinforcing the Chinese government's control over those industries. Today, the Chinese government continues actively to support its key industries and "national champion" SOEs. As turned to next, these objectives guide sector-specific, steel industrial policies and the industrial policies issued by China's provincial and local governments.

B. The Chinese Government's Sector-Specific Industrial Policies

Consistent with the national objectives set forth in the overarching Five-Year Plans, China has introduced sector-specific industrial policies aimed at encouraging the development of key industries and enterprises. Indeed, recognizing the importance of downstream industries in the specialty steel sector to China's economic growth and security, the Chinese government has implemented industry-specific industrial policies that have boosted these industries by expanding their production capacity, upgrading and modernizing their existing facilities, and ensuring

[44] See Circular of the State Economy and Trade Commission on the Promulgation of the Guidance of Recent Development in the Industrial Sector (Sept. 28, 2002) at 2-3 available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51268.

markets for their products. These sector-specific industrial policies provide special guidance and support to downstream industries in China's specialty steel sector.

In the automotive sector, for instance, the Chinese government has implemented a comprehensive set of policies to encourage the development of its automobile and auto parts industry. The automotive sector is an important downstream industry in China's specialty steel sector. Specialty steel is required by automobile and auto parts manufactures for many applications. Indeed, as remarked earlier, cars are using more stainless steel than ever, primarily for exhaust system parts, gaskets, air bag inflator housings, windshield wipers and blades, fuel systems, fasteners, powertrain, structural parts, and many other critical components.

Because the automotive sector is a significant contributor to China's economic growth, the Chinese government has enacted comprehensive industrial policies to protect and develop China's automotive sector.[45] The Eighth Five-Year Plan for the Chinese Automotive Industry (1991–1995) designated the automotive industry as a "pillar industry" that would drive the economy in the twenty-first century. In 1994, the government issued the Automotive Industry Policy ("1994 AIP") that protected and developed the Chinese automotive industry and key enterprises within the industry. The 1994 AIP also put into practice various measures to foster the growth of the industry, such as encouraging foreign investment, requiring foreign investors to establish research and development ("R&D") capabilities in China and to manufacture high-tech automotive products in China, and mandating high local-content requirements.[46] Additionally, the primary SOE car manufacturers were established in the 1994 AIP as the national champions

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[45] See Charles W. McMillion, China's Soaring Financial, Industrial and Technological Power, at 33 (Sept. 2007).

[46] Andrew Szamosszegi, How Chinese Government Subsidies And Market Intervention Have Resulted In The Offshoring Of U.S. Auto Parts Production: A Case Study, at 11.

for the automotive industry: First Automotive Works Corp. ("FAW"); Dongfeng Motor Corp. ("Dongfeng"); Shanghai Automotive Industry Corp. ("SAIC").[47]

The Tenth Five-Year Plan for the Chinese Automotive Industry, covering the period 2001 through 2005, extended many of the policies of previous Five-Year Plans and the 1994 AIP. For instance, the Tenth Five-Year Plan stipulated that key enterprises in the sector should be supported. "Powerful corporations will be encouraged and supported to develop further and become bigger and stronger. Distribution of resources will be optimized and a pattern of large automobile corporation groups will be established."[48] China's automotive manufacturing industry was to be consolidated from 118 existing companies to only two or three companies, while the auto parts industry would be reduced from several hundred parts producers to 5–10 large supplier groups.[49] The plan also promoted the production of vehicles that would be competitive in the international market.

In June 2004, the State Development and Reform Commission issued the Automobile Industry Development Policy No. 8 Decree ("2004 AIP").[50] This document designated the automobile industry as a pillar industry in the national economy to be achieved by the year 2010. The plan furthers China's goal of controlling the automotive sector by creating large-scale SOE groups that will dominate the automobile manufacturing and parts industry. Indeed, the main

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[47] See China's New Automobile Policy Fails to Comply with Its WTO Commitments, quoting Policy on the Automobile Industry, adopted by the State Council in 1994, available at http://business.sohu.com/2004/06/02/31/article220353167.shtml.

[48] The Tenth Five Year Plan of the Automotive Industry and its Development, China Daily, available at http://bizchina.chinadaily.com.cn/guide/industry/industry2.htm.

[49] China Britain Business Council, available at www.cbbc.org/the_review/review_archive /sectors/10.html.

[50] See Automobile Industry Development Policy No. 8 Decree, State Development and Reform Commission of the People's Republic of China, (Jun. 18, 2004), available at http://www.tdctrade.com/report/reg/reg_040601.htm.

objectives of the 2004 AIP has been to "form a number of large competitive automobile groups" and to "develop a number of vehicle parts enterprises that will realize scale production and edge into the international automobile parts procurement system, and take an active part in international competition."[51]

To achieve the government's objective of creating a globally-competitive automotive sector led by national champion SOEs, the 2004 AIP establishes numerous governmental support measures. The plan, for instance, provides "support for automobile parts and components production" by

> directing social funds to flow into automobile parts production and help parts production enterprises with comparative advantages to form specialised and industrialised production and module-type supply capability. The State gives preferential treatment to parts production enterprises which can supply parts to several independent complete vehicle production enterprises and participate in the international automobile parts procurement system in the areas of technical import and transformation, financing, merger and restructuring.

2004 AIP, Article 31, Chapter 8. The 2004 AIP also protects the industry through "investment management" and "import management" measures that restrict foreign investment and imports of foreign auto parts into China.[52]

While China's automotive sector is still guided today by many of the policies set forth in the 2004 AIP, many of the Chinese provisions of the 2004 AIP have been found to be inconsistent with commitments assumed by China upon acceding to the WTO.[53] In July 2008, a

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[51] The Tenth Five Year Plan of the Automotive Industry and its Development, China Daily, available at http://bizchina.chinadaily.com.cn/guide/industry/ industry2.htm.

[52] These governmental measures are discussed in section IV, below.

[53] See Panel Report, China – Measures Affecting Imports of Automobile Parts, WT/DS340/R, Jul. 18, 2008, at para. 8.4.

WTO Panel concluded that the Chinese government's measures supporting Chinese automobile parts and components producers are: (1) inconsistent with Article III:2, first sentence of the GATT 1994 in that they subject imported auto parts to an internal charge in excess of that applied to like domestic auto parts; (2) inconsistent with Article III:4 of the GATT 1994 in that they accord imported auto parts less favorable treatment than like domestic auto parts; and (3) not justified under Article XX(d) of the GATT 1994 as measures that are necessary to secure compliance with laws or regulations which are not inconsistent with the GATT 1994. Id.[54]

In the Eleventh Five-Year Plan for the Automotive Industry, covering 2006 through 2010, the Chinese government extended many of the earlier policies and implemented a new industrial policy aimed at creating an independent, domestic automotive sector. The Plan promotes the development of Chinese brands and independent intellectual property rights ("IPRs"). The government intends that brands of domestic cars with independent IPRs will increase their share of the car sales in China from 30 percent in 2007 to 50 percent by the end of the Eleventh Five-Year Plan period in 2010.[55] In accordance with this policy, China's three national champion car manufacturers (FAW, SAIC, and Dongfeng) are investing a total of US$5.28 billion in programs to develop brands with independent IPRs.

The implementation of these industrial policies by automakers in China is reflected in the description offered by Shanghai Volkswagen ("SVW"), a joint venture between SAIC and Volkswagen, of its operations in Shanghai. SVW explains that by using "foreign capital and introducing overseas technology" it accelerated development of the Chinese car-making

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[54] With respect to the United States' claims that provisions of China's 2004 AIP are inconsistent with the Agreement on Subsidies and Countervailing Measures, the Panel decided to exercise judicial economy and did not resolve these claims on the merits.

[55] See Car giants to develop own brands, available at http://en.ce.cn/Industries/Auto/200708/14/t20070814_12531297_1.shtml.

industry.[56] Additionally, consistent with the industrial policy's focus on developing the automobile parts industry in China, the company

> started the Santana localization endeavor to revitalize the Chinese parts supply industry. This grand trans-regional, inter-departmental, cross-industry and systematic project has helped a large number of local parts suppliers achieve their technical advancement, thus laying a solid foundation for manufacturing parts and components up to the international standard. Now over 400 domestic suppliers are able to supply SVW with locally made parts. SVW-accepted parts makers are now accepted by other carmakers as their parts suppliers, and some of them have become suppliers for global sourcing manufacturers.

Id.

The explosive growth in China's automotive sector since the late 1990s evinces the effectiveness of the Chinese government's industrial policies for the automotive sector. China's vehicle production capacity has tripled in the past ten years, reaching 12.69 million units in 2007,[57] and its exports of automobiles increased in 2007 alone by 79 percent.[58] In 2006, China surpassed Germany to become the world's fourth largest producer of automobiles.[59] Vehicle production capacity is expected to surpass that of the United States in 2010, as it is forecast to reach 17.16 million units in 2010 and 18.49 million units in 2013.[60] Further evidence of these industrial policies' success is found in the significant investments made by foreign car

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[56] See Shanghai Volkswagen Website, SVW Introduction, available at www.csvw.com/csvw/english/gsjs/gsjs/index.shtml.

[57] See Charles W. McMillion, China's Soaring Financial, Industrial and Technological Power, at 33 (Sept. 2007).

[58] See Plastics News – Automotive, available at http://www.plasticsnews.com/china/english/automotive/headlines2.html?id=1203640690.

[59] See Charles W. McMillion, China's Soaring Financial, Industrial and Technological Power, at 33 (Sept. 2007).

[60] China's Vehicle Production Capacity: China to Become No. 1 in 2010, Fourin China Auto Weekly (Dec. 25, 2007), available at http://www.fourin.com/chinaautoweekly/new_issue.html.

companies in China. GM, Ford, and Chrysler, for instance, have committed to purchase substantial quantities of auto parts produced by Chinese parts manufacturers.[61] Delphi, an auto parts producer, imports from China more than $100 million in auto parts annually after having invested more than $500 million in China over the past decade. Id. at 3.

The Chinese government has implemented similar, comprehensive industrial development plans to foster the growth of other key industries. Pursuant to a "five-year development blueprint," for example, the Chinese government plans to carry out numerous "key projects for the revitalization of China's equipment manufacturing industry during the 2006-2010 period."[62] China identifies the following "key projects" that are being used to support Chinese equipment/machinery producers:

- large high-efficiency, clean-generating equipment, such as million kilowatt-grade nuclear generating units;
- super high voltage power transmission equipment;
- complete set of large ethylene equipment, such as complete set of equipment for paraxylene, terephthalic acid, and polyester;
- large coal chemical equipment, such as equipment for liquefaction and gasification of coal;
- comprehensive coal mining equipment, such as large underground mining and conveyance/dressing equipment;
- large metallurgical equipment, such as continuous rolling mills for cold- and hot-rolled steel sheet and complete sets of plating equipment;
- large shipping equipment, such as large offshore oil engineering equipment and liquefied natural gas tankers;
- rail transport equipment, such as commercial production of trains and new subway cars; and
- equipment for environmental protection and comprehensive utilization of resources, such as equipment for treatment of urban and industrial wastewater and solid waste.

Id.

[61] Andrew Szamosszegi, How Chinese Government Subsidies And Market Intervention Have Resulted In The Offshoring Of U.S. Auto Parts Production: A Case Study, at 11.

[62] See Key Projects for Revitalizing Equipment Manufacturing Industry, Xinhua News Agency (Mar. 6, 2006), available at http://www.china.org.cn/english/2006lh/160261.htm.

The Chinese government, moreover, is providing significant subsidies "for the purpose of raising core competitiveness and capacity for independent innovation of domestic enterprises, promoting the development of equipment manufacturing and implementing the preferential policies of import taxation to invigorate the equipment manufacturing."[63] These and other subsidies used to foster the development of China's equipment manufacturing industry are discussed below in section IV.A, below.

C. Five-Year Plans and Other Industrial Policies Implemented by Provincial and Local Governments

To reinforce the central government's policies, provincial and local governments in China have formulated corresponding industrial policies that identify the key sectors and enterprises to be encouraged through additional support measures applicable in their territories. Provincial and local governments use their Five-Year Plans to achieve the same objectives as those of the national government, including establishing levels of assistance granted to industries and individual companies, setting detailed production and capacity targets, determining which company will produce which products, and specifying which technologies will be used in production.[64]

The Five-Year Plans of almost every provincial and local government in China identify one or more of the primary downstream industries in the specialty steel sector as "pillar" or "key" industries subject to preferential treatment and provide substantial governmental direction for the growth and evolution of the industries. For example, the relationship between Haier, an

[63] See Circular of the Ministry of Finance, State Development and Reform Commission, General Administration of Customs and State Administration of Taxation on Import Taxation Policies to Implement the Opinions of the State Council of Invigorating Equipment Manufacturing, Cai Guan Shui [2007] No. 11, available at http://www.asianlii.org/cn/legis/cen/laws/cotmofsdarcgaocasaotoitptitootscoiem2494/.

[64] See The Chinese Steel Industry, International Iron and Steel Institute, Issue 4 (Jan. 2007).

appliance manufacturer that is considered to be one of China's most successful modern enterprises, and the local governments in Qingdao City and Shandong Province is instructive as to how local governments in China have been bolstering the development of key enterprises in downstream industries in the specialty steel sector.

> China's most famous international brand belongs to the electrical appliance company, Haier. Its CEO, Zhang Ruiming, is the only Chinese CEO to have appeared in Fortune's list of the "world's top 100 CEOs". Far from being the product purely of the free market, Haier's growth is explained by a combination of the entrepreneurial drive of its CEO, Zhang Ruiming, allied to the strong support of the local government in Qingdao City and Shandong Province. Haier received strong financial support from the local government through their relationship with the local banks; was supported by the government in its merger with other local firms, in negotiations with other governments to take over their local firms in gaining permission to list on the domestic stock market; and through the preferential allocation of high quality industrial land to help it expand through establishing a science park.[65]

China's automotive industry, moreover, has been designated as a pillar industry by numerous provincial and municipal governments, with 24 provincial governments designating the automotive industry as a pillar industry by the mid-1990s.[66]

Today, the primary downstream industries in China's specialty steel sector remain key industries supported by provincial and local governments throughout China.[67] The Provincial

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[65] See Peter Nolan, Evaluation of the World Bank's Contribution to Chinese Enterprise Reform, at 8 (2005), available at http://lnweb18.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/115BD744564229F85256FF000590B8C/$file/china_cae_enterprise_reform.pdf.

[66] Andrew Wedeman, Crossing the River by Feeling for Stones or Carried Across by the Current? The Dynamics of Reform in Post-Mao China, at 28.

[67] Another example of an industrial policy implemented by a municipal government is Hefei's "industrial development plan," which identifies eight "key industries." See Hefei Municipal Government Catalogue of Favored Industries, available at www.hefei.gov.cn/english/zjhf.jsp?section=015003005&module=common&id=015003005. The key industries include: automotive; machinery; household appliances; chemical industry and tires; information (...continued)

Government of Guangdong, for instance, has identified many important, downstream consumers of specialty steel among the nine provincial pillar industries that are supported by the Guangdong provincial government (such as automotive, petrochemical, household appliances, construction, electronics, and information technology).[68] According to the "Prospect of the Nine Pillar Industries," which sets out Guangdong's industrial policies for the period 2005 through 2010, the Provincial Government of Guangdong is to increase the nine pillar industries' international competitiveness and accelerate restructuring in the industries. Id. In the automotive industry, the government plans to increase the province's annual production capacity to 1.6 million automobiles and to export 10 percent of its products. Id.

In Shanghai, another important manufacturing base, the Municipal Government of Shanghai provides incentives to enhance the competitive advantages of Shanghai's six pillar industries – automotive, petrochemical and fine chemicals, refined steel, complete equipment manufacturing (machinery), information technology, and biomedical and pharmaceuticals.[69] Shanghai's plans to develop its pillar industries is also set out in the Development Plan for Industry.[70]

For instance, as discussed above, the Chinese government has identified numerous "key projects for the revitalization of China's equipment manufacturing industry during the 2006-

(...continued)
technology and software; new materials; biotechnology and new medicine; and agriculture and food processing. Id. The industrial development plan calls for the government to support the industrial structure, product mix, and the structure of enterprises.

[68] See [Industry] Prospects of GD's nine pillar industries (Mar. 30, 2005), available at http://www.newsgd.com/business.

[69] See Comprehensive Economic Development, Shanghai Foreign Economic Relation & Trade, available at www.smert.gov.cn/gb/2/node498/node580/userobject1ai10688.

[70] See Development plan for the industry, Shanghai Economic Committee (Investment Guidebook on Industry and Commerce in Shanghai), available at www.shec.gov.cn/shec/english/guidebook_ content.jsp?id=12718&num=47-1-4.

2010 period . . ..”[71] Following the central government’s blueprint, the Municipal Government of Shanghai has set out the following plan to promote the development of its equipment (machinery) industry in its Development Plan for Industry:

> Efforts shall be made to drive the upgrade and breakthrough of the equipment industry, while taking the opportunities of urbanization process to precisely elect the key point of breakthrough. In the meantime, the industry shall propel R&D by industrial, college/university and research institutions, while accelerating international cooperation and enhancing the level of industrialization. By 2010, technologies of core products shall reach leading international level. There shall be a number of large enterprises and system integration companies with international competitiveness. Technologies of power generating equipments, micro-electronics and coal liquefying equipments shall be among the world leading levels. A state-level advanced equipment manufacturing base shall be basically in place. It is predicted that the equipment industry shall turn out a gross industrial output of RMB 1 trillion by 2007, and RMB 1.5 trillion by 2010, accounting for about 50% and 54% respectively of that of the municipality.

Id. The government expects to advance in eight key segments within the equipment/machinery industry: (1) power station and power transmission/distribution equipments; (2) railway; (3) microelectronics equipment; (4) precision processing equipment; (5) key special equipment;[72] (6) energy equipment; (7) new environmental protection equipment; and (8) smart test and automatic control equipment.

The Shanghai municipal government also has established a comprehensive plan to support its automotive industry. For instance, Shanghai’s industrial policy for the automotive

[71] See Key Projects for Revitalizing Equipment Manufacturing Industry, Xinhua News Agency (Mar. 6, 2006), available at http://www.china.org.cn/english/2006lh/160261.htm.

[72] The government will ensure that enterprises have the capacities to self-design and manufacture key equipment, such as ultra-large cylinders, ultra-large rotors, large high-pressure containers, large metallurgic and heavy mechanical rackets, large forged/cast parts, primarily shield bulldozers, port machinery, and heavy machine equipment. Id.

sector directs the industry to "focus on autonomous product development, brand building, exporting and maintaining the leading position" and to "enhance its core competence and the international operation capability."[73]

The Municipal Government of Tianjin, a significant specialty steel production base, has provided substantial assistance to important specialty-steel-consuming industries, which are among its six pillar industries (information technology, chemical and metallurgical, automotive, biotechnology and modern pharmaceutical, and new energy and environmental protection).[74] In 2005 alone, Tianjin's government invested 160 billion yuan in 560 projects undertaken by its pillar industries. Id.

Lastly, provincial and local governments have been actively implementing the policy of "coordinative development." An important implementation method used by these governmental authorities has been to attract investment by concentrating and unifying the production chain within specific areas known as "industrial clusters."[75] Industrial clusters represent geographic concentrations of interconnected enterprises in a particular industry that share related production

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[73] Comprehensive Economic Development, Shanghai Foreign Economic Relation & Trade, available at www.smert.gov.cn/gb/2/node498/node580/userobject1ai10688. See also Development plan for the industry, Shanghai Economic Committee (Investment Guidebook on Industry and Commerce in Shanghai), available at www.shec.gov.cn/shec/english/guidebook_content.jsp?id=12718&num=47-1-4.

[74] See China's Tianjin Allocated More Investment for Pillar Industries, Asia Pulse (Feb. 22, 2005).

[75] See, e.g., Industrial Clusters in the Pearl River Delta (PRD, Industrial Cluster Series (Issue 2), Li & Fung Research Centre (May 2006), available at http://www.idsgroup.com/profile/pdf/industry_series/LFIndustrial2.pdf; Industrial Clusters in Yangtze River Delta (YRD), Industrial Cluster Series (Issue 3), Li & Fung Research Centre (May 2006), available at http://www.idsgroup.com/profile/pdf/ industry_series/LFIndustrial3.pdf.

inputs, specialized labor pools, distribution and communication channels, and network associations.[76]

In the Province of Guangdong, for instance, the provincial and local governments, with the approval of the People's Congress, have implemented a plan for the development of township clusters in the Western Pearl River Delta ("PRD"), the Plan for the Coordinated Development of the Pearl River Delta (PRD) Township ("PRD Coordinated Development Plan").[77] According to the PRD Coordinated Development Plan, the provincial and local governments in Guangdong are creating "three major processing manufacturing cluster areas," which include many of the primary downstream consumers of specialty steel, such as the home appliance industry. Indeed, the Guangdong provincial government has designated certain districts to be "cluster" areas for home electrical appliances, such as Zhongshan, Foshan, and Shunde. Id. at 17 and Appendix 3.

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[76] See Overview of the Industrial Clusters in China, Industrial Cluster Series (Issue 1), Li & Fung Research Centre (May 2006), available at http://www.idsgroup.com/profile/pdf/industry_series/LFIndustrial1.pdf.

[77] See The Development of Western Pearl River Delta Region and its Prospects for Collaboration with Hong Kong, Greater Pearl River Delta Business Council, at 13 (Aug. 2006). The importance of the PRD Coordinated Development Plan, which was jointly formulated by the Ministry of Construction and the Guangdong provincial government, to the industrial policies implemented in Guangdong is explained as follows:

> the "PRD Coordinated Development Plan" has the effect of local by-law, become the action guideline for co-ordinated development of township clusters in the PRD, and the legal basis for various relevant industries planning, special projects planning and the overall town planning within the region. Although all municipalities in the PRD are currently formulating new strategic planning schemes, the overall spatial strategy for development in the PRD and the positioning of each city would not deviate significantly from the "PRD Coordinated Development Plan."

Id.

Local governments have also actively fostered the development of appliance-specific "industrial clusters" in their jurisdictions. In Guangdong, both the Shunde district in Foshan, which is known as the "Kingdom of Household Appliances,"[78] and the Nantou district in Zhongshan, "a renowned home appliances production base with the title of 'Specialized Town for Home Appliances in Guangdong,'" have used preferential measures to successfully attract many electrical appliance producers.[79]

D. Summary

As a whole, the industrial policies implemented by the Chinese government at all levels to ensure the viability of downstream industries in China's specialty steel sector are a prime example of China's extensive governmental efforts to manipulate the market and dictate outcomes by involving itself in decisions that should be made by the market. As next discussed in section IV, these industrial development policies and strategies provide the framework for a variety of direct and indirect support measures executed by the Chinese government to ensure that its "pillar" industries and "national champion" SOEs do not fail.

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78 See PRD Economic Profile, Pearl River Delta Business, available at http://www.prdbiz.com/prd/economicprofile.php (explaining that "electrical appliances" is an industrial cluster in the Shunde district of Foshan City).

79 See Overview of the Industrial Clusters in China, Industrial Cluster Series (Issue 1), Li & Fung Research Centre (May 2006), at 10, available at http://www.idsgroup.com/profile/pdf/industry_series/LFIndustrial1.pdf. See also The Development of Western Pearl River Delta Region and its Prospects for Collaboration with Hong Kong, Greater Pearl River Delta Business Council, at 29-30 (Aug. 2006) (explaining that "{u}nder the municipal administration of Zhongshan are a number of specialised town {*sic*}, each engaging in developing a different pillar industry").

IV. MEASURES EMPLOYED BY THE CHINESE GOVERNMENT TO SUPPORT AND DEVELOP DOWNSTREAM INDUSTRIES IN CHINA'S SPECIALTY STEEL SECTOR

To carry out China's industrial policies to develop and protect downstream industries in China's specialty steel sector, various direct and indirect support measures have been implemented by governments at the national, provincial, and local levels. Specific support measures used by the Chinese government to encourage the production and exportation of downstream industries in China's specialty steel sector are detailed below.

Obtaining information regarding the nature and type of assistance received by Chinese producers is complicated, because corporate reporting in China is limited and often unavailable, particularly from SOEs. Indeed, a report issued by the Office of the United States Trade Representative has described the difficulty of obtaining information regarding Chinese support measures as follows:

> China's subsidy programs are often the result of internal administrative measures that are not publicized. Sometimes they take the form of income tax reductions or exemptions. They can also take a variety of other forms, including mechanisms such as credit allocations, low interest loans, debt forgiveness, and reduction of freight charges.[80]

Accordingly, due to the lack of publicly available information in China, the beneficiaries of subsidies granted by the Chinese government are not identified, in most instances, in this report.

A. Subsidies Provided to Downstream Industries in China's Specialty Steel Sector

1. Debt-to-Equity Swaps

Debt-to-equity swaps are one of the primary tools utilized by the Chinese government to carry out its reform and restructuring of favored industries and SOEs under its national industrial

[80] See United States Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, at 120 (March 2006).

policies. China has employed this technique to prop up state-owned enterprises through direct government infusions of cash. Indeed, the Chinese government has acknowledged that the debt-to-equity swap program is "designed to free key SOEs from debt burdens."[81]

In the typical debt-to-equity swap, non-performing loans ("NPLs") owed by steel companies are transferred from their state-owned creditor banks to one of four asset management companies ("AMCs").[82] The four AMCs, which are owned by the Chinese government's four largest state-owned banks, include: (1) China Huarong Asset Management Corp. ("Huarong AMC"), owned by Industrial and Commercial Bank of China ("ICBC"); (2) China Great Wall Asset Management Corp. ("Great Wall AMC"); (3) China Orient Asset Management Corp. ("Orient AMC"); and (4) China Cinda Asset Management Corp. ("Cinda AMC"), owned by China Construction Bank ("CCB").[83] The AMCs then exchange the debt for shares in the companies. The companies often receive an additional benefit pursuant to these transactions, because many debt-to-equity swap agreements require the AMCs and creditor banks to continue providing assistance to the companies after the swap had occurred. Id.

Numerous SOEs in downstream industries in China's specialty steel sector have participated in China's debt-to-equity swap program. SOEs in the automotive and chemical industries, for instance, were among the beneficiaries of debt-to-equity swaps in Chingqing

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[81] See Goal of SOE Reform Achieved, People's Daily Online (Dec. 27, 2000), available at http://english.people.com.cn/200211/01/print200012/27/print20001227_58958.html.

[82] See China's Bad-debt Disposal Speeds Up, People's Daily Online, available at http://english.people.com.cn/200211/01/print20021101_106096.html.

[83] See China's debt-for-equity swaps proceed despite concern, Japan Economic Newswire Plus (Nov. 13, 1999).

Province.[84] In Beijing, 17 SOEs in various industrial sectors, including the machinery industry (Beijing Heavy Electrical Machinery Plant) and the high-tech industry, reduced their debts by 16.84 billion through this subsidy program.[85]

These debt-to-equity swaps constitute countervailable subsidies because they are not on commercial terms. As an initial matter, the Chinese government does not act as a reasonable private investor when it exchanges unpaid debt for equity shares, because it already owns these enterprises. By converting the debt owed to the government-owned banks into equity, the Chinese government does not change its ownership position in the enterprises. It does, however, give up its right to payments of the principal and interest owed on the debt.

Further evidence of the non-commercial nature of the debt-to-equity swap transactions is demonstrated by the Chinese government's failure to act as a reasonable private investor when it assesses whether to exchange the unpaid debt for equity shares. China does not conduct an analysis of whether the investments will generate a reasonable rate of return in a reasonable period of time. Rather, the Chinese government views the deals as a means to reduce the companies' liabilities-to-assets ratio and thereby boost the companies' competitiveness.[86] According to the Director of Development and Planning Department under the State

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[84] See Major Deb-to-Equity Swap Project in Chongqing Signed, People's Daily Online (Feb. 25, 2000), available at http://english.peopledaily.com.cn/english/20007/08/print20000508_40335.html.

[85] See Beijing State-Owned Enterprises Accomplish Debt to Equity Task, People's Daily Online (Jan. 27, 2001), available at http://english.peopledaily.com.cn/english/20007/08/print20000508_40335.html.

[86] See Tisco, South China Morning Post (Jan. 4, 2000).

Administration of Metallurgical Industry ("SAMI"), the debt-to-equity swap program is, "a big boon for debt-stricken steel enterprises struggling for profits."[87]

Further evidence of the noncommercial nature of the debt-to-equity swap transactions is provided in the unwillingness of international investors and financiers, including the World Bank, to participate in the program. The World Bank has criticized the deals as being "flawed in their financing plans and in identification and transfer of such funds." Id. The foreign investment community, moreover, has been skeptical of the process and has not participated in the debt-to-equity swap program. Id. Many Chinese companies, moreover, consider the debt-to-equity swap program "as a one-time debt write-off sanctioned by Beijing."[88]

2. Equity Infusions

Chinese producers in key industries also have been heavily subsidized by equity infusions from the Chinese government. While this scheme has enabled the government to provide substantial cash subsidies to favored enterprises, the government has gained no additional rights by acquiring ownership shares in companies in which it already has been the dominant shareholder. As shown in the following example, the terms of the equity transactions confirm that the Chinese government fails in these arrangements to obtain a reasonable commercial return on its investment.

On April 27, 2005, Baosteel issued five billion new public shares, of which two billion were placed with public investors, and three billion were purchased by Baosteel Group,

[87] See China Debt-to-Equity Swaps Help Steel Makers, China Daily (Mar. 26, 2000).

[88] Id. The two remaining AMCs are China Great Wall Asset Management Corporation and China Orient Asset Management Corporation. See Foreign bankers remain skeptical as Cinda takes equity in five companies – Debt-swap deals to test reform plan, South China Morning Post (Oct. 14, 1999).

Baosteel's wholly state-owned parent company and majority shareholder.[89] Of the two billion shares placed with public investors, 1.65 billion were listed on the Shanghai Stock Exchange and placed preferentially to current shareholders. Id. The remaining shares were placed with institutional investors. The issue price was set, by inquiry, at RMB 5.12 per share, yielding funds totaling approximately RMB 25.6 billion ($3.19 billion). Id.

The new share issuance provided a substantial subsidy to Baosteel because the government, through the 100-percent state-owned Baosteel Group, paid an overvalued price for its three-fifths portion of the new share issuance.[90] While the government paid the same price as the shares sold to private parties, RMB 5.12 per share, the government's shares had different rights and restrictions that should have made them worth less. Id.

Specifically, the Chinese government's shares were encumbered by various restrictions: (1) prior to August 18, 2005, the shares owned by the government were not tradable -- including the new shares issued on April 27, 2005; (2) after August 18, 2005, the trading rights obtained by the government are highly conditional, with only certain portions of Baosteel Group's shares allowed to be traded as per a specified schedule and further limitations imposed if the trading price falls below a certain level; (3) the government is prohibited from selling its shares for less than RMB 5.63 after the initial period; and (4) the government may never own less than 67 percent of the total number of shares. Id. at 5, 110 n.30. Further, the Chinese government has stated that it would prevent Baosteel's share price from ever falling below RMB 4.53 in order to "protect the interests of investors." Id. at 110 n.30. The government would protect the investors' interests by manipulating the share price, if necessary, through further injections

[89] See 2005 Baosteel Annual Report at 5.

[90] Any amount paid over fair market value would constitute a subsidy.

and/or purchases of public shares on the Shanghai Stock Exchange. Id. Nonetheless, Baosteel Group purchased three billion of these limited shares for the same price that private investors paid for tradable shares.

3. **"Policy Loans" from State-Owned Banks**

Downstream industries in China's specialty steel sector, particularly key SOEs in these industries, have benefited from massive amounts of subsidized loans provided by the Chinese government through its state-owned banks. As referenced earlier, China's banking system is dominated by four state-owned banks – the ICBC, the CCB, the People's Bank of China, and the Agricultural Bank of China – which account for over 60 percent of all loans.[91] In accordance with the industrial policies of central or local governments, these banks have made loans based on political directives (so-called "policy loans"), rather than the borrowers' creditworthiness or other market-based factors. The Chinese government has instructed banks in China to provide loans to further its industrial policies on numerous occasions.

For instance, in mid-1996 the People's Bank of China ("PBC") announced that state banks would increase "circulating capital loans" in the second half of the year to key state enterprises to ease shortage of operation funds.[92] In 1998, China put banking reform on hold to lend billions of yuan to key SOEs and infrastructure projects to maintain economic growth targets.[93] Policy loans have also been used by the Chinese government to carry out the

[91] Luo Ping, Challenges for China's Banking Sector and Policy Responses (Nov. 14-16, 2003).

[92] See The Mineral Industry of China, U.S. Geological Survey – Minerals Information, at 3 (1996).

[93] See The Mineral Industry of China, U.S. Geological Survey – Minerals Information, at 1 (1998).

restructuring and modernization of favored industries and SOEs.[94] The ICBC, for example, reports that "{a} considerable part of its loans have been channeled to the State's key corporations and key projects."[95] In 2000 alone, the ICBC made loans in the amount of RMB 67 billion to favored SOEs for restructuring and modernization projects.[96]

Because capital allocation is driven by political concerns and official edict rather than market mechanisms, these "policy loans" generally have gone to SOEs and to industries favored by the Chinese government, such as the primary downstream consumer industries in the specialty steel sector.[97] Local officials have supported inefficient SOEs through bank lending, fearing the social disturbances that might be triggered by disgruntled, unemployed workers.[98] Currently, SOEs account for 25 percent of China's GDP, but receive over 65 percent of loans from state-owned banks.[99]

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94 See Goal of SOE Reform Achieved, People's Daily Online (Dec. 27, 2000), available at http://english.people.com.cn/200211/01/print200012/27/print20001227_58958.html.

95 See ICBC's Assets Exceed 4 Trillion Yuan, People's Daily Online (Dec. 28, 2000), available at http://english.peopledaily.com.cn/ english/200012/28/print20001228_59047.html.

96 See ICBC Puts in 139 Billion Yuan in Fixed Assets, People's Daily Online (Jan. 2, 2001), available at http://english.peopledaily.com.cn/ english/200101/02/print20010102_59423.html.

97 See Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government. A recent IMF report concludes that "banks remain exposed to several sectors that are likely over invested, such as steel, cement, aluminum, and construction and, are therefore vulnerable to an economic slowdown and/or consolidation in these sectors." Richard Podpiera, Progress in China's Banking Sector Reform: Has Bank Behavior Changed?, No. WP/06/71, at 11 (Mar. 1, 2006).

98 See Minying Enterprises and High-Technology Zones, available at http://www.law.gmu.edu/nctl/stpp/us_china_pubs/6.8_Minying_Enterprises_High_Tech_Zones.pdf.

99 See Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government (Jun. 1, 2005), available at http://knowledge.wharton.upenn.edu/index.cfm?fa=printArticle&ID=1202.

Additionally, the Chinese government has channeled its finances to preferred industries at extremely low, non-market interest rates.[100] Indeed, WTO member countries concluded in late 2005 that China continues to provide "preferential bank financing to producers of agricultural and industrial goods, despite a clear commitment by China four years ago to eliminate all prohibited subsidies upon its accession to the WTO." Id. at 13. Since 1998, these banks collectively have benefited from repeated governmental capital injections and nonperforming loan purchases in excess of $250 billion.[101] The U.S. delegation at the WTO further stated that:

> [S]tate-owned banks continue to make policy-driven loans that are not commercially justified, and when those loans fail, the loans are written-off and passed to the asset management companies to be dealt with. The recent inauguration of Huida Asset Management Ltd., set up to specifically deal with the non-performing loans of the state-owned People's Bank of China is one such example.[102]

In its 2005 report to the U.S. Congress, the U.S.-China Economic and Security Review Commission determined low- and no-cost financing to be "one of the most pervasive forms of subsidies in the Chinese economy."[103] The Commission reported that this system of policy lending, whereby capital is allocated for political or strategic reasons using subsidized interest rates and other noncommercial terms, arguably amounts to a massive governmental subsidy for Chinese firms that is used both to bolster their operations and to fund acquisitions. Id.

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[100] According to Morgan Stanley, prices on a variety of financial instruments, such as interest rates, bank credit lines and bond prices, are tightly controlled by leadership decisions made at the highest levels of the Chinese government. See Stephen S. Roach, Inside the China Debate, at 2 (2006).

[101] WTO No. G/SCM/Q2/CHN/14, at 3 (Sept. 29, 2005).

[102] Id.

[103] See 2005 Report to Congress of the U.S.-China Economic and Security Review Commission, at 39.

These preferential loans, granted on non-commercial terms to inefficient SOEs, have subsidized downstream industries in the specialty steel sector and have given the industries an unfair advantage in the market.[104] Today, Chinese producers in pillar industries continue to have access to subsidized financing from state-owned banks that have a strong incentive and Chinese governmental direction to lend to these preferred industries. Without access to the records of the state-owned banks, asset management companies, and other lenders, it is impossible to know the full extent to which these industries have benefited from China's subsidized loans. Given the importance of these industries to China's economic growth and development, however, it is reasonable to conclude that the level of borrowing and the benefits to the industries have been substantial. In just one example, SAIC, China's largest automaker, received "huge amounts of bank credit for its market expansion."[105]

4. State Bond-Financed Projects

This program carries out China's Five-Year Plans by restructuring certain key industries, including the many downstream industries in China's specialty steel sector, to make them internationally competitive and to promote domestic production in China to take the place of imports. Since 1999, the Chinese government has used State Bond-Financed Projects ("SBFP") to restructure and modernize SOEs in key industries.[106] According to the Chinese government,

[104] These state-owned banks are, in essence, acting as the government when they provide loans. Indeed, according to the Working Party Report on China's accession to the WTO, "when state-owned enterprises, including banks, provide financial contributions they are doing so as government actors." Thus, to the extent that the loans are being provided at preferential or below-market rates, they constitute a subsidy. See WTO No. G/SCM/118, at 12 (Nov. 9, 2005).

[105] See Bank Backs Shanghai Auto Industry, People's Daily Online (Jul. 8, 2000), available at http://english.peopledaily.com.cn/ english/200007/08.html.

[106] See 19.5b Yuan T-Bonds Stimulate 240b Yuan of Investment in Technological Upgrading, People's Daily Online (Mar. 21, 2001), available at http://english.peopledaily.com.cn/ english/200103/24/print20010324_65893.html.

by the end of 2000, 880 projects had been "helped with interest-discount T-bonds to a sum of 240 billion yuan. Of the 240 billion yuan, 145.9 billion yuan were bank loans and 195 billion yuan {*sic*} government grants."[107]

China has prioritized technological updating of enterprises and products in numerous downstream industries in the specialty steel sector. Government-funded modernization projects have, for example, been undertaken by SOEs "in such major industrial sectors as metallurgical, petrochemical, nonferrous metal, machinery, textile and information and others involving papermaking, medicine, building material, chemistry." Id.

5. State Key Technology Renovation Project Fund

The Chinese government also has provided downstream industries in China's specialty steel sector with significant subsidies in the form of subsidized (or reduced interest) loans for the strategic restructuring of key SOEs and technical transformation of key production technologies. In this regard, the Chinese government implemented the State Key Technology Renovation Project Fund ("SKTRPF") in 1999, with 15.3 billion yuan earmarked "for technological renovation efforts of the country's old industries, including the key metallurgical industry."[108]

Under the aegis of the SKTRPF, China has granted these subsidies pursuant to at least two State Economic and Trade Commission ("SETC") programs, Loan Interest Subsidy Fund program and Key Technology Project program, which were promulgated in 1999 and 2000,

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[107] Id. It is believed that the figure of 195 billion yuan in government grants should be 95 billion yuan in order to be added to the 145.9 billion yuan in bank loans to equal the total of 240 billion yuan.

[108] See China on Way to World Steel Power (Sept. 13, 1999), available at http://www.people.com.cn/english/199909/14/chnmedia.html.

respectively.[109] The Loan Interest Subsidy Fund set up a discretionary fund to subsidize interest on loans for industry technological upgrades, while the Key Technology Project program provided further, specific guidance as to what technology projects are "key," so that they should receive support.

These programs fit hand-in-glove with the overarching industrial policy set forth in China's Five-Year Plans. Indeed, the Loan Interest Subsidy Fund program stated that the "subsidy fund shall follow the principles . . . {of} the national industrial policies," with the goal of "aggressively impel{ling} economic growth through sped up {technological} transformation."[110] Likewise, the Key Technology Project program was formulated "in accordance with the national industrial policy."[111] Notably, one of its stated goals was to "expand exports" of "key products" and "key industries." Id.

The Key Technology Project program, moreover, is essentially a list that identifies 27 key product areas and industries. The specialty steel industry and specialty steel products are first on the list of 27. Section 1 on "Key Steel Varieties" indicates several "urgently needed, technically difficult, high added-value varieties of steel products" that must be developed. Id. at Sec. 1.

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109 See Management Measures of Technology Renovation Projects Loan Interest Subsidy Fund, State Economic and Trade Commission (Apr. 2, 1999) ("Loan Interest Subsidy Fund"); National Key Technology Renovation 'Shuang Gao Yi You' Project, State Economic and Trade Commission (Jun. 2000) (Chinese language document) available at http://www.jzgy.net/qgb/zcfg/fg26.htm ("Key Technology Project").

110 See Loan Interest Subsidy Fund, at Ch. 2, Sec. 3.1 and Ch. 1, Sec. 1, respectively.

111 See Key Technology Project, at Preamble.

6. Science and Technology Development Subsidies

As discussed in section III above, the Chinese government is implementing a comprehensive S&T industrial policy that is infused with economic nationalism under the Eleventh Five-Year Plan.[112] China has significantly increased governmental funding to support enterprises and projects involved in R&D or high-technology projects that include: (1) preferential support from policy banks; (2 directly grants of money; (3) encouragement of government agencies to use procurement policy to support targeted technologies; (4) reduced rate of income taxes at 15 percent; (5) VAT rebates on high-tech exports; and (6) repayment guarantees to induce support from commercial banks. Id.

Additionally, under the Technology Importing and Innovation Plan, Chinese policy banks and commercial banks may grant "domestic enterprises with necessary financial support for importing advanced technologies and their re-innovating.[113] China also uses the 11th Five Year Plan for High Technology Sector Development and the S&T Development Plan (2006-2020) to identify favored industries and developmental priorities for certain of these industries. The Chinese government, for instance, has established research goals for the semiconductor industry that are funded by government labs.[114] The Chinese government also supports development of

[112] See "China's State Sector, Industrial Policies and the 11th Five Year Plan," Testimony of Barry Naughton, Professor, before the U.S.-China Economic and Security Review Commission Hearing on the "Extent of the Government's Control of China's Economy, and Implications for the United States" (May 24, 2007), available at http://www.uscc.gov/hearings/2007hearings/written_testimonies/07_05_24_25wrts/07_05_24_25_naughton_statement.php.

[113] See Technology Importing and Innovation Plan at Art. 16.

[114] See "China's State Sector, Industrial Policies and the 11th Five Year Plan," Testimony of Barry Naughton, Professor, before the U.S.-China Economic and Security Review Commission Hearing on the "Extent of the Government's Control of China's Economy, and Implications for the United States" (May 24, 2007), available at http://www.uscc.gov/hearings/2007hearings/written_testimonies/07_05_24_25wrts/07_05_24_25_naughton_statement.php.

S&T in China through specific engineering projects (or *Gongcheng*), such as the development of civilian passenger aircraft. Id.

7. Provision of Land at Preferential Rates

The Chinese government also subsidizes enterprises in China through the provision of land at preferential prices.[115] Given the importance of downstream industries in China's specialty steel sector, it is likely that enterprises in these favored industries have benefited from these significant subsidies.

Private land ownership, either by individuals or corporations, is prohibited in China.[116] China's constitution declares, "Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state."[117] Thus, to the present time, all real property officially remains in the hands of the state. Within this framework of public ownership, the Chinese government offers lease agreements or other forms of land-use rights rather than transferring actual ownership.[118] As this section will demonstrate, the bifurcation or separation of land use from land ownership creates a unique land

[115] See, e.g., Memorandum from David M. Spooner, Assistant Secretary for Import Administration, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Laminated Woven Sacks from the People's Republic of China, at Comment 1 (Jun. 16, 2008) ("LWS I&D Memo") (finding that Chinese companies received subsidies in the form of a complete waiver of land-use fees within the parks or the form of land-use rights at preferential rates).

[116] See Memorandum from David M. Spooner, Assistant Secretary for Import Administration, to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") – China's Status as a Non-Market Economy (Aug. 30, 2006) (recognizing that the Chinese government, "either at the national or local level, is the ultimate owner of all land in China").

[117] Chinese Constitution, Ch 1, Art. 10. Agricultural collectives, are state entities.

[118] See Barry Naughton, The Assertive Center: Beijing Moves Against Local Government Control of Land, China Leadership Monitor, No. 20 (Winter 2007). See also Cao Pei, Real Estate Law in China, at 10 (1998) ("Real Estate Law in China").

market that is easily manipulated to subsidize key industries, such as downstream industries in China's specialty steel sector. Indeed, China itself has acknowledged that Chinese producers receive subsidized land. Chinese Premier Wen Jiabao recently said publicly that the key Chinese industries in fact receive discounts on land, stating that "local governments . . . routinely offer free or cut-rate real estate . . . to developers looking to set up job-creating businesses . . . ." Id.

China has established two distinct manners in which corporations may utilize the land without actually owning it: (1) "allocated" land-use rights; and (2) "granted" land-use rights.[119] Both have been used to support favored industries in China. As China underwent the process of nationalizing real property following the Communist party's ascendancy in 1949, it allocated the right to use parcels of land to SOEs, state agencies, social organizations, and other enterprises without fee and for an indefinite term.[120] These "allocated" land use rights ("ALRs") were not transferable, and land-users were limited to the land-use specified by the Chinese government at the peril of forfeiting the land-use right.[121] The transition to China's current real property regime began in 1981 with the introduction of the fee-for-use concept, first by local law in Shenzhen, and then by similar laws in other municipalities.[122] Under these laws, an individual or organization seeking land for a proper purpose can obtain for a fee a "granted land-use right" ("GLR"), essentially an agreement allowing the individual or organization exclusive right to a

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[119] See, e.g., LWS I&D Memo, at Comment 1.

[120] Tung-Pi Chen, Emerging Real Estate Markets in Urban China, 8 Int'l Tax & Bus. Lawyer 78, 81 (1990).

[121] Real Estate Law in China at 9.

[122] The first law allowing issuance of "granted land-use rights" was the 1981 Shenzhen SEZ Provisional Statute on Land Administration, administered by the Shenzhen Municipality. Real Estate Law in China at 28.

particular parcel, for a particular use, for a definite period of time, by applying to the local government. Id.

In 1988, China amended its Constitution to allow sale and transfer of these GLRs,[123] and in 1990, the GLR concept was implemented nationally with promulgation of the Interim Regulations of the PRC on Granting and Transferring the Right to the Use of State-owned Land in Cities and Towns.[124] These regulations replicated the local GLR laws issued in previous years, but still allowed for a variety of divergent practices. Id. The regulations also set the standard terms for GLRs based on the purpose of the grant -- for example, land-use rights for industrial purposes have a term of 50 years.[125]

China promulgated a comprehensive national real estate law effective January 1, 1995, which standardized state policies and certain practices with regard to land-use rights. The 1995 Land Law clarified the conditions and methods to which local governments must adhere when granting and pricing land-use rights.[126] Specifically, when a local land authority grants a GLR, it must execute a written contract with the land-user. Id. at Art. 14. Land-use rights "may be granted in a manner of auction, invitation to bid" or, significantly, "bilateral negotiations," *i.e.*, negotiations between "the land administration department of the city or county . . . government

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[123] See Seventh National People's Congress, Amendments to the 1982 Constitution of the People's Republic of China (adopted 1st sess., April 12, 1988), as reported in "China's Constitutional Framework," U.S. Congressional-Executive Committee on China (Jun. 3, 2004), available at http://www.cecc.gov/pages/virtualAcad/gov/stateconst.php?made=print (last visited Mar. 7, 2007).

[124] Real Estate Law in China at 30.

[125] Interim Regulations of the PRC on the Assignment and Transfer of the Land Use Right of State-Owned Land in the Urban Areas, at Art. 12 (1990).

[126] See Law of the People's Republic of China on Management of Urban Real Estate – 1995," (July 5, 1994) ("1995 Land Law"), available at http://www.lehmanlaw.com/resource-centre/laws-and-regulations/real-estate/the-law-of-the-peoples-republic-of-china-on-urban-real-estate-administration-1994.

and the land user."[127] Notably, when the price of a GLR is set via bilateral negotiations, the *only* limitation is a "minimum price fixed in accordance with the State's regulations." Id. at Art. 12. As a result, local governments have substantial discretion in initial land-use pricing and thus can easily set artificially low prices to favor key enterprises or industries.

Moreover, this minimum "fixed" price does not appear to be based on market principles. To the contrary, mandatory real property valuation methods indicate that governmental policies, not market forces, primarily drive land-use pricing in China. Pursuant to the 1995 Land Law, the "datum land price, labeled land price and re-purchase price for various types of premises shall be fixed and made public on a regular basis," according to measures adopted by the State Council of China. Id. at Art. 32. The law further indicates that all land-use rights' valuations must be performed on the basis of these fixed prices, while merely "taking reference of the local market price." Id. at Art. 33. Thus, where the value of a GLR is concerned, market forces are only a secondary consideration to state policy.

The effects of these laws are highly predictable. First, when a state-owned entity sells GLRs to a favored SOE, the 1995 Land Law's non-market valuation methods facilitate artificial land pricing, virtually ensuring significant land subsidies. Second, as local governments compete for tax income and jobs, these governments are likely to manipulate the fixed prices and weight "reference" to local market prices to maximize their already substantial discretion, allowing significantly undervalued GLR sales to favored enterprises. Such subsidies are particularly widespread because local governments stockpile land to grant land use-rights. According to the World Bank, Chinese municipalities use various methods to acquire as much land as possible for little or no cost, and then grant land-use rights on the acquired lands for

[127] Id. at Arts. 12 and 14.

revenue purposes, often at below-market rates to favored enterprises.[128] For example, municipalities often acquire rural land from agricultural collectives, converting it to non-rural use by granting GLRs. Id. at 8. Because the municipality may resell land acquired from farmers for a price as large as 100 times what it cost the municipality to acquire it from the farmers, it can easily grant a land-use right to a steel producer for a price that is much less than this -- for example, five times its acquisition cost -- and thereby confer a large subsidy upon the steel producer, while still generating considerable revenue. Id. Municipalities also often designate rundown urban areas for re-development and forcibly resettle the inhabitants, increasing the supply of land for new GLRs and thus facilitating local subsidies to favored land-users.

Because Chinese law ensures that all use of land and land-planning conforms to China's macroeconomic plans and industrial policies, there can be no doubt that land use planning makes more and better-suited land available for favored industries and enterprises, including the steel industry. Article 11 of the 1995 Land Law explicitly commands local governments to set the "purpose, terms of use, and all other conditions regarding each individual land use right . . . in accordance with land use plans to be promulgated by city and county land administration departments."[129] These local land-use plans must be approved by the provincial government, which must follow the land-use planning of the Chinese government.[130] All sales of land-use

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[128] See George E. Peterson, Land Leasing and Land Sale as an Infrastructure-Financing Option, World Bank Policy Research Working Paper 4043, at 7 (Nov. 2006).

[129] See 1995 Land Law at Art. 11. Moreover, the extreme penalty for failing to properly use land underscores the level of governmental control of land-use and market-interference: if the holder of a land-use right does not "commence" the planned use of the land within two years of the grant, or if a holder uses land for an improper purpose, the state can reclaim the land-use right without compensation. Id. at Art. 25.

[130] Id. at Art. 11; Real Estate Law in China at 59.

rights must also conform to all land-use plans.[131] In 1998, China further strengthened land-use control by promulgating the "Land Use Purpose Control System."[132] Pursuant to this system, comprehensive land-use plans are now promulgated by the State Council, while provinces, counties, and townships each create land-use plans conforming to the State Council plan. Id. at Arts. 17-18. Plans by counties include land-zoning and uses purpose definitions, while township plans must define the specific use of each plot. Id. at Art. 20

Importantly, all land-use plans must conform to the requirements of China's industrial policies. Id. at Arts. 17 and 24. The conclusion is inescapable that land-use planning, and the GLR grants and transfers made pursuant to such planning, subsidize key enterprises, such as downstream industries in the specialty steel sector.

Finally, the 1995 Land Law includes provisions regarding ALRs. This confirms that the practice of "allocating" land-use rights, unlimited in duration and without any fee, continues to the present time. Specifically, local governments may provide ALRs for "construction lands . . . used for such projects as energy, communications and water enjoying priority support by the State" and "other lands as provided for by laws and administrative regulations." Id. at Arts. 23.3 and 23.4. Because significant quantities of specialty steel are required in all of these projects, such as the construction of power plants and water facilities, these provisions strongly suggest that producers in downstream industries in the specialty steel sector receive land from the government for such purpose at substantially-preferential prices.

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[131] Specifically, when a GLR is transferred or sold, the use may not be changed unless both the original granting authority and the responsible land-use planning department consent to the change and execute a new grant contract with an adjusted land-use fee. 1995 Land Law at Art. 43.

[132] See The Law of Land Administration of the People's Republic of China (1998, effective Jan. 1, 1999) available at http://product.chinawe.com/cgi-bin/lawdetail.pl?LawID=434.

8. **Provision of Raw Materials at Preferential Rates**

Downstream industries in China's specialty steel sector benefit from government programs that subsidize the cost of raw materials, including outright grants and price discounts as well as export-restriction schemes.

a. **Provision of SOE-Produced Raw Material Inputs**

The Chinese government provides raw materials to producers in key industries at preferential, subsidized prices. A recent report by the U.S.-China Economic and Security Review Commission concluded that "[p]rovincial and municipal governments subsidize purchases of … raw materials … by requiring other SOEs or pressuring their own suppliers to provide these inputs at below-market or even below-cost prices."[133] Indeed, the U.S. Department of Commerce has found in recent countervailing duty investigations of products imported from China that the Chinese government confers substantial countervailable subsidies upon producers of downstream products, including specialty steel products, the provision of raw material inputs at below-market prices.[134]

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133 See 2007 Report to Congress of the U.S.-China Economic and Security Review Commission, November 2007, at 40.

134 See, e.g., Memorandum from David M. Spooner, Assistant Secretary for Import Administration, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China, at 9-12 (Jul. 7, 2008) ("OTR Tires I&D Memo") (finding the Chinese government's provision of natural and synthetic rubber to constitute a countervailable subsidy); Memorandum from David M. Spooner, Assistant Secretary for Import Administration, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China at 9-12 (May 29, 2008) ("CWP I&D Memo") (concluding that the Chinese government conferred a countervailable subsidy upon steel producers that purchased government-produced hot-rolled steel at preferential prices); LWS I&D Memo, at 18 (finding Chinese companies received countervailable subsidies through the provision of biaxial-oriented polypropylene at preferential rates from state-owned petrochemical

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For example, Angang Steel has received significant raw-material subsidies through its relationship with its government-owned parent. Angang Holding, a government-owned entity, has provided guaranteed price discounts to Angang Steel with respect to the steelmaker's purchases of iron ore.[135] According to the company's financial reports, Angang Holding has guaranteed a 10-percent price discount on the average import price paid by Angang for iron ore. Chinese producers of specialty steel and downstream specialty steel products are likely to benefit from similar arrangements involving the purchase of raw materials, such as nickel and molybdenum, and specialty steel at subsidized prices.

b. Restraints on Exports of Raw Materials

The Chinese government also has utilized a number of export-restriction schemes, including export-licensing schemes and differential-export-tax ("DET") schemes, to ensure abundant domestic supplies of critical raw materials and to maintain artificially low pricing for those inputs. The stated position of the government with respect to the increased export restrictions is that they "reduc[e] exports of high energy-consuming and highly polluting products, while encouraging the import of low energy materials and low-level resource products in an attempt to address China's trade imbalance."[136] However, the main beneficiary of the

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producers); and Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 Fed. Reg. 39,657, 39,663-665 (Jul. 10, 2008) (finding the sale of government-produced stainless steel to downstream consumers at preferential prices to constitute a countervailable subsidy).

[135] Angang Steel Company Limited 2006 Annual Report, at 74.

[136] See China's Planned Aluminum-Product Export Tax Rebate Reduction Worries Industry, Resource Investor (May 21, 2007). See also See Steel and Iron Industry Development Policy, Order No. 25 of the National Reform and Development Commission, July 2005 ("Steel Policy 2005"), at Art. 30 (stating specifically that "[t]he export of such preliminarily processed products as coke, iron alloy, pig iron, waste steel and steel base (ingot) with high energy consumption and serious pollution shall be restricted …").

restrictions on essential raw material inputs is the domestic specialty steel industry and downstream consumers of specialty steel products. According to one recent article, the tax is necessary as "controlling exports of zinc and nickel is imperative given domestic demand."[137]

Until recently, the Chinese government used a licensing system to restrict the exportation of vital raw materials, such as metallurgical coke. In 2004, the European Union complained that the licensing scheme created significant imbalances in the global market and demanded that the Chinese government eliminate its program.[138] While the central government agreed to a minimum quantity of coke to be supplied to the European Union, the Chinese government sought ways to ensure that the licensing scheme stayed in place and was vigorously enforced. The Chinese Ministry of Commerce, for example, began enforcing regulations forbidding the trading or selling of export licenses for metallurgical coke among Chinese coke producers.[139]

In addition to the licensing scheme, the Chinese government has altered its tax regime to provide a differential export-tax scheme to restrain exports of key raw materials and basic specialty steel products while encouraging exportation of downstream products subject to a greater degree of manufacturing in China by not imposing similar export taxes and continuing to provide export rebates on value-added downstream products.[140] Nickel, for instance, is subject to the government's increased export restrictions -- in November 2006, the Chinese government

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[137] David Harman, China To Impose Or Increase Export Tax On Metal Products On June 1, Resource Investor (May 22, 2007), available at http://www.resourceinvestor.com/pebble.asp?relid=32114.

[138] See Philip Shawcross, Steel Or Coke, The Compass Is Pointing To Asia's Giant: EU Set To Challenge Chinese Licensing, American Metal Market (May 12, 2004). See also, Nancy E. Kelly, US, EU Protest Chinese Coke Export Controls, American Metal Market (Jun. 1, 2004).

[139] See Kit Ling Wong, Chinese Ministry Issues Warning On Resale Of Coke Export Licenses, American Metal Market (Jul. 28, 2004).

[140] As discussed above, the DET also confers a direct benefit upon downstream specialty steel consumers in the form of lower-priced specialty steel inputs.

increased the export tax levied on nickel raw materials and products from 2 percent to 15 percent for purposes of limiting exports of these items.[141] According to one recent article, China considers the tax to be necessary as "controlling exports of zinc and nickel is imperative given domestic demand."[142] The Chinese government has also levied export taxes to restrict the export of various semi-finished specialty steel products consumed by downstream consumers.[143]

At the same time, China has not imposed export taxes and has provided a rebate of the VAT on many products produced by downstream industries in the specialty steel sector.[144] In this way, China discourages Chinese producers from exporting raw materials and semi-finished materials.

China's reliance upon this differential export-tax scheme distorts trade and promotes exports of downstream products made in China to the detriment of competing U.S. producers. First, the levying of export taxes on upstream products at the rate of between 5 and 15 percent has the effect of increasing the supply, and thereby lowering the price, in China of raw materials that are consumed in producing the downstream products. Second, the imposition of no export tax on these downstream products encourages increased exports of the value-added products. The implementation of this differential export-tax scheme by the Chinese government, therefore,

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[141] See China's Jinchuan Group Limits 2007 Nickel Export Target, Resource Investor (Mar. 29, 2007) available at www.resourceinvestor.com/pebble.asp?relid=30361. See also Chinese Nickel Industry, BGRMM (Apr. 2008) available at http://www.insg.org/presents Ms_Wang_Apr08.pdf (reporting that the taxes assessed on the exportation of nickel products range from 15 to 20 percent).

[142] See China To Impose Or Increase Export Tax On Metal Products On June 1, Resourcex Investor (May 22, 2007) available at http://www.resourcexinvestor.com/ news.php?id=1235.

[143] See China's export tax hits same 83 products that lost rebate, Steel Business Briefing (May 23, 2007). See also China Raises Export Duties to Save Resources, The Daily Star, available at http://www.thedailystar.net/story.php?nid=16970.

[144] See Adjustment of Temporary Tariffs for Exports, Appendix II.

discourages the exportation of basic products, while encouraging the production and exportation of further-manufactured products. As observed in a study by the Organization for Economic Cooperation and Development ("OECD"), "The two main reasons for imposing export duties are 1) fiscal receipts or revenue and 2) promotion of downstream processing industries, i.e. by providing domestic manufacturing and processing industries with cheap raw materials and other inputs."[145]

In addition to export taxes, China continues to use VAT rebates to promote exports. In terms of exports of products using specialty steel, China grants domestic producers a rebate at varying levels depending on the exported good.[146] Because Chinese producers benefit from this preferential tax rate only upon exportation of those products, the subsidy is contingent upon exportation and therefore is trade-distortive. The benefits gained by these VAT rebates enable Chinese producers to sell in the U.S. market and third countries at prices that undercut U.S. domestic producers.

Importantly, the Chinese government's systematic use of various export restraints to manipulate the price of raw materials in China assists Chinese producers in their purchasing large quantities of raw materials, including specialty steel, at subsidized, below-market rates and then to export downstream products at low prices. These subsidy programs enable Chinese producers to target the U.S. market without being affected by the cost-price squeeze affecting U.S. producers.

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[145] See Analysis of Non-Tariff Measures: the Case of Export Duties, at 14, TD/TC/WP(2002)54/FINAL (OECD Working Party of the Trade Committee, Jan. 31, 2003).

[146] See, e.g., China's Export Rebate Adjustment on Steel Coming to An End, Asia Pulse (Jun. 20, 2007).

9. Provision of Utilities and Energy Resources at Preferential Rates

The Chinese government also grants electricity subsidies to producers in downstream industries in China's specialty steel sector. Indeed, many preferred industries are eligible for discounted electricity rates in the effort to promote production.[147] While data on the actual rates given to individual companies are unavailable, China has acknowledged that subsidies on energy inputs are provided to "special industrial sectors."[148] Indeed, very recently, Chinese Premier Wen Jiabao said publicly that the Chinese steel industry in fact receives discounts on electricity, stating that "local governments . . . routinely offer free or cut-rate . . electricity to developers looking to set up job-creating businesses. . . ." Id.

A comprehensive study on the price of electricity in China released in 2008 concludes that energy subsidies to China's steel industry "shot up sharply in 2004 and later, synchronizing with the buildup in steel capacity in China and the rise in steel exports from China."[149] This study calculated that between 2000 and 2007 total electricity subsidies to the steel industry, including the specialty steel industry, reached approximately US$ 916 million.[150] Indeed, the steel industry, like many other Chinese industries, was built with the help of subsidized

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[147] In 2004, Commerce Secretary Donald Evans cited Chinese utility subsidies as an unfair trade advantage. See Peter Navarro, Report of 'The China Price Project', at 12 Merage School of Business, University of California-Irvine (Jan. 2007).

[148] "Notification Pursuant to Article XXV of the Agreement on Subsidies and Countervailing Measures," Annex 5A, Section XV.

[149] See Usha C.V. Haley, Shedding Light on Energy Subsidies in China: An Analysis of China's Steel Industry from 2000-2007, at 41, prepared for Alliance for American Manufacturing (Dec. 2007). Moreover, a recent report by the U.S.-China Economic and Security Review Commission concluded that "provincial and municipal governments sell energy and other utilities to their SOEs at below-market prices." 2007 Report to Congress of the U.S.-China Economic and Security Review Commission, November 2007, at 40.

[150] See Usha C.V. Haley, Shedding Light on Energy Subsidies in China: An Analysis of China's Steel Industry from 2000-2007, at 35.

electricity costs. Moreover, because much of the electricity is generated by SOEs, the government continues to use energy prices as a tool of coercion by rewarding companies in line with stated policies with lower rates, and withdrawing preferred rates from those companies that are not. Recent reports indicate that the price of non-compliance with certain governmental directives can be the loss of electricity altogether.[151]

10. Import Substitution

a. Import Substitution Policy

A primary objective of the Chinese government's industrial policies has been to reduce import penetration by encouraging the production of specialty steel products in China in lieu of like products being imported into China.[152] Governmental policies of this type are referred to as "import substitution."[153] The Steel Policy 2005, for instance, requires the use of domestically-produced steel-manufacturing equipment and domestic technologies whenever domestic suppliers exist.[154] This policy also discriminates against foreign equipment and technology imports by calling for a variety of government financial support for steel and iron projects utilizing newly developed domestic equipment. Id.

In recognition of the importance of specialty steel to China's key industries, the replacement of imported specialty steel and specialty steel products with domestic products has

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151 See, e.g., Polluters Must Pay More, China Daily, June 27, 2007.

152 See section III, above.

153 An example of import-substitution policies are provisions regarding local content and other localization requirements under China's industrial policies for its automotive sector. A WTO Panel ruled recently that these requirements are inconsistent with China's international legal obligations. See Panel Report, China – Measures Affecting Imports of Automobile Parts, WT/DS340/R, Jul. 18, 2008, at para. 8.4.

154 See Steel and Iron Industry Development Policy, Order No. 25 of the National Reform and Development Commission, July 2005.

been a priority of the central, provincial, and local governments in China. For example, China's central government established TPCO to avoid reliance on imports of stainless steel seamless pipe that were perceived as hindering the development of the domestic Chinese petroleum industry.[155] Similarly, following completion of TPCO's 500,000-ton seamless pipe project at a cost of 14 billion yuan in 2002, the Chinese government reported that 50 percent of the output would be exported to the United States, the Middle East and Southeast Asia and that the other 50 percent of the output would be consumed in the domestic market in China to decrease import penetration from 90 percent to 30 percent.[156]

The Chinese government has implemented various measures aimed at making China self-sufficient in terms of producing specialty steel products.[157] These measures include both formal subsidy programs, such as the import substitution programs discussed below, as well as informal measures, such as transactions among SOEs.[158]

A recent agreement between TISCO and China National Petroleum Company ("CNPC") provides just one example of how the Chinese government has used transactions among SOEs to support domestic downstream consumers of specialty steel in displacing imports of specialty

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155 See China's State-Directed Expansion in Oil Country Tubular Goods: A Case Study, at 60, citing Basic Information of Tianjin Steel Pipe Co.. Ltd., Report on Representative State-Owned Enterprises in China in 2004, State-owned Assets Supervision and Administration Commission (2004).

156 See Tianjin Steel Pipe Co. Targets World Top 4 Rank, The Information Center of the Metallurgical Industry of the P.R.C. (Jul. 2, 2002), available at http://www.mmi.gov.cn/mmi_en/more/morec/2002.htm.

157 See Goal set for iron, steel, China Daily (Apr. 6, 1996) (with the development strategy for its steel industry during the Ninth Five-Year Plan and beyond to the year 2000, the Chinese government expected the steel industry reforms to increase domestic production to at least 70 percent of all stainless rolled steel consumed in China by 2000.

158 See CNPC sources all steel from domestic with Taigang become {*sic*} the first cooperation partner, Information Center of Metallurgical Industry of P.R.C. (Dec. 19, 2007), available at www.mmi.gov.cn/mmi_en/more/morec.htm.

steel and specialty steel products into China. According to the Information Center of the Metallurgical Industry of China,

> [t]o increase the ratio of steel sourcing from domestic in the total steel demand for containers of oil and gas, CNPC (China National Petroleum Company) signed strategic cooperation frame agreements with Taigang recently. . . . CNPC will boost the ratio of steel sourcing from domestic, up to 100% finally, through purchasing high quality steel from Taigang. The agreement between Taigang and CNPC has an important meaning to securing the large oil and gas transferring line, liquid natural gas and large refining projects moving on smoothly. And also it will help raise the ratio of steel sourcing from domestic in the total demand for containers of oil and gas, and to 100% finally, boost the improvements of technology and product mix in China iron and steel industry and the economy growth.

Id. Thus, through transactions by SOEs with one another, China has advanced its import substitution objectives, replacing imported specialty steel products with domestically-produced specialty steel products.

b. **Steel Import Substitution Program**

In recognition of the importance of specialty steel products to China's key industries, the replacement of imported specialty steel products with domestic products has been a priority of the central, provincial, and local governments in China. In 1998, the Chinese government introduced a subsidy program to further this objective, the Steel Import Substitution Program ("SISP").[159] The SISP encouraged export-oriented processing enterprises that would otherwise have used imported steel to increase their purchases from domestic steel works by granting 17-percent VAT rebates to the purchasers. Id. In discussing the steel import substitution tax rebate exemption, the Export-Import Bank of China explained in 2005 that "the goal is to implement

[159] See China Achieves Steel Import Substitution Plan, Asia Pulse (Mar. 20, 2000). See also China's State-Directed Expansion in Oil Country Tubular Goods: A Case Study, at 106-117 (Oct. 2007).

the government's ‘import substitution’ policy, and encourage processing enterprises to use domestic steel; it is a way to promote national trading.”[160]

According to the SBMI, 27 steel producers sold 3.2 million tons of steel under this program in 1999. TISCO and Baosteel participated in the SISP and were among 12 steel producers that over-fulfilled their annual targets. Id. Baosteel alone delivered 1.37 million tons, accounting for over 45 percent of the year’s target. Id.

Effective July 1, 2005, China terminated its tax incentives available under the “special steel for processing and export products” program. According to the China Iron and Steel Association, during the six years this program was in effect “a total of more than 30 million [tons of] China's domestic steel production was put into the processing trade market and replaced imported steel. The total amount of exemption tax for the ‘special steel for processing and export products’ reached over RMB 12 billion [$1.4 billion].”[161]

11. Special Economic Areas and Industrial Parks

The Chinese government also provides various financial incentives to manufacturers operating in specified Special Economic Areas (“SEA”), such as Special Economic Zones (“SEZs”), High Technology Industrial Development Zones, Export Processing Zones, free ports, bonded zones, and the like. These SEAs promote investment with unique tax packages and other incentives, many of which benefit the downstream industries in China’s specialty steel sector. The incentives generally include significant reductions in, or exemptions from, national and local income taxes, land-use fees, import and export duties, and priority treatment in obtaining basic

[160] See 2005 Steel Import Substitution Tax Rebate and Related Policies, Export-Import Bank of China Website (Apr. 20, 2005).

[161] See Special Steel for Processing and Export Products Accumulated RMB 12 Billion in Tax Exemption, Ningbo Foreign Trade and Economic Cooperation Website (July 27, 2005).

infrastructure services.[162] The government also has created special incentives for projects involving export-oriented investments and for certain key industries. Id.

Downstream industries in China's specialty steel sector are among the industries that benefit from subsidies provided to enterprises located in SEAs, such as the SEZ of the Pudong New Area of Shanghai.[163] Non-wholly foreign-owned FIEs established in SEZs, FEs (wholly foreign-owned FIEs) established in SEZs, joint-venture Chinese firms, and single-investor Chinese firms established in the SEZ of the Pudong New Area of Shanghai pay income tax at a reduced rate of 15 percent.[164] The eligibility criteria for this program relating to FIEs located in the Pudong New Area of Shanghai can be found in the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*, which specifically identifies Chinese joint ventures and single-investor Chinese firms established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15 percent.

Additionally, China's subsidies notification to the WTO identifies preferential tax policies for enterprises recognized as high- or new-technology enterprises established in the high- or new-technology industrial development zones. Enterprises located in such areas pay a 15-percent income tax rate and are exempt from income tax for their first two years.[165] The

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[162] See U.S. & Foreign Commercial Service and U.S. Department of State, Doing Business in China: A Country Commercial Guide for U.S. Companies, ch. 6, Investment Climate (2005).

[163] See http://www.baosteel.com/group_e/e12steel_n/index.htm.

[164] See Statement of Reasons Concerning the Making of a Final Determination With Respect to the Dumping of Certain Laminate Flooring Originating in or Exported From the People's Republic of China and France and the Making of a Final Determination With Respect to the Subsidizing of Laminate Flooring Originating in or Exported From the People's Republic of China, Nos. 4214-4, 4218-19 at Appendix 3 (Jun. 1, 2005) (hereinafter "Canada Statement, Nos. 4214-4, 4218-19 (Jun. 1, 2005)").

[165] China Subsidies Notification at 10.

China Association of Development Zones cites additional tax incentives, including the following:

- Loss compensation schemes whereby any losses experienced by companies in development zones can be offset through reductions in income taxes for a period of 5 years after the loss is incurred. See National Development Zones.
- Regional tax incentives whereby companies in specified regions, including the "Middle Western Areas," are eligible for a 15-percent reduction in income tax after the original exemption-reduction period ends. Id.
- Export-oriented tax incentives whereby taxes are reduced by as much as 50 percent for export-oriented enterprises which export 70 percent or more of their total annual output. Id.

12. Northeast Revitalization Program

The Government of China has undertaken an industrial revitalization program that a study by the WTO has found provides "potentially unfair advantages to businesses locating to or operating in Northeast China."[166] Since 2003, China's central government has been executing a plan to resuscitate the old industrial base in the three northeastern provinces of Heilongjiang, Jilin, and Liaoning, aiming to build the region into a world-class industrial base.[167] Together, these provinces account for about 10 percent of China's steel production.

Under this program, China is implementing a "strategic restructuring and technical transformation of key enterprises in sectors manufacturing oil, petrochemical, iron and steel, automotive, shipbuilding and aircraft products in Northeast China in a bid to establish production bases of advantaged industries."[168] In support of the Northeast Revitalization Program, China's

[166] WTO No. G/SCM/Q2/CHN/14, at 2 (Sept. 29, 2005).

[167] China's Old Industrial Base Eyes Bright Future With Ambitious Plan, People's Daily Online, http://english.peopledaily.com.cn/200401/09/print20040109_132185.html.

[168] WTO No. G/SCM/Q2/CHN/14, at 2 (Sept. 29, 2005).

government has offered preferential policies and financial support to industry, including tax incentives and low-interest rate financing.[169]

The November 2005 report by the WTO concluded that China's state-owned banks were continuing to extend "subsidized financing for large-scale investment projects in China which were designed to increase the competitiveness of state-owned enterprises, particularly in the Northeast, in industries such as oil and gas, petrochemicals, iron and steel, and ship-building."[170] Furthermore, the WTO's study cited a report on the MOFCOM website claiming that the Dalian Branch of the Export-Import Bank would provide RMB 5 billion in export credits to companies in Northeast China to enter global markets. According to MOFCOM, since November 2003 low-cost credit provided by the bank had saved the enterprises 150 million yuan in interest. Id.

13. Preferential Tax Measures

The central, provincial, and local governments in China provide a variety of tax exemptions, reductions, and credits that directly benefit downstream industries in the specialty steel sector.[171]

a. Exemption of Customs Duty and VAT on Imported Capital Equipment

Chinese firms that import capital equipment used exclusively to make products for export are eligible to receive a full refund of customs duties and VAT on the imported capital equipment. The exemptions from tariffs and import-linked VAT are set forth in the Circular of

[169] See China's Old Industrial Base Eyes Bright Future With Ambitious Plan, People's Daily Online, available at http://english.peopledaily.com.cn/200401/09/print20040109_132185.html.

[170] See WTO No. G/SCM/118 (Nov. 9, 2005) at 12.

[171] On November 29, 2007, China agreed to remove certain of these tax measures pursuant to a Memorandum of Understanding ("MOU") with the United States following a challenge by the United States before the WTO, but the extent to which China has complied with the terms of the MOU is unclear at this time.

the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment, which was established on December 29, 1997, and came into effect on January 1, 1998. This program was established in order to attract foreign advanced technology and equipment and encourage structural improvement and technological advancement in industry.

Under this program, enterprises meeting the eligibility criteria may apply for exemption from tariffs and VAT on imported equipment and its related technologies, components and parts. To qualify, the enterprise must receive approval of its application from the appropriate authority, and subsequent approval from the local customs officials, verifying that the documents presented are adequate and that the imported items are not listed in the catalogues of commodities that are not eligible for tax exemptions. The program is also limited to: (1) investments by foreign parties investing in encouraged industrial areas defined by the "Catalogue for the Guidance of Foreign Investment Industries," which is issued jointly by the NDRC and the Ministry of Commerce ("MOFCOM"); and (2) domestic parties investing in encouraged industrial areas defined by "Catalogues of Current Priorities of Industrial Sectors, Products and Technologies Encouraged by the State." [172]

Downstream industries in the specialty steel sector are among the encouraged industries eligible to benefit from the exemption from tariffs and VAT on imported equipment and its related technologies, components and parts. The Chinese automotive industry, for instance, is eligible to receive subsidies under this program related to numerous investments, including the "manufacture of complete automobiles (including R&D activities)" and "manufacture of key

[172] See Catalogue for the Guidance of Foreign Investment Industries (Amended in 2004), State Development and Reform Commission (Nov. 30, 2004), available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/RegulationsonForeignInvestment/t20060620_51089.jsp.

spare parts for automobiles ….” Id. The automotive industry, moreover, is likely to have benefited from these subsidies while importing advanced foreign manufacturing technology and equipment during the restructuring and modernization of Chinese automobile and auto parts producers.[173]

b. Enterprise Income Tax Reduction for Purchase of Domestically-Made Machinery and Equipment

The Chinese government provides tax subsidies for the purchase of domestically-produced machinery and equipment. Specifically, pursuant to the Notice Concerning Some Issues on the Deduction of the Investment Made by Enterprises with Foreign Investment and Foreign Enterprises in Purchasing Domestic Equipment from Enterprise Income Tax, issued jointly by the Ministry of Finance and the State Administration of Taxation on 14 January 2000, "40 per cent of the investment made in purchasing domestic equipment can be deducted from the increment of enterprise income tax."

c. Income Tax Exemption for Investment in Domestic "Technological Renovation" Constitutes a Prohibited Domestic-Content Subsidy

China provides assistance for approved technological renovation projects pursuant to the State Tax Administration's Technological Renovation of Domestic Equipment Corporate Income Tax Exemption Notice[174] ("Equipment Tax Notice") and the Enterprise Research and

[173] See 2004 China's Non-ferrous Metal Industry Survey, State Economic and Trade Commission (Jul. 19, 2005), available at http://www.fdi.gov.cn/pub/FDI_EN/Economy/Sectors/Manufacturing/ Nonferrous%20Metal/t20060422_25076.htm.

[174] See Technological Renovation of Domestic Equipment Corporate Income Tax Exemption Notice, State Tax Administration (Jan. 17, 2000) (Chinese language document), available at http://www.jsgs.gov.cn/Page/statutedetail.aspx?statuteid=2965) ("Equipment Tax Notice").

Development Tax Notice ("R&D Tax Notice").[175] Under the Equipment Tax Notice, any enterprise may receive a credit for a certain portion of investment in any domestically-produced equipment that relates to an upgrade of the enterprise's technologies.[176] Tax exemptions for specific equipment investments are obtained by application to the Tax Administration, which has discretion to grant or deny the exemption. Id. Investments eligible for the exemption may be funded by bank loans. Consequently, an enterprise may receive a discount-rate loan under the Measures and the Technology Project to fund "technological renovation," and then may also claim an income tax exemption in the amount of the state-bank-funded equipment purchase. Id.

Under the R&D Tax Notice, enterprises involved in mining, manufacturing, electricity generation, or gas and water production may deduct a certain portion of their research and development costs related to new product development.[177] Specifically, the R&D Tax Notice provides that any increase in actual R&D expenses of 10% or more from the previous year to develop a new product or technology may be offset by a 150% deduction from the taxable income of the current year.[178]

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[175] See Enterprise Research and Development Tax Notice, State Tax Administration, Cai Shui Zi 2003 [244]" (Jan. 27, 2003) (Chinese language document), available at http://www.whgs.gov.cn:7001/cms/whgs03/laws/05/030205/200311270027.html ("R&D Tax Notice").

[176] See Equipment Tax Notice.

[177] R&D Tax Notice.

[178] Id.; see also China's Notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement at 31, Art. XXVII .

Numerous Chinese producers have been heavily subsidized pursuant to this program. Though precise figures are not available, the Baosteel website confirms Baosteel's receipt of tax subsidies pursuant to the Equipment Tax Notice and the R&D Tax Notice.[179]

d. Refund of Import Duties and Value-Added Taxes to Promote Development of the Equipment Manufacturing Industry

The Chinese government is fostering the development of equipment manufacturing and "key technological equipment."[180] Specifically, in order to increase the competitiveness and independent innovation capacity of domestic enterprises that manufacture equipment China is implementing the following preferential taxation policies:

> refund the previously levied import tariffs and value-added taxes for the key parts and accessories imported for development and manufacturing of these equipment, and {sic} raw materials which cannot be produced domestically. The refunded money will be generally used as national investment to the research and development of new products and the cultivation of capacity for independent innovation.

Id.

e. Fixed Assets Investment Orientation Regulatory Tax

Downstream industries in China's specialty steel sector benefit by being exempted or taxed at a preferential rate under the fixed assets investment orientation regulatory tax.[181] The tax is levied on the amount of fixed capital investment made by Chinese enterprises in a given

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179 See Profile of Tang Bang, Baosteel.com (Chinese language document), available at http://54.baosteel.com/xgcl/show20.nsf/show2?openform&parentUNID=66B698FDD52BC7354825715B002D673F.

180 See Circular of the Ministry of Finance, State Development and Reform Commission, General Administration of Customs and State Administration of Taxation on Import Taxation Policies to Implement the Opinions of the State Council of Invigorating Equipment Manufacturing, Cai Guan Shui [2007] No. 11, available at http://www.asianlii.org/cn/legis/cen/laws/cotmofsdarcgaocasaotoitptitootscoiem2494/.

181 See Provisional Regulations on Fixed Assets Investment Orientation Regulatory Tax of the People's Republic of China, State Council Order No.82 (Apr. 16, 1991).

year.[182] The Chinese government varies the actual tax rate levied on a particular company, which ranges from zero percent to 30 percent, "in accordance with the state industrial policy and in light of the scale of the project." [183] While the general tax rate applied to fixed capital investment has been 15 percent, China has three exceptions from this rate. First, a zero tax rate is applied to fixed capital investment in projects "urgently needed by the state," including the increase of key raw materials and geological prospecting. Id. Second, projects encouraged by the state but constrained by energy supply and transportation facilities are subject to a five-percent tax rate. Third, the Chinese government penalizes projects that are of an inefficient scale, that employ outmoded technologies, or that make products already in excess supply, by applying the highest rate of 30 percent to these projects. Id. Additionally, projects encouraged by the state and renewal and transformation projects are subject to preferential tax rates of five and ten percent, respectively.[184]

As China encouraged the development of specialty steel production as one of its priorities under the Ninth and Tenth Five-Year Plans, specialty steel projects were likely deemed to be urgently needed by the state. Fixed capital investments in these projects, therefore, would have been taxed at a zero rate.

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[182] See Lu Ding, Prospect of Industrial Policy Regime After the WTO (2000). This tax is also identified as the coordinating tax for direction of fixed capital investment ("coordinating tax"). Id.

[183] See Provisional Regulations on Fixed Assets Investment Orientation Regulatory Tax of the People's Republic of China, State Council Order No.82, at Art. 3 (Apr. 16, 1991).

[184] See also Fixed Assets Investment Orientation Regulation Tax, Beijing Local Taxation Bureau, available at http://english.tax861.gov.cn/zgszky/zgszky14.htm.

f. Tax Benefits to Foreign-Invested Enterprises (FIEs)

Pursuant to provisions of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises, the Chinese government provides various tax subsidies to foreign-invested enterprises ("FIEs") in China.[185] These subsidies include:

- income tax exemption and income tax reductions pursuant to Decree No. 85;
- reduced corporate tax rate for FIEs;
- income tax refund for FIEs that reinvest in Chinese businesses;
- exemption of the business tax on technological transfers for FIEs;
- VAT rebate on the purchases of domestic equipment by FIEs;
- income tax exemption or reduction for dividends, interest, rentals, franchising fees and other forms of income earned by FIEs.

China's new tax regime, the Enterprise Income Tax Law of the People's Republic of China ("EITL"), was scheduled to take effect on January 1, 2008. This new tax regime is designed to eliminate the discrepancies between tax rates for domestically-owned companies and tax rates for FIEs and to shift incentives for foreign investment away from focusing on exports and toward high-technology and high-value-added products. Notwithstanding the new EITL, the subsidies conferred by the previous tax regime are still relevant today, for several reasons. First, the targeted companies have likely taken advantage of one or more of these incentives during the period of investigation. More important, the EITL contains a provision that allows most companies enjoying the previous incentives to continue receiving many of those benefits, for the

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[185] See Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises, Order of the President of the People's Republic of China, No.45 (Apr. 9, 1999). See also Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises, (Effective on January 1, 2005).

next five years or longer.[186] Furthermore, the implementation of China's laws involves great complexity and ambiguity, and it is more likely than not that FIEs are still able to take advantage of loopholes in the implementation process to continue to receive preferential tax treatment.[187]

14. China's Enforced Undervaluation of Its Currency Further Subsidizes the Manufacture and Exportation of Downstream Specialty Steel Products

a. Background on China's Elaborate System for Undervaluing the Yuan

As important as the many other subsidies are that China's national, provincial, and local governments dispense, the program that probably has had the most far-reaching impact on the manufacture and sale of specialty steel products is China's undervaluation of its currency. This policy has been in effect since 1994 and has contributed substantially to (a) large and growing trade surpluses for China bilaterally with the United States as well as globally, (b) foreign exchange reserves held by China that are now estimated to be in excess of $1.8 trillion, and (c) historically high foreign direct investment in China at an annual rate of $60 billion or higher in each of the last several years. All of these phenomena tied to the yuan's undervaluation have greatly benefited downstream industries in China's specialty steel sector.

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[186] See EITL, at Art. 57. Moreover, Subsequent government publications have indicated that FIEs that qualified for preferential tax treatment under the old Tax Law on Foreign-Invested Enterprises, and that still meet the conditions imposed under the old Tax Law, are still eligible to receive the preferential treatment. See Circular of the State Administration of Taxation on How to Deal with Related Issues after Cancellation of Several Previous Tax Preferential Policies on Foreign-Invested Enterprises and Foreign Enterprises, Guo Shi Fa No. 23 (Feb. 27, 2008).

[187] See, e.g., Measures for Verification Collection of Enterprise Income Tax for Trial Implementation) Article 3 (Mar. 6, 2008) (explaining that taxpayers of "special industries" or those of a certain scale are apparently "not governed" by the standard measures for verifying Enterprise Income Tax).

It would be difficult to overstate how critical the yuan's undervaluation has been to the economic success of China generally and to the promotion of downstream industries in China's specialty steel sector more specifically. In recent years, estimates of the extent of the yuan's undervaluation in real terms have ranged generally from 20 to 50 percent or more.[188] While nominal appreciation of the renminbi relative to the U.S. dollar accelerated beginning in late 2007, the China Currency Coalition and, separately, the Peterson Institute for International Economics calculated that the renminbi continues to be seriously undervalued in real terms and needs to appreciate against the U.S. dollar by approximately 30 percent.[189]

How the Chinese government has achieved this much undervaluation for so long a period is worth noting. The basic answer is that the Chinese government has engaged in protracted, large-scale intervention in the exchange markets since 1994. This intervention – pursuant to directive by China's State Council – has been achieved with the help of strict exchange regulations that are implemented by the People's Bank of China and the State Administration of Foreign Exchange. Just how restrictive China's exchange controls are can be seen from a brief review of some of the current regulations that were issued in 1996. Thus –

- Article 6 of the Regulations bans foreign currencies from circulation in China and from being used for pricing or account settlement in China.
- Article 8 of the Regulations stipulates that domestic enterprises located in China shall deposit in China rather than abroad their current account incomes of foreign exchange.
- Article 9 of the Regulations directs that domestic enterprises in China shall sell their current account incomes of foreign exchange to designated Chinese banks.

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188 See U.S.-China Economic and Security Review Commission, 2007 Report to Congress, at 29 (Nov. 2007).

189 See www.ChinaCurrencyCoalition.org and William R. Cline and John Williamson, New Estimates of Fundamental Equilibrium Exchange Rates (July 2008).

- Article 14 of the Regulations prevents foreign exchange assets held by Chinese citizens from being carried or sent abroad without approval by China's foreign exchange management administration.
- Article 18 of the Regulations requires that domestic enterprises located in China shall bring their capital-account foreign exchange incomes to China unless otherwise permitted by China's State Council.
- Article 19 of the Regulations decrees that domestic enterprises in China shall sell their capital-account foreign exchange incomes to designated Chinese banks.
- Article 26 of the Regulations sets forth that financial institutions in China can handle foreign exchange matters only with approval by China's foreign exchange management administration.
- Articles 38, 40, 41, and 43 of the Regulations are among the provisions that authorize the imposition of severe monetary penalties on various persons, domestic enterprises, and financial institutions in China for foreign-exchange crimes such as depositing foreign exchange abroad without authorization, failure to sell foreign exchange to designated Chinese banks, unauthorized removal of foreign exchange from China, and mishandling of foreign exchange settlements.

Clearly, China's Regulations are geared to have and to keep as much foreign exchange as possible under the Chinese government's control through selected, governmentally-owned and overseen banks. This arrangement results in a broad segregation of foreign exchange from the yuan in China's domestic market and necessitates a series of measures that China's government must take in maintaining this compartmentalization.

In particular, in the absence of a market-clearing mechanism for the very large quantities of foreign exchange that come to China as foreign direct investment and in payment for Chinese exports, the Chinese government first creates demand for that foreign exchange by intervening in the market as the primary buyer of the foreign exchange. Roughly speaking, in this role China must purchase about $20 billion or more per month from companies and individuals in China. In doing so, China prints and issues massive amounts of yuan at the official exchange rate. This step not only means that the Chinese government obtains huge foreign reserves to invest or spend as it sees fit, but also that China's domestic economy is flush with yuan. In an effort to avoid inflation in China caused by the excess supply of yuan it has generated in its foreign-exchange operations, the Chinese government then "sterilizes" a significant portion of that increase by selling debt into (i.e., borrowing yuan from) the Chinese domestic economy.

As can be seen, China employs an elaborate system for undervaluing the yuan.

b. China's Undervaluation of the Yuan Is A Prohibited Export Subsidy

China's enforced undervaluation of the yuan is a prohibited export subsidy within the meaning of Articles 1, 2, and 3 of the World Trade Organization's SCM Agreement, because the program (1) involves a governmental financial contribution, (2) bestows a benefit, and (3) is contingent upon exportation.

With regard to the first of these criteria set forth in Article 1.1(a)(1)(i) and (iv) of the SCM Agreement, the Chinese government – acting through selected banks that either are Chinese governmental entities or are private bodies under the direction of the Chinese government and entrusted with the task – makes a direct transfer of funds by exchanging with the exporter yuan for U.S. dollars. As China's Regulations and exchange controls indicate, there is an extraordinary regulatory structure that the Chinese government has in place in order to make these direct transfers of funds possible.

Second, the prerequisite of a benefit under Article 1.1(b) of the SCM Agreement is satisfied, because the exporter receives more yuan from the Chinese government in return for the U.S. dollars earned than would be the case if the yuan were not undervalued relative to the U.S. dollar. For example, a Chinese exporter who sells $100 of goods to a customer in the United States receives approximately 680 yuan from China's banks at the yuan's currently undervalued exchange rate of 6.8 yuan/U.S. dollar. If, on the other hand, the yuan were realistically valued by market forces at the estimated equilibrium exchange rate of 5.0 yuan/U.S. dollar, the Chinese exporter would receive only 500 yuan. Thanks to the yuan's undervaluation, therefore, the Chinese exporter has 180 additional yuan in the former situation than in the latter circumstance and so is obviously "better off" with the undervalued yuan.[190]

Third, and lastly, China's undervalued exchange-rate regime is a specific subsidy. Article 3 of the SCM Agreement prohibits subsidies that are contingent, in law or in fact, upon export performance. Although it is not clear from the limited availability of China's laws and regulations if the Chinese government's subsidy program described here is explicitly contingent in law on export performance, it is evident that this program is "in fact tied to actual or anticipated exportation or export earnings." See SCM Agreement, Article 3.1(a) n.4. While China perhaps has not expressly stated in its laws that its undervalued exchange-rate regime is designed to increase exports to the United States and other countries in an effort to bolster Chinese manufacturing capabilities and increase China's employment levels and U.S.-dollar holdings, in fact the policy actually does have these effects.

To determine whether a subsidy is de facto contingent upon export performance requires evaluation of three elements: (1) whether the granting authority has imposed a condition based on export performance in providing the subsidy; (2) whether the facts demonstrate that the granting of a subsidy is tied to or contingent upon actual or anticipated exports; and (3) whether,

[190] See Appellate Body Report, Canada – Measures Affecting the Export of Civilian Aircraft, adopted Aug. 20, 1999, WT/DS70/AB/R, para. 157 ("Canada – Aircraft"). See also Panel Report, United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, adopted June 7, 2000, WT/DS138/R, at paras. 6.66-6.69 (stating that "{t}he existence or non-existence of 'benefit' rests on whether the potential recipient or beneficiary . . . received a 'financial contribution' on terms more favourable than those available to the potential recipient or beneficiary in the market.").

as one relevant fact among others analyzed, the subsidy's recipient is export-oriented. See Canada – Aircraft, WT/DS70/AB/R, paras. 170-173.

Scrutiny of these factors with reference to China's foreign-exchange policy and practice confirms that China's undervalued exchange-rate regime constitutes a de facto export subsidy. First, the Chinese government, as the granting authority, imposes a condition based on export performance in providing the subsidy. The subsidy, derived from the undervalued yuan, is dependent upon the existence of export performance in order to take effect. The nexus between the subsidy of the yuan's undervaluation and the requirement of exportation for a company in China to enjoy that subsidy is so close and inextricably linked that conditionality is indisputable.

Second, the facts demonstrate that the granting of the subsidy is tied to or contingent upon actual or anticipated exports from China, because the subsidization would not occur if exports did not occur. In order for the foreign-exchange program to operate, products must be traded internationally. Without export performance, there would be no foreign currency to exchange. Moreover, the fact that the subsidy results in increased exports to the United States and elsewhere and in the accumulation by China of massive foreign-exchange reserves provides additional evidence of tying. Thus, the required tying/contingency element is satisfied.[191]

[191] The fact that the undervalued yuan's subsidy is also available to non-exporters or domestic Chinese users (as when U.S. dollars are received from foreign direct investment in China or from repatriation of profits from abroad) does not dissolve the export contingency for Chinese exporters. See, e.g., Appellate Body Report, United States - Subsidies on Upland Cotton, adopted Mar. 3, 2005, WT/DS267/AB/R, paras. 564, 576; and Appellate Body Report, U.S. – FSC Article 21.5, WT/DS108/AB/RW, adopted, Jan. 29, 2002, paras. 114, 115, and 119. This conclusion by the Appellate Body is reinforced by Article 3.1(a)'s language in the SCM Agreement that a subsidy can be contingent upon export performance ". . . whether solely or as one of several other conditions. . . ."

Third, the recipients in China of this subsidy are export-oriented. This characterization is confirmed by China's large and growing trade surpluses globally and with the United States and by China's enormous foreign-exchange reserves noted earlier.

For these reasons, China's undervalued currency should be treated as the prohibited export subsidy that it is and should be found in violation of China's obligations at the WTO.

c. The Adverse Impact of the Yuan's Undervaluation on U.S. Producers of Downstream Specialty Steel Products

Given the Chinese government's very deliberate steps and effectiveness in undervaluing the yuan, it is not surprising that far-reaching ramifications have followed. As a practical matter, the yuan's undervaluation on this large and protracted scale has given Chinese producers and exporters of specialty steel products substantial advantages vis-à-vis their U.S. counterparts.[192] The following list illustrates at least some of the principal advantages from the perspective of China.

- The yuan's undervaluation means that the prices of Chinese specialty steel products expressed in U.S. dollars, Euros, or other currencies correspondingly overvalued with respect to the yuan are significantly lower than if the yuan were fairly valued. The

[192] Whether or not China has been engaging in manipulation of the yuan, as the International Monetary Fund ("IMF") defines that term, is debatable. Article IV(1)(iii) of the IMF's Articles of Agreement states that each member of the IMF shall avoid manipulating exchange rates or the international monetary system "in order to" prevent effective balance-of-payments adjustment or to gain an unfair competitive advantage over other members. The IMF interprets the quoted language to mean that a member of the IMF will only be deemed in breach of this standard if the determination is made that the member has manipulated its exchange rate for the purpose of preventing effective balance-of-payments adjustment or gaining an unfair competitive advantage. See Paper by the IMF's Legal Department, "Article IV of the Fund's Articles of Agreement: An Overview of the Legal Framework," at 15-16 (June 28, 2006). The IMF has determined in its Article IV surveillances that this element of intent by China has been lacking and so has not found manipulation by China. In its semi-annual reports under 22 U.S.C. § 5305 over the last few years, the U.S. Department of the Treasury has reached the same conclusion as to China. Regardless of these judgments from a monetary perspective, the yuan's enforced undervaluation by China has certainly led to an unfair competitive advantage for China and Chinese companies as a trade matter.

yuan's undervaluation accordingly causes lost sales, price depression, or price suppression for U.S. producers and exporters of specialty steel products, not only in the U.S. market, but also in other countries with currencies that are unnaturally strong against the yuan. The loss of this revenue for U.S. companies is the gain of Chinese companies. A strong yuan would erode Chinese exports, and increase U.S. exports, to third countries.

- Similarly, the yuan's undervaluation acts to insulate Chinese companies in their home market from exports to China by U.S. firms and leaves the Chinese domestic market to be served more by Chinese producers of specialty steel products than if the yuan were not so fundamentally undervalued. Once again, Chinese producers of specialty steel products realize revenue at the expense of U.S. producers and exporters. A strong yuan would increase U.S. exports of downstream specialty steel products to China and bolster the U.S. economy.

- With greater sales in China, the United States, and third countries than would be the case if the yuan were valued by the forces of supply and demand in the exchange markets, the financial positions of downstream industries in China's specialty steel sector are strengthened, while the financial positions of U.S. producers and exporters of downstream specialty steel products are weakened.

- The increased income for downstream industries in China's specialty steel sector enables Chinese firms in those industries to invest and add capacity in China, which places U.S. producers at a further disadvantage.

- Those U.S. producers of downstream specialty steel products that are not forced into bankruptcy or out of business are given an incentive by the yuan's undervaluation to relocate in China or to enter into subcontracts with Chinese firms and supply the U.S. market in one of these ways.

- Investment and relocation in China augment research and development in China and weaken research and development in the United States, while undercutting the tax bases of local and state governments, as well as of the federal government, and all of the community projects funded by those monies.

- Jobs in the United States are transferred to workers in China, resulting in lost income for the families of the displaced U.S. workers, lower tax bases for the communities of those U.S. workers, and perhaps most critically, loss of skill and knowledge by subsequent generations of U.S. workers in downstream industries in the specialty steel sector.

- At the levels of the Chinese national, provincial, and local governments, the vast foreign exchange reserves collected from foreign direct investment in China and exports from China subsidized by the yuan's undervaluation are a ready source of cash for China to subsidize in turn both the Chinese producers of raw materials needed for the production of specialty steel products and the Chinese producers themselves.

As this recitation sets forth, the yuan's undervaluation has exceptionally debilitating consequences for downstream industries in the United States' specialty steel sector, both over the short-term and the long-term, and these adverse effects are being felt already and will be felt in the future as well by the U.S. economy generally.

d. <u>Summary</u>

At the time of China's accession to the WTO in December 2001, the Chinese government reported to the Working Party on the Accession of China that ". . . since the unification of exchange rates on 1 January 1994, <u>China had adopted a single and managed floating exchange rate regime based on supply and demand</u>." <u>See</u> Report of the Working Party on the Accession of China, WT/ACC/CHN/49, at para. 31 (Oct. 1, 2001) (emphasis added).

This characterization is not accurate. If the yuan's value relative to other countries' currencies, and relative to the U.S. dollar, in particular, were truly based upon supply and demand, the large imbalances in China's trade surpluses and huge foreign exchange reserves would never have become so extreme and would not now exist.

Export subsidies, as opposed to domestic subsidies, have been prohibited under the WTO's agreements since 1947 based upon export subsidies' negative impact, inefficiencies in allocating resources, and lack of redeeming features as far as balanced and sustainable international trade is concerned. These broad observations as to export subsidies are emphatically true with respect to the undervaluation of a currency such as China's yuan. This undervaluation has been skewing prices and costs throughout the Chinese economy since 1994, and the Chinese government has been very adroit at making this exchange subsidization fuel China's economy at the expense of other countries. A more blatant and classic "beggar-thy-neighbor" measure than the yuan's undervaluation is difficult to imagine.

B. Indirect Governmental Support of Downstream Industries in China's Specialty Steel Sector

1. Chinese Governmental Procurement and Purchases by SOEs Support Downstream Industries in China's Specialty Steel Sector

Between 2003 and 2006, China spent US$1.6 trillion on basic industries and infrastructure, with investments in all fixed assets increasing at a rate of 25-30 percent each year.[193] In accordance with the "principle of coordinative development" and China's "proactive fiscal policy," the Chinese government has used these investments to support key industries and enterprises among China's downstream specialty steel industries.

A basic tenet of China's economic development is the "principle of coordinative development," which means that the Chinese government seeks to match the development of significant, national infrastructure projects with that of basic industries, such as the steel industry.[194] China has emphasized that the "reorganization and upgrading of energy industry and raw materials industry must aim at improving their international competitive power, and creating conditions for the downstream industries to participate in the international competition." The Chinese government has focused its resources on key upstream raw materials and products, such as specialty steel, that are consumed by high-value-added, downstream "pillar industries," such as the energy and petrochemical industries, driving China's economic development.

In 1999, the Chinese government's State Development Planning Commission ("SDPC") described how China intended to use a "proactive fiscal policy," in particular its investments in fixed assets, to implement coordinative development in China and, thereby, support key industries and enterprises. The SDPC explained that China planned to issue 100 billion yuan of

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[193] See Investment benefits infrastructure sector, China Daily (Sept. 22, 2007).

[194] See Lu Ding, Prospect of Industrial Policy Regime After the WTO, at 7 (2000).

long-term treasury bonds to boost investment demand and to adjust the pattern of expenditures, strictly controlling and limiting expenditures for ordinary projects in favor of expenditures for key projects. According to the SDPC, "The function of budgetary funds in directing investment should be given full play."[195]

China has used various measures to implement these policies. The Chinese government, for instance, has provided direct financial support through its state-owned banks, such as the ICBC, which is the ICBC is the leading lender to China's "key infrastructure projects."[196] In 2000 alone, the ICBC provided financing for investments in fixed assets totaling 137 billion yuan, with 70 billion yuan invested in basic infrastructure and 67 billion yuan invested in "corporate technological upgrading and innovative projects."

China also has supported downstream industries in China's specialty steel sector through massive investments in fixed assets in these industries. As discussed below, China provides this support either through governmental purchases for infrastructure projects, or through purchases of specialty steel products made by SOEs for infrastructure-related projects, such as investments in energy.

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[195] See Peiyan, Report on the Implementation of the 1999 Plan for National Economic and Social Development and on the Draft 2000 Plan for National Economic and Social Development (Delivered at the Third Session of the Ninth National People's Congress on March 6, 2000), available at http://english.gov.cn/official/2005-07/21/content_16602.htm.

[196] See ICBC Puts in 130 Billion Yuan In Fixed Assets, China People's Daily (Jan. 2, 2001), available at http://english.peopledaily.com.cn/english/200101/02/eng20010102_59423.html.

a. Governmental Purchases (Public Sector Procurement)[197]

In accordance with the "principle of coordinative development," the Chinese government has sought to match the development of significant, national infrastructure projects with that of key industries, such as downstream industries in the specialty steel sector.[198] Pursuant to this policy, governments at all levels in China have allowed SOEs in these basic industries preferential access to infrastructure projects as means of supporting the enterprises and industries.

The Chinese government's massive spending on infrastructure development projects, such as the Three Gorges Project, has been used to support key industries and enterprises.[199] Purchases are made by the Chinese government in accordance with its procurement law, which went into effect on January 1, 2003, and was meant to be the first step in China's effort to create a comprehensive procurement system for the Chinese government at all levels.[200] The GP Law, however, discriminates against "non-Chinese" domestic companies. Specifically, under Article

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[197] Although China acceded to the WTO on December 11, 2001, China is not yet a member of the WTO's plurilateral Agreement on Government Procurement ("GPA"). China committed to become an observer to the GPA and to initiate negotiations for membership to the GPA "as soon as possible." In that regard, China submitted its initial GPA offer in December 2007. Because China is not yet a member of the GPA, it does not have WTO market access obligations in the area of government procurement. When China joined the WTO, it did, however, commit to terms of the SCM Agreement. To the extent that the suppliers receive more than adequate remuneration from the Chinese government, the procurement process confers countervailable subsidies upon the suppliers. China also committed to conduct its governmental procurement in a transparent manner and to provide all foreign suppliers with equal opportunity to participate in procurements opened to foreign suppliers in accordance with the Most Favored Nation principle.

[198] See Lu Ding Prospect of Industrial Policy Regime After the WTO, at 7 (2000).

[199] See Taiyuan Steelworks Wins the Bid for Three Gorges Project, SinoCast China Business Daily News (Jan. 16, 2003) (explaining that China's largest stainless steel producer, TISCO, won nine or ten bids for stainless steel used in the Three Gorges Project).

[200] See Government Procurement Law of the People's Republic of China, No. 68 (Jun. 29, 2002) ("GP Law").

10 of the GP Law, Chinese government agencies and related entities are required to purchase equipment and technology from Chinese state- or privately-owned enterprises, unless the goods and services are unavailable or cannot be obtained under reasonable commercial conditions. Moreover, SOEs in the utilities sectors (such as water, energy, and transport) are not covered by Chinese local procurement legislation.[201]

Furthermore, an audit conducted by the Asian Development Bank ("ADB") of a Chinese steel producer suggests that the Chinese government implemented this policy, at least in part, by ensuring that key steel enterprises were in a position to benefit from the Chinese government's massive investments in infrastructure.[202] Specifically, the ADB found that the steel company was "one of 512 large- and medium-sized companies identified by the national Government for support," and "one of 126 'key enterprises' identified by the provincial government." Id. These key steel enterprises also receive "support in such areas as fast tracking infrastructure support projects and receiving priority from other SOEs for procurement of equipment, supplies, and services." Id.

Given the importance to many public sector projects of pillar industries, including downstream industries in the specialty steel sector, Chinese producers in these industries are likely to have benefited from China's biased procurement process. Indeed, China's GP Law ensures that the massive investments made by the Chinese government in infrastructure are funneled to the key enterprises in these favored industries in China.

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[201] China's public procurement system also has been criticized for a lack of consistency and transparency, limited access to public tenders, and insufficient publicity of all public tenders.

[202] Project Performance Audit Report on Laiwu Iron and Steel Company Modernization and Expansion Project in People's Republic of China, at 11 (Jan. 2003).

b. Purchases by State-Owned Enterprises

In addition to purchases made by the Chinese government through the public procurement process, purchases made by SOEs also have been used to benefit downstream consumers of specialty steel in China. As noted throughout this report, downstream industries in China's specialty steel sector are considered "pillar" industries, and specialty steel products are an essential raw material input consumed by many other key industries in China. By granting producers of downstream specialty steel products (as well as producers of specialty steel) preferential access to these important consumers, the Chinese government provides further support to enterprises in these key industries.

Many industries deemed by the Chinese government as critical to China's economic growth and security (such as the oil refinery, power generation, chemical, transportation, and machinery manufacturing sectors) have been developing rapidly in recent years.[203] These industries require substantial amounts of specialty steel and downstream specialty steel products. In 2006, the state-owned electric power industry invested a record $56.7 billion, and the state-owned oil and petrochemical industries invested $52.0 billion.[204]

Investments of this type consume substantial quantities of specialty steel products. In the petrochemical industry, for instance, China consumed approximately 4.05 to 4.15 million tons of steel in 2005, including 2.156 million tons of seamless pipe applied to the production of oil well pipe.[205] In China's forecast of steel demand by its energy industry during the period of the 11th

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203 See China will consume 6.5m tonnes of stainless steel this year, Shanghai Non-Ferrous Metals (Oct. 15, 2007), available at http://www.smm.com.cn/en/readnews.php?id=12565.

204 See McMillion, China's Soaring Financial, Industrial, and Technological Power (Sept. 2007).

205 See China's steel consumption forecast for 2006-2010, available at http://www.steelguru.com/selectednews/index/2006/010/029/archives.html#14766.

Five-Year Plan (2006-2010), the Chinese petrochemical industry is expected to consume 6.0 to 6.5 million tons of steel products by 2010. Id.

Because foreign producers are largely precluded from competing against Chinese producers to supply China's significant investments in fixed assets, producers in China, particularly SOEs, are supplying the specialty steel products used in these massive investments by downstream industries. TISCO, for instance, signed a strategic cooperation agreement with CNPC to supply all the steel required by CNPC for oil and gas containers. "According to the agreement, the two companies will cooperate on developing line pipe steel for oil and natural gas, specialty steel, steel for low temperature container and welded steel pipe, seamless pipe and new materials."[206]

Thus, the Chinese government has encouraged the development of downstream industries in China's specialty steel sector by structuring governmental purchases of specialty steel products to provide a secure source of revenue to producers in China. The revenue from these infrastructure-related sales has allowed producers in China to continue expanding their production capacities by providing the requisite capital for such investments.

2. Control and Direction of Foreign Investment in Downstream Industries in China's Specialty Steel Sector

The Chinese government has used foreign investment as a tool to develop downstream industries in China's specialty steel sector by directing needed foreign capital and technology to these preferred industries.[207]

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[206] See CNPC sources all steel from domestic with Taigang become {*sic*} the first cooperation partner, Information Center of Metallurgical Industry of P.R.C. (Dec. 19, 2007), available at www.mmi.gov.cn/mmi_en/more/morec.htm.

[207] See e.g., Lu Ding, Prospect of Industrial Policy Regime After the WTO, at 12 (2000) (explaining that among the few categories of foreign investment projects supported by the GOC

(...continued)

a. Measures Controlling Foreign Investment

The government controls foreign direct investment into China using the "Catalogue for the Guidance of Foreign Investment Industries," which is issued jointly by the National Development and Reform Commission and the Ministry of Commerce.[208] The catalogue distinguishes between encouraged and discouraged industries, with discouraged industries further broken down into those where foreign investment is restricted and those where foreign investment is prohibited. Industries that are discouraged are generally those that are not in line with the central government's national economic development goals. Encouraged industries include "manufacture of complete automobiles (including R&D activities)" and "manufacture of key spare parts for automobiles …." Id. However, "the proportion of foreign investments shall not exceed 50%." Id.

Additionally, the Ministry of Science and Technology and the Ministry of Commerce issued the "Catalogue of Encouraged Hi-tech Products for Foreign Investment."[209] In accordance with this catalogue, the Chinese government encourages foreign investment in various automobile parts products, including "anti-skid brakes," "electron controlled automatic transmission case," and "electric steering gear with booster." Id.

(...continued)
are projects that meet the demand of the international market and that open markets and expand exports).

208 See Catalogue for the Guidance of Foreign Investment Industries (Amended in 2004), State Development and Reform Commission (Nov. 30, 2004) (identifying, for example, "prospecting and exploitation of copper ores" as an encouraged activity), available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/RegulationsonForeignInvestment/t20060620_51089.jsp.

209 See Catalogue of Encouraged Hi-tech Products for Foreign Investment, Ministry of Science and Technology and the Ministry of Commerce (Dec. 6, 2004), available at http://www.fdi.gov.cn/pub/FDI_EN/Economy/Investment%20Environment/FDI%20in%20China/Industrial%20Guidelines/t20060422_24931.htm.

Under the "Temporary Provisions on Promoting Industrial Structure Adjustment" and the "Directory Catalogue on Readjustment of Industrial Structure (Version 2005)," issued by the NDRC in December 2005, the Chinese government has designated investments made in certain industries as "encouraged investments" eligible to receive various types of governmental assistance.[210] Numerous products and projects of downstream industries in China's specialty steel sector are encouraged by China. For example, projects in the automotive industry (such as design, development, and manufacture of automobiles and parts) are eligible to receive subsidies from the government.[211]

To encourage foreign investment in favored industries, the Chinese government has bestowed various subsidies, including tax reductions and import-duty waivers.[212] Various tax subsidies, which are discussed in section IV.A.13 above, are provided by the Chinese government to foreign-invested enterprises, such as a reduced corporate tax rate, an income tax refund for FIEs that reinvest in Chinese businesses, and an exemption of the business tax on technological transfers for FIEs. The government also has exempted duties on imported equipment.[213]

Through these measures, the Chinese government successfully has been directing foreign investment and technology transfers into numerous projects in downstream industries in the specialty steel sector. In the automotive sector, for example, all three of China's national

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[210] See Decision of the State Council on Promulgating and Implementing the "Temporary Provisions on Promoting Industrial Structure Adjustment," at Article 17, State Council (2005), available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51279.

[211] See Directory Catalogue on Readjustment of Industrial Structure (Version 2005), Decree of the National Development and Reform Commission (No. 40) (Dec. 2, 2005).

[212] See Revised Catalogue for the Guidance of Foreign Investment Industries, (Jan. 2005), available at http://www.tdctrade.com/alert/cba-e0501a-5.htm.

[213] See China is World's No. 1 Stainless Steel Consumer, Asia Pulse (Apr. 11, 2002).

champion SOEs have multiple joint ventures with foreign automakers. SAIC, China's largest car manufacturer, has a joint venture with Volkswagen, SVW, and a joint venture with GM, SAIC GM Wuling. Id. FAW, another major Chinese automaker, has formed joint ventures with Mazda in Jilin and with Toyota, Tianjin FAW Toyota. Lastly, Dongfeng has signed joint venture agreements with Peugeot, Dongfeng Peugeot Citroen, and with Honda. Id.

b. Limits on Foreign Ownership

During the 1990s, China's government began an SOE reform plan that was expected to terminate the Chinese government's ownership and control of SOEs and to privatize much of the SOE sector by 1998.[214] Rather than privatize certain large- and medium-sized SOEs, however, the Chinese governmental maintained control of these enterprises through stock positions held by various government agencies. Id. These agencies served as stockholders with the power to hire or fire managers and to control mergers, acquisitions, and bankruptcies. Id. As explained by the State Development Planning Committee Minister, "The state must retain the controlling share in key enterprises that have a significant bearing on the national economy and national security."[215] In the Tenth Five-Year Plan, the Chinese government codified its position that the "state must hold a controlling stake in strategic enterprises that concern the national economy" and also must "uphold the dominance of the public sector of the economy {and} let the state-owned sector play the leading role."[216]

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[214] See The Mineral Industry of China – 1998, U.S. Geological Survey, at 1.2 (1999), available at http://minerals.usgs.gov/minerals/pubs/country/asia.html#ch.

[215] See China to Improve Economic Operation Through Industrial Restructuring, People's Daily (Mar. 06, 2001), available at http://english.people.com.cn/200103/06/eng20010306_64240.html.

[216] See The Tenth Five-Year Plan for National Economic and Social Development – People's Republic of China, available at http://www.logos-net.net/ilo/195_base/en/init/chn_1.htm.

Given the importance of downstream industries in the specialty steel sector to China's economic and industrial growth, the government has been unwilling to relinquish control of SOEs in pillar industries. In the automotive industry, for instance, Pursuant to Article 47 of the 2004 AIP, the Chinese government limits foreign investors to no more than two joint ventures and restricts foreign ownership in a joint venture to less than 50 percent.[217] China has imposed similar limitations on foreign ownership in its iron and steel sector pursuant to the new Steel and Iron Industry Development Policy issued in July 2005.[218] Specifically, foreign investment has been limited to a non-controlling interest under Article 23 of the Steel Policy 2005, which provides that, "[i]n principle, foreign investors that make investment in China's iron and steel industry are not allowed to have a controlling share status." Id.

c. Local Content and Other Localization Requirements

China has protected and supported the development of downstream industries in the specialty steel sector through local content and other localization requirements. In the automotive sector, for instance, the Chinese government has forced parts producers in other countries to relocate their production facilities to China by making approvals of auto assembly operations contingent upon the purchase of local parts.[219] While China has removed explicit local content requirements supporting domestic parts production as part of its accession

[217] See, e.g., China's Laws, Regulations and Practices in the Areas of Technology Transfer, Trade-Related Investment Measures, Subsidies and Intellectual Property Protection Which Raise WTO Compliance Concerns, Trade Lawyers Advisory Group, at 25 (September 2007).

[218] See Steel and Iron Industry Development Policy, Order No. 25 of the National Reform and Development Commission, July 2005, at Art. 23.

[219] A WTO Panel found provisions of China's automotive industrial policies regarding local content and other localization requirements to be inconsistent with commitments assumed by China upon acceding to the WTO. See, e.g., Panel Report, China – Measures Affecting Imports of Automobile Parts, WT/DS340/R, Jul. 18, 2008, at para. 8.4.

commitments to the WTO,[220] it has replaced the explicit domestic content requirements with more subtle forms of "persuasion."[221]

Because the Chinese government has limited the number of licenses granted for final automobile assembly, the awarding of a license to expand auto production capacity in China is extremely valuable. Id. at 14-15. The automakers are forced to substitute parts made in the United States and other countries with parts made in China if they want to introduce new models and succeed in the Chinese market. Id. at 15. According to the NDRC, foreign automakers are expected to fulfill localization requirements.[222] The Chinese government, therefore, "is accomplishing via non-tariff barriers the very goals that it previously achieved with WTO-inconsistent tariff measures."[223]

The effectiveness of China's localization measures is reflected in the commitments made by foreign automakers to purchase Chinese-made auto parts.

- Press reports indicate that GM has committed to purchasing $10 billion annually in Chinese-produced auto parts by 2009. By 2005, Buicks manufactured in China by GM's joint venture already had an 80-percent local content ratio.
- Ford is reported also to have made at least US$ 3 billion in commitments to buying substantial quantities of Chinese-produced parts for export to Ford plants worldwide. The Wanxiang Group, China's largest indigenous auto parts supplier, has reported an agreement with Visteon, whereby it will supply the former Ford auto parts affiliate with substantial volumes of auto parts. Visteon reportedly has 21 plants in China.

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[220] For instance, under the 1994 AIP, the Chinese government required 40-percent local content at start-up for passenger car production, with this local content requirement increasing to 60 percent by the second year and 80 percent by the third year. See Andrew Szamosszegi, How Chinese Government Subsidies And Market Intervention Have Resulted In The Offshoring Of U.S. Auto Parts Production: A Case Study, at 11.

[221] Andrew Szamosszegi, How Chinese Government Subsidies And Market Intervention Have Resulted In The Offshoring Of U.S. Auto Parts Production: A Case Study, at 14.

[222] Witman Liao, Foreign joint venture partners urged to fulfill contract commitments, China Automotive Review (Mar. 2007).

[223] Andrew Szamosszegi, How Chinese Government Subsidies And Market Intervention Have Resulted In The Offshoring Of U.S. Auto Parts Production: A Case Study, at 15.

- DaimlerChrysler also has stated that it intends to buy more auto parts from China.
- Toyota agreed to expand local parts purchases in order to secure a production license from the government.

Id.

d. Technology Transfer Requirements

The Chinese government is also directing advanced production technologies to its key industries, including downstream industries in the specialty steel sector, by conditioning investment approval upon satisfying technology transfer requirements. In the iron and steel sector, for instance, the Steel Policy 2005 requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel.[224] Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China under Article 23 of the Steel Policy 2005, this requirement would seem to constitute a de facto technology transfer requirement.

China's 2004 AIP provides another example of technology transfer requirements imposed by the Chinese government, which uses the Government's control over the licensing and approval of foreign investments to ensure that investments in advanced production technologies are made in the automotive industry.[225] Pursuant to Article 47 of the 2004 AIP, foreign investment projects in China's automotive industry require the establishment of R&D facilities with an investment of at least RMB 500 million. Id. at 25. In Annex II of the 2004 AIP, foreign investors seeking approval of new automobile production plants must file technology-transfer agreements. Id.

[224] See Steel and Iron Industry Development Policy, Order No. 25 of the National Reform and Development Commission, July 2005.

[225] See, e.g., China's Laws, Regulations and Practices in the Areas of Technology Transfer, Trade-Related Investment Measures, Subsidies and Intellectual Property Protection Which Raise WTO Compliance Concerns, Trade Lawyers Advisory Group, at 23-29 (September 2007).

The Chinese government, moreover, has been successful in its efforts to direct foreign-technology transfers into its automotive industry. China has successfully conditioned the approval of joint ventures entered into by U.S. companies in China on the transfer of technology to Chinese automakers.[226]

3. Coordination and Manipulation of Raw Materials

The Chinese government supports downstream industries in the specialty steel sector by ensuring that enterprises in these industries are supplied with sufficient quantities of key raw material inputs at low prices. China hasbeen securing control of many vital raw materials, such as nickel, by supporting massive investments made by its SOEs. The Chinese nickel industry, for instance, is controlled by the Chinese government through Jinchuan Group Ltd., which controls approximately 90 percent of the total nickel production in China.[227] As part of a A$1.3 billion nickel purchase agreement with an Australian nickel producer, Jinchuan Group invested more than A$12 million in loans and equity immediately.[228] In another project in Australia, the Chinese government awarded RMB 1.30 billion in subsidies to Jiangsu Shagang Steel Group to support the steel group's iron-ore mining project in Australia.[229] Many more examples of the

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[226] Andrew Szamosszegi, How Chinese Government Subsidies And Market Intervention Have Resulted In The Offshoring Of U.S. Auto Parts Production: A Case Study, at 15.

[227] See Prospects and Opportunities for the Development of Chinese Nickel and Cobalt Industry, Presentation by Yongjun Li, Chairman of the Board and CEO of Jinchuan Group Ltd., (explaining that Jinchuan is a SOE owned by the Government of Gansu Province (58.44 percent), China State Development Bank (22.55 percent), Shaghai Baosteel Group Corp. (8.11 percent), Taiyuan Iron and Steel (Group) Co., Ltd. (8.11 percent), and Gansu Industry Trans. Investment Company (2.78 percent)).

[228] See Jinchuan Signs Over US$1 Billion Nickel Offtake Agreement with Allegiance, PR Newswire (Apr. 21, 2005), available at http://www.prnewswire.co.uk/cgi/news/release?id=168877.

[229] See China Jiangsu Over 6 M RMB Of Subsidies To Overseas Investors, Financial Times (Feb. 15, 2006).

Chinese government's provision of such subsidies to help defray the costs associated with producers' ventures to obtain domestic- and foreign-sourced raw materials, such as nickel or iron ore, are described in greater detail below.

a. <u>Exclusive Sourcing Agreements</u>

While specific details are difficult to obtain regarding price coordination between the Chinese government and China's specialty steel industry and exclusive sourcing agreements, the fact that the Chinese government is providing preferential land, tax, and financing policies to state-owned producers of specialty steel to expand into downstream production shows that China is using governmental policy to create large, vertically-integrated specialty steel producers that have access to exclusive sourcing arrangements with affiliated mines and refineries to supply raw materials at low prices. Consequently, these downstream producers have significant competitive advantages, both in terms of raw material pricing and availability, in competing not only for domestic but also for export sales. The Chinese government is implementing a comprehensive plan to develop large, vertically-integrated, state-owned producers that will have not only the benefit of governmental subsidization but also the exclusive sourcing of key raw materials at low prices. These actions by the Chinese government have been and will continue to be at the direct expense of China's international competitors, including downstream consumers of specialty steel in the United States.

b. <u>Preferential Mineral Resources Policies</u>

The Chinese government supports its key industries by ensuring that producers are supplied with sufficient quantities of key raw material inputs at reduced prices. Lacking sufficient domestic supplies of nickel, iron ore, and other mineral resources, the Chinese government has developed an "overall plan for the supply of mineral resources . . . which requires development of both domestic and foreign resources."[230] According to the terms of the plan, the Chinese government seeks to motivate Chinese mining companies to enter the global market by exploring foreign mineral resources. China accordingly has been aiding its SOEs to secure access to both domestic and international suppliers of the necessary raw materials through various direct measures, such as preferential loans and export credit guarantees, as well as by indirect measures.[231]

i. Background

China's first mining law, "The Mineral Resources Law of the People's Republic of China," was passed by the National People's Congress in March 1986 and was revised in August 1996.[232] In February 1998, the State Council of China issued detailed regulations on mineral rights management, implementing the amended Mineral Resources Law of 1996. Id. (explaining that the Chinese government enacted Regulations on Registration for Mineral Exploration, the Regulations on Registration for Exploitation of Mineral Resources, and the Regulations on Transfer of Exploration Rights and Mining Rights).

As part of the natural resources reforms carried out in 1998, the Ministry of Land and Resources ("MLR") became responsible for all functions relating to the management of mineral resources, including planning, protection, and rational utilization of land resources, mineral

[230] See China to Make Use of Foreign Mineral Resources, People's Daily Online (Jun. 12, 2001).

[231] See Infrastructure Sector Opens Up, People's Daily Online (Mar. 24, 2001), available at http://english.peopledaily.com.cn/english/200103/24/eng20010324_65849.html (explaining that the "government will offer support for domestic firms wanting to set up abroad by offering preferential loans and providing export credit guarantees").

[232] See New Century, New Opportunities for the New Mineral Industries in China – An Overview of the Mineral Industries and National Mineral Policy, available at http://www.natural-resources.org/minerals/CD/docs/regional/unescap/CH10%20China.pdf.

resources, marine resources, and other natural resources. Id. The MLR shares its responsibilities with local officials at the provincial, prefectural, and mineral-rich county levels.

ii. Preferential Policies Supporting the Exploration and Development of Mineral Resources in China

The preferential mineral resources policies and governmental support measures crafted by the MLR and local government officials have been guided by the National Program for Exploration and Development of Mineral Resources of 1999-2010 ("NPEDMR"), which was enacted in April 2001. Among the program's major objectives have been: (1) to raise domestic mineral availability by means of both strengthening national geological survey funded by the central government and local governments and promoting commercial geological exploration for mineral resources through appropriate mineral policy; (2) to guarantee the supply of energy and minerals needed by national economic and social development based on "two sources of resources and two markets," both domestic and international; and (3) to upgrade mining safety. Some of these policies and governmental support are next discussed.

(a) Preferential Policies of the Central Government That Support the Exploration and Development of Mineral Resources in China

The Chinese government has used numerous, preferential policies and measures to support the development of mineral resources available to China's specialty steel industry as well as downstream industries. In September 2004, for instance, China implemented the "Program of Superseding Resources Prospecting in Crisis Mines in China (2004-2010). Under this program, the Chinese government created a special fund for mineral prospecting in nearly-exhausted mines in China. The fund is comprised of 2 billion yuan from the central government's budget and 2 billion yuan from the budgets of local governments and mining enterprises.

China also has supported downstream specialty steel products by identifying these projects as "favored" in the "Temporary Provisions on Promoting Industrial Structure Adjustment" and the "Directory Catalogue on Readjustment of Industrial Structure (Version 2005)" issued by the National Development and Reform Commission in December 2005.[233] By being identified as favored, these projects are eligible for tax and other fiscal incentives. It is noteworthy that "wholly foreigner owned enterprises are not allowed."[234]

The exploration and development of mineral resources in China is also promoted under the Western Development Initiative ("WDI"). Under this program, the Chinese government will support "pillar industries" that include mineral industries, agriculture, and tourism in the twelve Western provinces of Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Qinghai, Ningxia, Xinjiang, Inner Mongolia, and Guangxi.[235] According to the Chinese government, "The comparative advantages of the mineral resources in the western regions are conspicuous, and their distribution is concentrated, thus providing the resources foundation for the formation of dominant pillar industries."[236] China supports the development of mineral resources located in the WDI area that have comparative resource advantages over other areas in China, such as nickel, through preferential policies and measures. Id.

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[233] See Decision of the State Council on Promulgating and Implementing the "Temporary Provisions on Promoting Industrial Structure Adjustment," State Council (2005), available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51279.

[234] See Catalogue for the Guidance of Foreign Investment Industries (Jan. 7, 2003), available at http://www.chinataiwan.org/web/webportal/W5029562/A5120231.html.

[235] See New Century, New Opportunities for the New Mineral Industries in China – An Overview of the Mineral Industries and National Mineral Policy, available at http://www.natural-resources.org/minerals/CD/docs/regional/unescap/CH10%20China.pdf.

[236] See China's Policy on Mineral Resources, available at http://english.people.com.cn/200312/23/ print20031223_131048.html.

The Chinese government has passed various laws and decrees that authorize a multitude of governmental measures to support the exploration and exploitation of mineral resources in accordance with the WDI.[237] In the "Notification on Policies and Measures for Western Development," for instance, China identifies certain key regions and mineral resources that are eligible for preferential measures under the WDI.[238] Companies that are located in these areas or that are mining these minerals are eligible for increased financial credit input, tax preferences, preferential land-use policies, preferential mineral policies, and greater foreign investment.[239] For instance, domestic and international firms are encouraged to invest in the exploration and development of certain mineral resources through the reimbursement of fees paid for the exploration or mining rights. Id. at 138. The fees paid for the use of exploration rights or the use of mining rights, moreover, may be reduced or exempted as follows:

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[237] See China taps more domestic mineral resources to fuel its roaring economic engine, People's Daily Online (Nov. 18, 2004), available at http://english.people.com.cn/200411/18/eng20041118_164376.html; Huge Mineral Reserves Discovered in Xinjiang, People's Daily Online (Feb. 13, 2001), available at http://english.peopledaily.com.cn/english/200102/13/print20010213_62252.html; and Preferential Policies on West Development Adopted, People's Daily Online (Dec. 28, 2000), available at http://english.peopledaily.com.cn/english/20012/28/print20001228_58981.html. See also Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions (Oct. 26, 2000); Order of the State Development and Reform Commission and the Ministry of Commerce – Catalogue of Priority Industries for Foreign Investment in the Central-Western Region (Amended 2004); Measures for the Administration of Financial Interest-subsidy Fund concerning Infrastructure Project Loan of State-level Economic and Technological Development Zone in Middle and Western Regions (Jun. 2, 2005); Circular of Ministry of Commerce on Implementing "the Project of Encouraging Investment in Central-Western Region" (Sept. 30, 2006); and Circular of Ministry of Finance and the State Administration of Taxation on Catalogue Change of Preferential Tax Policies for Development of China's Western Regions (Nov. 16, 2006).

[238] See New Century, New Opportunities for the New Mineral Industries in China – An Overview of the Mineral Industries and National Mineral Policy at 136-137, available at http://www.natural-resources.org/minerals/CD/docs/regional/unescap/CH10%20China.pdf.

[239] Id. See also Preferential Policies on West Development Adopted, People's Daily Online (Dec. 28, 2000), available at http://english.peopledaily.com.cn/english/200012/28/eng20001228_58981.html.

> The fees for the use of exploration right may be exempted in the first year. Half of the rates are charged during the second and the third year. 75 per cent of the rates are charged during the fourth to the seventh years.
>
> The fees for the use of mining right may be exempted during the period of mine construction and in the first year in which the mine is put into operation. Half of the rates apply in the second and third years of the mine production stage.
>
> Foreign investors are encouraged to invest in exploration for and development of mineral resources in the WDI region. Beside the national preferable policies, the foreign investors are not charged for the first year and half charged for the following two years with the fees for the use of exploration right and the fees for use of mining right. There is no royalty for the exploitation of mineral resources for the first five years of mine production if the mining project with foreign investment is listed in the encouraged category of the Catalogue of Industries for Foreign Investment.

Id. at 139.

(b) Preferential Policies of Local Governments That Support the Exploration and Development of Mineral Resources in China

Provincial and other local governments in China also have implemented policies and measures to support the exploration and development of mineral resources in their respective territories. In Sichuan, for instance, the provincial government has established various "preferential policies regarding the mineral resources" that include the following:[240]

- exploration and mining projects in minority regions are exempted from rights fees for the first two years and pay 50 percent of the rights fees during the third through fifth years of the projects;
- exploration and mining projects encouraged in the "Industrial Guidelines for the Foreign Investment" are exempted from the mineral resources compensation fees for 5 years, and intergrowth mining products from these projects are eligible for a 50-percent deduction in the resources compensation fees;

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[240] See Preferential Policies for National Development Zones, available at http://www.sccom.gov. cn/wszs/page/english/htm/tzzc/3.htm.

- exploration and mining projects encouraged in the "Industrial Guidelines for the Foreign Investment" that use the residual mining resources are exempt from resources compensation fees;
- projects that use advanced technology where the existing, domestic technology is inadequate may benefit from a 50-percent deduction in the resources compensation fees for the first 3 years so long as the utilization of the mining resources, mining selection, and re-mining are higher than the domestic averages;
- exploration expenditures in designated regions that create commercial mining potential may be treated as deferred assets and amortized beginning in the first year of the commercial mining; and
- non-permanent, exploration activities are exempt from site-usage fees.

In Shanxi province, for instance, the provincial government transferred an iron-ore mine to TISCO in 2005.[241] The provincial government explained that it was willing to accept 190 million yuan for the mine because "{t}he deal will facilitate the mass development of the mine and prolong the service period of the mine." Id. A typical market actor would not discount the sale price of a mine by taking these factors into consideration.

iii. Preferential Policies Supporting the Exploration and Development of Mineral Resources Outside China

The Chinese government has supported investments by Chinese firms in overseas mines to supplement scarce domestic mineral resources and has sought to "motivate more competitive mining companies to enter the global market by exploring foreign mineral resources, in addition to regular imports" by using various direct measures, such as preferential loans and export credit guarantees, as well as indirect measures.[242]

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[241] See Taiyuan Steelmaker Inks Shanxi Iron Ore Mine, Sinocast China Business Daily News (Dec. 13, 2005).

[242] See Infrastructure Sector Opens Up, People's Daily Online (Mar. 24, 2001), available at http://english.peopledaily.com.cn/english/200103/24/eng20010324_65849.html (explaining that the "government will offer support for domestic firms wanting to set up abroad by offering preferential loans and providing export credit guarantees").

In 2004, for instance, the Chinese government issued the "Circular of MOC and MFA of Distributing Guide Catalogue of Countries and Industries for Investment Abroad."[243] That Circular, for the first time, stipulated the countries and industries in which the Chinese government encouraged overseas investment. "The enterprises that meet with the Guide Catalogue and have the certificates of investment abroad have priority to enjoy the preferential policies in funds, foreign exchange, tax, customs, exit and entry." Id.

China has actively supported investments abroad to shore up access to foreign supplies of any of the metals that it lacks, such as nickel, that are consumed in the production of steel and, in particular, specialty steel. Indeed, the steel industry is the primary consumer of nickel, with the stainless steel sector alone accounting for 65 percent of total consumption.[244] The Chinese government has used various means to secure this vital raw material for its specialty steel producers.[245]

For instance, Jinchuan Nonferrous, China's largest nickel producer, entered into a contract for US$700 million to purchase nickel from the world's third-largest nickel producer, Australia's WMC Resources, extending their existing agreements through 2010. Jinchuan also entered into a life-of-mine off-take agreement with Australian-listed Sally-Malay Mining.

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243 See Circular of MOC and MFA of Distributing Guide Catalogue of Countries and Industries for Investment Abroad, available at http://fec2.mofcom.gov.cn/aarticle/laws/200407/20040701240241.html.

244 The Status of nickel resources in the world and the development of mineral resources in MCC, China Metallurgical Construction Group Corporation (Sept. 10, 2005), available at http://www.pecc.org/community/minerals-shanxi-2005/papers/wang-yongguang(paper).pdf.

245 See Chinese Firms Encouraged to Invest Overseas: Bank, People's Daily Online (Sept. 25, 2000), available at http://english.peopledaily.com.cn/english/200009/25/print20000925_51176.html.

Chinese SOEs also have acquired mines overseas. China Metallurgical Construction Group Corporation ("MCC Group"), a large conglomerate under the direct guidance of the State-owned Assets Supervision and Administration Commission of the State Council, has invested in mines at home and abroad.[246] MCC develops and manages mineral resources, such as iron ore and nickel, required by the steel and other industries in China. Relying on financing from the Government of China, MCC has undertaken numerous projects to develop overseas mineral resources. For example, MCC controls 85 percent of the Ramu nickel project in Papua New Guinea. The project is designed to produce 58,000 tons of sulfur, nickel, and cobalt each year, with 32,000 tons of nickel content. MCC also holds a majority interest in the Duddar lead and zinc mine in Pakistan. The mine is expected to have an annual capacity of 100,000 tons of zinc concentrate, 54,000 tons of zinc content, 32,000 tons of lead concentrate, and 20,000 tons of lead content.

In terms of direct financial assistance, one of the Chinese government's primary tools is the provision of direct financial support through the state-owned "policy banks."[247] MCC has a long-standing relationship with the China Development Bank ("CDB"). CDB financed MCC's investment in the Duddar project with a loan of US $54 million.[248] China has used these policy

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[246] The Status of nickel resources in the world and the development of mineral resources in MCC, China Metallurgical Construction Group Corporation (Sept. 10, 2005), available at http://www.pecc.org/community/minerals-shanxi-2005/papers/wang-yongguang(paper).pdf.

[247] See Chinese Firms Encouraged to Invest Overseas: Bank, People's Daily Online (Sept. 25, 2000).

[248] See Pakistan Mineral Development Corporation Website, available at http://www.pmdc.gov.pk/pmdc-final/news.htm.

loans to provide financial support for projects that develop overseas metal resources, referred to as "Going to the World" projects.[249]

4. Weak Environmental Regulations

Environmental enforcement in China is primarily the responsibility of local governments that look to those producers to provide employment and tax revenues. These conflicting interests have repeatedly led Chinese governmental authorities to allow important industries, such as the specialty steel industry and its downstream-consuming industries, to continue to pollute.[250]

The lack of effective environmental regulation for "key" Chinese industries is having profound effects on the world's environment. China also has emerged as the world's second greatest emitter of greenhouse gases.[251] The expansion of downstream industries in China's specialty steel industry, and their demand for electricity produced in large part by heavily polluting coal-fired generating plants, is a major cause of this production.

Chinese industries are also less energy-efficient than the steel industries in the United States, the European Union, and other developed countries. The Chinese government's industrial policies fueling the artificial expansion of industrial production capacity are also forcing the transfer of production to high-polluting facilities in China from relatively low-polluting facilities in the rest of the world. While China benefits economically in the short-term from the increased production attributable to its industrial policies, the whole world – including

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[249] See Chinese Firms Encouraged to Invest Overseas: Bank, People's Daily Online (Sept. 25, 2000).

[250] See SEPA Begins New Onslaught on Polluters, Including Petrochemical and Metals Producers, Metals Weekly (Feb. 10, 2006).

[251] See Pan Jiahua, China and Climate Change: The Role of the Energy Sector, Science & Dev. Network Policy Briefs (Jun. 2005), available at http://www.scidev.net/dossiers/index.cfm?fuseaction= policybrief&policy=64&dossier=4.

China – loses because of the increased pollution and greenhouse gas emissions for which Chinese industry is responsible.

5. Inadequate Labor Laws and Worker Safety Standards

Many workers in China lack minimal health and safety protections and adequate wages. China's labor law prohibits workers from organizing independent unions and does not provide for the right to strike. Without the right to organize independently, Chinese steelworkers lack effective ways to resolve labor issues in the workplace. Workers in China are regularly denied basic labor rights and remain largely unprotected by the weak enforcement of China's existing labor law and policies.[252]

Indeed, the U.S. State Department's annual human rights report confirmed China's poor labor record, concluding that China restricts "labor rights, including freedom of association, the right to organize and bargain collectively, and worker health and safety."[253] The report noted that "[p]rotests by those seeking to redress grievances increased significantly" in 2005 and were often suppressed violently by Chinese security forces. Id. It also found that although Chinese law permits collective bargaining, this right is largely illusory. Id. at 30.

The State Department is not alone in finding gross inadequacies in China's labor record. Various human rights organizations also have concluded that China's protection of labor rights is grossly deficient. Freedom House, a prominent human rights and pro-democracy organization, reports that:

> Freedom of assembly and association is severely restricted. … Independent trade unions are illegal, and enforcement of labor laws is poor. All unions must belong to the state-controlled All China

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[252] See Human Rights Watch, Human Rights and the 2008 Olympics in Beijing, available at http://www.hrw.org/campaigns/china/beijing08/labor.htm.
[253] See China: Country Reports on Human Rights Practices, United States Department of State, at 1 (2005), available at http://www.state.gov.

> Federation of Trade Unions, and several independent labor activists have been jailed for their advocacy efforts. Collective bargaining is legal in all industries, but it does not occur in practice.[254]

Other human rights organizations have documented labor abuses in China, including being forced to work overtime without pay; denying women the right to paid maternity leave; denying workers pay for sick leave and their legal right to national holidays; and illegally denying workers health insurance and then terminating those that are injured on the job.[255]

In these ways, at terrible human cost, China's government support downstream industries in China's specialty steel sector

V. CONCLUSION

This paper is a catalogue, albeit necessarily incomplete, of some of the major ways in which China's national, provincial, and local governments have been going about effectuating very thoughtfully and carefully a long-term plan to encourage the production of specialty steel and downstream specialty steel products in China. Chinese authorities are resolved to foster the development of domestic downstream industries in the specialty steel sector capable not only of supporting China's economic growth and largely replacing imports into China, but also of exporting large quantities of products from China to destinations such as the United States.

The scale of this endeavor, and the success already attained, are breathtaking and do not bode well for U.S. producers. In the midst of this performance by China, it is important to keep in mind that the neo-mercantilist programs and measures by China's governmental authorities are incompatible with the economic theory of free trade and are fundamentally at odds with

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[254] See Freedom in the World China (Freedom House 2005), available at http://www.freedomhouse.org.

[255] See, e.g., Wal-Mart in China: What They Don't Want Us to Know, National Labor Committee (2005), available at http://www.nlcnet.org.

major commitments China has assumed at the World Trade Organization under public international law.

BEFORE THE OFFICE OF THE
UNITED STATES TRADE REPRESENTATIVE

THE INTERAGENCY TRADE POLICY STAFF COMMITTEE

COMMENTS ON CHINA'S COMPLIANCE WITH ITS COMMITMENTS TO THE WORLD TRADE ORGANIZATION

WRITTEN NOTIFICATION OF INTENT TO TESTIFY
AND WRITTEN TESTIMONY

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SEPTEMBER 18, 2008

I. CHINA IS IN VIOLATION OF ITS COMMITMENTS TO THE WORLD TRADE ORGANIZATION ON SUBSIDIES

When China formally joined the World Trade Organization ("WTO") on December 11, 2001, along with the many benefits it received China made a series of commitments under the WTO's covered agreements and in China's Protocol of Accession to the WTO. China's membership in the WTO rests upon the consent of the WTO's other member states that was given on the strength of the pledges that the Chinese government made to conform China's system to the WTO's rules. In exchange for these commitments, China gained improved market-access opportunities with other WTO members, such as Permanent-Normal-Trade-Relations ("PNTR") with the United States.

Among its obligations to the WTO, China agreed to end certain governmental subsidies to companies in China. Of tremendous importance, China stated that it would eliminate – by the time of its accession to the WTO – all subsidy programs falling within the scope of Article 3 of the WTO's Agreement on Subsidies and Countervailing Measures ("the SCM Agreement"). Article 3 prohibits subsidies that are contingent in law or in fact upon export performance and also prohibits subsidies that are contingent upon the use of domestic over imported goods.

Nearly seven years later, China has not kept this promise and has not honored its international legal obligations in this regard. While China belatedly notified some subsidies to the WTO in April 2006 in addition to those notified in its Protocol of Accession (Attachment 1) and appears to have terminated some prohibited subsidies as the result of a dispute settlement brought by the United States against China at the WTO (Attachment 2), many prohibited and specific subsidies remain and have not even been notified to the WTO by China (Attachment 3).

Under its very deliberate, national plan to build a world-class stainless steel industry in China, the Chinese government has given top priority (a) to encouraging exports of semi-fabricated and downstream stainless steel products and (b) to reducing China's reliance upon imports of these products for its domestic market. In implementing this trade-distorting industrial policy at the central, provincial, and local levels of government, China has relied, and continues to rely, upon various measures that include not only subsidies but also import and export restrictions and other discriminatory regulations, all of which raise serious concerns under the WTO's agreements.

But it is China's subsidies that especially have been enabling China's stainless steel industry to prosper at the expense of members of the Specialty Steel Industry of North America ("SSINA") (listed at Attachment 4). In particular, (a) China's production of stainless steel has increased dramatically (Attachment 5), (b) China's exports of stainless steel semi-fabricated products to the United States have risen substantially and quickly (Attachment 6), and (c) China's exports of these products to third countries are doing very well vis-à-vis U.S. exports to those markets (Attachment 7).

Perhaps the most damaging export-contingent subsidy China has been employing is the enforced undervaluation of its currency, the renminbi. At the time of its accession to the WTO, China described its exchange arrangement as a single and managed floating exchange-rate regime based on supply and demand. In fact, China does not trust the market to value its currency and instead has intervened in the exchange markets on a massive scale for years and has had in place an elaborate system of currency controls and techniques that depress the renminbi's value, essentially pegging the renminbi to the U.S. dollar.

The China Currency Coalition ("CCC") calculated in July 2008 that over the eighteen-month period from September 2006 through February 2008, the renminbi on average was at least 35 percent undervalued relative to the U.S. dollar on a real-exchange-rate basis. With China's recent halt in the nominal appreciation of the renminbi, it is likely that the renminbi's undervaluation in real terms continues to be in this range. China's competitive currency depreciation has skewed the relative values of major global currencies (Attachment 8) and has created dangerous trade and monetary imbalances. The China Currency Coalition's members (Attachment 9) – U.S. industry, agriculture, and labor organizations, including the SSINA's companies – have all been badly harmed by the renminbi's substantial undervaluation.

In its "Top-to-Bottom Review" of U.S.-China Trade Relations in February 2006, the U.S. Trade Representative observed that, along with macroeconomic factors outside trade, China's exchange-rate mechanism affects China's trade and plays an important role in the adjustment of global imbalances. The CCC and the SSINA urge that China's enforced undervaluation of the renminbi be cited as a critically important, prohibited export subsidy that China employs contrary to its commitments to the WTO.

II. CONCLUSION

In closing, China continues to provide massive amounts of subsidies to support the Chinese stainless steel industry in accordance with the objectives of the Chinese government's industrial policies. These subsidies are having a seriously adverse impact on members of the SSINA by increasing Chinese stainless capacity, production, and shipments and by enabling Chinese companies to capture greater shares of the markets for stainless steel products in the United States, China, and third countries. Most of these subsidies, moreover, have not been notified to the WTO. Finally, as the CCC's members can attest, China's undervaluation of the renminbi is acting as a huge drag on the U.S. economy generally.

ATTACHMENT 1

LIST OF SUBSIDIES NOTIFIED BY THE GOVERNMENT OF CHINA

Protocol on the Accession of the People's Republic of China, WT/L/432 (Nov. 23, 2001), Annex 5A

1. Subsidies from central budget provided to certain state-owned enterprises ("SOEs") running at a loss

2. Subsidies from local budget provided to certain SOEs running at a loss

3. Priority in obtaining loans and foreign currencies based on export performance

4. Preferential tariff rates based on localization rate of automotive production

5. Preferential policies for enterprises with foreign investment established in special economic zones ("SEZs") (excluding the Pudong area of Shanghai)

6. Preferential Policies for Economic and Technology Development Areas

7. Preferential policies for the SEZ of the Pudong area of Shanghai

8. Preferential policies for foreign-invested entities ("FIEs")

9. Loans from state policy banks

10. Financial subsidies for alleviation of poverty

11. Funds for technology, renovation, and research and development

12. Infrastructure construction funds for agricultural water conservancy and projects to protect against floods

13. Tax and tariff refunds for export products

14. Tariff and import duties reduction and exemption for enterprises

15. Provision of low-price inputs (coal for electricity generating and crude oil) for special industrial sectors

16. Subsidies to certain industries in the forestry industry

17. Preferential income tax treatment for high-tech enterprises

18. Preferential income tax treatment for enterprises utilizing waste

19. Preferential income tax treatment in poverty-stricken regions

20. Preferential income tax treatment for enterprises transferring technologies

21. Preferential income tax treatment for disaster-stricken enterprises

22. Preferential income tax treatment to enterprises that provide job opportunities for the unemployed

23. Tariff and VAT exemptions for imported technology and equipment of investors investing in areas encouraged by the government

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement, People's Republic of China, G/SCM/N/123/CHN (Apr. 13, 2006)

1. Preferential tax policies for foreign-invested enterprises

2. Preferential tax policies for foreign-invested export enterprises

3. Preferential tax policies for foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas

4. Preferential tax policies for foreign-invested enterprises engaged in energy, transportation, and infrastructure projects

5. Preferential tax policies for Chinese-foreign equity joint ventures engaged in port and dock construction

6. Preferential tax policies for enterprises with foreign investment that are technology-intensive and knowledge-intensive

7. Preferential tax policies for enterprises with foreign investment in the border cities

8. Preferential tax policies for enterprises with foreign investment recognized as high- or new-technology enterprises established in the State high- or new-technology industrial development zones, and for advanced-technology enterprises invested in and operated by foreign businesses

9. Preferential tax policies for enterprises recognized as high- or new-technology enterprises established in the State high- or new-technology industrial development zones

10. Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding the Pudong area of Shanghai)

11. Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones

12. Preferential tax policies for enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zones

13. Preferential tax policies in the western regions

14. Preferential tax policies for enterprises established in poverty-stricken areas

15. Fiscal funds to alleviate poverty

16. Specific subsidy on agricultural production and construction in the poverty-stricken areas of Hexi and Dingxi of Gansu Province and Xihaigu of Ningxia Hui Autonomous Region

17. Discounted interests rates for poverty-alleviation loans

18. Preferential tax policies for enterprises that utilize waste materials

19. Preferential tax policies for enterprises suffering from natural disasters

20. Preferential tax policies for welfare enterprises

21. Preferential tax policies for enterprises making little profit

22. Preferential tax policies for township enterprises

23. Preferential tax policies for enterprises that provide employment for unemployed people

24. Preferential tax policies for scientific research institutions under transformation

25. Preferential tax policies for the research and development of enterprises

26. Preferential tax policies for the research and development of foreign-invested enterprises

27. Preferential tax policies for enterprises transferring technology

28. Preferential tax policies for the key leading enterprises engaged in agricultural industrialization

29. Preferential tax policies for enterprises engaged in forestry

30. Funds for supporting technological innovation for the technological small- and medium-sized enterprises (SMEs)

31. Development funds for SMEs

32. Fund for international market exploration by SMEs

33. Special fund for establishment of service system for SMEs

34. Fund for subsidizing the training of the rural migrant labour force

35. Outlay for training of youngster farmers on science and technology

36. Fund for specialized cooperatives of farmers

37. Subsidy for popularization of agricultural technologies

38. Subsidy for growing superior grain cultivars

39. Subsidy for purchasing agricultural machinery and tools

40. Subsidy for actualizing agricultural technology

41. Fund provided for agricultural industrialization

42. Fund for agricultural disaster relief

43. Fund provided to exempt from or reduce agriculture tax on farmers suffering from poor harvest after disasters

44. Subsidy for major flood control and drought resistance

45. Fund for construction of small irrigation facilities in rural areas

46. Fund for construction of small ecological facilities in rural areas

47. Fund for projects on collection, reservation, and utilization of rainfall

48. Fund for interest discount of loans for the purpose of agricultural water-saving irrigation

49. Subsidies for national key construction projects on water and soil conservation

50. Special fund for projects on protection of natural forestry

51. Cash subsidy for returning cultivated land to forests

52. Compensation fund for forestry ecological benefits

53. Interest discount for loans for the purpose of desertification prevention in forestry

54. Subsidy for prevention from and control of pest and disease in forestry

55. Subsidy for grass seed sowing by airplanes

56. Preferential tax policies for integrated circuit industry

57. Preferential tax policies for foreign-invested enterprises and foreign enterprises that have establishments or places in China and are engaged in production or business operations purchasing domestically produced equipment

58. Preferential tax policies for domestic enterprises purchasing domestically produced equipment to upgrade technology

59. Exemption of tariff and import VAT for imported technologies and equipment

60. Preferential tax policies for enterprises of grain or oil reserve

61. Preferential tax policies for the imports of China Grain Reserves Corporation for the purpose of rotation of grain reserves

62. Preferential tax policies for relief grain and disaster-relief grain, compensation grain for returning cultivated land to forests and to grass land, and grain rations for the migrants from the reservoir areas

63. Preferential tax treatment for tea sold in border areas

64. Preferential tax treatment for imported products for the purpose of replacing the planting of poppies

65. Preferential tax policies on imports of seeds (seedlings), breeding stock (fowl), fish fries (breeds), and non profit-making wild animals and plants kept as breeds during the period of the "Tenth Five-Year Plan"

66. Preferential tax treatment for specimens of endangered wild animals and plants returned by the government of Hong Kong, China to the Office of the Administration of Import and Export of Endangered Species

67. Preferential tax treatment for endangered wild animals and plants as well as their products returned by foreign governments, by the Government of Hong Kong, China, or the Government of Macao, China, to the Office of the Administration of Import and Export of Endangered Species

68. Preferential tax treatment for building material products produced with integrated utilization of resources

69. Preferential tax treatment for other products produced with integrated utilization of resources

70. Preferential tax treatment for imported products for scientific and educational purposes

71. Preferential tax treatment for imported products exclusively used by disabled people

72. Preferential tax treatment to anti-HIV-AIDS medicine

73. Refund of import VAT of raw copper materials

74. Preferential tax treatment for casting and forging products

75. Preferential tax treatment to dies products

76. Preferential tax treatment to numerically controlled machine tool products

ATTACHMENT 2

PROHIBITED SUBSIDIES SUBJECT TO MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN CHINA AND THE UNITED STATES

In November 2007, the Government of China signed a Memorandum of Understanding ("MOU") with the United States designed to settle a dispute initiated by the United States before the WTO regarding certain Chinese measures conditioned either on exports or on a firm's use of domestic over imported products.[1] As indicated by the United States in its request for a WTO panel in July 2007, China's subject programs violated a series of provisions in the WTO's SCM Agreement as well as various commitments undertaken by China to eliminate such subsidies by December 11, 2001, as part of China's Protocol of Accession to the WTO.[2] Under the MOU's terms, China agreed to repeal the prohibited subsidies next indicated.[3]

1. Tax preferences provided under:

    (a) the *Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Issues of Tax Credit To Enterprise Income Tax for Purchase of Domestically Produced Equipment by Enterprises with Foreign Investment and Foreign Enterprises*, CaiShuiZi [2000] No. 49, issued on 14 January 2000, and the *Circular of the State Administration of Taxation on Printing and Issuing the Measures On Tax Credit To Enterprise Income Tax for Purchase of Domestically Produced Equipment by Enterprises with Foreign Investment and Foreign Enterprises*, GuoShuiFa [2000] No. 90, issued on 18 May 2000; and

    (b) the *Circular on Printing and Issuing the Interim Measures on Credit and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation*, CaiShuiZi [1999] No. 290, issued by the Ministry of Finance and the State Administration of Taxation on 8 December 1999.

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[1] See Communication from China and the United States, China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments, WT/DS358/14 (Jan. 4, 2008).
[2] See Request for the Establishment of a Panel by the United States, China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments, WT/DS358/13 (July 13, 2007).
[3] See Communication from China and the United States, China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments, WT/DS358/14 (Jan. 4, 2008).

2. Tax preferences provided under:

(a) Article 9 of the *Provisions of the State Council on the Encouragement of Foreign Investment*, GuoFa [1986] No. 95, issued on 11 October 1986 (hereinafter "*State Council Provisions*"); Article 6 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*, Order No. 45, promulgated on 9 April 1991 (hereinafter "*FIE Income Tax Law*"); and Article 75, paragraph 1, section 8 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*, Decree No. 85, issued by the State Council on 30 June 1991 (hereinafter "*FIE Income Tax Implementing Rules*");

(b) Article 8 of the *State Council Provisions*; Article 6 of the *FIE Income Tax Law*; and Article 75, paragraph 1, section 7 of the *FIE Income Tax Implementing Rules*; and

(c) Article 10 of the *State Council Provisions*; Articles 6 and 10 of the *FIE Income Tax Law*; and Article 81 of the *FIE Income Tax Implementing Rules*.

3. Tax and other preferences provided under:

(a) Article 7 of the *FIE Income Tax Law*; Article 73, paragraph 1, section 6 of the *FIE Income Tax Implementing Rules*; and Section XIII of the *Catalogue of Encouraged Foreign Investment Industries* (hereinafter "*Encouraged Catalogue*") within the *Catalogue for the Guidance of Foreign Investment Industries*, Order [2004] No. 24, issued by the National Development and Reform Commission and the Ministry of Commerce on 30 November 2004 (hereinafter "*Catalogue*"); and

(b) the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*, GuoFa [1997] No. 37, issued on 29 December 1997; and Section XIII of the *Encouraged Catalogue*.

ATTACHMENT 3

SAMPLE LIST OF CHINA'S NON-NOTIFIED SUBSIDIES THAT EITHER BENEFIT OR LIKELY BENEFIT CHINESE STAINLESS STEEL PRODUCERS

1. Debt-to-Equity Swaps
2. Equity Infusions
3. Debt Forgiveness
4. State Bond-Financed Project Program
5. Provision of Land at Less than Adequate Remuneration
6. Provision of Equipment at Less than Adequate Remuneration
7. Provision of Electricity at Less than Adequate Remuneration
8. Provision of Water at Less than Adequate Remuneration
9. Provision of Raw Material Inputs Produced by State-Owned Enterprises ("SOEs") at Less than Adequate Remuneration
10. Steel Import Substitution Program
11. Restraints on Exports of Raw Materials
12. Northeast Revitalization Program
13. Exemption of Import Duties and VAT for the "Encouragement of Investment by Taiwan Compatriots"
14. VAT Refunds on Domestic Equipment Purchases for FIEs That Buy New Equipment Instead of Imported Equipment
15. Domestic VAT Refunds for Companies Located in Economic Development Zones
16. Fixed Assets Investment Orientation Regulatory Tax
17. Discounted Lending Rates for FIEs That Are Contingent Upon Export
18. Xiamen City Key Exporting Enterprises Support Fund
19. Funds for "Outward Expansion" of Industries in Guangdong Province
20. Grants to Promote Exports from Zhejiang Province
21. Zhejiang Export Interest Subsidy Fund
22. Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province

23. Exemption from Real Estate Tax and Dike-Maintaining Fee for FIEs in Shunde District of Guangdong Province

24. Provincial and Local Tax Exemptions and Reductions for Productive FIEs

25. Preferential Tax Policies for Town and Village Enterprises

26. Trade Development Fund of Liaoning Province (No. 559) Grants

27. Liaoning Province Export Interest Subsidies

28. Shenzhen City Export Interest Subsidy Fund

ATTACHMENT 4

MEMBERS OF THE
Specialty Steel Industry of North America

September 2008

AK Steel Corporation
West Chester, Ohio

Allegheny Ludlum
An Allegheny Technologies Company
Pittsburgh, Pennsylvania

ATI Allvac
An Allegheny Technologies Company
Monroe, North Carolina

Carpenter Technology Corporation
Reading, Pennsylvania

Crucible Specialty Metals
Syracuse, New York

Electralloy
Oil City, Pennsylvania

Haynes International, Inc.
Kokomo, Indiana

Latrobe Specialty Steel Company
Latrobe, Pennsylvania

North American Stainless
Ghent, Kentucky

Outokumpu Stainless
Schaumburg, Illinois

ThyssenKrupp Mexinox S.A. de C.V.
San Luis Potosi, Mexico

ThyssenKrupp VDM USA, Inc.
Florham Park, New Jersey

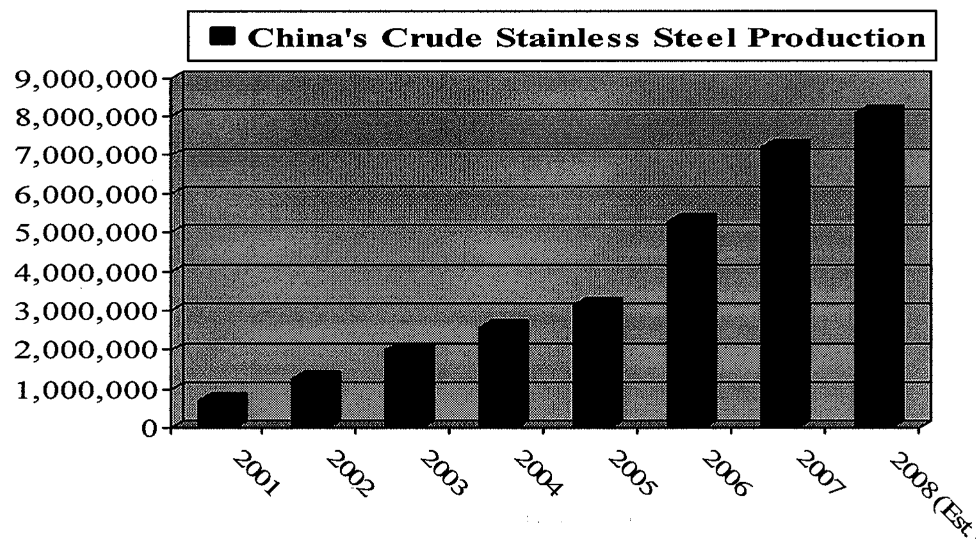
Universal Stainless and Alloy Products
Bridgeville, PA

Valbruna Slater Stainless Inc.
Fort Wayne, Indiana

ATTACHMENT 5

Since China's Accession to the WTO, the Chinese Stainless Steel Industry Has Experienced Explosive Growth

	2001	2002	2003	2004	2005	2006	2007	2008 (Estimated)
China's Production of Crude Stainless Steel (metric tons)	750,000	1,200,000	2,000,000	2,360,000	3,160,000	5,300,000	7,600,000	8,200,000
Year-on-Year Growth (% Change)	50%	60%	67%	18%	34%	70%	43%	8%



ATTACHMENT 6

U.S. Imports of Semi-Fabricated Stainless Steel[1] from China
Annual 2002-2007 and Jan - Jun 2007 & 2008
Quantity in Short Tons, Value in U.S. Dollars

Quantity	2002	2003	2004	2005	2006	2007	Jan - Jun 2007	Jan - Jun 2008
Sheet and Strip	5,805	8,581	55,355	57,359	116,209	111,416	61,610	84,546
Plate	-	1	145	542	2,786	22,969	10,212	9,897
Flat Products	*5,805*	*8,582*	*55,500*	*57,901*	*118,995*	*134,386*	*71,823*	*94,443*
Bar	978	774	2,100	5,310	2,152	2,036	1,053	984
Rod	2,809	2,146	4,499	4,854	5,116	3,916	1,905	2,224
Wire	2,276	2,936	4,120	6,765	6,850	6,874	3,590	2,591
Long Products	*6,063*	*5,856*	*10,720*	*16,930*	*14,117*	*12,826*	*6,547*	*5,799*
Grand Total	**11,868**	**14,438**	**66,220**	**74,830**	**133,112**	**147,211**	**78,370**	**100,243**

Value	2002	2003	2004	2005	2006	2007	Jan - Jun 2007	Jan - Jun 2008
Sheet and Strip	7,691,186	12,512,939	115,018,263	123,347,885	275,194,993	442,083,233	238,036,062	303,770,112
Plate	-	6,565	362,163	1,320,576	9,696,482	100,088,549	38,793,837	40,946,274
Flat Products	*7,691,186*	*12,519,504*	*115,380,426*	*124,668,461*	*284,891,475*	*542,171,782*	*276,829,899*	*344,716,386*
Bar	1,843,520	1,529,330	6,342,859	24,599,746	7,005,376	9,542,293	4,506,613	5,566,769
Rod	2,575,746	1,911,925	6,548,999	8,299,507	8,603,690	8,508,822	4,268,974	5,222,399
Wire	5,045,182	6,631,502	11,636,072	21,391,242	22,723,929	28,635,665	13,778,904	11,048,451
Long Products	*9,464,448*	*10,072,757*	*24,527,930*	*54,290,495*	*38,332,995*	*46,686,780*	*22,554,491*	*21,837,619*
Grand Total	**17,155,634**	**22,592,261**	**139,908,356**	**178,958,956**	**323,224,470**	**588,858,562**	**299,384,390**	**366,554,005**

[1]HTS Numbers

Sheet and Strip:	HTS# 7219.13, 7219.14, 7219.23, 7219.24, 7219.32, 7219.33, 7219.34, 7219.35, 7219.90, 7220.12, 7220.20, 7220.90
Plate:	HTS# 7219.11, 7219.12, 7219.21, 7219.22, 7219.31, 7220.11
Bar:	HTS# 7222.11, 7222.19, 7222.20, 7222.30
Rod:	HTS# 7221.00
Wire:	HTS# 7223.00

Source: US Department of Commerce

Prepared by Georgetown Economic Services

ATTACHMENT 7(a)

Chinese and U.S. Exports of Stainless Steel
HTS #: Flat Products (Plate and Sheet & Strip Products)
Annual 2002-2007 and Jan - Mar 2007 & 2008
Quantity in Metric Tons

		2002	2003	2004	2005	2006	2007	Jan - Mar 07	Jan - Mar 08
Germany	(China) *	330	144	233	311	56,740	122,499	69,614	414
Germany	(United States)	13,502	18,063	16,651	17,450	15,855	23,348	14,644	11,159
Italy	(China)	2,780	350	8,882	3,467	46,584	100,618	30,776	3,852
Italy	(United States)	1,790	5,008	9,023	5,925	13,726	16,786	9,975	9,660
United States	(China)	1,004	7,786	50,237	55,570	106,565	99,944	23,016	35,522
United States	(United States)	-	-	-	-	-	-	-	-
South Korea	(China)	4,765	1,312	2,756	17,557	44,782	65,885	9,564	15,903
South Korea	(United States)	374	3,291	9,839	8,658	2,167	2,239	706	3,041
Algeria	(China)	-	707	6,466	11,815	14,804	55,508	8,219	11,612
Algeria	(United States)	-	-	-	-	-	27	-	-
Taiwan	(China)	-	159	8,424	50,089	41,248	47,566	10,453	9,559
Taiwan	(United States)	882	4,771	11,658	4,304	2,430	2,683	1,523	3,035
France	(China)	-	2	37	1,221	11,248	34,556	7,125	2,485
France	(United States)	397	783	271	456	761	772	213	346
Malaysia	(China)	796	718	7,558	8,678	9,784	30,675	5,319	3,081
Malaysia	(United States)	186	1,509	1,937	1,163	454	8,173	7,569	4,286
Hong Kong	(China)	3,780	6,673	18,119	15,818	21,419	29,684	15,725	11,122
Hong Kong	(United States)	9,238	24,332	12,878	11,163	5,926	4,449	2,235	1,045
Honduras	(China)	-	3	499	3,491	11,329	22,697	4,363	7,495
Honduras	(United States)	4	5	6	9	26	58	27	130
Thailand	(China)	363	717	3,287	9,721	10,045	22,696	2,796	4,218
Thailand	(United States)	435	2,939	743	194	597	710	237	1,005
Russia	(China)	316	3	13	217	8,434	22,343	3,750	3,154
Russia	(United States)	4	16	7	-	236	296	152	149
Singapore	(China)	123	7,594	12,374	14,980	25,710	20,854	6,138	1,363
Singapore	(United States)	510	884	646	365	345	1,821	1,104	803
China	(China) **	164	2,240	9,248	12,874	20,797	20,673	7,884	6,191
China	(United States)	4,945	49,267	25,294	52,160	9,285	22,977	13,577	11,097
Argentina	(China)	-	9	140	526	3,795	20,561	2,679	3,804
Argentina	(United States)	38	42	37	109	261	386	133	110
India	(China)	5	76	963	3,779	8,581	20,258	6,329	453
India	(United States)	6,246	10,028	10,763	13,036	13,103	14,054	7,421	4,319
Indonesia	(China)	2,197	311	854	9,172	17,561	17,461	5,468	3,797
Indonesia	(United States)	125	142	35	201	243	37	9	120
Belgium	(China)	84	-	797	677	11,205	13,526	6,811	683
Belgium	(United States)	8,503	11,557	1,242	413	16,037	42,969	21,491	17,054
Canada	(China)	2	570	3,939	4,626	9,041	13,337	4,118	2,239
Canada	(United States)	97,548	100,082	112,272	116,788	137,871	144,105	82,340	71,266
Japan	(China)	1	701	2,027	1,621	3,844	12,447	3,495	822
Japan	(United States)	565	800	281	425	593	1,012	538	597
Australia	(China)	-	1,202	2,559	4,410	9,581	11,974	4,183	1,465
Australia	(United States)	81	143	75	99	565	568	203	164
Netherlands	(China)	-	4	686	1,876	16,799	10,916	7,050	187
Netherlands	(United States)	55	290	95	150	261	1,538	210	3,077
Turkey	(China)	39	110	292	420	1,159	9,134	3,025	1,075
Turkey	(United States)	7	2	7	7	143	958	306	1,673
Brazil	(China)	82	341	1,693	1,650	9,741	7,784	1,596	2,529
Brazil	(United States)	1,187	728	244	409	3,077	5,096	2,074	3,234
Kazakhstan	(China)	12	63	601	284	411	6,175	4,123	776
Kazakhstan	(United States)	-	-	-	3	-	10	10	0.1
Total	**(China)**	**16,843**	**31,794**	**142,683**	**234,850**	**521,208**	**839,773**	**253,618**	**133,804**
Total	**(United States)**	**146,623**	**234,684**	**214,005**	**233,486**	**223,961**	**295,074**	**166,698**	**147,371**

Source: China Customs and US Department of Commerce

Notes:
* China's exports to countries in the European Union (EU) declined substantially in 2008 due to antidumping proceedings commenced by EU authorities.
** China Customs reports exports to "China," which represents goods that are exported to Hong Kong and then re-exported back to China.

Prepared by Georgetown Economic Services

Chinese and U.S. Exports of Stainless Steel
HTS #: Long Products (Wire, Rod and Bar products)
Annual 2002-2007 and Jan - Mar 2007 & 2008
Quantity in Metric Tons

		2002	2003	2004	2005	2006	2007	Jan - Mar 07	Jan - Mar 08
South Korea	(China)	243	3,301	16,736	29,914	46,887	48,057	15,180	8,295
South Korea	(United States)	439	826	2,156	621	540	1,277	456	747
Singapore	(China)	492	1,262	40,547	20,768	26,489	31,302	7,222	18,393
Singapore	(United States)	593	708	1,056	1,332	1,356	1,137	645	251
United States	(China)	5,505	5,463	9,932	15,183	13,016	11,971	2,920	1,996
United States	(United States)	-	-	-	-	-	-	-	-
Japan	(China)	3,150	5,252	9,652	9,287	11,139	10,255	3,128	2,310
Japan	(United States)	229	161	271	384	439	667	188	265
China	(China) *	851	1,469	3,177	5,128	6,499	8,587	2,025	1,740
China	(United States)	391	367	451	599	1,033	2,274	1,222	779
Hong Kong	(China)	2,374	3,636	6,114	6,156	8,221	8,541	2,496	2,414
Hong Kong	(United States)	201	137	248	236	374	683	327	177
Philippines	(China)	131	3,698	3,740	4,802	19,841	5,718	1,785	737
Philippines	(United States)	6	16	13	97	27	219	203	6
Thailand	(China)	426	522	1,128	3,376	2,991	5,572	1,141	717
Thailand	(United States)	28	18	52	169	563	436	261	241
Malaysia	(China)	2,543	797	43,661	59,068	54,766	36,851	10,232	554
Malaysia	(United States)	115	55	29	95	51	200	100	309
Indonesia	(China)	201	1,954	603	1,254	4,025	3,527	589	2,822
Indonesia	(United States)	21	30	223	14	30	12	1	149
Mexico	(China)	440	906	922	880	1,688	3,514	1,735	701
Mexico	(United States)	6,122	5,698	4,270	5,062	6,097	8,452	4,376	5,146
Taiwan	(China)	39	23	30	411	2,976	4,064	2,376	433
Taiwan	(United States)	238	329	362	507	362	372	61	761
India	(China)	878	907	1,097	2,134	1,723	2,842	531	-
India	(United States)	160	942	3,150	3,563	3,290	3,112	2,180	904
El Salvador	(China)	-	-	-	9	15	2,394	2,356	3
El Salvador	(United States)	32	30	22	5	11	12	12	4
South Africa	(China)	73	36	145	317	762	2,380	437	399
South Africa	(United States)	11	6	17	58	94	56	35	50
Kazakhstan	(China)	-	-	2	12	629	1,970	305	-
Kazakhstan	(United States)	-	-	-	11	-	4	4	1
Italy	(China)	172	313	1,479	2,989	2,489	4,448	1,291	572
Italy	(United States)	96	104	244	123	1,331	923	658	194
Australia	(China)	203	168	521	603	1,890	1,857	750	391
Australia	(United States)	76	98	157	215	254	236	82	139
Canada	(China)	182	159	621	1,351	1,070	1,126	320	211
Canada	(United States)	8,933	10,263	12,758	12,586	16,021	13,229	7,552	8,135
Turkey	(China)	144	263	383	348	661	1,122	420	62
Turkey	(United States)	85	34	109	27	67	26	9	26
Russia	(China)	36	53	93	161	396	1,112	80	248
Russia	(United States)	7	26	4	3	77	24	24	3
Brazil	(China)	12	58	37	191	613	1,104	278	110
Brazil	(United States)	182	194	353	274	518	364	280	141
Chile	(China)	5	36	101	324	606	920	445	49
Chile	(United States)	23	23	16	37	17	81	24	57
Germany	(China)	457	441	1,140	1,323	1,531	2,310	896	348
Germany	(United States)	458	463	679	340	1,505	1,796	728	597
Netherlands	(China)	57	453	406	1,105	1,426	3,053	883	635
Netherlands	(United States)	176	62	140	175	256	148	54	121
Total	**(China)**	**18,614**	**31,171**	**142,268**	**167,094**	**212,347**	**204,595**	**59,823**	**44,139**
Total	**(United States)**	**18,624**	**20,587**	**26,782**	**26,534**	**34,314**	**35,738**	**19,483**	**19,200**

Sources: China Customs and US Department of Commerce

Notes:
* China Customs reports exports to "China," which represents goods that are exported to Hong Kong and then re-exported back to China.

ATTACHMENT 8

Chart One: Real Exchange Rate (RER) Comparisons

Chart One shows the estimated real exchange rates for the currencies of Canada, the European Monetary Union ("EMU"), Japan, South Korea, and China with the U.S. dollar from January 2003 to May 2008. The value of each real exchange rate ("RER") has been indexed so that the RER of each country's currency with the U.S. dollar for January 2003 equals 100. From January 2003 to May 2008, relative to the U.S. dollar, the Canadian dollar appreciated 31.2 percent, the EMU's euro appreciated 29 percent, the Chinese renminbi appreciated 16.3 percent, the South Korean won appreciated 11.3 percent, and the Japanese yen depreciated 3 percent.

A comparison of these currencies against the U.S. dollar since 2003 demonstrates that the Asian currencies have appreciated substantially less against the U.S. dollar on a real basis than have the currencies of Canada and the EMU and that, in Japan's case, the yen has depreciated against the U.S. dollar. Governmental controls in the Asian countries of the relative values of their currencies against the U.S. dollar have caused the divergence in the levels of RER appreciation against the U.S. dollar between the Asian currencies, on the one hand, and the currencies of Canada and the EMU, on the other hand. These governmental controls ensure that the currencies of the Asian countries remain artificially low on a real effective exchange rate ("REER") basis and in real terms against the U.S. dollar.

The slight appreciation of the renminbi against the U.S. dollar as compared to the large appreciation of the Canadian dollar and the euro against the U.S. dollar is particularly striking because just the opposite should have occurred. China has increased its trade, particularly with regard to imports, with the U.S. considerably more than Canada or the EMU have since 2003. In theory, this increase should have corresponded to an increase in the RER of the renminbi with the U.S. dollar larger than the increases in the RER of the Canadian dollar and the euro with the U.S. dollar.

Thus, as demonstrated in Chart One, the renminbi has not appreciated sufficiently against the U.S. dollar. This conclusion is consistent with two recent studies in July 2008 by the China Currency Coalition and the Peterson Institute, which concluded that the renminbi was undervalued against the U.S. dollar on a RER basis by approximately 30 percent as of February of 2008. The China Currency Coalition's study, using publicly available data gathered and published by the International Monetary Fund ("IMF") and the World Bank, and applying two methodologies employed by the IMF, determined that during the eighteen-month period from September 2006 through February 2008 the renminbi on average was undervalued against the U.S. dollar by at least 35 percent on a real exchange rate basis.

Chart Two: Real Exchange Rate (RER) vs. Real Effective Exchange Rate (REER)

Chart Two shows both the Chinese renminbi's REER in relation to the currencies of Australia, Canada, the European Monetary Union, Hong Kong, India, Japan, Russia, South Korea, Taiwan, the United States, and all of China's other trading partners as well as the estimated RER of the renminbi in relation to the U.S. dollar during the period January 2003 through April 2008. The renminbi's REER and RER have been indexed to January 2003, which means that their value as of January 2003 equals 100.

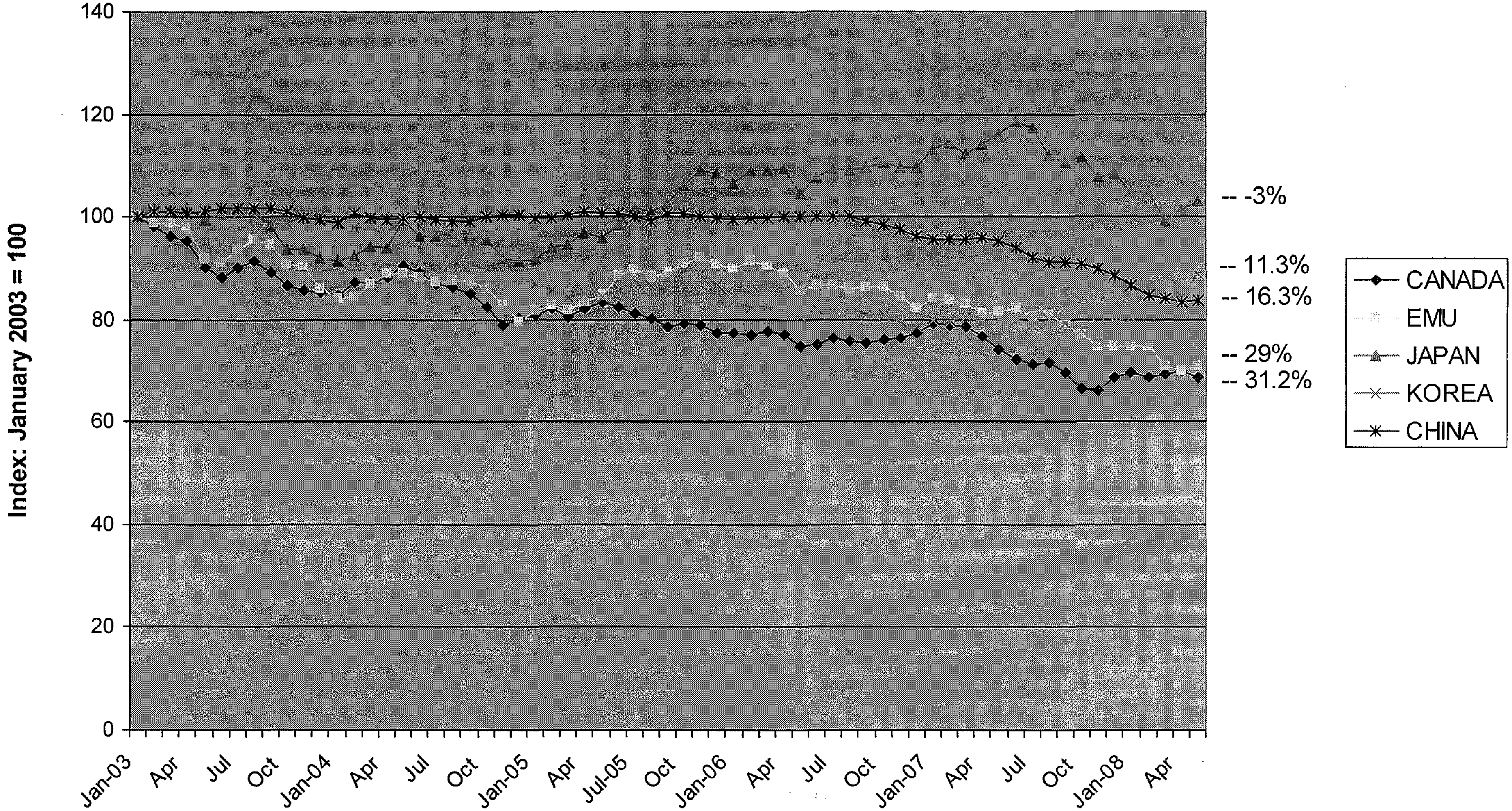
Chart Two demonstrates that while the renminbi has experienced a slight appreciation against the U.S. dollar on an RER basis, the renminbi's REER has depreciated since January 2003. The depreciation or weakening of the renminbi's REER comes as a result of the renminbi's slow rate of appreciation against the U.S. dollar while the U.S. dollar has been rapidly depreciating against the currencies of major trading partners of the United States. If the movements of the renminbi were determined by market forces, the renminbi would already have appreciated to a significantly greater extent against the U.S. dollar than has occurred and would have allowed the renminbi's REER to appreciate as well.

In addition to determining the renminbi's undervaluation against the U.S. dollar on a RER basis, the recent study by the China Currency Coalition also found that the renminbi's REER was undervalued by 11.8 percent against the U.S. dollar as of February 2008. This undervaluation of the renminbi in relation to the U.S. dollar on a REER basis is reflected in Chart Two.

In sum, for trade to become sustainable between the United States and China, the renminbi should appreciate by at least approximately 30 percent on a RER basis and should appreciate by 11.8 percent on a REER basis.

Chart One

Changes in Selected World Currencies with Respect to the U.S. Dollar in Real Terms[1] (January 2003 - May 2008)

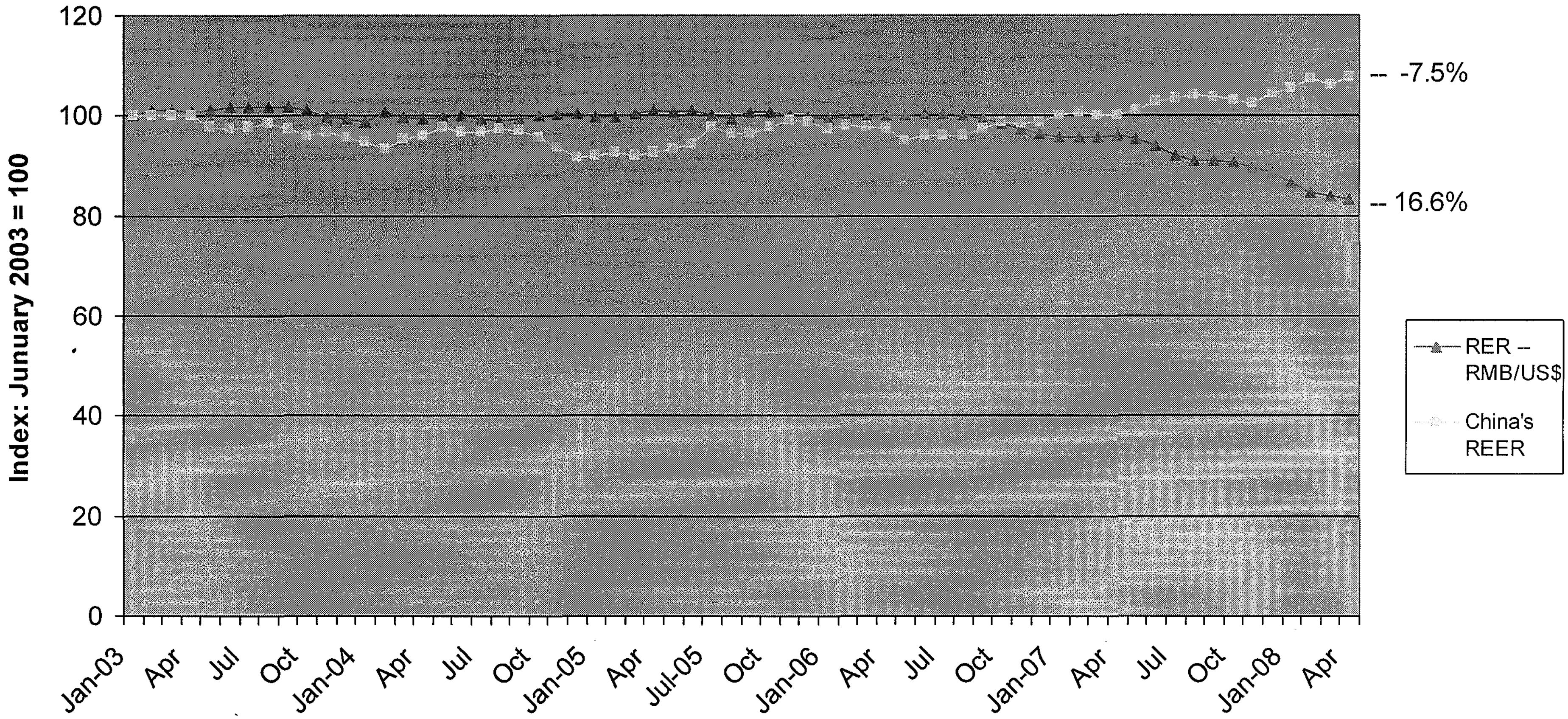


[1] The nominal exchange rates are adjusted for inflation as reported in each country's consumer price index (CPI). The nominal exchange rate between the currencies of two countries adjusted by the CPIs of each country is also known as the real exchange rate (RER).

Source: IMF, International Financial Statistics

Chart Two

Changes in China's Indexed Exchange Rate in Relation to the U.S. Dollar in Real[1] Terms and China's Indexed Exchange Rate on a Real Trade-Weighted Basis[2] (January 2003 - April 2008)



[1] The nominal exchange rate is adjusted for inflation as reported in each country's consumer price index (CPI). The nominal exchange rate between the renminbi and the U.S. dollar adjusted by the CPIs of each country is also known as the real exchange rate (RER) between the renminbi and the U.S. dollar.

[2] The real trade-weighted exchange rate is also called the real effective exchange rate (REER). China's REER equals the trade-weighted average of the RERs between the renminbi and each of China's trading partners' currencies.

Source: IMF, International Financial Statistics

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- Wood Machinery Manufacturers of America

An Assessment of China's Subsidies to Strategic and Heavyweight Industries

Submitted to the U.S.-China Economic and Security Review Commission

By

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Executive Summary

This study examines China's government subsidies to industries known as "absolute control" and "heavyweight" industries. The absolute control industries are armaments, power generation and distribution, oil and petrochemicals, telecommunications, coal, civil aviation, and shipping. The Chinese government views these industries as being strategic and of vital importance to the proper function of China's safety and economic well being. Government control over these industries is to remain absolute, or close to it. The heavyweight industries are machinery, automobiles, information technology, construction, and iron & steel and non-ferrous metals. These industries are deemed important to the domestic economy. The Chinese government intends to maintain a high degree of control over these industries, but is more willing to tolerate private ownership.

Subsidies exist when a government transfers resources to a producer or exporter. This study attempts to assess the nature and scale of Chinese subsidies to strategic and heavyweight industries by examining the results of U.S. countervailing duty investigations of Chinese subsidies and by reviewing the annual reports of Chinese firms from the favored industries.

The nature of Chinese subsidies

The Chinese government uses subsidies for a variety of purposes, and subsidies come in a variety of forms. Tax subsidies, preferential loans, and grants are the most common form of subsidy. The government also provides favorable input prices and transfers assets to favored firms at prices that are below market value.

Chinese subsidies are both practical and strategic. Practical subsidies reward companies for accomplishing a social policy goal, such as investing in disadvantaged regions to alleviate unemployment. Strategic subsidies are those that seek to advance the overall economic well being of the country by earning foreign exchange, promoting technological development, developing an industry that the government views as being important, or otherwise enhancing China's industrial competitiveness. Examples of strategic subsidies include subsidies that attract foreign investments in export-oriented industries, subsidies that reward companies for investing in research and development facilities, and subsidies that increase the competitiveness of a favored industry.

By their very nature, subsidies are distortive. Strategic subsidies, which seem geared to accelerate China's economic development, have competitive effects because they reduce the costs of the favored Chinese firms relative to firms in the United States and other countries. In competitive international markets, such subsidies would be expected to increase economic activity of favored industries in China relative to activity in the United States. This means higher levels of Chinese output and exports and lower levels of U.S. output and exports.

The value of Chinese subsidies

The value of Chinese subsidies was assessed by examining the countervailing duty determinations made by the U.S. Department of Commerce and corporate financial reports of subsidiaries of state-owned enterprises. These subsidiaries raise money in Hong Kong and other international capital markets, and therefore submit and publish annual reports that contain information about the subsidies received in China.

Both sources confirm that Chinese subsidies are meaningful. Excluding the very high subsidy rates calculated by the Department, which reflect the failure of certain Chinese firms to cooperate in investigations, the range of subsidy rates is 0.57 percent to 44.93 percent, the average subsidy rate is 18.6 percent, and the median subsidy rate is 14 percent. Thus, the extent of subsidization can be the difference between a profitable year and an unprofitable one. The range of subsidy rates derived from the separate analysis of the annual reports of selected absolute control and heavyweight firms is consistent with the findings of the Department, though most subsidy rates from this latter methodology fall in the range of 1-10 percent. One would expect the Department's calculations to be higher because it has access to proprietary information not present in annual reports.

The WTO and Chinese subsidies

The Agreement on Subsidies and Countervailing Measures indicates that export subsidies and subsidies that are contingent upon the use of domestic over imported goods are prohibited. China has for years provided incentives to firms that purchased domestic machinery. This subsidy is mentioned in several annual reports examined below and has been countervailed by the Department. The Department has also countervailed several subsidies that conferred benefits contingent on exports, including a program that encouraged exports by firms with foreign investment.

The U.S. government has taken China to the WTO over prohibited subsidies, and those efforts appear to have had some success. Many of the annual reports examined indicate that the tax code's preferences to foreign invested firms were abolished at the end of 2007. However, this benefit is to be phased out over a five-year period. Many of the firms reporting benefits under the prohibited program that provides tax credits for purchases of domestic machinery have reported that the program was terminated at the end of 2007 and is no longer in effect.

.The SCM Agreement also lays out a number of actionable subsidies, which can be challenged at the WTO via the dispute settlement process or through national countervailing action. Many, though not all, of the Chinese subsidies acknowledged by the government to the WTO are actionable. The Department of Commerce has countervailed many of the actionable subsidies when U.S. industries have petitioned for relief. Some actionable subsidies, such as the provision of electricity at below market rates, are not included in China's subsidy notification and have been difficult to countervail because low rates are believed to be generally available. However, the Department has recently uncovered some evidence of preferential pricing. Chalco's annual report also indicates that the aluminum industry in China has received access to cheap electricity for a number of years.

Chinese subsidies and western firms

Many Chinese subsidies provide tax and other incentives to foreign investors. Exports and research and development activities are highly encouraged. An analysis of U.S. data on foreign direct investment indicates that U.S. firms are increasing capital expenditures in China and value added in China, at a time when U.S. investments in productive equipment have been stagnating.

Press reports also suggest that China has heavily promoted the location of R&D activities to China by foreign firms, and is succeeding. But this desire to attract investment has taken a new twist. In the summer of 2008, China's President Hu Jintao urged the country's scientists, engineers and educators to work toward making China an

"Innovation nation." The government is reportedly devoting substantial sums to achieve this goal. China is also targeting R&D in the aerospace and automotive industries.

It appears that China is no longer content to remain the "workshop of the world" while relying on foreign technologies. Government efforts to construct China's first production facilities for LCD-glass substrate and to promote home-grown wireless technology should be viewed in this light. These efforts are certain to increase competitive pressures on firms that once viewed themselves immune to Chinese competition.

As China's role in the global economy increases, so will the role played by firms subsidized and controlled by Beijing. If these subsidies persist, they will continue to provide Chinese firms with a significant competitive advantage vis-à-vis U.S. firms. In addition to this competitive advantage, U.S. firms must be aware that decisions made by Chinese competitors from strategic and heavyweight industries could reflect government incentives and control, not market incentives and profit. Given the government's streak of economic nationalism, the possibility that Chinese firms in government controlled and heavyweight industries would sacrifice economic profits to achieve official aims should not be discounted.

In order to estimate the competitive effect of Chinese subsidies on U.S. firms, three policy simulations were performed using the Global Trade Analysis Project Data Base and applied general equilibrium model. All three experiments indicated that eliminating Chinese subsidies would increase U.S. output, exports, worker earnings and economic welfare. In contrast, the output of the subsidized industries in China and China's economic welfare would decline.

The stagnant level of equipment stock of U.S. manufacturers, rising U.S. capital expenditures in China, and the rapid expansion of imports from China suggest that Chinese subsidies have been diverting equipment investments from the United States to China, or otherwise limiting U.S. manufacturing investments. The simulation considering this possibility indicated that reversing this pattern would have a beneficial effect on U.S. manufacturers that compete with Chinese firms, and on the overall U.S. economy.

Chinese subsidies and U.S. policy

For many years, the U.S. government did little to address Chinese subsidies. In recent years, however, the U.S. government has sought to eliminate these subsidies through action at the WTO and by modifying a longstanding policy of not investigating subsidies from non-market economies. The WTO cases have brought about policy changes by the Chinese government that should reduce the pronounced policy tilt in favor of foreign investment. The USTR, with the support of several advanced and developing economies, is now addressing China's "famous brands" program subsidies at the WTO.

The Department of Commerce has investigated Chinese subsidies in several industries, and many of these investigations have led to countervailing duties being placed on the imports of subsidized Chinese firms. For U.S. industries in competition with such firms, these U.S. government actions are a very welcome development.

Introduction

This report reviews China's government subsidies to industries known as "absolute control" and "heavyweight" industries.[1] The strategic industries identified by the government are armaments, power generation and distribution, oil and petrochemicals, telecommunications, coal, civil aviation, and shipping.[2] The heavyweight industries are machinery, automobiles, information technology, construction, and iron, steel, and non-ferrous metals.[3]

These industries were specified in a "guiding opinion" issued by China's State Council and State-Owned Assets Supervision and Administration Commission ("SASAC") in December 2006. The State Council is the highest executive organ of state power, as well as the highest organ of state administration. SASAC manages the Chinese Communist Party's efforts to control state-owned enterprises ("SOEs"), while increasing their "economic returns and maintaining the political returns to the government."[4] There is a central government SASAC as well as provincial and municipal SASACs. At the time of this writing, there were 150 central SOEs.[5]

These twelve industries account for a significant portion of China's economy. Firms in many of these Chinese industries, including steel, aluminum, and information technology, compete with U.S. firms, provide inputs to firms that compete with U.S. firms, and/or supply goods and services to U.S. firms and consumers. In today's world of

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[1] This report was commissioned by the United States-China Economic and Security Review Commission.
[2] In this report, the terms "absolute control" and "strategic" are used interchangeably.
[3] U.S.-China Economic and Security Commission, *2007 Report to Congress of the U.S.-China Economic and Security Commission*, Chapter 1.
[4] U.S.-China Economic and Security Commission, hearing on the Extent of the Government's Control of China's Economy and the Implications for the United States, testimony of George Haley, May 25, 2007.
[5] The list of firms owned by the central government's SASAC was viewed in January 2009 at http://www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html.

multi-trillion dollar trade flows, the effects of Chinese subsidies are not confined to China.

Part I

Part I of this report provides a general description of subsidies in the context of the World Trade Organization's subsidy agreement and U.S. regulations. For many years, the United States did not countervail Chinese government subsidies because subsidies could not be indentified and measured in a nonmarket economy.[6] However, the U.S. Department of Commerce changed this practice in 2007 to reflect the changed circumstances of China's economy.[7]

Since this decision, there have been 13 countervailing duty cases initiated against China in the United States through December 2008. Part I contains a catalog of the subsidies that were countervailed in these investigations.[8] Programs that bestow benefits on Chinese industries but are not countervailable under WTO rules are also discussed. Part I concludes with an examination of CVD investigations undertaken in Canada and Australia, which also apply anti-subsidies measures to China.

Part II

Part II focuses on the subsidies conferred on the "absolute control" and "heavyweight" industries. These subsidies can arise from central government sources,

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[6] Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986).

[7] *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) and accompanying Issues and Decisions Memorandum at 19-23.

[8] Typically, a U.S. company or industry initiates a countervailing duty ("CVD") investigation spelling out which subsidies are bestowed upon a Chinese industry or firm producing the "subject" merchandise. The Department then investigates whether the subsidies exist through a series of questionnaires sent to the relevant Chinese firms and the Chinese government, and issues a preliminary determination that includes estimated subsidy values. Department investigators then verify the Chinese responses by interviewing company and government officials in China, and re-value the benefit conferred by the programs the Department finds to be countervailable under U.S. law.

such as the Ministry of Finance or Ministry of Technology; from state-owned banks; and from local government entities.

The financial reports of the SOEs directly owned by the central government through SASAC do not make their financial reports public. But as China has reformed its economy, many of these SOEs have been encouraged to raise money in capital markets in China and beyond in order to increase the efficiency of SOE operations. For strategic and heavyweight SOE, the typical pattern has been to create subsidiaries owned by the fully-government-owned enterprise, and allow the subsidiaries to issue shares in capital markets in China and in money centers such as Hong Kong, New York, and London. The government of China has made it clear that it intends for the centrally-owned SOEs to maintain absolute control over the armaments, power generation and distribution, oil and petrochemicals, telecommunications, coal, civil aviation, and shipping industries.[9] Nevertheless, these SOEs have subsidiaries whose shares are listed in international capital markets, and the official financial statements submitted to the relevant regulatory authorities provide some indication of the subsidies bestowed on firms in these industries. Similar information is available for firms in the heavyweight or pillar industries (machinery, automobiles, information technology, construction, and iron, steel, and non-ferrous metals).

Part II uses these annual financial reports, along with information from the trade press and other sources, to examine the nature and scale of Chinese subsidies to strategic and heavyweight industries. The firms examined appear in **Table 1** below. A subsidy value is calculated for each firm based on information from annual reports.

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[9] "China Nails Down Stat-owned Controlling Industries," *AsiaInfo Services* (2006). *HighBeam Research.* 5 Jun. 2008 <http://www.highbeam.com>.

Table 1. Strategic and heavyweight industries examined in this report

Industry	Company A	Company B
Armaments	China Aerospace International Holdings Ltd	AviChina Industry & Technology Co Ltd
Power generation and distribution	Huaneng Power International Inc	
Oil & petrochemicals	PetroChina	Bluechem
Telecommunications	China Telecom Corporation Limited	
Coal	China Shenhua Energy Company Limited	
Civil aviation	Air China	
Shipping	COSCO	
Machinery	Jingwei Textile Machinery Company Limited	
Automobiles	Dongfeng Motor Company	
Information technology	China Electronics Corporation Holdings Co. Ltd.	IRICO Group Electronics Co Ltd
Construction	China State Construction International Holdings Limited	
Iron & steel & non-ferrous metals	Angang Steel Co Ltd	Aluminum Corporation of China Ltd

This material is also useful for determining whether there are any identifiable patterns in incentives that reveal strategic considerations by Beijing.

Part III

Part III focuses on the effects of these Chinese subsidies on competition with U.S. firms. Subsidies reduce the production costs of recipients relative to other countries' firms that do not benefit from subsidies. As a result, the subsidy beneficiaries are willing to produce and sell more products at a given sales price, are able to sell their products at a lower price than would be the case absent the subsidies, or have lower fixed costs.[10] Thus, the first order effect of Chinese subsidies is to increase output, employment, and exports in China relative to the "but-for world" in which there are no Chinese subsidies. Conversely, the competitive position of firms that compete with subsidized Chinese firms declines relative to a scenario in which China does not subsidize its firms.

[10] Certain subsidies lead to downward shift in the supply curve. If the recipient has an upward sloping supply curve and is a price taker, the subsidy enables it to increase the amount of product it supplies at the market price. If the recipient has constant costs, subsidies would enable it to reduce prices by the amount of the per unit subsidy without reducing profits. If a subsidy reduces fixed costs, the supply curve is not affected, but the average cost curve shifts downward, leading to higher profits.

Subsidies and incentives that attract foreign investment and shift production and R&D from one location to another can have long run effects as well, such as higher levels of capital stock, higher technology levels, and better productivity performance in the subsidy granting country, and lower levels of capital stock, less advanced technology, and slower productivity growth in the country where production activity is disadvantaged by the subsidies.[11]

To estimate the competitive effect of China's subsidies, the benefits uncovered in the analyses described in Parts I and II are incorporated into an applied general equilibrium model and database widely used in economic policy analysis, the Global Trade Analysis Project ("GTAP") model and database developed and maintained by the Center for Global Trade Analysis at Purdue University.[12] This exercise enables us to estimate how subsidies provided by China affect the output, trade, and employment of parallel U.S. industries and the overall U.S. economy.

[11] This is not to say that all foreign direct investment or technology transfer from the United States is bad, or that growth in, and competition from, China is automatically bad. However, work by Ralph E. Gomory and William J. Baumol has demonstrated that as an underdeveloped country starts to catch up to the developed country, it is possible for the loss of industries to become harmful to the interests of the more developed nation. See U.S.-China Economic and Security Commission, hearing on the China and the Future of Globalization, testimony of Ralph E. Gomory, May 19-20, 2005; and Ralph E. Gomory and William J. Baumol, *Global Trade and Conflicting National Interests* (MIT Press, 2000).

[12] Thomas Hertel, ed., *Global Trade Analysis: Modeling and Applications* (Cambridge University Press, 1997); and Betina V. Dimaranan, ed., *Global Trade, Assistance, and Production: The GTAP 6 Database* (Center for Global Trade Analysis, Department of Agricultural Economics, Purdue University, 2006).

Part I: Subsidies in International Trade and the Special Case of China

Introduction

The United States has a long history of using anti-subsidy measures to combat subsidies in other countries.[13] According to one expert on U.S. trade laws, current U.S. countervailing duty laws can be traced to measures employed by the United States in the 1890s. The United States passed its first countervailing duty in 1897.[14]

Subsidies, especially those conferred only on exports (*i.e.*, export subsidies), became a significant problem during the 1930s. Subsequently, the architects of the General Agreement on Tariffs and Trade ("GATT") codified guidelines for distinguishing between acceptable and unacceptable subsidies, and export subsidies were banned.[15] Nevertheless, subsidies remained a problem. By the late 1970s subsidies had become "one of the most frequently used and controversial instruments of commercial policy,"[16] leading John H. Jackson and William J. Davey to declare that competitive subsidization, not normal market forces, were driving world trade in certain sectors.[17]

Ironically, although China was clearly subsidizing its industries at that time, the country and other communist countries were not subject to countervailing duty laws in the United States. That has changed, and several U.S. industries have filed countervailing duty ("CVD") petitions against China since November 2006.

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[13] The terms "anti-subsidy" and "countervailing duty" are used interchangeably in this report.
[14] Greg Mastel, *American Trade Laws After the Uruguay Round*, (Armonk, NY: M.E. Sharpe, 1996) at 110.
[15] Gary C. Hufbauer and Joanna Shelton Erb, "Subsidies in International Trade," in John H. Jackson and William J. Davey, eds. *Legal Problems of International Economic Relations: Cases, Materials, and Text*, second edition, (West Publishing Co., 1990) at 726. The original GATT was negotiated in 1947.
[16] Jackson and Davey at 723.
[17] *Id.*.

In Part I, these investigations are examined with an eye toward determining the level of subsidies conferred upon Chinese firms. The United States is not the only country applying CVD law to China. Accordingly, a summary of anti-subsidy cases in Canada and Australia is provided. Part I begins with a more detailed description of subsidies and anti-subsidy measures.

Subsidies Defined

At its simplest level, a subsidy represents a direct or indirect transfer of resources from the government, and therefore the taxpayers, to a producer or exporter. However, the precise definition of a subsidy for the purposes of applying trade remedies under GATT was unsettled until 1994.[18] According to Article 1 of the prevailing Agreement on Subsidies and Countervailing Measures ("SCM Agreement") that applies to members of the World Trade Organization ("WTO"), a subsidy exists if there is a financial contribution by a government or any form of income and price support and a benefit is conferred. A subsidy is also required to be "specific". Export subsidies and import substitution subsidies are automatically deemed to be specific, while domestic subsidies are specific only if they are limited in law or in fact to an enterprise or industry.[19]

The nuances of the subsidy definition are many, a reflection of the many ways by which governments can provide a financial advantage to domestic enterprises. According to U.S. trade law, which largely tracks the SCM Agreement, a financial contribution means

- the direct transfer of funds, as with a grant, loan, or equity infusion;

[18] Mastel, *American Trade Laws After the Uruguay Round,* at 113.
[19] China agreed in its Accession Protocol that the subsidies provided to state owned firms will be regarded as specific under the SCM Agreement. See Henry Gao, "China's Participation in the WTO: A Lawyer's Perspective," *Singapore Year Book of International Law*, Vol. 11 (2007) at 16.

- the potential direct transfer of funds, as with a loan guarantee;
- foregoing or not collecting revenue that is otherwise due, as with tax credits or deductions from taxable income;
- providing goods or services other than general infrastructure; or
- purchasing goods.

According to the Statement of Administrative Action accompanying the bill to implement the SCM Agreement in the United States, the examples specified in the generic categories above are not exhaustive. This flexibility is especially important with regard to China, where government largesse takes many forms. The following table lists the financial contributions and benefits that are specified in U.S. regulations.[20]

Table 2. Financial contributions and benefits conferred according to U.S. CVD regulations

Financial Contribution	Benefit
Grants	The amount of the grant
Loans	The amount paid on a government-provided loan is less than the amount that would be paid on a comparable commercial loan
Loan guarantees	The amount paid on a loan with a government-provided guarantee is less than the amount that would be paid on a comparable commercial loan obtained without the guarantee.
Equity infusion	The government either pays more than private investors for newly issued shares, or infuses equity into a firm in which private investors would not invest
Debt forgiveness	The amount of principal and/or interest that the government assumes or forgives
Direct and indirect taxes	The tax paid by a firm, including interest charges on deferred taxes, is less than the tax that would have been paid in the absence of the program
Provision of goods or services	The goods or services are provided for less than adequate remuneration
Worker-related subsidies	Government-provided assistance to workers relieves a firm of an obligation it would normally incur.
Internal transport and freight charges for export shipments	The charges paid for by the firm for transport or freight with respect to export sales are less than what the firm would have paid if the goods were destined for domestic consumption

[20] FR 63 (Nov. 25, 1998) 65408-65418.

Ctd.

Financial Contribution	Benefit
Price preferences for inputs used in the production of exports	The terms or conditions on which products and services provided for the production of exports are more favorable than terms and conditions for the production of goods for domestic consumption
Exemption or remission upon export of indirect taxes	The amount remitted or exempted upon export exceeds the amount levied with respect to the production and distribution of products for domestic consumption
Remission or drawbacks of import charges upon export	The amount of remission or drawback exceeds the actual amount of import charges on imported inputs that are consumed in the production of the exported product
Upstream subsidies	A countervailable subsidy is provided with respect to an input product and the subsidized input has a significant effect on the cost of manufacture

International trade law classifies subsidies in accordance with their potential to distort trade flows. There are three broad categories of subsidies: prohibited, actionable, and non-actionable. According to Article 3 of the SCM, Members of the WTO are prohibited from maintaining export subsidies. Subsidies that are contingent upon the use of domestic over imported goods are prohibited. These subsidies are clearly trade distorting because they provide official financial incentives to firms that export or replace imports with domestically made goods. **Appendix 1** contains the list of export subsidies from the SCM Agreement. A WTO member that maintains prohibited subsidies can be challenged by other members through the WTO's dispute settlement process.

While not prohibited, actionable subsidies are subject to challenge, either through the dispute settlement process or through national countervailing action, in the event that they cause adverse effects to the interests of another Member. Adverse effects take the form of 1) injury to a domestic industry caused by subsidized imports in the territory of the complaining Member; 2) serious prejudice (*e.g.,* export displacement), which can occur in the market of the subsidizing Member or in a third country market; and 3) nullification or impairment of benefits (*e.g.,* subsidies offset the anticipated improvement in market access) accruing under the GATT 1994.

Non-actionable subsidies are described in Article 8 of the SCM Agreement. They include subsidies that are not specific, assistance for research activities conducted by firms or higher education or research establishments on a contract basis, assistance to disadvantaged regions, and assistance to promote the adaptation of existing facilities to newly imposed environmental requirements.[21] See **Appendix 2** for a list of the subsidies notified by China its notification of 2006.

A number of other subsidies, such as low priced water, electricity, and fuel are frequently not countervailable because the subsidized low prices are not specific. China did not include such subsidies in its official notification. Instead, the benefit is considered to be generally available because the government keeps prices low for all industries and consumers. As such, in most cases thus far, the U.S. Department of Commerce has refused to countervail low energy prices and water prices in China, even though Chinese policies confer a benefit to domestic producers in the form of low-priced electricity and water.[22] Recently, however, the Department discovered that the national government set lower electricity prices in one particular area of the country and countervailed the practice as a regionally specific subsidy.[23]

In the past, the U.S. government shied away from assessing countervailing duties on imports from countries such as China which it considered to have "nonmarket

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[21] Certain conditions must be met for assistance for research, disadvantaged regions, and adaptation to environmental requirements to be deemed non-actionable.
[22] The value of this benefit to a Chinese aluminum producer is calculated in Part II of this report.
[23] *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum at 60-61.

economies."[24] The U.S. policy dates back to a ruling the Department made in 1984. In what is commonly known as the "Georgetown Steel" case, the Department reasoned that it was impossible to identify and measure a subsidy in a nonmarket economy because all pricing and production was controlled by the state.[25] In other words, the Department considered the country an entity with no market-based values. Any "subsidy" therefore was simply a nominal transfer from one government bureau to another. The Georgetown Steel policy applied to all nonmarket economies for more than twenty years.

Recently, the U.S. government has carved out an exception to its Georgetown Steel policy with respect to China.[26] In 2007, the Department finalized its first countervailing duty investigation against China, ruling that China's present-day economy has advanced beyond the "Soviet-style" system of the past. The Department concluded that all pricing and production is no longer determined by the state. As such, it can now identify and measure subsidies in China.

This decision, however, is highly nuanced. The Department continues to consider China a nonmarket economy.[27] In other words, the Department posits that China has decreased state influence to a sufficient level where subsidies can be identified and measured but not to a level where many prices and costs are meaningful.[28] This position

[24] The Commerce Department determines whether a country has a market or nonmarket economy for purposes of calculating antidumping duties.
[25] Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986).
[26] *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) and accompanying Issues and Decisions Memorandum at 19-23.
[27] In antidumping cases, Commerce disregards all input and output values in China when calculating antidumping duties.
[28] Indeed, many of the companies examined in Part II have comprehensive agreements with their government-owned parents and affiliates which spell out pricing rules for the goods and services traded between them.

is highly controversial. Several years of legal disputes will undoubtedly determine whether the China exception will survive in its present form.[29]

Subsidy Investigations of the U.S. Department of Commerce

The first U.S. CVD investigation against China since the Georgetown decision was initiated against Chinese producers of coated free sheet paper on November 27, 2006. During the next two years, the Department initiated twelve other investigations after petitions for relief from U.S. industries. The following table contains a list of the investigations and the dates on which official notices of initiation were published in the U.S. Federal Register. The Department made subsidy findings in each investigation completed through December 2008 though did not countervail all programs alleged by petitioners.[30]

Table 3. U.S. countervailing duty investigations initiated by the U.S. Department of Commerce, 2006-2008

Case/Industry	Date Initiated
Coated Free Sheet Paper	11/27/2006
Circular Welded Pipe	7/5/2007
Off-The-Road Tires	8/7/2007
Light-walled Rectangular Pipe	7/24/2007
Woven Sacks	7/25/2007
Magnets	10/18/2007
Light weight Thermal Paper	10/29/2007
Sodium Nitrate	11/29/2007
Circular Welded Austenitic Stainless Pressure Pipe	2/25/2008
Circular Welded Line Pipe	4/29/2008
Citric Acid and Citrate Salts	5/12/2008
Tow-Behind Lawn Groomers	7/21/2008
Certain Kitchen Appliance Shelving and Racks	8/26/2008

[29] Every case thus far has been disputed in both U.S. courts and at the WTO.
[30] There are several reasons why the Department might not countervail a particular program. For example, the Department might not find evidence that a program exists. Other programs might exist, but provide a subsidy that is too small (less than 0.005 percent) to countervail. Some programs may confer financial contributions and benefits, but are not specific.

The results of the Department's investigations offer the most comprehensive accounting of the nature and scale of Chinese government subsidies. However, much of the information collected during the investigations is proprietary and not publically available. The Department does disclose the identities of the investigated firms, the subsidy programs found to be countervailable, and the magnitude of the subsidies. It is not clear which, or if any, firms belong to industries deemed strategic or heavyweight by national authorities in December 2006. But the subsidy programs countervailed by the Department and magnitude of the various subsidies provide a window into the types of programs China is using to support strategic and heavyweight industries.

Appendix 3 contains a summary, by company, of the rates applied by the Department of Commerce. Final investigation rates range from 0.57 percent to 616.83 percent.[31] Rates in excess of 100 percent often indicate that a mandatory respondent and/or the government provided incomplete or false information to the Department of Commerce or otherwise failed to cooperate to the best of their ability. In such instances, in order to encourage the submission of complete and accurate information, the Department can base its determination on facts otherwise available (*i.e.,* facts other than those provided by the respondent(s)) and can make "adverse inferences."[32] The following excerpts from the Federal Register Notice of the final CVD determination for Circular Welded Carbon Quality Steel Pipe from the People's Republic of China provides an illustration of the Department's reasoning when faced with a lack of complete and accurate cooperation.

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[31] The Department issues a preliminary subsidy determination based on questionnaire responses and then a final determination. **Appendix 3** contains both rates for cases that were concluded as of December 2008, but only preliminary rates for ongoing investigations.

[32] This practice also ensures that firms that fail to cooperate will not receive more favorable rates than firms that do cooperate.

> The Department has concluded that it is appropriate to base the final determination for Tianjin Shuangjie Pipe Group Co., Ltd. ("Shuangjie") on facts otherwise available. Shuangjie failed to respond at all to the Department's October 24, 2007, request for shipment data relating to the allegation of critical circumstances, did not respond to the Department's October 25, 2007, supplemental questionnaire, and finally, on October 31, 2007, withdrew all of its proprietary information from the record.
>
> Consequently, the use of facts otherwise available is warranted under section 776(a) (2) (A) of the Act.
>
> In selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776 (b) of the Act because, in addition to not fully responding to all our requests for information, Shuangjie withdrew from all participation and did not provide the Department with the opportunity to verify the information it did submit. Thus, Shuangjie failed to cooperate by not acting to the best of its ability, and our final determination is based on total [adverse facts available].
>
> We have also determined that it is appropriate to apply facts available with respect to certain information that the [government of China] failed to provide, or information that could not be verified. Specifically, despite the Department's requests to submit sub-national government plans relating to the steel industry in the PRC, the GOC stated that none existed. However, at verification, the Department discovered the existence of the Shandong Provincial Steel Plan. Additionally, the Department was unable to verify information regarding the level state ownership in the [hot rolled steel] industry in the PRC because the [government of China] misrepresented the source of the data. In both instances, the GOC failed to act to the best of its ability and, consequently, application of [adverse facts available] is warranted.[33]

While the application of AFA rates is justified in the context of subsidy investigations, actual subsidy rates are unlikely to be in excess of 100 percent. Among the subsidies calculated without total adverse facts available, the range of subsidy rates is 0.57 percent to 44.93 percent, the average subsidy rate is 18.6 percent, and the median

[33] 73 FR 31968, June 5, 2008.

subsidy rate is 14 percent.[34] **Table 4** contains range of rates for each investigation as of December 2008.

Table 4. U.S. countervailing duty subsidy rates as determined by the U.S. Department of Commerce, 2006-2008

Case/Industry	Range of rates
Coated Free Sheet Paper	7.4 to 44.25
Circular Welded Pipe	29.62 to 616.93
Off-The-Road Tires	2.45 to 14.00
Light-walled Rectangular Pipe	2.17 to 200.58
Woven Sacks	29.54 to 352.82
Magnets	109.95
Light weight Thermal Paper	0.57 to 138.53
Sodium Nitrate	169.01
Circular Welded Austenitic Stainless Pressure Pipe 1/	1.47 to 105.73
Circular Welded Line Pipe	35.63 to 40.05
Citric Acid and Citrate Salts 1/	1.41 to 97.72
Tow-Behind Lawn Groomers 1/	0.95 to 254.52
Certain Kitchen Appliance Shelving and Racks 1/	13.22 to 197.14

1/ CVD rates are based on preliminary findings.

Given that some company rates are inflated due to the failure of certain respondents to cooperate, a review of CVD rates by program is also instructive.[35] The program-specific analysis appears in **Appendix 4**. The table contains 80 program specific rates, with an average CVD rate of 3.11 percent and a median rate of 0.37 percent.

The data indicate that subsidized Chinese firms tend to benefit from more than one program. The minimum number of countervailed programs per firm is two, while the maximum number of countervailed programs (achieved by Guangdong Guanhao High-Tech, a producer of lightweight thermal paper) is 15. The average number of

[34] For domestic subsidies, the CVD rate is equal to the subsidy value divided by the company's sales value. For export subsidies, the CVD rate is equal to the subsidy value divided by export sales. In an investigation where both domestic and export subsidies are present, the two rates are additive.

[35] This analysis includes preliminary rates if no final rates are available and excludes firms who received total AFA rates. The preliminary rates for programs involved in Certain Kitchen Appliance Shelving Racks are excluded, as those rates were not published in the Federal Register prior to 2009.

countervailed programs per firm is 4.5, while the median number of programs per firm is 4. The most frequently countervailed programs through December 2008 are policy lending and tax subsidies to foreign invested firms based on location, which have been countervailed 7 times each. The second most frequently countervailed programs is the provision of hot-rolled steel at less than adequate remuneration, which has been countervailed six times. The most lucrative program for recipients has been the provision of hot-rolled steel at less than adequate remuneration. **Table 5** contains the average CVD rates of the most common programs investigated through December 2008.[36] An additional 22 programs have been countervailed only once. The median CVD rate for those programs is 0.18 percent.

Table 5. Most commonly countervailed programs and average rates in China CVD cases, 2006-2008

Program	Frequency	Average CVD Rate
Policy Lending	7	1.86%
Tax Subsidies to FIEs Based on Location	7	0.30%
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel	6	26.08%
"Two Free, Three Half" Income Tax Program	6	1.18%
Provision of Land for Less than Adequate Remuneration	5	3.20%
VAT and Tariff Exemptions on Imported Equipment	5	0.68%
Debt Forgiveness	4	5.34%
VAT Rebates on FIE Purchases of Domestically Produced Equipment	4	0.25%
Local Income Tax Exemption and Reduction Program for "Productive" FIEs	4	0.18%
Provision of Inputs for Less than Adequate Remuneration: Rubber	3	0.08%
Export Loans	2	1.06%
State Key Technology Renovation Project Fund	2	0.17%
Foreign Trade Development Fund	2	0.07%
Stamp Tax Exemption on Share Transfer	2	0.02%

[36] The table is based on final CVD rates for concluded investigations and preliminary rates for investigations that were ongoing as of December 2008. It excludes firms that received total AFA rates.

Table 6 below illustrates that the tax-oriented Chinese subsidies are the most frequently countervailed "financial contribution" from government to industry, with 14 instances. Grants are the second most countervailed type of program, with nine instances, while the provision of goods or services for less than adequate remuneration has been countervailed six times. These three types of subsidies account for 80 percent of the programs countervailed by the Department in subsidies cases through the end of 2008.

Table 6. Most common types of financial contributions in China CVD cases, 2006-2008

Financial Contribution	Number of Chinese Programs	Share of total
Direct and indirect taxes	14	38.9%
Grants	9	25.0%
Provision of goods or services	6	16.7%
Loans	4	11.1%
Exemption or remission upon export of indirect taxes	2	5.6%
Debt forgiveness	1	2.8%

The Department's subsidy investigations also demonstrate that provincial and municipal authorities, not just central authorities, subsidize firms that produce goods for export in local facilities. Subsidies granted by sub-national authorities and countervailed by the Department include: the municipalities of Huzhou City, Shanghai, Zhanjiang City, Yixing City, and Anqiu City, and the provinces of Shandong, Guangdong, and Liaoning.

The characterization of subsidies as national or sub-national may be a distinction without a difference. Under Chinese law, provincial and municipal authorities are required to follow the dictates of central authorities. The relationship between central, provincial, and local governments is described in the excerpt from the following a recent "Issues and Decision" Memorandum:

> Specifically, the central-level plans set goals regarding macroeconomic policies and provide a vision for economic development, market and regulatory activities, social administration, and the provision of public services. The [government of China] explained that the provincial and city five-year plans are drafted based on the goals and objectives of the central-level plans. In other words, local governments (i.e., provinces and cities) must align their policies with stated central government policies and carry out those policies to the extent that such measures affect their locality. As such, central-level plans should be considered a central government policy or program that local governments adopt and implement through their own five-year plans.[37]

There are, however, instances when local and central government officials are at cross purposes. For example, local officials may fund a local enterprise even if the central government has different priorities, such as industry consolidation that would place a regional firm under a central SOE.[38]

It is evident from the list of subsidies in **Appendix 4** that the Department has countervailed many programs aimed at attracting foreign investors. **Table 7** below shows the programs specifically aimed at foreign invested enterprises ("FIEs"). Thirty-one of the programs countervailed by the Department, nearly 40 percent, are directly aimed at attracting foreign investments.

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[37] Department of Commerce, *Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China* (July 7, 2008) at 13-14. *Citations omitted.*

[38] "China Steelmakers Confirm Launch of Shandong Titan," *Reuters* (August 01, 2006) at http://jo2.mofcom.gov.cn/aarticle/chinanews/200608/20060802771939.html. See, also, Eurofer Report at 48-55.

Table 7. Chinese subsidy programs oriented toward FIEs and countervailed by the U.S. Department of Commerce, 2006-2008

Program	Frequency	Average CVD Rate
Tax Subsidies to FIEs Based on Location	7	0.30%
"Two Free, Three Half" Income Tax Program	6	1.18%
VAT and Tariff Exemptions on Imported Equipment	5	0.68%
VAT Rebates on FIE Purchases of Domestically Produced Equipment	4	0.25%
Local Income Tax Exemption and Reduction Program for "Productive" FIEs	4	0.18%
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs	1	2.07%
Refund of Enterprise Income Taxes on FIE profits Reinvested in an Export-Oriented Enterprise	1	0.64%
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs	1	0.11%
Income Tax Reductions for Export-oriented FIEs	1	0.15%
FIE Land Tax Waiver	1	0.09%

Foreign direct investment has long been viewed as desirable in China. As implied by the program names, Chinese subsidies aimed at foreign investors have many purposes. For example, the government provides subsidies to FIEs that invest in certain areas. As the Departments explains,

> FIEs are encouraged to locate in designated coastal economic zones, special economic zones, and economic and technical development zones in the PRC through preferential tax rates. This preference was originally created in June 1988 by the Finance Ministry under the "provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIE in Coastal Economic Zone" and was administered during the [period of investigation] under the Income Tax Law of the People's Republic of China for Enterprises with Foreign investment and Foreign Enterprises.[39]

The two free, three half program, which exempts FIEs from income tax in their first two profitable years and reduces income taxes by 50 percent in the subsequent three

[39] Department of Commerce, *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Lightweight Thermal Paper from the People's Republic of China* (September 25, 2008) at 15.

years, was enacted in 1991 to attract foreign businesses to China. In order to qualify for this program, FIEs must engage in the following industries: 1) machine manufacturing and electronics; 2) energy resource (excluding oil and natural gas); 3) metallurgical, chemical and building material industries; 4) so-called light industries, and textile and packaging; 5) medical equipment and pharmaceutical; 6) agriculture, forestry, animal husbandry, fishery and water conservation; 7) construction; 8) communications and transportation (excluding passenger transport); 9) services related to the development science and technology and other services related to repair and maintenance of production equipment and precision instruments; and 10) any other industries specified by tax authorities under the State Council.[40]

Other tax preferences aim to influence the behavior of FIEs by reducing the cost of importing necessary equipment. The programs also encourage FIEs to purchase domestic equipment if available, produce more sophisticated products, to export, and reinvest export-related profits in China.

Although many of the subsidy programs countervailed by the Department are aimed at attracting the investment of foreign companies, the companies listed in **Appendix 3** are not easily recognizable as western firms. There are four explanations for this phenomenon. First, in some cases, the FIE may be owned by a firm, based in Hong Kong or elsewhere, whose ownership is really Chinese. Second, the source of foreign capital is a non-western firm. For example, Yixing Union, a Chinese producer of Citric Acid, is 50-percent owned by a Thai firm.[41] Third, U.S. firms that are benefitting from

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[40] Department of Commerce, *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) from the People's Republic of China* (November 17, 2008) at 12-13.
[41] See 2007 Annual Report of Saha-Union Public Company Limited at 110.

FIE incentives in China may be reluctant to file petitions against Chinese subsidy programs for fear of losing those benefits. That is, the paucity of recognizable firms in China CVD cases is not a reflection of foreign disinterest in Chinese subsidies, but rather an indication of their success in attracting foreign investors to China. Fourth, in certain industries, such as steel, the government of China must approve foreign ownership. Established foreign steel producers that have tried to purchase controlling shares in Chinese steel makers often have failed due to government opposition.[42]

Subsidy Investigations in Canada and Australia

Both Canada and Australia have applied the CVD law to China in recent years. Since the Uruguay Round, Canada has launched several investigations into Chinese subsidies. Australia, on the other hand, initiated only one investigation which it terminated before rendering a final decision.[43]

To date, Australia has not imposed countervailing duties on subsidized imports from China. Australia has, however, supported the U.S. position before the WTO that China provides subsidies which violate the SCM agreement. For example, Australia supported the U.S. dispute over certain prohibited or "red light" subsidies (i.e., export subsidies and import-substitution subsidies). As a third party in the dispute, Australia argued that China's refunds, reductions, or exemption from taxes and other monies owned to the government were export-contingent or supported the purchased of domestic

[42] Alan Price, et al., *Money for Metal* (July 2007) at 12. ArcelorMittal is the second largest shareholder of the Hunan Valin Group, but has failed to secure Chinese government approval to purchase a majority share of steel maker China Oriental, a 38 percent share of the Laiwu Steel Group, and a 25 percent share of Angang Steel, China's second largest steel producer. "ArcelorMittal play for bigger China Oriental stake seen failing," *American Metal Market* (August 6, 2008); Vivian Wai-yin Kwok, "Mittal Gets Iron Clawhold into Angang Steel," *Forbes* (2008).
[43] *Certain Toilet Paper Exported from the People's Republic of China: Withdrawal of Application for a Countervailing Duty Notice*, Australian Customs Dumping Notice No. 2008/38 (October 24, 2008).

over imported goods.[44] It remains to be seen whether Australia will utilize the CVD law to impose duties on subsidized imports from China.[45]

Unlike Australia, Canada has imposed countervailing duties on subsidized imports from China.[46] Beginning in 2004, Canada investigated subsidies provided to various steel products, laminate flooring, and thermoelectric coolers and warmers. From 2004 to 2008, the Canadian Border Services Agency ("CBSA") initiated six investigations to which it ultimately found countervailable subsidies. The following table contains a list of the investigations and the dates on which the cases were initiated. Like the U.S. Commerce Department, the CBSA made subsidy findings though did not countervail all programs alleged by the domestic industry.

Table 8. Canadian countervailing duty investigations initiated by the Canadian Border Services Agency, 2006-2008

Case/Industry	Date Initiated
Carbon Steel and Stainless Steel Fastners	4/28/2004
Certain Laminate Flooring	10/4/2004
Copper Pipe Fittings	6/8/2006
Seamless Carbon or Alloy Oil and Gas Well Casing	8/13/2007
Carbon Steel Welded Pipe (Circular Welded Pipe)	1/23/2008
Certain Thermoelectric Coolers and Warmers	5/15/2008

Attached at **Appendix 5** is a more detailed chart including the subsidy programs and countervailing rates imposed.

Similar to the U.S. investigations, not all of the firms involved in the investigations belong to industries deemed strategic or heavyweight. However, the subsidy programs countervailed by the CBSA do provide a glimpse at the magnitude and types of programs China is using to support key industries. Most notable are

[44] *US Action Against China Takes Center Stage*, Australian Industry Group (Winter 2007).
[45] Because Australia considers China to be a market economy, it does not face the same potential legal disputes as other countries when applying the CVD law to China.
[46] Like the United States, Canada both investigates subsidies and simultaneously considers China a nonmarket economy.

investigations involving steel given that the steel industry is a “strategic” or “pillar” industry.

As with the United States, the CBSA found that upstream steel inputs are provided to downstream producers for less than adequate remuneration. The largest countervailable subsidies stem from the provision of the hot-rolled steel inputs. The GOC provides the subsidy through its majority-owned control over the industry.[47] The GOC sets policy through various industrial plans and executes the policy by way of its controlling ownership stake. The GOC guides steel supplies and maintains low input prices for downstream export-oriented producers. As such, the CBSA found that world prices for hot-rolled steel differ substantially from those in China.[48] The differential is substantial. For example, the CBSA found that the GOC provided significant subsidies to steel producers, ranging from 25 to 113 percent for carbon steel welded pipe.[49]

International Perspectives

Although the United States and Canada are at the vanguard of efforts to apply anti-subsidy laws to China, it is clear that worries about Chinese subsidies extend beyond U.S. borders.

In 2007, the European Union released a major study of *Future Challenges and Opportunities in EU-China Trade and Investment Relations*.[50] The study covered a number of industrial and service sectors, including the automotive, chemical, machinery, and information communication technology “heavyweight” industries.

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[47] *Statement of Reasons Concerning the Making of Final Determination With Respect to the Dumping and Subsidizing of Certain Carbon Steel Welded Pipe Originating In Or Exported From the People’s Republic of China*, 4214-16 (AD/1373) 4218-24 (CVD/123) (August 5, 2008) at 36-37.
[48] *Id.* at 59.
[49] See **Appendix 5**.
[50] Emerging Markets Group and Development Solutions, *Study on the Future Opportunities and Challenges of EU-China Trade and Investment Relations* (February 2007) (hereafter, *EU-China TIR*).

The study of the Chinese automotive sector found that "government directs the banks to give 'policy' loans to bankrupt SOEs."[51] But subsidies are not confined to government-owned firms. For example, the privately-owned Chery has reportedly received massive state support.[52] The study's author concludes that Chinese government support for the domestic automotive industry is the most significant market distortion affecting that industry and has the most significant impact on the industry's competitiveness.[53] The chemical industry study noted that favorable tax treatment, especially the two free, three half program, provides new ethylene plants in China with a cost advantage over competitors in the United States, Europe, and other Asian countries.[54] The authors of the machinery industry study found that European firms were adversely affected by "irrational competition from subsidised competitors,"[55] that China's subsidies were increasingly doled out by local governments,[56] and that the average SOE in China would lose money but for government subsidies.[57] The study on information communication technology equipment ("ICT") determined that firms in the industry receive direct funding from government ministries, particularly the Ministry of Information and Industry.[58] The government of China has provided seed money to support Chinese high-tech companies, Vimicro the first Chinese semiconductor company to trade shares on the NASDAQ.[59]

[51] Eric Thun, "Study 3: Transport Equipment – Automotive," in *EU-China TIR* at 16.
[52] *Id.*
[53] *Id.* at 35.
[54] Klaus Griesar , "Study 2: Chemicals," in *EU-China TIR* at 23.
[55] Joachim Ihrcke and Krystina Becker, "Study 1: Machinery," in *EU-China TIR* at 2.
[56] *Id.* at 28-29.
[57] *Id.* at 15.
[58] John Ure, "Study 5: ICT Equipment," in *EU-China TIR* at 25.
[59] *Id.* at 16.

At the time of this writing, the EU had refrained from filing an anti-subsidy case against China. However, the EU has noted the prevalence of subsidies in a recent antidumping investigation of citric acid from China. The Commission regulation imposing a provisional anti-dumping duty on Chinese citric acid found that two companies obtained land and other fixed assets "for prices substantially below market value."[60] A third company received government funds during a one-year period amounting to 10 percent of the firms total assets and rented certain items without charge.[61] The Commission also determined that many of the companies being investigated benefitted from non-market loans. Chinese banks from the state-dominated banking sector provided loans in amounts beyond those allowed by their own policies.[62] A fourth company received bank loans amounting to 20 percent of company assets without any arrangements made for interest payments or accruals.[63]

The EU may soon join the United States and Canada in applying CVD laws to Chinese subsidies and/or challenging Chinese subsidies at the WTO. Eurofer, the association of EU steelmakers, is urging stronger enforcement of trade remedy laws against China trade. Eurofer claims that the Chinese government has created cost advantages for Chinese firms through subsidies, preferential loans, debt forgiveness, and by lowering the level of labor rights and labor and environmental standards.[64] The

[60] Commission Regulation (EC) No. 488/2008 (June 2, 2008) at par. 26.
[61] *Id.* at par. 27.
[62] *Id.* at par. 25.
[63] *Id.* at par. 28.
[64] "Eurofer points finger at China for hindering its steel market," *China Business News* (February 26, 2009).

textile, ICT, machinery, and farm products industries are believed to be in discussions with the European Commission about challenging Chinese subsidies before the WTO.[65]

The steel industry in Europe is particularly concerned about the role played by subsidies in expanding Chinese steel production capacity. A recent report funded by the industry noted China, within a matter of years, had been transformed from a net steel importer into the world's largest steel exporter, accounting for 20.7 percent of global steel exports in 2007, and one-third of the world's output.[66] Prepared by the consultancy THINK!DESK, the report documents subsidies to the Chinese steel industry from 2001 to 2007 and provides numerous examples of government largesse prior to China's entry into the WTO, when the Chinese government was bolstering the country's indebted and woefully inefficient steel industry to prosper once China entered the World Trade Organization.[67] Subsidies amounting to billions of dollars include grants; subsidized loans; debt forgiveness and debt-to-equity swaps; access to land, water, electricity at below-market prices; and VAT rebates to steel makers providing steel to export-oriented industries.[68] The Eurofer Report also documents a variety of government subsidies, by company and type of subsidy, conferred during the 2001-2007 period. For example, the preferential subsidy granted to support domestic equipment purchases disbursed RMB

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[65] "EU may follow US and Mexico on WTO challenge of alleged breach by Chinese mainland of subsidy rules," *hktdc.com* (undated).

[66] Markus Taube and Christian Schmidkonz, *The State-Business Nexus in China's Steel Industry—Chinese Market Distortion in Domestic and International Perspective*, (January 2009) prepared for the European Confederation of Iron and Steel Industries (hereafter, "Eurofer Report") at 11 and 13.

[67] *Id.* at 78-90. "Before China joined the WTO on December 11th, 2001, state-owned enterprises were systematically prepared for the new business environment and in many cases provided with additional financial and other resources – an 'extra layer of fat' to soften the shock of becoming exposed to the international market place and its atmosphere of competition."

[68] *Id.* at 78-90.

3.4 billion ($416.2 million) to 20 steel producers during the period.[69] The bulk of these subsidies occurred during the 2003-2007 period, during the rapid run-up in Chinese steel exports.

Chinese subsidies are not just a concern for the so-called advanced economies. Many developing countries are also concerned. For example, Colombia, Ecuador, Guatemala, and Mexico have requested to join consultations between the United States and China over China's World Top Brand Program, a collection of grants, loans, and other incentives that the United States is challenging through the WTO's dispute settlement process.[70] A South African maker of stainless steel kitchen sinks filed a countervailing duty petition against Chinese imports. This petition marks the first CVD filing against Chinese subsidies by a developing economy.[71] The government of China allegedly had the case withdrawn by applying pressure on the South African producer's Swiss owner, which has operations in China.[72]

Other Preferences

Other government policies in China have enhanced the competitiveness of firms operating in China relative to competitors elsewhere. Among the policies most cited are

[69] *Id.* at 132-133. As discussed in Part II of this study, the import substitution subsidy for domestic equipment has benefitted several firms in absolute control and heavyweight industries. The dollar estimate was calculated using the annual Yuan-dollar exchange rate published by the U.S. Federal Reserve Board (Statistical Release G.5A).

[70] *China—Grants, Loans, and Other Incentives: Request for Consultations by the United States*, WT/DS387/1, G/L/879, G/SCM/D81/1, G/AG/GEN/79 (January 7, 2009); and *Acceptance by China of the Requests to Join Consultations*, WT/DS387/11 (February 3, 2009).

[71] "China welcomes S. Africa decision to end investigation of Chinese products," Xinhua News Agency (February 9, 2009).

[72] Mathabo Le Roux, "South Africa: China Blocks Subsidy Challenge from Country," *allAfrica.com* (February 17, 2009) at http://allafrica.com/stories/printable/200902160074.html.

China's exchange rate policy,[73] and China's lax enforcement of labor laws and environmental standards.[74]

Many economists have concluded that China's undervalued Yuan strongly influences China's trade.[75] At the time of this writing, the Yuan was still believed to be significantly undervalued. Although a number of U.S. CVD petitions have alleged that China's weak currency confers a subsidy, the Department of Commerce has not yet initiated an investigation on China's exchange rate program.

The Chinese government has prevented or limited an appreciation of the Yuan through sustained purchases of foreign currency, primarily U.S. dollars, since 1994. At the outset of 1994, China devalued the Yuan from RMB 5.8145 per dollar to RMB 8.7217 per dollar.[76] The Central Bank of China was forced to intervene in foreign exchange markets in order to limit the Yuan's appreciation.[77] From May 1995 to September 25, 1998, the daily exchange rate averaged RMB 8.32 per dollar, only rarely dropping below 8.3 per dollar. On September 28, 1998, the Yuan hit 8.2783 per dollar, and remained within RMB 0.0124 of that rate through May 21, 2005. From January 1994 to June 2005, China's foreign currency reserves increased by $688.8 billion, mostly

[73] See, for example, "The Chinese Economy: Progress and Challenges Ben S. Bernanke," Speech at the Chinese Academy of Social Sciences, Beijing, China (December 15, 2006).
[74] See, for example, Eurofer Report at 152-153.
[75] See, for example, Jeffrey Frankel, *On the Renminbi: The Choice between Adjustment under a Fixed Exchange Rate and Adjustment under a Flexible Rate*, (October 13, 2004); Morris Goldstein, *A (Lack of) Progress Report on China's Exchange Rate Policies*, Peterson Institute for International Affairs WP 07-5 (June 2007); Michael Mussa, "IMF Surveillance over China's Exchange Rate Policy," in Morris Goldstein and Nicholas Lardy, eds., *Debating China's Exchange Rate Policy* (April 2008) at 279-339; Jian Lu, "Empirical study on the influence of RMB exchange rate misalignment on China's export," *Frontiers of Economics in China* 2007 2(2): 224-236; and Yu Hsing and Wen-Jen Hsien, "Impacts of Monetary, Fiscal and Exchange Rate Policies on Output in China: A VAR Approach," *Economics of Planning* (2004) 37: 125-139.
[76] The daily exchange rates used for this analysis are available from the Federal Reserve Bank of St. Louis at http://www.research.stlouisfed.org/fred2/series/DEXCHUS?cid=282.
[77] Yan-jun Huang, "On the Current RMB Exchange Rate Regime Affecting the Effectiveness of Monetary Policy," *Journal of Zhejiang University* Vol. 2 (Apr. – June 2001) at 227-231.

in U.S. dollars. Beginning in July 2005, China has pegged the Yuan to a basket of currencies, but has continued to accumulate foreign currency reserves.[78]

The undervalued Yuan stimulates Chinese exports above the level that would occur if the Yuan were weaker, and depresses imports into China by raising their relative prices.[79] Although some observers argue that the extent to which a weaker currency subsidizes exports is not entirely clear,[80] China's experience suggests that the stimulus has been significant. The massive devaluation at the outset of 1994 stimulated exports from China, increased foreign exchange inflows, and created pressure to appreciate the Yuan.[81] As a result, the Central Bank of China was compelled to increase China's foreign exchange currency reserves in 1994 and 1995 by $53 billion dollars, more than had been accumulated *during the thirteen years prior to the devaluation*.[82] In contrast, the Yuan appreciated relative to many other Asian currencies following the Asian crisis of 1997. This led to a dramatic reduction in export growth, an increase in imports, and a decline in the amount of foreign currency purchases needed to maintain the Yuan's fixed exchange rate.[83] Even before the current global recession, the stronger Yuan-dollar

[78] From July 2005 until April 2008, China's non-gold reserves grew by an additional $1,022.4 billion.
[79] If all prices in an economy are completely flexible, currency devaluation would not change relative prices. However, in a "sticky price" environment, devaluation does have real effects. See Robert W. Staiger and Alan O. Sykes, *'Currency Manipulation' and World Trade*, Stanford University Law and Economics Olin Working Paper No. 363 (June 2008).
[80] Staiger and Sykes acknowledge that export subsidies have real effects, but claim that devaluation does not subsidize the devaluating country's exports when producers invoice in their own currency. However they also indicate even if producers invoice in their own currency, prices of the devaluating countries' products become more competitive in export markets. This suggests that the exporters from the devaluating country will benefit from higher demand in subsequent periods.
[81] Huang at 229.
[82] These reserve statistics exclude gold. Data are from the International Monetary Fund, via Haver Analytics.
[83] Huang at 229.

exchange rate prevailing since July 2005 had begun to affect the growth of China's trade surplus and reduce exporter profits.[84]

Thus, while U.S. petitioners have been unable to meet the requirements for initiating a subsidies investigation of China's currency policy, there is strong evidence that China purchases dollars to prevent or limit the appreciation of its currency, and that China's weak Yuan stimulates exports above levels that would prevail were China's currency not fixed at an artificially weak level.

Chinese labor and environmental practices have also been criticized for providing Chinese firms with a competitive advantage akin to a subsidy. China has not yet ratified the International Labor Organization's conventions on collective bargaining and freedom of association. Moreover, Chinese firms face lower expenses related to healthcare, social security-type programs, and safety than companies with production in advanced economies.[85] Reports indicate that there are up to 20 million children participating in China's workforce and 6 million people forced to work in prison labor camps.[86] An analysis by the firm Verité found that excessive overtime was rampant at export-oriented factories in China, as was the failure to pay legal overtime wages.[87] There are many organizations dedicated to documenting, and reversing, such shortcomings of China's

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[84] "China Focus: Yuan yet to see equilibrium after 21-pct rise exactly 3 years after revaluation," Xinhua News Agency (July 21, 2008). "The exchange reform would no doubt promote the country's economic restructuring, or the industrial upgrading and a shift from the heavy reliance on resources and energies for growth. But exporters suffered as less orders came in and profit margins were squeezed." "However, economists agreed the country's current exchange policy was appropriate in addressing the imbalance of international payments, and measures had been effective, as seen from the decelerating trade surplus."

[85] Eurofer Report at 152.

[86] Anya Sostek, "AFL-CIO says China's trade policies hurt U.S. jobs," *Pittsburgh Post-Gazette* (June 10, 2006)

[87] *Excessive Overtime in Chinese Supplier Factories: Causes, Impacts, and Recommendations for Action* Verité Research Paper (September 2004) at 4 and 16.

labor market.[88] Subsequent corporate investigations have corroborated some of the specific allegations made by these groups.[89]

All things equal, labor practices in China reduce labor costs for firms operating in China. Increasing the supply of labor in China by 26 million (*i.e.*, the sum of chilled and prison labor) would likely lead to higher wages for remaining workers and, therefore, higher marginal costs for China's exporters. Wages would also rise if China's labor laws regarding overtime hours and pay were strictly enforced. Labor costs in China would still remain well below labor costs in advanced industrial countries, but higher costs would price some exports out of foreign markets. Indeed, higher labor costs that resulted from recent labor reforms in China are believed to have contributed to reduced profits at exporters and to factory closures in China.[90]

As such, weak enforcement of labor laws in China provides a benefit to exporters in the form of lower costs for labor inputs, just like below market electricity rates provide a benefit to manufacturers. However, it would be very difficult for any petitioner to establish this subsidy as financial contribution by the government of China that is specific in fact or in law.

A similar analysis applies to environmental standards. The economic rationale for environmental laws and standards is that the market alone does not value the environment properly because industrial polluters do not bear the full social cost of their pollution. If the *marginal external cost* due to excessive pollution in China were included in a firm's

[88] China Labor Watch and the China Labour Bulletin are two such organizations.
[89] Craig Simons, "New labor movement afoot in China," China Labor Watch (February 04, 2007) at http://www.chinalaborwatch.org/2-12-2007NewLaborMovement.htm.
[90] "Yuan yet to see equilibrium."

marginal cost, it would produce less of the product causing pollution.[91] Advanced countries have imposed standards and other measures, such as fees and tradable permits, to correct for this negative externality. Regardless of which mechanism is chosen, the cost of production generally rises.

In China's case, there are numerous examples demonstrating that the country has not undertaken adequate pollution abatement measures, though this has begun to change. A recent World Bank Report on China described the situation as follows:

> In China, well over half the major lakes are severely polluted; only 38 percent of river water is drinkable; only 20 percent of the population has access to unpolluted drinking water; and almost a quarter of the people regularly drink water that is heavily polluted ("China: Water Shortage" 2006). Waste disposal is a serious source of water pollution, and the countryside suffers from the leaching of nitrates into groundwater.[92]

Air pollution in China is similarly awful. According to a joint study conducted by the World Bank and the Chinese State EPA, 750,000 deaths in China are attributable to respiratory diseases. An according to EU standards, only one percent of China's urban population breathes safe air.[93]

By either not applying existing regulations, or failing to develop regulations that would limit pollution at a cost to domestic industries, the Chinese government has conferred a benefit to manufacturers in China. The benefit can be viewed as an income support, because the government's policy increases profit at any given market price. But as with the benefit resulting from lax enforcement of labor standards, the benefit conferred by China's lax environmental standards does not appear to be specific in law or in fact under WTO rules.

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[91] Robert S. Pindyck and Daniel L. Rubinfeld, *Microeconomics*, 6th edition (2006) at 642-43.
[92] L. Alan Winters and Shahid Yusuf, eds., *Dancing with Giants: China, India and the Global Economy* (World Bank, 2007) at 25.
[93] Yiyi Lu, "The Poison infecting China," *Times Online* (July 14, 2008).

Part II: Valuation of Chinese Subsidies to Absolute Control and Heavyweight Industries

Introduction

Part II examines the nature and scale of Chinese subsidies to strategic and heavyweight industries. The analysis for each industry focuses on one or two companies who list shares on the Hong Kong Stock Exchange. For each company, there is a brief summary of the firm, its ownership structure, and any relevant international and strategic dimensions. There is also an explanation of all the subsidies described in each firm's annual financial report to investors. The subsidies are presented in a table along with a subsidy rate which is equal to the total value of the firms subsidies divided by its sales.[94]

Part II concludes with a discussion of any identifiable patterns in state support for these industries.

Analysis of Strategic Subsidiaries

Armaments

Avichina Industry and Technology Company Limited ("AviChina")

AviChina is a Chinese producer of automotive and aerospace products, including mini-size cars, low-emission sedans, automotive engines, helicopters, general purpose aircraft, and regional jets.[95] As of 2007, the group held stakes in two joint ventures producing automotive engines, one with Suzuki and one with Mitsubishi.[96] Both Japanese firms have technology transfer agreements with AviChina.[97] Its joint venture

[94] As the tables in Part II may include subsides from different years, the subsidy rate in the individual tables is not comparable to the subsidy rates calculated by the Department of Commerce.
[95] AviChina Industry and Technology Company Limited Annual Report for 2007 (hereafter, "AviChina 2007 AR") at 2. In 2007, aerospace products accounted for approximately 30 percent of the group's sales.
[96] *Id.* at 2.
[97] *Id.* at 33-34.

with the Italian firm Agusta produces helicopters, while its venture with Embraer-Empresa Brasileira de Aeronautica S.A. produces regional jets.[98] AviChina subsidiaries Hongdu Aviation, Harbin Aviation, and Changhe Aviation are also known to produce military aircraft.[99]

AviChina shares are traded in Hong Kong. The group's principal domestic shareholders are AVIC II, a state-owned aviation corporation, and the GOC's asset management firms China Hua Rong Asset Management Corporation, China Cinda Asset Management Corporation, and China Orient Asset Management.[100] AVIC II owns 95.66 percent of AviChina's domestic shares.[101] The European Aeronautics Defence and Space Company, which owns Airbus, is the primary shareholder of AviChina's H shares in Hong Kong.

AVIC II is one of China's two major manufacturers of civilian and military aircraft. It was formed in 1999 when the former China Aviation Industry Corp. was split into AVIC I and AVIC II.[102] This breakup was part of a major reorganization of China's five arms companies into ten enterprise groups in order to foster competition and limit financial losses.[103] AVIC I focuses on large and medium sized aircraft, while AVIC II focuses largely on smaller aircraft and helicopters.[104] According to recent press reports, the Chinese government is strongly considering a re-merger of the two state-owned

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98 *Id.* at 2.
99 Evan S. Medeiros, Roger Cliff, Keith Crane, and James C. Mulvenon, *A New Direction for China's Defense Industry* (hereafter, "RAND Report") (RAND, 2005) at 156-157.
100 AviChina 2007 AR at 2.
101 *Id.* at 31.
102 Lu Haoting and Xu Dashan, "AVIC I & II closer to merger," *China Daily* (June 18, 2008) at http://www.chinadaily.com.cn/china/2008-06/18/content_6772516.htm.
103 Eamon Surry, *An Estimate of the Value of Chinese Arms Production*, Research note presented at the 11th Annual Conference on Economics and Security, University of the West of England (July 2007) at 3.
104 "Aviation Industries of China II (AVIC-II)," http://www.globalsecurity.org/military/world/china/avic2.htm.

aviation entities in order to pool research and manufacturing resources and close the gap with Western aviation firms.[105]

AviChina is increasing its manufacturing work for both Airbus and Boeing. Two of AviChina's subsidiaries have entered into a joint venture with Airbus China Co. to set up a final assembly line in Tianjin for the Airbus A320 series.[106] Parent company AVIC II and Airbus have agreed to establish a composite material manufacturing center to produce composite parts and components for Airbus' A350XWB wide body aircraft. AviChina subsidiary Hongdu Aviation entered into a sub-contracting agreement with U.S Goodrich Corporation to produce engine parts and components for the Boeing 787 aircraft for the period from 2008 to 2021.

Total estimated subsidies to AviChina: RMB 435.0 million ($57.2 million)

AviChina's annual report for 2007 indicates that it benefits from government grants, preferential interest rates, preferential tax rates, and the provision of land at no cost. The largest subsidy is listed as a deferred income related to government grants. This amount, RMB 150 million, is money that the government provided AviChina in the past for the purchase of property, plant, and equipment ("PP&E"). This amount is being amortized over time, including RMB 33.1 million in 2007. The RMB 17.7 million deferred income grant reflects moneys that have been provided by the government to pay for non-PP&E expenses to be undertaken within the next year.

There are four lending related grants. The RMB 33 million government interest subsidy is not explained, but appears to indicate that a central or local government entity is paying some of the bank interest owed by the firm. AviChina's 2007 annual report

[105] Lu Haoting and Xu Dashan.
[106] AviChina 2007 AR at 7.

also lists RMB 160 million as being borrowed from non-bank entities at a weighted average interest rate of 0.07 percent. This preferential rate is 6.32 percent lower than the interest rates paid by the firm to banks, which saved AviChina approximately RMB 10 million. AviChina has RBM 5.2 billion in outstanding loans from government-owned banks. The Department of Commerce has found government-owned banks provide loans to favored firms at below market rates. The subsidy rates for this program have been, on average, 0.78 percent of sales.[107] Applying this rate to AviChina's sales implies a benefit worth RMB 119 million. Finally, nearly RMB 500 million in AviChina's borrowings are guaranteed by its state-owned parent and other related subsidiaries. These guarantees further reduce AviChina's cost of borrowing by lowering the interest rates that independent lenders would charge the company were it not for the government guarantees.

Other potential subsidies related to those found by the Department of Commerce include the provision of land for less than adequate remuneration and tax-related benefits. AviChina's annual report clearly states that some of its facilities operate on land provided free of charge by its government-owned parent. In three of the subsidy investigations where this program was found to be used, the average subsidy rate was 0.85 percent.[108] Applying this rate to AviChina's sales yields an estimated benefit of RMB 44 million. AviChina's annual report lists a refund of real estate VAT for RMB 3.6 million. It is not clear whether this refund represents a subsidy, but the Department has countervailed VAT related subsidies granted to ten companies. AviChina's annual report refers to low

[107] This average excludes the AFA rate on Guangdong Guanhao High-Tech, a Chinese producer of light-weight thermal paper.
[108] This average subsidy rate excludes the rate of Zibo Aifudi Plastic, a Chinese producer of laminated woven sacks.

interest rates provided to certain subsidiaries of the company. The standard corporate tax rate through 2007 was 33 percent, 30 percent for the central government and the remainder for sub-national governments. AviChina acknowledges that some of its subsidiaries faced tax rates ranging from 7.5 to 15 percent. Applying information from the firm's 2005 report, it appears that this benefit saved the firm approximately RMB 24 million.

Table 9. Valuation of subsidies to AviChina, 2007

Item	RMB Mil.	Source	Page
Government grants (available)	167.6	2007 AR	54, 109
Government grants (amortized)	33.2		82
Government interest subsidies	33.2		121
Preferential lending	129.3		14, 114
Refund of value added tax	3.7		80
Preferential tax rates	23.9		84
Land granted for use at no cost by SOE	44.0		94
Total subsidies	435.0		
Net income	-488.3		
Revenues	16,540.6		
Subsidy in UDS Mil.	57.2		
Subsidy rate	2.6%		

China Aerospace International Holdings Ltd. ("CASIL")

Through its subsidiaries, CASIL engages in hi-tech manufacturing and developing science and technology park complexes.[109] The firm is also a holding company for investments in complex properties and high-tech industries.[110] Among CASIL high tech products are plastic products, intelligent chargers, liquid crystal display and printed circuit boards.[111] According to its 2007 annual report, CASIL wholly owns seven firms on the mainland that are registered as wholly foreign-owned entities in China.[112] It also

[109] China Aerospace International Holdings Ltd. Annual Report for 2007 (hereafter, "CASIL 2007 AR") at 3.
[110] *Id.* at 6.
[111] *Id.* at 3.
[112] *Id.* at 89.

owns at least 80 percent of five Sino-foreign joint ventures in China and 30 percent of several other entities with operations in China or Hong Kong.[113]

CASIL is not listed on any mainland stock exchange, but is listed only on the Hong Kong Stock Exchange.[114] CASIL's largest shareholder is the China Aerospace Science & Technology Corporation ("CASC"), which is a holding company owned by the central government SASAC.[115] However, CASC does not own these shares directly. As of yearend 2007, Jetcote Investments Limited owned 42.53 percent of CASIL, 5.13 percent directly and 37.4 percent through two wholly owned investment companies. Jetcote, for its part, is 100 percent owned by CASC. Thus, CASC officially owns 42.53 percent of CASIL. In addition to its ownership stake, CASC provided a large loan to CASIL, assisted it financially with a profitable swaps agreement, and strongly supports the company's development of civilian technology parks.[116]

According to RAND, CASC controls research and production entities encompassing multiple research institutes, production facilities, and companies.[117] CASC's subsidiaries produce ballistic missiles, space launch vehicles, satellites, manned spacecraft, and civilian products.[118] CASC, along with the China Aerospace and Industry Group Corporation ("CASIC"), are the two main players in China's missile industry, and the market environment between them is one of "managed competition" in which the two conglomerates manage the flow of capital among their respective subsidiaries.[119] The

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[113] *Id.* at 89-90.
[114] *Id.* at 37.
[115] *Id.* at 27.
[116] *Id.* 3-5, 32 and 72.
[117] RAND Report at 53. The state-owned China Aerospace Corporation was created in 1993 when the government transformed China's Ministry of Aerospace into a state-owned corporate entity. CASC and CASIC trace their formation to the breakup of the China Aerospace Corporation in 1999.
[118] *Id.*
[119] *Id.* at 52, 73, and 75.

non-defense subsidiaries of CASC and CASIC are believed to be financially self-sufficient, unlike the two groups' missile producing subsidiaries. The non-defense entities are believed to enhance the level of technical expertise in China's missile industry and to facilitate the flow of information.[120] CASC and CASIC have generally aimed to separate the management and production of military goods from the management and production of civilian goods.[121] CASIL, the Hong Kong listed subsidiary, is clearly a civilian company. However, there has been an increased willingness by the two missile conglomerates to allow civilian subsidiaries to enter into military-related production. There is some indication that CASC and CASIC believe that such entry would help introduce the dynamism of the commercial sector into the military sector, or, at the very least, would earn profits for the holding companies that could offset losses of their military-oriented subsidiaries.[122] CASIL contributed HK$310 million to its equity holders in 2007, which implies investment earnings of HK$131.8 million (US$16.9 million) for CASC.

Total estimated subsidies to CASIL: HK$99.7 million ($12.8 million)

CASIL received assets from its state-owned parent at less than adequate remuneration, concessionary tax rates on certain subsidiaries, and benefitted from debt forgiveness and preferential lending in conjunction with inflated interest rates from certain bank deposits.

CASIL earned a profit of HK$ 28.9 million under an asset swap agreement with its CASC, its SOE parent. According to CASIL, the agreement between the two firms originated in 2006. CASIL acquired the equity interest in a firm that turned around and

[120] *Id.* at 74.
[121] *Id.* at 99-100.
[122] *Id.* at 100.

sold its property for a profit by the end of 2007.[123] The acquisition transaction, explained in CASIL's 2006 annual report,[124] indicates that CASIL acquired a 79.25 percent interest in a Canadian company and a 100 percent interest in a profitable Chinese company; forgiveness of an HK$ 80 million debt owed to CASC, and HK$ 14.9 million in cash from CASC. Moreover, the purchase price of the assets purchased was discounted by HK$ 21.6 million. In exchange, CASIL provided CASC a portfolio of loans whose *book* value, not market value, was HK$ 187.8 million. Because the profit of HK$ 28.9 million results, in part, from the discount of HK$ 21.6 million cited above, the latter amount is not being treated as a subsidy. However, because it is highly unlikely that the market value of the loan portfolio is equal to the book value, the HK$14.6 million cash paid by CASC to CASIL is being treated as a grant.[125]

CASIL acknowledges that certain of its subsidiaries "are entitled to exemption from income tax under tax holidays and concessions." Although its annual report does not spell out the value of these rates, other information suggests that the companies saved HK$ 14.4 million.[126]

CASIL also borrows at preferential interest rates. Its annual report indicates that it currently has a 4-year mortgage loan secured by bank deposits. The secured loans have interest rates of 1.25 percent, while the firm earned interest on its deposits ranging from 3.6 percent to 4.5 percent. Another liability, a loan from a non-wholly owned subsidiary, has an interest rate of zero. CASIL appears to have no other outstanding bank loans

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[123] CASIL 2007 AR at 5.
[124] CASIL 2006 AR at 70-71.
[125] This is justified because China's non-performing loan ratio by year end 2006 was 7.1 percent. See "CHINA'S BANKS REDUCE NPL RATIO FALLS TO 7.09" *AsiaInfo Services* (2007). HighBeam Research. 9 Jan. 2009 <http://www.highbeam.com>.
[126] CASIL 2007 AR at 62-63.

subject to market interest rates. However, in 2006, it had loans bearing a rate of 7.22 percent. Applying the average subsidy rate of 0.78% of sales to CASIL implies a subsidy of HK$13.1 million.

In 2005, CASIL was experiencing financial difficulties due in part to the market's shift away from cathode ray tube television screens.[127] As part of its restructuring, the Bank of China in Hong Kong waived CASIL's debt of HK$ 176 million in 2005.[128] The value of this subsidy was estimated using the average Chinese long-term interest rate in 2005, assuming payoff over 5 years. The forgiveness of CASIL's debt thus provided an estimated benefit of HK$ 28.7 million in 2007.

Table 10. Valuation of subsidies to CASIL, 2007

Item	HK$ Mil.	Source	Page
Government Grant	14.6	2006 AR	70-71
Provision assets for less than adequate remuneration	28.8	2007 AR	5
Preferential lending	13.1		10, 74, 84
Debt foregiveness	28.7	2005 AR	4
Concessionary tax rates	14.4	2007 AR	62-63
Total subsidies	99.7		
Net income	310.4		
Revenues	1,681.9		
Subsidy in UDS Mil.	12.8		
Subsidy rate	5.9%		

Power Generation and Distribution

Huaneng Power International, Inc. ("HPI")

One of the China's largest listed power producers, HPI is engaged in developing, constructing, operating and managing large-scale power plants throughout China. As of March 2008, the company wholly-owned 16 operating power plants, had controlling

[127] CASIL 2005 AR at 3.
[128] CASIL 2007 AR at 4.

interests in 13 operating power plants, and had minority interests in 5 operating power companies located in 12 provinces and two municipalities in China.[129]

HPI's ownership structure is even more complicated than those of the other listed firms covered in this report. Huaneng International Power Development Corporation ("HIPDC") directly owns 42.3 percent of HPI. The Huaneng Group, which is 100 percent owned by the central government SASAC, directly owns 8.75 percent of HPI. Public shareholders own the remaining 49.22 percent of HPI shares.[130] However, HIPDC is itself largely government-owned. The SASAC-owned Huafeng Group owns 51.98 percent of HIPDC directly and 5 percent indirectly, and the other owners have direct or indirect ties to the central or provincial governments.[131] As a result, the SASAC-owned Huaneng Group is considered HPI's ultimate parent company.[132] The public shares of HPI are listed in the stock exchanges of New York, Hong Kong, and Shanghai.[133]

Although the government appears to be moving toward a power market with greater levels of competition, it currently still regulates electricity tariffs.[134] According to HPI, "the government is responsible to regulate and supervise power tariffs in light of the principles of efficiency, incentives, and investment encouragement and <u>taking into consideration of (*sic*) affordability</u>."[135] (Emphasis added.) With coal prices currently high, HPI and other utilities in China have seen dramatic increases in their input prices

[129] Huaneng Power International, Inc. Annual Report for 2007 (hereafter, "HPI 2007 AR") at 2.
[130] Huaneng Power International, Inc. Annual Report on Form 20-F for 2007 (herafter, HPI 2007 form 20-F) at 16.
[131] *Id.*
[132] HPI 2007 AR at 251.
[133] *Id.* at 86.
[134] HPI 2007 form 20-F at 2 and 11.
[135] *Id.* at 11. See also, "We believe Huaneng's coal troubles will abate during the next two years," *Morningstar®* (hereafter, "Coal troubles") (August 14, 2008) at 1.

while the government has been slow to increase electricity prices. As a result, the firm's profitability declined in 2007 and is expected to plummet in 2008.[136]

Total estimated subsidies to HPI: RMB 1,953.6 million ($256.9 million)

HPI is a foreign invested firm as nearly half of its shares are foreign-owned. Such foreign investment makes HPI eligible for significant tax-related benefits. HPI's annual report for 2007 also indicates that the firm has received grants to pay for certain investments, tax credits for purchasing Chinese-made products instead of imports, and preferential interest rates.

Since January 1999, Sino-foreign enterprises investing in energy and transportation infrastructure businesses have been subject to a reduced income tax rate of 15 percent, half the normal rate. HPI states that it has applied this rule to all of its fully owned operating power plants. The value of this subsidy is equal to the statutory tax rate of 30 percent minus the weighted average statutory rate, which HPI estimates to be about 18 percent. Based on these figures, the benefit of this program is RMB 876 million.[137] Also, certain HPI power plants owned by the firm are exempted from income tax for two years starting from the first profit-making year (after offsetting all tax losses carried forward from the previous years), followed by a 50 percent reduction of the applicable tax rate for the next three years. HPI estimates that these tax benefits amounted to a tax savings of RMB 282 million.[138] The firm's status as a foreign invested enterprise also

[136] "Coal Troubles" at 2.
[137] HPI 2007 AR 163.
[138] *Id.* 183.

entitles it to exemptions from certain sales tax surcharges. The benefit from this program was at least RMB 8 million.[139]

HPI has also reduced its tax burden through its purchases of domestically-manufactured equipment. The income tax credit is 40 percent of the amount spent on the domestically-manufactured equipment. HPI made purchased equipment in 2006 and has deferred income tax assets of RMB 126 million that it can use to reduce taxes in future years. HPI used this program in 2007 to reduce its taxes by RMB 167 million.[140]

In addition to favorable tax rates, HPI received government grants to pay for the construction of desulphurization equipment. HPI and its subsidiaries list government grant "liabilities" of RMB423 million; an additional RMB14.57 million in government grants was credited to HPI's 2007 income statement.[141]

HPI's annual report also identifies loans at interest rates as low as 2 percent, indicating the presence of preferential lending.[142] Applying the average subsidy rate applied to Chinese firms in the Department's investigations yields a subsidy amount of RMB 183 million.

In addition to these subsidies whose value are readily apparent are other subsidies whose value is less transparent. According to HPI's form SEC form 20-F, the Chinese government participates in annual price setting meetings between coal users and coal buyers, and retains the ability to regulate coal prices if needed. It is unclear how large a

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[139] *Id.* at 20. The full value of this benefit is unknown, but likely much larger. The RMB 8 million estimate represents only the decrease in the cost of such taxes in 2007 compared to 2006.
[140] *Id.* at 230 and 238.
[141] *Id.* at 155.
[142] *Id.* at 27, 227-228.

benefit this program confers, but whatever that value is, it is likely eroded by government efforts to limit energy prices in China.[143]

Table 11. Valuation of subsidies to HPI, 2007

Item	RMB Mil.	Source	Page
Government grants (available)	423.0		155
Government grants (current costs)	14.6		
Exemption from certain tax surcharges by FIEs	8.0		20
Preferential interest rates	183.2	2007 AR	27, 227-228
Concessionary tax rates (tax holiday)	282.0		111, 163
Reduced statutory rate	876.1		
Income tax credit due to purchase of domestically manufactured equipment	166.7		238
Total subsidies	1,953.6		
Net income	5,614.3		
Revenues	23,433.6		
Subsidy in UDS Mil.	256.9		
Subsidy rate	8.3%		

Oil and Petrochemicals

PetroChina Co. Ltd. ("PetroChina")

Created in 1999 during a restructuring of the state-owned China National Petroleum Company ("CNPC"), PetroChina is a vertically integrated conglomerate that engages in a broad range of petroleum and gas related activities.[144] The PetroChina group of companies is one of the largest Chinese firms and one of the world's largest oil companies.[145] Indeed, the firm was briefly the world's largest in terms of market value when it's "A" shares tripled in value on their first day of trading.

[143] HPI 20-F 2007 at 14-15

[144] PetroChina Co. Ltd. Annual Report for 2007 (hereafter, "PetroChina 2007 AR") at 2. These activities include the exploration, development, production and sales of crude oil and natural gas; the refining, transportation, storage and marketing of crude oil and petroleum products; the production and sales of basic petrochemical products, derivative chemical products and other chemical products; and the transmission of natural gas, crude oil and refined products; and the sales of natural gas.

[145] *Id.* at 2.

PetroChina "H" shares have been listed on the Hong Kong Stock Exchange, while so-called "A" shares are listed on the Shanghai Stock Exchange. American Depository Shares are listed on the New York Stock Exchange. Despite these listings, PetroChina is largely state-owned, with CNPC owning 86.29 percent of the company as of yearend 2007.[146] A significant number of shares are owned by Chinese insurance companies and are subject to selling restrictions.[147]

Like other Chinese petroleum conglomerates, PetroChina has been expanding its control over energy resources by expanding aggressively beyond China's borders. According to its Interim Report for 2008, the firm's strategic objective is to become "an international petroleum company with significant oil assets both onshore and offshore as well as in both the PRC and international markets."[148] To date, these activities are largely aimed at supplying energy to China, not foreign markets. For example, 96.7 percent of PetroChina's revenues from external customers resulted from sales within China. In contrast, PetroChina's overseas assets are expanding at a faster rate (39 percent) than domestically-owned assets (20.8 percent) as the firm moves to secure raw materials for China.[149] CNPC Exploration & Development, jointly owned by PetroChina and its parent, CNPC, has expanded in recent years and now operates 71 oil and gas projects in 26 countries across Africa, Central Asia, Russia, the Middle East, South America, and the Asia-Pacific region.[150]

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[146] *Id.* at 13.
[147] *Id.* at 12.
[148] PetroChina Co. Ltd. Interim Report for 2008 (hereafter, "PetroChem 2008 IR") at 21.
[149] PetroChina 2007 AR at 38.
[150] Yang Yue, "PetroChina Agrees to Deal for Overseas Oil," *Cajing.com*. PetroChina is in the process of buying the remaining shares of CNPC E&D it does not already own. See also, "ADR Flash: PTR" 1H08 Results a Heavy Burden to Carry," *Citigroup Investment Research* (August 28, 2008).

Total estimated subsidies to PetroChina: RMB 37,476.7 million ($4,927.4 million)

PetroChina benefits from a host of tax preferences that are contingent on location. The firm also receives government grants to support investments in plant and equipment, loan guarantees from its state-owned parent at no cost, and preferential loans, including loans with no interest rate. PetroChina has also received certain assets at below-market prices.

According to PetroChina's annual report for 2007, the firm benefits from at least four programs that reduce taxes owed:[151]

- Tax Policies Related to the Great Development of the Western China;
- Tax Preferential Policies for Reviving the Northeast Old Industry Base of China;
- Basis of Asset Depreciation and Amortization in the Northeast Old Industry Base of China;
- Expanding the Deduction Scope of VAT in the Northeast Area of China.

The value of these programs to PetroChina is spelled out in its annual report. Income tax savings resulting from preferential rates amount to RMB 16,930 million.[152] The VAT deduction program, which allows for the deduction of VAT included in the purchased fixed assets, goods or taxable services certain investment-related expenditures, resulted in a benefit of RMB 12,133 million.[153]

Government grants appear as liabilities on the PetroChina's balance sheet and income statement. Seven hundred seventy-four million renminbi represents grants

[151] PetroChina 2007 AR at 121 and 196.
[152] *Id.* at 196.
[153] *Id.* at 139.

payable,[154] which likely represents amounts received or due from the government that will be amortized over time. In addition, a grant of RMB 1,110 million is included as other income.[155] The purpose of this grant is not explained, but the government of China is known to provide subsidies to offset the cost of government price controls on gasoline retailers.[156]

PetroChina has significant financial activities with its state-owned parent, CNPC, and other related companies. According to PetroChina, it benefits from no-cost loan guarantees from CNPC on RMB 498 million in loans.[157] A guarantee rate of 0.5 percent, the base rate used by the U.S. government's Overseas Private Investment Corporation, implies a benefit of RMB 2 million. PetroChina borrows substantial sums from related companies and state-owned banks at rates that are frequently below the prime rate set by China's central bank.[158] These low rates are available to PetroChina even though its bank borrowings are unsecured by any of its assets. The firm's annual report for 2007 also indicates that PetroChina receives interest free loans.[159] Based on the average of subsidy rates for preferential lending in U.S. subsidy cases involving China, the estimated value of PetroChina's below-market loans is RMB 6,527 million.

Three other subsidies received by PetroChina have not been valued because data are not available. First, PetroChina reports that in 2007 CNPC assigned all of its rights and obligations under seven production sharing contracts to PetroChina at nil

[154] *Id.* at 97.
[155] *Id.* at 152.
[156] Joe McDonald, "PetroChina 1Q profit falls 31.5 percent on heavy refining losses due to price controls," *AP Worldstream* (April 28, 2008).
[157] PetroChina 2007 AR at 49.
[158] *Id.* at 45 and 213-216.
[159] *Id.* at 216

consideration (i.e., for free).[160] Second, CNPC has granted PetroChina the exclusive right to use certain trademarks, patents, know-how, and computer software of CNPC at no cost.[161] These transfers amount to provisions of assets at less than adequate remuneration. While the Department of Commerce has countervailed the provision of land for less than adequate remuneration, it has not yet, as of the time of this writing, countervailed the provision of other assets at below-market rates. Third, many purchases made by PetroChina from its parent company are subject to a so-called Comprehensive Agreement. This agreement details specific pricing principles for certain products and services, providing an avenue for the government to provide a variety of goods and services at below market rates.[162]

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[160] *Id.* at 48.
[161] *Id.* These intellectual property rights relate to the assets and businesses of CNPC transferred to the PetroChina as part of the 1999 restructuring that gave rise to PetroChina.
[162] *Id.* At 46.

Table 12. Valuation of subsidies to PetroChina, 2007

Item	RMB Mil.	Source	Page
Government grants (liability)	774.0	2007 AR	97
Government grants (current)	1,110.0		152
Preferential lending rates	6,527.2		213-216
Preferential rates for investing in western China			121, 196
Accelerated depreciation & amortization for investments in Northeast China			
Preferential rates for East-West Pipeline Project	16,930.0		
Deduction of input VAT on purchases of fixed assets	12,133.0		139
Loan guarantee at no cost	2.5		49
Provision of assets at less than adequate remuneration	Unknown		48
Provision of IP assets at no cost	Unknown		48
Total subsidies	37,476.7		
Net income	5,614.3		
Revenues	835,037.0		
Subsidy in UDS Mil.	4,927.4		
Subsidy rate	4.5%		

China BlueChemical Ltd. ("BlueChem")

Headquartered in Hainan Province, BlueChem develops, produces and sells mineral fertilizers and chemical products.[163] It is China's main producer of methanol and urea and is entering the so-called coal chemical industry, which produces chemicals using coal as a feedstock instead of more expensive natural gas.[164] The firm controls nine subsidiaries in businesses ranging from the production and sale of plastic bags to transportation services to port operation.[165]

[163] China BlueChem Ltd. Annual Report for 2007 (hereafter, "BlueChem 2007 AR").
[164] *Id.* at 5.
[165] *Id.* at 84.

BlueChem was established in China as CNOOC Chemical Limited in July 2000, and changed its name in April 2006.[166] It listed in the Hong Kong Exchange in September 2006. BlueChem's parent company is the China National Offshore Oil Corporation ("CNOOC"), China's third largest energy company. As of yearend 2007, 38 percent of its shares were privately held and 59 percent were held by CNOOC. The remainder of the firm's shares is held by three other Chinese state-owned entities and by Transammonia, the world's largest private fertilizer and fertilizer raw materials merchandising and trading company. [167] Transammonia is a significant importer of fertilizers and other products to the U.S. market.

Currently, BlueChem is focused on serving the Chinese market. In 2007, only five percent of its sales were exports.[168] However, this may be changing, as the firm's exports tripled from year earlier levels and it is currently in the throes of a major capacity expansion.[169]

Total estimated subsidies to BlueChem: RMB 1,707.4 million ($224.6 million)

According to BlueChem, "strong support towards agriculture and overall concessionary schemes offered by the PRC government to mineral fertilizers sector promoted the development of the PRC mineral fertilizers sector."[170] Specifically, "the mineral fertilisers enterprises continue to enjoy government-sanctioned concessionary schemes, such as VAT exemptions for urea producers, rate freeze for natural gas consumption for urea production purposes and concessionary rates offered in the areas of

[166] *Id.* at 46.
[167] *Id.* at 95. In addition, approximately 160 million BlueChem shares have been transferred from CNOOC to China's National Council of the Social Security Fund.
[168] *Id.* at 66.
[169] *Id.* at 5 and 66.
[170] *Id.* at 6.

electricity supply and transportation."[171] BlueChem also benefits from a variety concessionary tax rates for foreign and domestic investors, government grants, preferential lending, debt forgiveness, and the provision of assets for less than adequate remuneration.

The tax programs that benefit BlueChem provide preferential tax rates to:

- Entities registered in Hainan province or Pudong New Area, Shanghai;
- Foreign invested firms, firms with new investments in Hainan Province, and firms that convert to production based on natural gas as opposed to oil (two full, three half program);
- High technology enterprises;
- Firms engaged in infrastructure development and operation.

These programs reduced BlueChem's 2007 tax bill by RMB 414 million in 2007.[172] BlueChem is a producer of urea, and also benefits from exemption of VAT for urea producers. The government's rebate of VAT payments already made is often accomplished well after the actual transactions take place. Although there were no such rebates in 2007, the rebate in 2006, which covered 2004 and the first half of 2005, amounted to RMB 89 million.[173]

Government grants to BlueChem appear as long-term liabilities. RMB 35.5 million were received by subsidiary Hainan Basuo from the Ministry of Communications for future renovation of the subsidiary's port facilities. In all, BlueChem received RMB 44 million in government grants.[174]

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[171] *Id.* at 13.
[172] *Id.* at 75.
[173] *Id.* at 11.
[174] *Id.* at 102.

By its own admission, BlueChem has purchased natural gas at prices below world levels. The value of this benefit is unknown, though it is likely very large because the natural gas used as a feedstock in the production of fertilizers represents a major proportion of total fertilizer costs. To offset this massive benefit, which creates a huge wedge between Chinese and world fertilizer prices, and to prevent too much subsidized fertilizer from leaving the China, the Chinese government applies a hefty export tax to fertilizers.[175] The combination of subsidies on natural gas purchases and export restrictions ensures that Chinese agriculture enjoys a substantial competitive benefit.

BlueChem also received substantial benefits related to its purchase of the chemical producer Tianye. In 2006, BlueChem purchased 90 percent of Tianye, but one of the sellers, the SASAC of the government of the Inner Mongolia Autonomous Region, transferred its equity at no cost.[176] This benefit amounted to approximately RMB 108 million. Tianye had an outstanding liability on a loan owed to the Export-Import Bank of China. As part of BlueChem's acquisition of Tianye, the amount due to the Export-Import Bank was assumed by the Finance Bureau of the Inner Mongolia Autonomous Region, which subsequently reduced the amount owed by RMB 1,019 million.[177]

BlueChem also benefits from preferential loans, though the benefit is provided in a roundabout fashion. In particular, it appears that BlueChem not only receives below market interest rates, but also did not submit certain interest payments due.[178] Applying

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[175] Shiliang, Feng, "Economic functioning of the petroleum/chemical sector in August" *China Chemical Reporter*, China National Chemical Information Center (2008). Retrieved December 17, 2008 from HighBeam Research: http://www.highbeam.com/doc/1G1-187766028.html.

[176] BlueChem 2007 AR at 106.

[177] *Id.* at 107

[178] See, for instance, BlueChem 2007 AR at 44 67 and 100, indicating that some interest payments were not paid to banks, but were instead held by BlueChem as "pledged deposits."

the average subsidy rate on preferential lending applied by the Department of Commerce yields a subsidy estimate of RMB 34 million.

Table 13. Valuation of subsidies to BlueChem, 2007

<table>
<tr><th>Item</th><th>RMB Mil.</th><th>Source</th><th>Page</th></tr>
<tr><td>Government grants (available)</td><td>44.0</td><td rowspan="12">2007 AR</td><td>102</td></tr>
<tr><td>Preferential lending rates</td><td>33.9</td><td>102</td></tr>
<tr><td>Debt foregiveness (Tianye)</td><td>1,019.3</td><td>107</td></tr>
<tr><td>Preferential rates for entities registered in Hainan Province or Pudong New Area, Shanghai</td><td rowspan="6">413.8</td><td rowspan="6">75</td></tr>
<tr><td>Two-Full, Three-Half for investments in Hainan Province</td></tr>
<tr><td>Two-Full, Three-Half for FIEs</td></tr>
<tr><td>Two-Full, Three-Half for conversion to natural gas-based production</td></tr>
<tr><td>Preferential rates for high technology enterprises</td></tr>
<tr><td>Preferential rates for infrastructure development and operation</td></tr>
<tr><td>VAT rebate (on Urea?)</td><td>89.3</td><td>66</td></tr>
<tr><td>Provision of natural gas at less than remuneration</td><td>Unknown</td><td>13</td></tr>
<tr><td>Provision of assets for less than adequate remuneration (Tianye)</td><td>108.2</td><td>106</td></tr>
<tr><td>Total subsidies</td><td>1,708.4</td><td></td><td></td></tr>
<tr><td>Net income</td><td>1,546.5</td><td></td><td></td></tr>
<tr><td>Revenues</td><td>4,340.4</td><td></td><td></td></tr>
<tr><td>Subsidy in UDS Mil.</td><td>224.6</td><td></td><td></td></tr>
<tr><td>Subsidy rate</td><td>39.4%</td><td></td><td></td></tr>
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Telecommunications

China Telecom Corporation Limited ("CTC")

CTC is the largest wire line telecommunications and broadband services provider in China and the world. As of yearend 2007, it had 220 million fixed line subscribers and 35 million broadband subscribers.[179]

[179] China Telecom Corporation Limited Annual Report for 2007 (hereafter, "CTC 2007 AR") at 4.

CTC is listed on the stock exchanges of Hong Kong and New York.[180] While CTC's shares are traded in two non-Chinese markets, the firm is primarily-owned by Chinese government-owned shareholders. As of December 2007, 82.85 percent of its shares are domestic shares while the remaining shares are either "H" shares traded in Hong Kong or ADS shares traded in New York.[181] The state-owned China Telecommunications Corporation ("China Telecom") owns 70.89 percent of CTC's shares, while other state-owned entities, such as Fujian State-owned Assets Investment Holdings Co., Ltd. and Guangdong Rising Assets Management Co., Ltd., own approximately 12 percent of CTC.[182]

According to its 2007 annual report, CTC was established in September 2002 as part of a major restructuring of China's domestic telecommunications industry, with service areas including Shanghai and the provinces of Guangdong, Jiangsu and Zhejiang. Two months later, the firm listed in New York and Hong Kong with an initial public offering worth $1.3 billion.[183] Over the next two years, CTC expanded its reach across China by acquiring 6 provincial telecoms in 2003 and another 10 in 2004, all from the government-owned China Telecom.[184] The second purchase was partially funded by the proceeds of a second share issuance.[185] In 2007, CTC purchased China Telecom (HK), China Telecom (Americas) and China Telecom System Integration from its government-owned parent for $1.4 billion.[186] China Telecom (HK) and China Telecom (Americas) provide leased line and related services including voice wholesale, international private

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[180] *Id.* at 4.
[181] *Id.*
[182] CTC 2007 AR at 198; and China Telecom Corporation Limited SEC Form 20-F for 2003 at 18.
[183] CTC 2007 AR at 5.
[184] *Id.* The total purchase price for the two sets of telecom firms was RMB 73.8 billion ($8.9 billion at then prevailing exchange rates).
[185] *Id.* at 123.
[186] *Id.* at 124.

network, cross-border transit connection and Internet data centers for multinational corporate customers in Asia-Pacific and North and South America, respectively.[187]

Total estimated subsidies to CTC: RMB 5,293 million ($696 million)

CTC's annual report includes information about preferential tax rates, tax credits for purchases of domestic equipment, and the provision of assets at less than adequate remuneration.

According to CTS's annual report, the firm receives preferential tax rates for investing in western China and in so-called special economic zones.[188] These preferences were valued at RMB 1,678 million in 2007.[189] Tax credits on the purchases of domestic equipment amounted to RMB 1,319 million in 2007, though CTC notes that these benefits will no longer be available from 2008 onwards.[190] The largest benefit acknowledged in CTC's annual report arose from the so-called *third acquisition agreement*, which included assets in Hong Kong and the United States. CTC paid RMB 1,480 million to acquire three firms with a net worth of RMB 3,776 million.[191] Accordingly, the subsidy is estimated as the difference between the amount paid and the net worth of the companies purchased in the acquisition.

[187] *Id.* at 11 and 124.
[188] *Id.* at 35.
[189] *Id.* at 166.
[190] Id.
[191] *Id.* at 124-5.

Table 14. Valuation of subsidies to CTC, 2007

Item	RMB Mil.	Source	Page
Preferential rates for investing in SEZs and western China	1,678.0	AR 2007	166
Tax credits for the purchases of domestic equipment	1,319.0		35
Provision of assets for less than adequate remuneration (3rd acquisition agreement)	2,296.0		124-5
Total subsidies	5,293.0		
Net income	1,546.5		
Revenues	37,011.0		
Subsidy in UDS Mil.	695.9		
Subsidy rate	14.3%		

Coal

China Shenhua Energy Co. Ltd. ("Shenhua")

Shenhua was established in China during November 2004 as part of a restructuring.[192] It is one of China's major coal producers, but it also operates railway, port and power businesses.[193] Shenhua has 15 main subsidiaries and joint ventures, most of which are in the business of electricity generation and sales.[194]

At the time of Shenhua's formation, the government anticipated that the firm would list shares in domestic and overseas markets. As such, Shenhua is listed on the stock exchanges of Hong Kong and Shanghai. The shares traded on Hong Kong represent 17.09 percent of the company's total shares, while those traded in Shanghai represent 9.05 of total shares. The remaining portion of the shares (73.86 percent), are held by the Shenhua Group Corporation Limited, an enterprise wholly-owned by the central government SASAC.[195]

[192] Shenhua Energy Co. Ltd. Annual Report for 2007 (hereafter, "Shenhua 2007 AR") at 159.
[193] *Id.* at 8.
[194] *Id.* at 89.
[195] *Id.* at 8 and 26.

Shenhua is domestically oriented. According to its annual report for 2007, 88.3 percent of Shenhua's sales satisfied domestic demand, while the remainder went toward export markets.[196] Although this breakdown partly reflects more rapid growth in China relative to other markets, it is also a reflection of a government policy to reduce coal exports and increase imports, presumably to ensure sufficient coal to supply China's energy needs.[197] It appears that Shenhua is preparing to expand its activities to international markets. According to its 2007 annual report, Shenhua "will, by international merger, acquisition and joint equity venture, obtain reserves of scarce resources and develop its international business with the objective of consolidating and raising the Company's leading position in the international coal industry."[198]

Total estimated subsidies to Shenhua: RMB 4,873 million ($641 million)

Shenhua benefits from capital grants, VAT refunds, preferential lending rates, preferential income tax rates, and tax credits for purchases of domestic equipment.

Its annual report for 2007 lists RMB 43 million in subsidy income.[199] According to press reports, the firm is slated to receive RMB 15 million in subsidies to establish a coal direct liquefaction lab to research key technologies and provide technical support for the commercialization of coal direct liquefaction technology in China.[200] Shenhua also received VAT refunds in 2007 from the Shanghai Lu Wan government and central governments for heat supply projects and resource utilization.[201] The VAT refund for 2007 totaled RMB 58 million. Shenhua also receives capital grants from the government

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[196] *Id.* at 306.
[197] *Id.* at 113.
[198] *Id.* at 15.
[199] *Id.* at 17.
[200] "Shenhua establishes coal direct liquefaction lab," *China Chemical Reporter*. China National Chemical Information Center (2008). HighBeam Research. 24 Dec. 2008 <http://www.highbeam.com>.
[201] Shenhua 2007 AR at 219.

that are expensed over time. These grants are listed in Shenhua's financial reports as investment funds received in advance and are valued at RMB 430 million.

Many of Shenhua's subsidiaries benefit from reduced tax rates. These reductions are conferred on subsidiaries located in western China and on subsidiaries that are considered foreign invested enterprises.[202] According to Shenhua's annual report for 2007, the total tax savings due to these programs was RMB 3,467 million in 2007. Shenhua also benefitted from the program to provide tax credits for purchases of domestic equipment. This benefit amounted to RMB 169 million in 2006.[203]

Shenhua is an extremely profitable venture, with profits of RMB 23,148 on revenues of RMB 82,107 (28 percent).

Table 15. Valuation of subsidies to Shenhua, 2007

Item	RMB Mil.	Source	Page
Government grant	43.0	AR 2007	17
Government grant (deferred income)	430.0		280
VAT refund	51.0		219
Grant to establish coal direct liquefaction lab	15.0		art
Preferential lending rates	*640.4*		*291*
Preferential tax rates for investing in Western China/foreign invested enterprises	3,467.0		274
Tax credits for the purchases of domestic equipment	*169.0*		*274*
Total subsidies	4,815.4		
Net income	23,148.0		
Revenues	82,107.0		
Subsidy in UDS Mil.	633.1		
Subsidy rate	5.9%		

[202] *Id.* at 180-181.
[203] *Id.* at 274.

Civil Aviation

Air China Limited (Air China)

Air China is China's only national flag carrier. Its hubs are located in Shanghai, China's financial capital, and Chengdu, the capital city of Sichuan province in central China.[204] It is also the dominant carrier at Beijing Capital International Airport.[205] Air China holds interests in Air Macau Company Limited (51%), Air China Cargo Co., Ltd. (51%), Shandong Airlines Company Limited (22.8%), Shenzhen Airlines Company Limited (25%) and Cathay Pacific Airways Limited (17.5%).[206] In December 2007, the firm became a member of the so-called Star Alliance, which includes many of the world's largest airlines.

Air China is listed on the Shanghai Stock Exchange in China, and its foreign shares are listed in London and Hong Kong.[207] Its principal owner is the China National Aviation Holding Company, a state-owned enterprise which owns, directly and indirectly, approximately 80 percent of the available domestic shares (A shares—are these tradable?)[208] Cathay Pacific owns 49.05 percent of Air China's foreign shares (so-called "H shares"). Morgan Stanley, JP Morgan Chase, and Citigroup are other significant holders of Air China's foreign shares.[209]

The government of China has taken a strong interest in its carriers. China's Administration of Civil Aviation and local governments are subsidizing regional carriers

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[204] Air China Limited Annual Report for 2007 (hereafter, "AirChina 2007 AR").
[205] *Id.* at 7.
[206] *Id.*
[207] *Id.* at 2.
[208] *Id.* at 30.
[209] *Id.* at 30 – 31.

in order to bolster the availability of regional travel.[210] China's three largest airlines, Air China, China Eastern Airlines, and China Southern Airlines, are all state-owned and experiencing financial difficulties.[211] China Eastern has reportedly been late on payments and concluded large loans with the overseas branches of three Chinese state-owned banks.[212] Chinese aviation authorities are also considering industry consolidation in order to improve competitiveness against foreign carriers who are increasingly serving the Chinese market.[213]

Total estimated subsidies to Air China: RMB 2,473 million ($325 million)

Air China's subsidies appearing in its annual report come in the form of government grants and preferential tax rates.

The Chinese government funded the purchase of an aircraft in 2000 and injected additional aircraft in 2004.[214] These transactions are reflected as a deferred income balance of RMB 1,463 Million on Air China's balance sheet. Of this total, RMB 77 million was released as income in 2007. Other subsidies treated as income amount to RMB 131 million. The annual report does not specify the purpose of these funds. Additional government grants are provided annually through Air China's ultimate holding company, the state-owned China National Aviation Holding Company ("CNAHC"). The holding company is obligated to provide two payments of RMB 50

[210] "CAAC to Subsidize Regional Aviation," *AsiaInfo Services* (December 13, 2006).
[211] Elaine Kurtenbach, "China airlines' earnings hit by surging fuel costs," *Associated Press* (August 27, 2008); and "Chinese airlines deny rumors of cash injection," *Xinhua News Agency* (January 17, 2007).
[212] "China Eastern Air in Deal for US$337M Lonas-Source," *Dow Jones* (April 23, 2008).
[213] Donald Greenlees, "Bid for China Eastern Airlines Stake Rebuffed," *The New York Times* (January 9, 2008).
[214] AirChina 2007 AR at 116.

million each year. Air China's balance sheet also indicates an additional amount of RMB 190 million from CNAHC as falling due during 2007.[215]

Air China states that its enterprise tax rates in China range from 12 percent to the standard rate of 33 percent. Its cargo affiliate is a recipient of the two full, three half program and a local tax exemption.[216] While Air China does not specify the full impact of these tax preferences, the difference between its current income tax and the amount that would be owed at the statutory rate implies a benefit of approximately RMB 589 million in 2007.

As this report is written, the government of China is also considering an RMB 3 billion bailout for the China Eastern Air Group, which is 12 percent owned by Air China.[217]

Table 16. Valuation of subsidies to Air China, 2007

Item	RMB Mil.	Source	Page
Government grants related to aircraft acquisition	1,462.7	AR 2007	85, 116
-Less amount amortized	-436.8		
Government grants (not specified)	131.1		85
Annual payment of outstanding government grant through SOE	100.0		53, 103
Preferential income tax rates	589.2		92
Total subsidies	1,846.2		
Net income	4,121.5		
Revenues	51,330.5		
Subsidy in UDS Mil.	242.7		
Subsidy rate	3.6%		

[215] *Id.* at 53. It appears that CNAHC paid RMB 54.8 million to Air China in 2007, but the remaining amount was simply shifted from a long-term receivable to a short-term one.
[216] *Id.* at 91.
[217] "AIR CHINA SUFFERS LOSSES FROM HOLDING IN EASTERN AIRLINES," *AsiaInfo Services* (2008). HighBeam Research. 26 Dec. 2008 <http://www.highbeam.com>.

Shipping

China COSCO Holdings Company Limited ("China COSCO")

Established in March 2005 from a wholly state-owned enterprise, China COSCO provides a wide range of container shipping, dry bulk shipping, logistics, terminals and container leasing covering the whole shipping value chain for both international and domestic customers.[218] Its dry bulk cargo fleet is the world's largest and its container manufacturing arm has 50 percent of the world market; its container leasing business is the world's second largest.[219]

China COSCO's shares have been listed domestically on the Shanghai Stock Exchange since June 2007 and are also listed in Hong Kong.[220] The controlling shareholder is the state-owned China Ocean Shipping (Group) Company, which held 53.57 percent of China COSCO's shares as of December 2007.[221] Other tranches of shares are also owned directly by state-owned entities or their subsidiaries, including Sinochem, COFCO Limited, and China National Machinery Industry Corporation.[222] In all, approximately 63 percent of China COSCO shares are state-owned and/or subject to trading restrictions.

China COSCO holds 100 percent ownership of 200 subsidiaries spread across the world and along the spectrum of the logistics value chain.[223] Only one of these subsidiaries, COSCO Container Lines Americas, Inc., is operates in the United States.[224] China COSCO also has nearly three dozen joint ventures, including COSCO Bulk Carrier

[218] China COSCO Holdings Company Limited Annual Report for 2007 (hereafter, "China COSCO 2007 AR") at 2.
[219] *Id.*
[220] *Id.* at 6.
[221] *Id.* at 18.
[222] *Id.* at 20.
[223] *Id.* at 289-302.
[224] *Id.* at 293.

Americas Inc., with operations in Delaware. China COSCO experienced rapid growth in sales since 2003, when revenues were RMB 25.9 billion, to 2007, when revenues reached RMB 108.0 billion, reflecting China growing trade and economic growth.[225] China COSCO's business strategy is to develop long-term contracts with major cargo owners. Its 2007 annual report specifically mentions recent 20-year contracts with "Shougang" and "Baogang," two large steel producers that are also state-owned.[226]

Total estimated subsidies to COSCO: RMB 2,775 million ($365 million)

COSCO's receives subsidies through subsidy income, favorable tax rates, and through contributions from its government-owned parent company.

According to COSCO's annual report for 2007, RMB 47.6 million of other income is attributed to a government subsidy.[227] COSCO's reconciliation of income tax expenses indicates that approximately RMB 2,500 million is saved due to differential tax rates.[228] COSCO's cash flow statement indicates that its state-owned parent company made a contribution of RMB 208 million to COSCO in 2007.[229]

In addition, the state-owned COSCO Group purchased approximately RMB 1,610 million in stock from COSCO as part of a large transaction which greatly increased the latter's shipping capacity. In this transaction, the state-owned parent gave money and assets to COSCO, but received only shares equal to the value of the assets conferred. This share purchase will amount to a subsidy unless COSCO uses the money received to

[225] *Id.* at 308.
[226] *Id.* at 84. for discussion of state-ownership in China's steel sector, see Alan Price, et al., Money for Metal (July 2007) at 8-9; and *SBB Analytics China* (September 11, 2007) at 4.
[227] COSCO 2007 AR at 253.
[228] *Id.* at 258-9. The tax attributable to Hong Kong is minor and the tax rates faced in other markets differs little from China's statutory rate. Thus, the deduction provided by COSCO's annual report is a good proxy for the impact of preferential tax rates in China.
[229] *Id.* at 151.

pay its parent for an equivalent amount of assets. As of December 31, 2007, that payment had yet to occur.[230]

Table 17. Valuation of subsidies to COSCO, 2007

Item	RMB Mil.	Source	Page
Contributions from COSCO Goup	207.9		151
Subsidy income	47.6	AR 2007	97, 253
Preferential tax rates	2,490.2		258-259
Total subsidies	2,745.7		
Net income	21,205.7		
Revenues	107,998.9		
Subsidy in UDS Mil.	361.0		
Subsidy rate	2.5%		

Analysis of Heavyweight Subsidiaries

Machinery

Jingwei Textile Machinery Company Limited ("JTM")

The flagship company of China's textile machinery industry, JTM develops, manufactures, and sells textile machinery, components, and parts. Its major products include a full suite of cotton weaving machines. It supplies approximately half of China's domestic textile machinery market.[231]

JTM is incorporated in China (the "PRC") with shares listed on exchanges in Hong Kong and Shenzhen. It was listed in Hong Kong in 1996, one year after its establishment during the restructuring of the Jingwei Textile Machinery Factory.[232]

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[230] *Id.* at 19, 21, 108, 150, 233. COSCO tripled the size of its fleet through RMB 34.6 billion worth of transactions with its parent company. RMB 16 billion was paid for by issuing 864.3 million shares to the state-owned parent ("COSCO Group") and the remainder was paid for in cash raised from a private placement to other (largely state-owned) investors. The state-owned parent purchased 53.7 million of these shares for RMB 30 per share. COSCO's cash flow statement suggests there has been only RMB 12.8 billion paid to the parent, far less than the RMB 18.6 billion owed.

[231] *Jingwei Textile Machinery Company Limited* Annual Report for 2007 (hereafter, "JTM 2007 AR") at 33.

[232] *Id.* at 33 and 72.

Holders of these listed shares own 66.17 percent of the company.[233] The China Textile Machinery (Group) Company Limited ("CTMC") owns the remaining 33.83 percent of JTM's shares and exercises control over the company. However, CTMC is 87.57-percent owned by the China Hengtian Group Company, which is wholly-owned by the central government SASAC.[234] As such, the directors of JTM regard the government-owned Hengtian Group as the company's beneficial owner and ultimate holding company.[235] Thus, JTM appears to be controlled by the government even though two-thirds of its shares are privately held.

In addition to dominating the domestic market for textile machinery, JTM is also a major exporter with sales in more than 40 countries.[236] Exports accounted for 14 percent of JTM's sales in 2007.[237] Its export markets are primarily elsewhere in Asia, though African markets are also important.[238] Although JTM holds a dominant position in the domestic market, the firm is currently being upgraded as part of the government's efforts to revitalize the country's equipment manufacturing industry during the "11th Five-Year Plan" period.[239]

Total estimated subsidies to JTM: RMB 127 million ($17 million)

The machinery industry in China is currently favored by Chinese government policies. Thus, JTM receives favorable tax treatment and government grants from central and local governments.

[233] *Id.* at 170.
[234] *Id.* at 9.
[235] *Id.* at 9 and 170.
[236] *Id.* at 33.
[237] *Id.* at 37.
[238] *Id.*
[239] *Id.* at 43.

Instead of the 33 percent rate paid by typical Chinese companies, JTM pays a 15 percent rate, which provides a benefit of RMB 36 million.[240] JTM also reports RMB 5 million in tax exemptions for certain subsidiaries and an RMB 8 million tax credit for the purchase of PRC-produced plant and equipment and certain qualifying R&D expenditures.[241] The firm also received a VAT rebate of RMB 2 million in 2007, some of which was pursuant to policies favoring the software and integrated circuit industries.[242]

JTM'S annual report lists several government grants, including RMB 9 million from a special fund targeting SOEs in the textile industry, and another earnings related grant of RMB 1.8 million, both provided by China's Ministry of Finance; RMB 5 million for a construction project in Laoshan, provided by the Qingdao Laoshan government; RMB 4 million for reconstruction, provided by the Tianjin New Technology Industrial Park Management Committee; and an additional RMB 2 million provided by an unnamed government entity.[243] In 2006, JTM received a refund of RMB 10 million from the government on land purchased by one of its parts manufacturing subsidiaries.[244] The 2007 annual report also acknowledges that the firm lined up RMB 43 million in state support for two projects falling under programs announced by the National Development Reform Commission and the Ministry of Technology, though it is not clear if these funds have been disbursed.[245]

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[240] *Id.* at 189.
[241] *Id.* at 189.
[242] *Id.*
[243] *Id.* at 117.
[244] *Id.*
[245] *Id.* at 35.

Table 18. Valuation of subsidies to JTM, 2007

Item	RMB Mil.	Source	Page
Government grant -- local support funds	10.8	AR 2007	117
Government grant to SOEs to encourage technological development in textile industry	8.9		115
Government grant (earnings-related grant and textile industry special fund)	1.8		158
Government grant for equipment upgrade	43.0		35
Refund of land purchase money (2006)	10.3		170
Preferential tax rates	36.4		189
Additional tax exemptions	5.0		189
VAT rebate to encourage the development of software & IC industries	2.0		115
Tax credits for the purchases of domestic equipment and certain R&D expenses	8.3		189
Total subsidies	126.5		
Net income	175.6		
Revenues	5,432.7		
Subsidy in UDS Mil.	16.6		
Subsidy rate	2.3%		

Automobiles

Dongfeng Motor Group Co. Ltd. ("DMG")

DMG manufactures and sells commercial vehicles, passenger vehicles, auto engines and parts. It also produces vehicle manufacturing equipment and engages in other automotive-related businesses.[246] Its joint venture partners include Nissan Motor Co. (passenger vehicles and automobile finance); Peugeot Citroën (passenger vehicles, engines, and auto parts); and Honda Motor Co. (passenger vehicles, engines, and auto parts).[247]

[246] Dongfeng Motor Group Co. Ltd. Annual Report for 2007 (hereafter, "DMG 2007 AR") at 1.
[247] *Id.* at 4.

DMG was created as part of a debt restructuring in 2000 of the Second Automotive Works, now known as the Dongfeng Motor Corporation ("Dongfeng").[248] As of yearend 2007, Dongfeng owned 66.86 percent of DMG's shares and is considered to be DMG's ultimate holding company.[249] DMG issued "H" shares on the Hong Kong Stock Exchange in December 2005, and the holders of these shares own the remaining 33.14 percent of the company. Among the largest holders of "H" shares are JPMorgan Chase & Co. and Morgan Stanley.[250]

DMG has traditionally been geared toward serving the domestic market, but that is changing. More than 90 percent of its sales in 2007 were made to customers in China, and it owns no production facilities abroad.[251] In terms of market share, DMG is a major player in China, holding 10.8 of the domestic market.[252] It ranks first in medium trucks, second in SUVs and light trucks, and third in heavy trucks and passenger vehicles.[253] Press reports indicate vehicle export sales to markets in Africa, the Middle East, Southeast Asia, and South America, and that exports in 2008 are well above year earlier levels.[254] Other press reports indicate that DMG's parts subsidiaries are making sales to Europe.[255] Moreover, a senior official in China's Ministry of Industry and Information Technology has told reporters that DMG's state-owned parent has the capability and the intention to buy assets from GM and Chrysler.[256]

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[248] *Id.* at 1.
[249] *Id.* at 1, 31, and 33.
[250] *Id.* at 31.
[251] *Id.* at 87.
[252] *Id.* at 6.
[253] *Id.*
[254] "Dongfeng Automobile Finished 08 Export Goal," *AsianInfo Services* (October 9, 2008).
[255] George Gao, "Dongfeng Citroen exports 2.3 mln euro auto parts in Q1," *Global Auto Sources (gassgoo.com)* (May 9, 2008).
[256] George Gao, "SAIC, Dongfeng said to buy GM, Chrysler assets," *Global Auto Sources (gassgoo.com)* (November 18, 2008).

Total estimated subsidies to DMG: RMB 1,595 million ($210 million)

DMG receives tax breaks by virtue of its foreign ownership, government grants for business development, and preferential lending rates.

The firm's consolidated annual report for 2007 shows that it began the year with RMB 79 million with government grants leftover from 2006 and received an additional RMB 204 million, mostly for business development.[257] DMG notes that the grants received from the government were "for the purpose of supporting the development of automotive technologies and automobile projects as well as an increase in the sales of raw materials."[258]

DMG's tax benefits offer substantial tax savings. The firm estimates that its various tax concession and lower rates for specific provinces and locations saved it RMB 849 million.[259]

There are several indications that DMG also benefits from favorable lending arrangements. The notes to its financial statement contain examples of the interest rates faced by the firm. Certain loans were made at interest rates such as 0.72 percent, 1.0 percent, 2.0 percent, 2.25 percent, 4.86 percent, and LIBOR + 0.1, all of which are well below China's prime rate during 2006 and 2007.[260]

[257] DMG 2007 AR at 131.
[258] *Id.* at 16.
[259] *Id.* at 102.
[260] *Id.* at 127-8.

Table 19. Valuation of subsidies to DMG, 2007

Item	RMB Mil.	Source	Page
Government grant for business development	204.0	AR 2007	131
Government grant (deferred)	79.0		131
Preferential tax rates	849.0		102
Preferential lending	462.7		127-8
Total subsidies	1,390.7		
Net income	4,037.0		
Revenues	59,318.0		
Subsidy in UDS Mil.	182.8		
Subsidy rate	2.3%		

Information Technology

China Electronics Corporation Holdings Company Limited ("CEC")

CEC is a Chinese information technology firm producing mobile communications equipment, semiconductors, electronic components, and software, and providing related services.[261] Its principal subsidiary is Shenzhen Sang Fei Consumer Communications Company Limited ("Sang Fei"), a high-tech, foreign-invested enterprise established in Shenzhen, a Special Economic Zone in China.[262]

CEC is incorporated in the Cayman Islands, registered in Bermuda, and traded on the Hong Kong Stock Exchange, where it has been listed since 1997.[263] The ultimate holding company of CEC is the China Electronics Corporation ("China Electronics"), which is 100 percent owned by China's central SASAC. China Electronics owns 74.98 percent of CEC.[264] Until March 2007, Sang Fei, CEC's principal subsidiary, was 25 percent owned by Koninklijke Philips Electronics N.V ("Philips), which was also one of Sang Fei's largest customers. However, Philips exited the mobile handset industry in

[261] China Electronics Corporation Holdings Company Limited Annual Report for 2007 (hereafter, "CEC 2007 Annual Report") at 3.
[262] *Id.* at 56. CEC owns 65 percent of Sang Fei.
[263] *Id.* at 35.
[264] *Id.* at 25.

March and sold its equity interest in Sang Fei to another subsidiary of government-owned China Electronics.[265] Prior to Philips' exit, its purchases from, and raw materials sales to, Sang Fei were approved by the state-owned China Electronics.[266]

Most of CEC's exports are invoiced in U.S. dollars, suggesting that the company competes in the U.S. market.[267] According to the PIERS service, from September 2007 to August 2008, there were $12.7 million in U.S. machinery imports attributed to China Electronics, the vast majority consisting of consumer electronics, but it is unclear how much of this activity can be attributed to CEC.

Total estimated subsidies to CEC: HK$ 34.5 million ($4.4 million)

CEC was listed in Hong Kong through a back door listing, whereby the state-owned parent "sold" its handheld device subsidiary to an existing firm, Winsan Investment Group (WIG"), which was already listed on the Hong Kong Stock Exchange. However, WIG paid by issuing new shares to the SOE, which thereby came to own more than 80 percent of the listed firm and subsequently sold WIG's existing businesses.

CEC appears to have benefitted from only two types of subsidies: preferential income tax rates and preferential lending. Its preferences derive from its status as a foreign invested firm, is location in special economic zones, and its status as a high tech firm. These preferences saved approximately HK$ 9.8 million in 2007.[268] CEC's annual report for 2007 indicates that the firm's annual finance costs in 2007 amounted to approximately 2 percent of outstanding bank loans at a time when the prime rate in China exceeded 6 percent. CEC's 2007 annual report is very vague on loan interest rates, but its

[265] *Id.* at 4, 22, and 72.
[266] *Id.* at 22.
[267] *Id.* at 6.
[268] *Id.* at 67

official circular in 2004, which provided disclosure-related information for the back door listing, acknowledged that CEC benefitted from low and interest free government loans.[269] Based on the average of subsidy rates applied in investigations where preferential lending was found, the value of the subsidy is HK$ 24.8 mil.

Table 20. Valuation of subsidies to CEC, 2007

Item	HKD Mil.	Source	Page
Preferential tax rates (2006)	9.8	2007 AR	67
Preferential lending	24.7		28
Total subsidies	34.5		
Net income	12.5		
Revenues	3,167.7		
Subsidy in UDS Mil.	4.4		
Subsidy rate	1.1%		

IRICO Group Electronics Company Limited ("IGE")

Incorporated in September 2004, IGE and its subsidiaries produce electronic display devices and related parts and components. The firm is currently transitioning from the production of color picture tubes to flat panel display devices.[270] It recently entered the fields of thin film transistor liquid crystal display ("TFT-LCD") glass substrate, luminous materials, and metallic component manufacturing.[271]

IGE is owned by IRICO Group Corporation, which hold three-quarters of the Company's shares, and by holders of the firm's H shares, which are listed in Hong Kong.[272] The IRICO Group Corporation is a 100 percent state-owned enterprise.[273]

IGE's primary market is in China, and the firm's domestic market share for color picture tubes is 25 percent.[274] IGE is also the world's third largest manufacturer of color

[269] Winsan (China) Investment Group Company Limited, *POSSIBLE ACQUISITION OF 65% EQUITY INTEREST IN SHENZHEN SANG FEI CONSUMER COMMUNICATIONS COMPANY LIMITED FROM CHINA ELECTRONICS CORPORATION* (June 21, 2004) at II-21.
[270] *IRICO Group Electronics Company Limited* Annual Report for 2007 (hereafter, "IGE 2007 AR") at 2.
[271] *Id.* at 14.
[272] *Id.* at 150 and 163.
[273] *Id.* at 2.

picture tubes.[275] However, the move away from picture tube-based to flat screen televisions has adversely affected IGE's financial performance. For example, the firm's sales revenues declined by RMB 1.5 billion between 2004 and 2007.[276] In contrast, the global market for TFT-LCD glass substrates is expanding rapidly, leading to shortages in China, where many flat-screen televisions are made.[277] According to IGE, the decision to invest in TFT-LCD glass substrate production "was initially established and concocted by IRICO Group Corporation," IGE's government-owned parent, and IGE is purchasing the production facilities from IRICO.[278] When announced in January 2007, the construction of the first TFT-LCD facility was expected to cost RMB 700 million and yield RMB 120 million in annual profits.[279]

Total estimated subsidies to IGE: RMB 353 million ($46 million)

IGE is subsidized by government grants, preferential tax rates, and preferential lending rates. It also is purchasing equity in a project at a price well below the full project cost from its government-owned parent.

According to IGE's annual report for 2007, it received RMB 25 million in grants in 2007 and amortized RMB 3 million from previously received subsidies.[280] The purpose of these subsidies is not disclosed, though IGE notes that the central government is pursuing a favorable subsidy policy affecting one of its business lines.[281]

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[274] *Id.* at 100.
[275] *Id.* at 13.
[276] *Id.* at 161.
[277] *Id.* at 10 and 14. According to IGE, there was no production of glass substrate for TFT-LCD in China during 2007. IGE's substrate production line began production in March 2008.
[278] *Id.* at 14.
[279] "IRICO Builds Liquid Crystal Glass Substrate plant," *AsiaInfo Services* (January 22, 2007).
[280] IGE 2007 AR at 101.
[281] *Id.* at 12.

IGE has several subsidiaries and provides an extensive discussion of the income tax benefits they receive. Preferential rates arise due to the presence of subsidiaries producing favored products in western China, a certain subsidiary's status as high technology company, the location of a subsidiary in a special economic zone, and the presence of sufficient foreign capital in three subsidiaries.[282] As a result of these special programs, the firm reduced its tax burden by RMB 22 million in 2007.

A number of items in IGE's financial report speak to favorable lending arrangements. The financial expenses incurred by IGE on its bank loans suggest the firm obtains preferential loans.[283] The firm acknowledges certain borrowing at interest rates as low as 3.78 percent. Moreover, more than one-fourth of its loans are guaranteed by collateral put up by its state-owned parent.[284] IGE also transferred certain loans to its SOE parent and now treats those loans as interest-free non-trade payables to the parent.[285] Applying the average subsidy rate for preferential lending in U.S. anti-subsidy proceedings yields a subsidy value of RMB 26.2 million.

The most substantial benefit conferred upon IGE is the TFT-LCD glass substrate production facility established by IGE's government-owned parent. According to IGE, project costs totaled RMB 800 million, but IGE is purchasing 69.53 percent of the project for only RMB 280 million.[286] This translates into a benefit of RMB 277 million.[287]

[282] *Id.* at 106-107.
[283] *Id.* at 97-98, 105. For example, the interest expense on short-term bank borrowing in 2007 and short-term loan balances in 2006 and 2007 imply an interest rate of 5 percent, comfortably below the prime rate in China.
[284] *Id.* at 136 and 156.
[285] *Id.* at 155.
[286] *Id.* at 14; Serena Li and Kevin Luo, *IRICO Group Electronics Co. Ltd: A Significant Growth Driver* Guotai Junan (HK) (September 10, 2007) at 1 and 23-24.
[287] The Department of Commerce would not countervail this whole amount in a single year, but spread it out over a period of time, such as 15 years, that would reflect the life of the asset.

Table 21. Valuation of subsidies to IGE, 2007

Item	RMB Mil.	Source	Page
Government grants	28.8	2007 AR	101
Preferential tax rates	21.8		106
Preferential lending	26.2		137
Provision of assets for less than adequate remuneration	276.7		articles
Total subsidies	353.5		
Net income	72.2		
Revenues	3,359.0		
Subsidy in UDS Mil.	46.5		
Subsidy rate	10.5%		

Construction

China State Construction International Holdings Ltd. ("CSCI")

CSCI is a construction holding company based in Hong Kong serving markets in Mainland China, Hong Kong, Macau, India, and the United Arab Emirates.[288] The firm engages in building construction; civil, electrical and mechanical engineering; concrete production, and land development. It is among the largest construction contractors in Hong Kong.[289]

CSCI is listed on the Hong Kong Stock Exchange but not in China or any other foreign exchange. It was incorporated in Cayman Islands during March 2004 and its shares were listed in Hong Kong beginning in July 2005.[290] Its immediate holding company is China Overseas Holdings Limited, which is incorporated in Hong Kong. CSCI's ultimate holding company is the China State Construction Engineering

[288] China State Construction International Holdings Limited Annual Report for 2007 (hereafter, "CSCI 2007 AR") at 3.
[289] See http://www.csci.com.hk/.
[290] CSCI 2007 AR at 93.

Corporation ("CSCEC"), which is owned by the central government SASAC.[291] CSCEC owns approximately 62 percent of CSCI.

Although CSCI is ultimately controlled by a firm owned by SASAC, the vast majority of CSCI's business is beyond mainland China. In 2007, mainland China activity accounted for only 6.5 percent of the firm's turnover, while activity in Hong Kong and Macau accounted for 54.1 percent and 15.6 percent, respectively.[292] CSCI acquired 20.3 percent of its sales from the Dubai market and 3.5 percent from the Indian market.[293] Although China accounted for only 6.5 percent of turnover in 2007, it accounted 30.5 percent of gross profits and had the highest gross margin, 35.2 percent, of any region.[294] Chinese labor is used in overseas projects.[295]

Total estimated subsidies to CSCI: HK$ 88.1 million ($11.3 million)

CSCI is not listed on any Chinese stock exchanges and most of its revenues are earned outside of China. The firm nevertheless benefits from Chinese government largesse in the form of preferential tax rates and lending.

CSCI's annual report for 2007 indicates that certain operations in China receive benefits through the two full, three half program. The firm valued these benefits at HK$ 8.8 million for 2007.[296] CSCI's financial statement acknowledges that the vast majority of the firm's interest-bearing loans is denominated in RMB and bears annual interest rates of 1.26 percent, well below market rates in China.[297] The estimated value of preferential lending is HK$ 79.3 million.

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[291] *Id.* at 74.
[292] *Id.* at 16-17.
[293] *Id.*
[294] *Id.* at 19-20.
[295] *Id.* at 14.
[296] *Id.* at 122.
[297] *Id.* at 139.

Table 22. Valuation of subsidies to CSCI, 2007

Item	HKD Mil.	Source	Page
Preferential tax rates	8.8	2007 AR	122
Preferential lending	79.3		139
Total subsidies	88.1		
Net income	448.0		
Revenues	10,168.3		
Subsidy in UDS Mil.	11.3		
Subsidy rate	0.9%		

Iron and Steel and Nonferrous Metals

Angang Steel Co Ltd. ("*Angang*")

Angang is a manufacturer of flat-rolled steel products such as hot and cold rolled sheets and steel plate and long products such as wire rod and seamless pipe.[298] Based in Liaoning, it is one of several large state-owned steel producers, and is China's second largest steel producer by market value.[299] It has joint ventures involving Thyssen Krupp and Mitsui,[300] among others, and was recently approached by Arcelor Mittal, the world's largest steelmaker, who is interested in acquiring a 25 percent stake in Angang.[301]

Angang is listed on the Hong Kong Stock Exchange (H shares) and the Shenzhen Stock Exchange (A shares). Like most other large steel producers in China, Angang is ultimately owned by China's central SASAC.[302] As is frequently the case in China, the central SASAC is the 100 percent owner of a holding company – Angang Holding Company – and this company owns approximately two thirds of Angang.[303] The

[298] Angang Steel Company Limited Annual Report for 2007 (hereafter, "Angang 2007 AR") at 3.
[299] "Press Release: Fitch Cuts Ansteel Outlook To Stable," Dow Jones (September 22, 2008).
[300] Angang 2007 AR at 38-39.
[301] Vivian Wai-yin Kwok, "Mittal Gets Iron Clawhold into Angang Steel," *Forbes.com* (May 5, 2008).
[302] Sub-national SASACs are also present in China's provinces and large municipalities, but are ultimately responsible to the central SASAC.
[303] Angang 2007 AR at 23. The shares owned by the Angang Holding Company are subject to a trading moratorium. The moratorium on the largest tranche of shares is slated to expire in 2011.

remaining shares are held by investors who purchased shares in Hong Kong and Shenzhen.

For years, China encouraged steel exports by refunding the value added tax upon export. Although the refunds were reduced and terminated for steel products in recent years, Angang had already become a significant player in export markets. In 2007, exports accounted for approximately one fifth of the company's sales volume and value.[304]

Total estimated subsidies to Angang: RMB 723 million ($95 million)

According to its 2007 annual report, the subsidies received by ASC are largely in the form of tax preferences and preferential interest rates.

Angang lists no government grants in 2007 and only RMB 3 million in 2006.[305]

Angang's tax breaks in 2007 consist of exemptions related to: R&D expenditures (RMB 453 million), outputs from so-called environmental protection facilities (RMB 145 million), and investments in the technical development of domestically produced machinery.[306] These subsidies totaled RMB 706 million in 2006.

Angang benefitted from preferential lending in 2007, as demonstrated by the low interest rates detailed in its annual report.[307, 308] Given the relatively strong performance of Angang – it is one of China's largest steel producers – the GOC appears to believe that large lending preferences are no longer necessary (though it is possible that the firm is assisted in other ways that are not explained in its annual report). This was not the case

[304] *Id.* at 15 and 33.
[305] *Id.* at 131.
[306] *Id.* at 154.
[307] *Id.* at 140, 143-4, 219.
[308] The interest rates that apply to the larger renminbi balances are below market rates, but Angang's borrowings are not sufficient to justify a rate based on the average rate applied by the Department in China CVD cases. Instead, the first quartile rate of 0.16 percent of sales has been applied.

at the turn of the century. According to Angang's 2001 annual report, the firm received an interest free RMB 600 million loan from its state-owned parent that was to be repaid over a five year period beginning in 1998. Given that prevailing interest rates at the time were 10.35 percent for five year loans in China, value of this preference was substantial.

Table 23. Valuation of subsidies to Angang, 2007

Item	RMB Mil.	Source	Page
Government grant (2006)	3.0	2007 AR	171
Preferential tax rates (environmental facilities)	145.0		154
Preferential tax rates (R&D)	453.0		154
Preferential tax rates (purchase of domestic equipment)	17.0		154
Preferential lending	104.8		219
Total subsidies	722.8		
Net income	7,525.0		
Revenues	65,499.0		
Subsidy in UDS Mil.	95.0		
Subsidy rate	1.1%		

Aluminum Corporation of China Limited ("Chalco")

Chalco is a vertically integrated aluminum powerhouse engaged in the exploration and production of bauxite; and the production, sales and research of alumina, primary aluminum and aluminum-fabricated products.[309] It is China's largest producer of alumina, as well as the world's third largest producer of alumina and fourth largest producer of primary aluminum.[310] Its operations are located in several different Chinese provinces. It is effectively China's national champion in the aluminum sector.

Chalco's shares are listed on the stock exchanges of Shanghai, Hong Kong and the New York. The firm's primary owner is the Aluminum Corporation of China

[309] Aluminum Corporation of China Limited Annual Report for 2007 (hereafter, "Chalco 2007 AR"), at 2.
[310] *Id*.

("Chinalco"), which is 100 percent owned by the central government SASAC.[311] This SASAC-owned entity directly controls 39 percent of Chalco's shares.[312] An additional 21 percent of Chalco's shares are held by state-owned entities, some of which are also controlled by Chinalco. For example, the Baotou Aluminum (Group) Co., Ltd. owns 2.6 percent of Chalco, but itself is owned by Chinalco.[313] In 2007, Chalco issued shares in order to "merge" with other Chinese aluminum industry players, including Baotou.[314]

Chalco is expanding its international activities in search of markets and resources. According to its annual report, "Since resource is the basis for the sustainable development of the Company, the Group will press ahead its corporate resource strategy *by focusing on resource acquisition and control*."[315] In 2007, Chalco and the Government of Queensland, Australia officially entered into agreements that would enable the firm to explore and mine bauxite in Australia.[316] Also in 2007, Chalco, the Malaysia Mining Company (MMC), and Saudi Arabian Binladin Group (SBG) entered into a memorandum of understanding to jointly construct a primary aluminum plant with an annual capacity of 1 million metric tons in Saudi Arabia. Chalco will be the largest shareholder in the project.[317] Chinalco, Chalco's state-owned parent company, is expanding overseas in order to secure resources such as copper (in Peru) and rare earth metals, and has plans to enter titanium production as well.[318] In 2008, Chinalco

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[311] According to its web site, Chinalco is an investment management and holding company authorized by the state and a backbone state-owned enterprise under direct administration of the central government.
[312] Chalco 2007 AR at 24.
[313] Chalco 2007 AR at 24; and Chinalco's web site at http://www.chalco.com.cn/, under "organizational structure."
[314] Chalco 2007 AR at 24.
[315] *Id.* at 41. (Italics added.)
[316] *Id.* at 38.
[317] *Id.* at 39.
[318] "Chinalco: No Decision Yet on Rio Tinto Stake Hike," *Dow Jones* (September 1, 2008).

purchased 12 percent of Australia's Rio Tinto PLC, which at the time was fending off a takeover proposal from rival BHP Billiton Ltd.[319]

Total estimated subsidies to Chalco: RMB 3,379 million ($444 million)

The Chinese government subsidizes Chalco through government grants, preferential tax rates, and preferential lending. The firm and other aluminum producers in China have also benefitted from favorable electricity prices set by the government.

According to Chalco's annual report for 2007, grants through its government-owned parent for technological development projects are treated as capital reserves.[320] These reserves total RMB 139 million in 2007. Chalco's financial report also acknowledges subsidy income of RMB 23 million in 2007 (RMB 60 million in 2006), but the purpose of these subsidies is not specified.[321] Government grants related to property, plant and equipment appear as non-current liabilities on the consolidated balance sheet. These were valued at RMB 148 million in 2007.

Chalco's preferential tax rates arise due to the location of certain operations in Western China and due to its purchases of domestically manufactured equipment.[322] Chalco has two subsidiaries subject to 15 percent tax rates because they are located in western China. This program reduced Chalco's taxes by RMB 1,079 million in 2007. Chalco's capital expenditures on domestically manufactured production equipment saved the firm an additional RMB 805 million.

Chalco's annual report also indicates that the firm received below market interest rates from state-owned banks and loan guarantees from state-owned enterprises. While

[319] "Australian Govt Approves Chinalco Stake in Rio Tinto," *Dow Jones* (August 24, 2008).
[320] Chalco 2007 AR at 190.
[321] *Id.* at 198.
[322] *Id.* at 213-214.

not all loan rates are specified, there is evidence that lending occurred at rates of 0 percent, 0.3 percent, 3.13 percent, and 3.6 percent.[323]

Until 2008, Chalco and other producers of aluminum benefitted from low electricity prices determined by the government. The Department of Commerce has on most occasions declined to countervail low electricity prices in China due to a lack of information or due to other information provided by the Chinese government. Chalco's form 20-F for 2007, submitted to the U.S. Securities and Exchange Commission, as well as other public information demonstrates that the Chinese government set low electricity prices for aluminum producers and that these low prices have reduced production costs significantly.

Electricity is a major cost component of aluminum production. Electricity accounts for 7.6 percent of alumina production cost and 33.7 percent of primary aluminum production cost.[324] According to Chalco, it consumed 34.9 billion kilowatts of electricity in 2007 at an average price of RMB 0.359 per kWh. Thus, its electricity cost in 2007 was RMB 12.5 billion.

The price setting mechanism for electricity in China is described in Chalco's form 20-F. There is no doubt that prices are set by the government and that the aluminum industry has benefited from favorable rates:

> We purchase electricity from the regional power grids for our smelter operations. Prices for electricity supplied by the power grids under power supply contracts *are set by the government* based on the power generation cost in the region and the consumers' ability to pay. Industrial users within each region are generally subject to a common electricity tariff schedule, but prices vary, sometimes substantially, across regions. Each regional power grid serves a region comprising several provinces. The regional

[323] *Id.* at 222. While some of these rates are for bonds, and not loans, information in the annual report indicates that other SOEs are holding Chalco's bonds. See AR 192, 221, 225,
[324] Chalco 2007 20-F at 29.

> power grids generally rely on multiple power sources to generate electricity, with coal and hydro power being the two most common sources.[325]
>
> The State Electricity Regulatory Commission is responsible for the supervision and administration of the power industry in China. The NDRC and local governments regulate electricity pricing. Electricity suppliers may not change their electricity prices without governmental authorization. The Electric Power Law and related rules and regulations govern electricity supply and distribution. Currently, China's state-owned power companies, through their respective local subsidiaries, operate all the regional power grids in China from which we obtain most of our electricity requirements. In October, 2007, Chinese government issued "Notice to Further Solutions to Difference in Electricity Rates", according to which the *preferential electricity rate originally enjoyed by Chinese primary aluminum enterprises ended at the end of 2007*.[326]

According to Chalco's 20-F for 2003, the favorable electricity prices and other benefits exist because the central government is favoring large producers in order to facilitate industry consolidation.[327]

The Chinese government announced an increase in electricity rates of 4.7 percent, on average, effective July 1, 2008.[328] If Chalco had paid the new electricity price in 2007, it would have spent an additional RMB 588 million to purchase electricity. This is a conservative estimate of the subsidy provided by the government's electricity price controls because electricity price in China, even after the price increases, are still controlled by the government and set at below-market levels.

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[325] *Id.* at 29-30.
[326] *Id.* at 42.
[327] Chalco 2003 20-F at 27-8. Chalco specifies favorable access to raw materials, tax preferences, and subsidies for R&D as other sources of benefits.
[328] "China raises power prices amid shortages," *AP Worldstream* (2008). HighBeam Research. 13 Jan. 2009 <http://www.highbeam.com>.

Table 24. Valuation of subsidies to Chalco, 2007

Item	RMB Mil.	Source	Page
Government grants (related to property, plant, and equipment)	148.3	2007 AR	102, 128
Government grant (subsidy income)	23.5		8, 198
Grants to support technological development (capital reserve)	139.0		190
Preferential tax rates (purchase of domestic equipment)	805.6		47, 214
Preferential tax rates (due to location)	1,079.2		47, 213-222
Preferential lending	594.2		195
Provision of assets for less than adequate remuneration	235.9		106, 148, 198
Preferential electricity prices	588.9	2007 20F	20F-11
Preferential prices for products and services provided by SOEs	Unknown		20F-12
Total subsidies	3,614.5		
Net income	11,628.9		
Revenues	76,180.4		
Subsidy in UDS Mil.	475.2		
Subsidy rate	4.7%		

Recent reports out of China indicate that Beijing is actively moving to prop up China's ailing aluminum sector. China's State Reserve Bureau plans to purchase 300,000 metric tons of domestic aluminum at a 10-percent premium to current market levels, from Chalco and other smelters.[329] Following the government's announcement, sub-national governments announced several aid measures, including relaxed export controls, further stockpiling, electricity subsidies, and higher loan ceilings.[330]

Identifiable Patterns of State Support

China's desire to control and guide the development of key industries is singular, but the goals of this support vary substantially from industry to industry. In some case,

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[329] "China's state reserve agency stockpile to buoy aluminum sector," *Xinhua News Agency* (2008). HighBeam Research. 12 Jan. 2009 <http://www.highbeam.com>. Total purchases could reach one million MTs.
[330] *Id.*

the government is simply seeking to upgrade the industry's technological sophistication. In others, the government is out to ensure that its companies have the financial wherewithal to secure needed resources for China. As the majority or primary owner of each firm is a state-owned enterprise, the State has the necessary leverage to compel the firms to action.

Upgrade and finance the armaments industry

It was not possible to analyze firms that produce weaponry for China as weapons manufacturing appears to reside mostly with wholly state-owned enterprises. It does appear, however, that the government of China is aiming to upgrade China's aerospace industry. The government is behind the development of technological parks focused on aerospace. AviChina has joint ventures and other relationships with some of the world's top aerospace firms. These relationships offer an ideal venue for technology transfer to AviChina, which is majority-owned by one of China's major defense-oriented SOEs.

China's arms industry has historically been unprofitable, and there is some indication that China's armaments SOEs are being partially funded by subsidiaries in money-making industries, such as the automotive industry.

Development of strategic sectors

Although China has reversed course from it previous reluctance to engage with the global economy, the government has not abandoned its desire to direct the course of Chinese economic development. The materials reviewed for this report indicate that China intends to develop its civilian aerospace, the automotive and parts industry, the software and integrated circuits industries, and wireless communications. These are clearly strategic sectors that are currently dominated by advanced country economies.

On the other hand, China is also trying to fine tune some of its less sexy industries, such as textile machinery. The subsidies directed toward this industry do not yet appear to be very large, but they do signal that the central government views the upgrading of China's textile machinery sector as an important goal.

Resource acquisition

China's rapidly growing economy has an insatiable demand for energy and other resources. In order to ensure adequate access to resources, Chinese energy producers have gone on an international buying spree. One of PetroChina's subsidiaries has accumulated 71 oil and gas projects in 26 countries across Africa, Central Asia, Russia, the Middle East, South America, and the Asia-Pacific region. The state-owned parent is also acquiring foreign assets, often in places like Sudan, where shareholder-owned companies are less likely to tread. Coal producer Shenhua, until now largely focused on its China operations, Shenhua is planning to expand internationally in order to obtain reserves of scarce resources and become a leading international player. The aluminum producer Chalco and its SOE parent are also expanding beyond China to acquire ownership over needed resources.

Raising China's international profile

China's international forays are not limited to resource industries. The telecom firm CTC seeks to provide communications services to companies operating outside of China. The Chinese government is also promoting wireless standards based on Chinese developed technologies, encouraging the use of these technologies by domestic telecom providers, and hoping that the standard is adopted outside of China. It is using subsidies strategically to accomplish these goals. The SOE-owned construction company CEC competes internationally in the Middle East and India using Chinese labor.

Domestic consolidation and control

China is known for large companies, especially in its metals and petrochemical sectors. The petrochemical industry is dominated by a handful of large firms, but the industrial structure of the aluminum and steel industries are less concentrated. The Chinese government prefers a more concentrated industrial structure in these two industries, and it is using subsidies to provide the larger firms with competitive advantages. A relatively new tactic for encouraging consolidation is to use subsidies and other preferences to erode the competitive position of firms whose environmental performance is below what China's government deems acceptable.

Shift production and R&D facilities to China

China has briskly transitioned from the command and control economy of the 1970s and 1980s to the more market-based system of today. After quickly transforming from the "Soviet-style" system to the "workshop of the world," China set its sights higher. China's new goal is to become a first-tier powerhouse driven by dynamic innovation through cutting-edge technology and intellectual expertise. While relics of the old system remain in place and are protected, China has placed particular emphasis on its new objective. To effectuate its next leap forward, the government has put in place numerous policies and incentives to ramp-up investment and promote research and development.

China's mission to increase investment and research and development exists in tandem with its desire to protect certain industries and enterprises. China's "strategic," "pillar," or "heavyweight" industries are encouraged to increase research and development. The steel industry, a highly encouraged and protected industry, serves as a useful example of the types of subsidies and market protections provided to strategic industries. Like other strategic industries, most steel producers in China are owned and controlled by the state, and the Chinese government showers research and development subsidies on producers in the steel industry.

The Chinese government routinely promulgates policy dictums regarding encouraged industries, such as steel. For example, China's *Steel and Iron Industry Development Policy* explains that funds shall be made available "for research and other policy support for major iron and steel projects utilizing newly developed domestic equipment."[331] National and local authorities then enact the policies through various government agencies and bureaus.

China promotes research and development through many subsidy programs. In 2006, China filed its subsidy notification to the WTO. While the notification is deficient in many respects, China did report some subsidies which are directly related to encouraging research and development. Specifically, companies can deduct from their taxable income 150% of actual expenses incurred on the research and development of new products, new technologies, and new crafts, provided that expenses have increased 10% or more from the previous year.[332] In addition, enterprises profiting from technology transfers as well as from technology consultation, technology services, and technology training provided as part of the transfers can receive a tax exemption if the

[331] *Money for Metal: A Detailed Examination of Chinese Government Subsidies to Its Steel Industry*, July 2007 ("*Money for Metal*"), citing *Steel and Iron Development Policy*, Order No. 25 of the National Reform and Development Commission, July 2005 at Article 16 {emphasis added}.
[332] Terence P. Stewart, *China's Industrial Subsidies Study: High Technology Vol. 1* (April 2007) (hereafter, "CIS") at 38.

annual net income is less than RMB 300,000.[333] Further, science and technology oriented small and medium sized businesses can receive grants and loan interest discounts on a project specific basis. Each project is capped at RMB 1 million and in some cases at RMB 2 million.[334]

Subsidies for R&D and technological development are prevalent in the sample of firms discussed above. Angang, one of the largest state-owned steel producers in China, reported in its 2007 financial statements that it received tax exemptions totaling RMB 453 million for state-sponsored research and development activities, compared to RMB 337 million in 2006.[335] Jingwei, Chalco, Shenhua, and BlueChem also received subsidies for the explicit purpose of funding R&D or technological development. As explained in Part I, the Department of Commerce has also countervailed such subsidies.[336] Domestic aluminum producers have also been urged to strengthen their R&D efforts.

China's R&D subsidies have scored important successes with foreign firms as well. By 2004, there were 600 R&D centers established by multinational corporations.[337] A 2005 survey of multinational corporations indicated that China topped the list of future R&D expansion locations.[338] A study in 2007 by the Research Institute at China's Ministry of Commerce concluded that multinational corporations are the major force in

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[333] *Id*.
[334] *Id*.
[335] *Money for Metal* at 59, citing to Angang Steel Company Limited Annual Report at 103. Another steel producer, Jinan, reported in its 2005 financial statements that it received cash grants for research and development. See *Money for Metal* at 31, citing to Jinan's 2005 Annual Report.
[336] See **Table 5**.
[337] "Multinational Corporations Establish 600 R&D Centers in China," *AsiaInfo Services* (August 24, 2004).
[338] Steve Toloken, "China rapidly attracting more R&D dollars," *Plastics News* (June 12, 2006).

importing technology to China.[339] The heavyweight auto industry has scored at least three R&D facilities from GM alone.[340]

The data confirm that China has succeeded in its efforts to expand R&D activity. Since 1996, China's expenditures on research and development increased from RMB 40.45 billion to RMB 300 billion, or 0.6 to 1.4 percent of GDP.[341] This expansion is all the more impressive given China's rapid GDP growth during the period. China's trade flows offer further indication that it is moving up the value chain. High-tech exports reached nearly thirty percent of total exports in 2005.[342]

China plans to build on this success. In the *11th Five-Year Guideline for National Economic and Social Development*, China set out to increase "innovation" by increasing the ratio of research and development expenditure to two percent of GDP in conjunction with promoting intellectual property ownership and well-known brands.[343] In its *Guideline for the National Medium and Long-Term Science and Technology Development Plan*, the government set as a high priority the advancement of China into the rank of innovative countries by 2020.[344] In tandem, the *11th Five-Year Plan on Promoting Trade through Science and Technology* encourages the establishment of

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339 Jiang Wei, "Companies opt for sustainability," *China Daily* (February 7, 2007).

340 These include the GM Center for Advanced Research and Science in Shanghai's Pudong New Area; a nearby R&D center for alternative fuels, which broke ground in Shanghai during September 2008; and an R&D test center in Anhui Province, where construction will start during the first half of 2009. According to China's subsidies notification to the WTO, firms with investments in the Pudong area of Shanghai are eligible for preferential tax rates. "GM begins construction on $250 million R&D center in Shanghai," *Gasgoo.com* (September 17, 2008); and "Shanghai GM to build auto R&D center in Anhui," *SinoCast* (December 19, 2008).

341 CIS at 1, citing to *China Science and Technology Statistics (2006): R&D Expenditure* available at www.sts.org.cn/sjkl/kjtdt/data2006/2006-1.htm; *R&D Expenditure Reached 300 Billion Yuan in 2006*, Xinhua News, January 29, 2007 available at www.xinhuanet.com/fortune2007-01/29/content_5671044.htm.

342 CIS at 3, citing to *China Science and Technology Statistics (2006): High Technology* available at www.sts.org.cn/sjkl/kjtjdt/data2006/2006-5.htm.

343 *Id.* at 4-5.

344 *Id.*

research and development centers and the transfer of technology from foreign to domestic companies.[345]

Following the national policy in lockstep, Tianjin, for example, maintains several specific funding devices designed to encourage high-tech exports. Tianjin provides grants, interest assistance, and export credit insurance to reinforce the policy goal.[346] In another example, Beijing plans to create a special industrial park for science and technology with increased spending on research and development.[347] The firm CASIL, discussed above, is developing an aerospace technology park in Shanghai and an "aerospace technology building" in Shenzhen.[348] Both of these projects are being conducted in conjunction with municipal governments.

Despite the fact that China has placed significant emphasis on its own products, it nonetheless recognizes that foreign investment is an important component in its overall strategy to become a first tier economy. The transfer of technology from foreign investors can be just as important, if not more important at times, than the development of China's own technology. China attracts a wide variety of foreign investors. As such, it has developed a vast array of options to fill the disparate needs of those investors. China's special economic zones play an important role in this area.

The establishment of special economic zones dates back to Deng Xiaoping's era of reform. Beginning in the 1970s, China opted for a step-by-step approach for China's opening to the outside world. One important step in this reform was establishing special economic zones to encourage western investment. The goal of the zones was to entice

[345] *Id.* at 8.
[346] *Id.* at 12-13.
[347] *Id.* at 11.
[348] CASIL 2007 AR at 3-4.

investment through preferential policies. As time passed, more types of zones were established, each having specialized purposes.[349] Today, hundreds of specialized areas exist all over China. The specialized areas offer an a la carte menu for western investors looking for specific needs.

Table 25. Sample Types of Specialized Areas

High and New Technology Zones
Economic-Technological Zone
Processing for Export Zones
Special Economic Zones
Development Zones
Bonded Areas
Coastal Open Cities
Open Cities on Yangtze River
Provincial Capitals
Open Cities on Border Lands
Coastal Economic Open Regions
Yangtze River Three Gorges Zone
Frontier Economic Cooperation Zones
Tourist Resort Areas

Attracting investment from the west and increasing research and development are most appropriately addressed within regions designated for high and new technology and export processing areas. For example, firms looking to conduct research and development most often benefit from new technology zones located in and around Beijing and Shanghai because of the highly educated workforce.[350] On the other hand, for firms looking to utilize China's low-cost labor workforce for manufacturing, the benefits are best found in processing for export or developed and bonded areas. In such areas, firms can expect reductions in land-use fees, reduced income taxes, and exemptions from tariffs when importing inputs or technology.[351]

[349] Mark Williams and Peng Zhao, *The Explosive Growth of China Outsourcing: Opportunities and Challenges*, (2005) (hereafter, "Outsourcing") at 12.
[350] *Id.* at 13.
[351] *Id.* at 13 and 21 and www.china.ord.cn/english/5841.htm

While the national government encourages the development of zones, local governments often compete for business using every means at their disposal. The *China Daily* reported that Premier Wen Jiabao was concerned about environmental degradation because local governments routinely offer free or cut-rate real estate and utilities to developers.[352] Indeed, Jiangsu Province was censured by Beijing for violating "rules and regulations about protection of land and mineral resources" including "an unauthorized manner to expand development zones."[353]

Because the special zones usually fall under differing local jurisdictions, the specific subsidies provided vary from region to region.[354] However, some common themes can be identified. Most notable are subsidies stemming from special tax exemptions, reduction in land and utility costs, and low-cost financing. Sometimes direct cash grants are provided to companies that wish to locate in a specialized area. An example of the subsidies offered in such special areas is described below.

The Jiangsu Yixing Economic and Development Zone ("YEDZ") is located near Wuxi in Yixing City, Jiangsu Province.[355] The area is close to Shanghai and located near land and sea transport arteries.[356] The YEDZ has attracted over seven hundred domestic and overseas enterprises including firms from Holland, Italy, Japan, Thailand, Hong Kong and Taiwan.[357] The zone focuses on electric circuit and mechanization, textiles, fine chemicals, and auto parts.[358] Moving forward, the zone plans to place more emphasis on the development of emerging industries such as photoelectric materials, new

[352] *China to act on pollution, emission*, China Daily (April 28, 2007).
[353] *Id.*
[354] *Outsourcing* at 13.
[355] "Jiangsu Yixing Economic and Development Zone," at http://www.yxedz.com/other/en-index.asp.
[356] *Id.*
[357] *Id.*
[358] *Id.*

energy and new materials.[359] The zone implements all preferential policies stipulated by the local, provincial, and national governments and implements even more preferential treatment for newer industries.[360]

The YEDZ offers numerous incentives to firms located within its boundaries. National income taxes are generally waived to some degree for long periods of time.[361] Local taxes and surtaxes are waived indefinitely.[362] Land, water, and power suppliers are offered at cut-rate prices.[363] The zone will even construct a firm's workshops free of charge.[364] All VAT is rebated for the first three years and waived indefinitely on imported equipment.[365] Individual income taxes for foreign or senior management are rebated for ten years.[366] Further, the YEDZ offers high-level employees and technicians with living quarters at cost.[367]

The YEDZ is but one example of the vast array of economic development zones in China. The zones play an important part in China's policy plans. Both research and development and foreign investment depend, in part, on China's optimum use of the special economic zones.

Encourage domestic brands

Encouraging branding is an important component of the emphasis on research and development and its transition from a "workshop" economy. To encourage the development of its own brands at the expense of foreign brands, China offers a multitude

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[359] *Id.*
[360] http://www.yxedz.com/other/en-01.asp
[361] http://www.yxedz.com/other/en-01-02.asp.
[362] http://www.yxedz.com/other/en-01-02.asp.
[363] http://www.yxedz.com/other/en-yfzc.asp (downloaded August 2, 2008).
[364] *Id.*
[365] http://www.yxedz.com/other/en-01-02.asp.
[366] *Id.*
[367] http://www.yxedz.com/other/en-yfzc.asp.

of subsidies. The government's goal is to increase Chinese branded exports in lieu of foreign branded exports. In order to effectuate this goal, the government offers grants, export credit insurance, preferential funding, technological support, and assistance to develop research and development centers to support Chinese brand names.[368]

Most of these subsidies are substantial and may be considered prohibited, red-light subsidies (i.e., export subsidies). For example, the Ministry of Finance recently appropriated RMB 700 million to support research and development funding to develop new "famous brand" products for export.[369] In tandem, the State Administration for Quality Supervision, Inspection, and Quarantine encouraged local bureaus to offer financial support and export credit guarantees to world "famous brands." Provincial government followed suit, offering similar incentives.[370] Beijing's science and technology industrial park will have a strong emphasis on increasing exports and promoting the creation of firms producing "famous brands," secure in their intellectual property rights.[371] The seriousness of the branding issue has been elevated to the WTO. Both the United States and Mexico have recently requested consultations with China about the "Famous Brand" programs. Both countries maintain that such programs are prohibited export subsidies.[372]

Additional information about the program has been divulged in the preliminary determination in the CVD investigation of Citric Acid from China.[373] Producer Yixing Union received a "famous brands" lump sum grant from the government of Yixing City.

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[368] CIS at 52.
[369] *Id.* at 52-53.
[370] *Id.*
[371] *Id.* at 11.
[372] *United States Files WTO Case Against China Over Illegal Support for Chinese "Famous Brands"*, Fibernews, January 8, 2008, www.fibersource.com/f-info/More_News/CHina-121908.htm
[373] 73 FR 54377 (September 19, 2008).

To receive a grant, recipients must present a certificate of Famous Product of China or a Famous Product of Jiangsu Province. Thus, there are three levels of government potentially involved in this program: central, provincial, and municipal. According to information submitted by the Chinese government during the investigation, there 34 companies received a Famous Brands Award during 2005 to 2007, though it is not clear if this count is limited to recipients from Jiangsu province.

Part III: Competitive Impact of Chinese Subsidies on U.S. Firms

Introduction

The Chinese subsidies discussed in this study have a variety of effects on economic activity in China. In general, subsidies increase the amount of a product that is produced and consumed.[374] Subsidies contingent on trade are considered the most distorting, but subsidies that reduce input costs, such as the cost of electricity and the cost of money, and shift investment in plant and equipment from one country to another may also influence trade flows. Such subsidies encourage production that can both replace imports and lead to higher export levels than would otherwise be the case.

Analyses indicate that Chinese subsidies to support state-owned firms and to attract foreign enterprises have affected trade flows. Studies have found that multinational corporations respond to preferential tax rates.[375] In China's case, where FDI has been actively drawn to export-oriented economic zones, foreign invested enterprises are responsible for the majority of exports.[376] Data in the *World Investment Report 2008* indicate that exports from foreign affiliates in China rose by more than $200 billion from 2005 to 2005.[377] One study also found that the real exchange rate between the Japanese Yuan and the Yen was a significant driver of Japanese manufacturing-oriented FDI in China.[378] An MIT study analyzed the relationship between China's

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[374] Robert S. Pindyck and Daniel L. Rubinfeld, *Microeconomics*, 6th edition (2006) at 329.
[375] See, for example, J.R. Hines, "Tax Policy and the Activities of Multinational Corporations," NBER Working Paper 5589 (May 1996).
[376] According to Chinese trade statistics, foreign-funded enterprises accounted for 55.6 percent of total Chinese export value from January to October, 2008.
[377] United Nations Conference on Trade and Development, *World Investment Report 2008—Transnational Corporations and the Infrastructure Challenge* (2008) at 285.
[378] Yuqing Xing, "Why is China so attractive for FDI? The role of exchange rates," *China Economic Review* 17 (2006) 198-2009.

subsidies to state-owned enterprises and exports using data from thirty provinces covering the late 1990s. Regression analysis found a persistent positive relationship between known subsidies to SOEs and their exports, "especially for those provinces that have made the overwhelming share of China's exports."

As this report has demonstrated, subsidies in China span a variety of industries and are given for a number of reasons by the central government and sub-national governments. Rather than attempt to measure the impact of all subsidies in all industries, the approach here considers three aspects of Chinese subsidies: subsidized electricity prices (*i.e.*, provision of electricity at less than adequate remuneration) to aluminum producers in China; subsidies to absolute control and heavyweight industries; and the potential impact of subsidies that encourage foreign investment in China by U.S. manufacturers, at the expense of investment in the United States. The economic effects presented include changes in exports, imports, domestic sales, employee earnings, and economic welfare.

These targeted effects are estimated using the Global Trade Analysis Project ("GTAP") global database applied to a multi-region, applied general equilibrium modeling framework also developed by GTAP.[379] This report employs the recently released version 7 of the database, which includes production, trade, and macroeconomic data for 113 regions and 57 economic sectors in 2004.[380] The model is implemented

[379] For an in depth description of the structure of the GTAP model, *see*, Thomas W. Hertel, ed., *Global Trade Analysis: Modeling and Applications* (Cambridge University Press, 1997). The last two iterations of the database are described in Betina V. Dimaranan, ed. *Global Trade, Assistance, and Production: The GTAP 6 Data Base* (Center for Global Trade Analysis, Purdue University, December 2006); and Badri Narayanan G. and Terrie L. Walmsley, eds., *Global Trade, Assistance, and Production: The GTAP 7 Data Base* (Center for Global Trade Analysis, Purdue University, December 2006).

[380] There are 226 countries included in GTAP. Many of the countries are aggregated into regions, such as Rest of Central Africa, Rest of Middle East, the Caribbean, Rest of Oceania, and Rest of West Asia, for

using the GEMPACK software suite and can be run using the RunGTAP software program. Other software modules enable users to create new regions and sectors from the existing regions and sectors in the GTAP 7 database.

A general equilibrium model is a useful tool for analyzing the effects of economic policy changes on the overall economy, specific economic sectors, trade flows, and even the global economy. The model initially reflects a global economy in equilibrium--that is, prices for goods, services, and factors are at equilibrium so that supply and demand are equal. To implement a policy change, such as a tariff or subsidy, or a change in a factor input reflecting an incentive, the model is "shocked" into a state of disequilibrium. Prices and quantities adjust to a new equilibrium, with different levels of exports, imports, production, employment, consumption, investment, and GDP. Because the model incorporates sector specific information, it is able to capture both upstream and downstream changes associated with a given policy change.

Economic Effects of Chinese Subsidies

To conduct policy simulations using the GTAP model and database, the modeler aggregates the regional and sector components of the database, sets a model closure that is appropriate for the simulations being run,[381] and applies the desired policy "shocks". The database has been aggregated into 16 economic sectors and 6 regions, and includes 5 factors of production. The 6 regions are USA; China; the Western Pacific Rim ("WestRim"); Western Hemisphere ("WestHem"); Europe; and Western Asia, Africa, and the Middle East ("WAM"). The 16 sectors are electricity, energy, petrochemicals,

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example. All significant economies are included in the database. See Badri Narayanan G. and Terrie L. Walmsley at 2-2 to 2-7.

[381] The term closure reflects the choice between exogenous and endogenous variables. The GTAP model is flexible enough to accept partial equilibrium and general equilibrium closures. The latter ensures that all markets in the model "clear."

air and sea transportation, communications, machinery, autos, electronics, construction, steel, aluminum, other utilities, agriculture and food, other extractive industries, other manufactures, and other services. The five factors of production are land, unskilled labor, skilled labor, capital, and natural resources. A more detailed description of the regional and sector aggregations and experiments are available in **Appendix 6**.

Experiment 1: Reduce subsidy on electricity prices to the aluminum industry in China

Chalco and other large aluminum producers purchased electricity at subsidized prices through 2007. This benefit was expected to end in 2007, and prices paid have risen somewhat. However, recent government pronouncements indicate that producers will continue to receive preferential prices, as well as other benefits. It is generally acknowledged that artificially low energy prices subsidize manufacturing, especially energy intensive manufacturing, in China.[382] As electricity costs are a major cost in aluminum production, this subsidy has enabled the Chinese aluminum industry to produce more, and export more, than it would have without preferential prices.

To assess the competitive impact of this subsidy, we eliminate the subsidy on electricity prices paid by aluminum producers in China. Since Version 7 of the GTAP Data Base does not incorporate this subsidy, we use the *alter tax* routine to create a new database that imposes a subsidy equivalent to 10 percent of the value of electricity purchased by the aluminum sector.[383] The figure of 10 percent is a reasonable approximation. The government of China increased electricity prices by 4.7 percent in

[382] C. Fred Bergsten, Charles Freeman, Nicholas R. Lardy, and Derek J. Mitchell, *China's Rise: Challenges and Opportunities*, Peterson Institute for International Economics (September 2008) at 116.
[383] This routine incorporates the subsidy without significantly changing other cost and sales shares. See Gerard Malcolm, “Adjusting Tax Rates in the GTAP Data Base,” GTAP Technical Paper No. 12, 1998.

mid-2008 and announced an additional 5 percent increase in the summer.[384] Chalco further indicated that its average price had increased 3.2 percent in 2007.[385]

Based on economic theory, removing this subsidy should increase the marginal cost of producing aluminum in China. Some consumers of aluminum in China and elsewhere will purchase foreign aluminum instead of Chinese aluminum. Thus, one would expect Chinese aluminum exports to decline and aluminum imports to increase. Facing a more level playing field at home and abroad, the U.S. aluminum industry would be expected to see its home market sales and exports increase. The rise in U.S. production would be expected to increase demand for factors of production, such as labor, that are required to produce aluminum in the United States.

The results of this simulation are shown below.[386] As theory predicts, China's aluminum exports decline while imports increase. In the U.S. market, imports from China decline, while the U.S. industry's sales into the U.S. market increase. U.S. aluminum exports rise by nearly $100 million to help fill the void left by China in other markets. The simulation results also indicate that U.S. returns to labor increase by approximately $30 million. The trade balances of the United States and China also change. The U.S. sees its balance improve by $32 million, while China's declines by $179 million.

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[384] "China raises power prices amid shortages," *AP Worldstream* (2008). HighBeam Research. 13 Jan. 2009 <http://www.highbeam.com>.
[385] Chalco 2007 20-F at 29.
[386] The experiment is performed on 2004 data because that is the latest year for which the GTAP Data Base is available.

Table 26. Impact of eliminating a 10 percent subsidy on electricity purchases by China's aluminum producers

Item	Impact
U.S. data	*$ millions*
Domestic sales	74.24
Aluminum exports	96.83
Aluminum imports from China	-73.60
Labor earnings	30.53
Balance of goods and services	32.48
Chinese data	
Aluminum exports	-757.61
Aluminum imports	600.44
Balance of goods and services	-178.84

In percentage terms, the effects on the domestic aluminum industry are not large. However, this should be seen in context of the other subsidies received by the aluminum industry. As demonstrated in **Table 24**, Chalco, the largest company in the industry, also benefits from preferential lending and favorable tax rates. The next experiment considers some of these other subsidies across a range of industries.

Experiment 2: Reduce subsidies to capital investment

Given the Department of Commerce's findings in China subsidy investigations, as well as the subsidies acknowledged in the annual reports herein, it is clear that subsidization in China is widespread. However, not all businesses in China are treated alike. Many investigations have found that subsidies such as preferential lending are conferred upon firms that are in favored industries subject to state promotional policies. The Department has also found several subsidies aimed at firms funded by foreign investments. This pattern is born out by the subsidies discussed in **Part II**, where all the strategic and heavyweight firms have varying degrees of "foreign" capital. Wholly-owned Chinese firms, not just foreign governments, have complained that the preferences provided to foreign investors, state-owned firms, and promoted industries and firms are unfair to companies that do not receive such favors. Indeed, truly privately owned domestic firms in China often find it difficult to borrow from state-owned banks.[387]

However, this dichotomy in Chinese economic policymaking is less of a problem when the industries in question are strategic and heavyweight industries. The NDRC and SASAC have clearly stated that the state is to maintain "absolute control" over strategic industries and meaningful control over heavyweight industries. Foreign firms are present in some of these industries, particularly in the form of joint ventures in the automotive and info-tech/electronics industries, but other strategic and heavyweight industries are predominantly under the control of the Chinese government.[388] This means that the potential distortion posed by extrapolation of subsidy levels to the whole industry is minimized.

Thus, in **Experiment 2** we apply a set of policy shocks that reduces the subsidies received by the strategic and heavyweight industries.[389] To simulate a reduction of subsidies, we apply higher output taxes to these industries. This methodology is appropriate because:

- Many of the subsidies offered are tax-related; and
- A higher output tax raises the price that consumers would pay for the industry output, which also would be the case if the firms experienced higher costs due to market-based interest rates and an end to government grants.

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[387] Kellee, S. Tsai, *Back Alley Banking: Private Entrepreneurs in China* (Cornell University Press, 2002).
[388] Steel is an exception in that some truly private firms do participate, but the government has yet to allow a single major domestic producer to fall under foreign control. Moreover, many of the firms with a proportion of shares held by the public are owned by firms that are ultimately controlled by provincial or municipal SASACs.
[389] The armaments industry is excluded because it is not treated as a separate industry in the GTAP database.

The policy shocks applied to the model differ from the subsidies calculated in **Part II**. The subsidy rates in Part II contained the full value of all subsidies, but the shocks applied to the model only reflect the value of subsidies attributed to 2007. For subsides that are intended to be amortized over time (so-called non-recurrent subsidies) such as debt forgiveness, provision of assets at less than adequate remuneration, and any subsidy treated as deferred income on the balance sheet, the subsidy value is divided by 15.[390] These CVD rates are shown in the following table according to their strategic and heavyweight designation.

[390] The Department's valuation methodology calls for the value of large non-recurrent subsidies to be distributed over the average useful life ("AUL") of the asset. To simplify calculation, an AUL of 15 years is assumed for all non-recurring benefits.

Table 27. Estimated countervailing duty rates for sample companies from strategic and heavyweight industries

	Estimated CVD Rates
Armaments	
AviChina	1.4%
Casil	5.9%
Energy	
HPI	6.7%
Oil & petrochemicals	
PetroChina	4.4%
BlueChem	14.2%
Communications	
CTC	1.8%
Coal	
Shenhua	5.2%
Civil aviation	
Air China	1.8%
Shipping	
COSCO	2.5%
Machinery	
JTI	2.1%
Automobiles	
DMG	2.6%
Information technology	
CEC	0.8%
IGE	2.8%
Construction	
CTCI	0.9%
Ferrous and non-ferrous metals	
Anang	1.1%
Chalco	4.1%

These company specific rates are used to develop the appropriate shocks for **Experiment 2**. The specific rate for each industry is the simple average of the relevant companies from Part II, with firms owned by armaments producers distributed to other industries. The CVD rates used to shock the model are shown in **Table 28**.

Table 28. Countervailing duty rates used in Experiment 2

Sector	Company	Rate
Electricity	HPI	6.7%
Energy	HP, PetroChina	5.5%
Petrochem	PetroChem, BlueChem	9.3%
Trans	AirChina, COSCO	2.1%
Comm	CTC	1.8%
Machinery	JTI	2.1%
Autos	DMG, AviChina	2.0%
Electronics	CEC, IGE	1.8%
Construction	CTCI, CASIL	3.4%
Steel	Anang	1.1%
Aluminum	Chalco	4.1%

These industries constitute a significant portion, 35 percent, of China's output in 2004. As such, eliminating subsidies would be expected to have a meaningful impact on China's economy, and on U.S. companies competing with Chinese firms. Chinese energy prices would rise, which would increase costs across the economy. Capital goods prices in China would rise, as would the prices of inputs such as steel and aluminum. Producers of final goods, such as car makers, would experience higher prices across the full range of intermediate inputs. Price increases, all things equal, would reduce demand both in China and abroad, for Chinese-made products. However, to the extent that the decline in subsidies reduces China's demand for foreign goods, there will be feedback effects that have a depressing effect on U.S. economic activity. Also, the exports of countries that use China as a processing zone likely would be adversely affected as well. Due to these countervailing factors, the net effect of reducing China's subsidies is not entirely clear *a priori*.

Experiment 2 reviews the medium term impact of removing Chinese subsidies. In this experiment, capital stock is assumed to be fixed in all regions, while labor is mobile. This simulation is summarized in **Tables 29-31**. Domestic sales by U.S.

industries rise in the United States by approximately $81 billion, while worker earnings rise by $31 billion. U.S. exports of strategic and heavyweight industries expand by $7.6 billion, while imports from these same industries decline by $9 billion. The overall balance of goods and services trade declines, which indicates that imports have risen in other industries. For China, exports from the favored industries shrink by $31.8 billion while imports expand by $3.4 billion

Table 29. Impact of reducing subsidies in China's strategic and heavyweight industries

Item	Impact
U.S. data	*$ millions*
Domestic sales	80,998
Exports (strategic/hwgt)	7,609
Imports from China (strategic/hwgt)	-8,984
Labor earnings	30,676
Balance of goods and services	-7,219
Chinese data	
Exports (strategic/hwgt)	-31,750
Imports (Strategic/hwgt)	3,438
Balance of goods and services	20,692

Table 30 contains data on the performance of competing U.S. industries. In all, these industries experience an increase in domestic sales of $30 billion, with a range of $250 million to $7.5 billion.[391] The large output gain of the construction industry in particular reflects not only private demand for construction services, but also U.S. government demand.[392] Lower subsidies in China also affect U.S. price levels, illustrated by a 0.39 percent increase in the U.S. GDP price index.

[391] The large increase in construction output reflects not only
[392] This simulation did not fix government spending in the United States.

Table 30. Impact on U.S. industries of reducing subsidies in China's strategic and heavyweight industries

Sector	Change in Domestic Sales
	$ millions
Electricity	1,321
Energy	985
Petrochem	7,483
Transportation (air and sea)	912
Communications	1,737
Machinery	3,927
Autos	1,951
Electronics	3,139
Construction	7,536
Steel	250
Aluminum	343
Total	29,584

In short, the medium run scenario appears to validate the belief of many U.S. industry players that Chinese subsidies are harmful to their businesses. On the other hand, consumers and businesses likely benefit by purchasing lower priced consumer goods and intermediate inputs from China.

How, then, to judge the outcome of this scenario? Economists typically use the concept of economic welfare to assess the impact of a policy change on a national economy. In general, welfare is a measure of economic efficiency. It can be raised by removing certain economic distortions, improving productivity, improving how resources are allocated, and by expanding factor endowments, such as capital. Positive changes in welfare are frequently cited by economists as a rationale in support of free trade agreements.

Table 31 summarizes welfare effects by region.[393] U.S. welfare increases when Chinese subsidies are reduced, while China's welfare declines. All other regions experience higher levels of welfare as a result of China reducing its subsidies to strategic and heavyweight industries.

Table 31. Welfare effects from the medium-run simulation

Region	Allocative Efficiency	Terms of Trade	Other	Total
	$ millions			
USA	792.9	769.1	148.6	1,710.6
China	-5,251.6	-3,761.9	430.0	-8,583.5
WestRim	2,219.5	933.5	-106.9	3,046.1
WestHem	446.5	-229.1	-11.2	206.2
Europe	3,554.3	1,857.2	-88.9	5,322.5
WAM	631.7	387.3	-8.9	1,010.1
Total	2,393.3	-44.0	362.7	2,712.0

Experiment 3: Reduce subsidies to capital investment and reverse changes to capital stock

The simulation in **Experiment 2** only tells part of the story. Aside from making Chinese firms more competitive, Beijing's subsidy policies have attracted vast amounts of foreign direct investments. According to the *World Investment Report*, China has been a leading destination of foreign direct investment among developing countries.[394] Although the potential gains from serving a growing Chinese market undoubtedly motivated increased investment, much investment was directed toward China's export promotion zones. As a result, foreign invested firms account for the majority of China's exports. Foreign direct investment geared toward serving the Chinese market would be largely beneficial to the U.S. and Chinese economies, as research has shown that such investments promote U.S. exports of goods and services. On the other hand, the

[393] In GTAP, the measure of overall welfare is equivalent variation.
[394] *World Investment Report 2008* at Annex table B1.

establishment of export-oriented facilities in China that essentially replace U.S. activities with activities in China may have adverse consequences not only for displaced U.S. workers, but for the overall U.S. economy.

The literature on offshoring tends to focus on the cost savings, the improved allocation of resources, and the gains from trade resulting from comparative advantage.[395] When such analyses are applied to the case of China, one fundamental question arises: Why has China offered lucrative subsidies to foreign investors if such subsidies were not needed to attract foreign investment in the first place? The answer, as discussed in Part II, is that such subsidies and other preferences were part of China's overarching strategy to attract foreign investments in order to promote economic growth through exports and technological advancement through technology transfer.

China's success in attracting foreign investment has coincided with a sharp reduction in the growth of U.S. capital stock in manufacturing industries. **Table 32** shows trends in capital expenditures by U.S. majority-owned affiliates in China. These data understate the U.S. presence in China because caps on foreign ownership in key sectors frequently limit the foreign ownership stake to 50 percent, preventing U.S. majority ownership. Nevertheless, the trend is clear: capital expenditures by U.S. manufacturers in China is rising rapidly, and value added in China even more rapidly.

[395] See, for example, Council of Economic Advisors, *Economic Report of the President 2004* (February 2005) at 226-227; and McKinsey Global Institute, Offshoring: Is It a Win-Win Game? (August 2003) at 7-9.

Table 32. Capital expenditures in manufacturing industries by U.S. majority-owned nonbank foreign affiliates in China

Industry	1999	2000	2001	2002	2003	2004	2005	2006
	Capital Expenditures							
	$ millions							
Manufacturing	1,202	1,145	1,005	1,439	918	1,869	2,486	2,656
Food	29	32	34	30	23	33	84	99
Chemicals	572	384	284	261	174	313	474	602
Primary and fabricated metals	30	22	30	38	24	42	52	221
Machinery	69	34	42	57	52	84	89	107
Computers and electronic products	223	373	378	813	342	694	1,013	923
Electrical equipment, appliances, & components	56	53	48	53	71	84	203	201
Transportation equipment	67	83	39	39	59	108	209	147
Other manufacturing	156	164	150	148	173	511	362	356
	Value Added							
Manufacturing	3,172	4,381	4,583	5,414	6,352	8,368	11,160	12,230
Food	91	145	186	175	263	348	405	545
Chemicals	740	872	1,091	1,412	1,330	1,648	3,007	2,758
Primary and fabricated metals	132	142	147	178	242	244	342	356
Machinery	131	211	245	348	466	742	889	1,120
Computers and electronic products	1,364	2,015	2,109	2,123	2,123	2,550	4,273	4,556
Electrical equipment, appliances, & components	344	389	199	395	480	612	618	817
Transportation equipment	74	135	141	268	339	398	434	635
Other manufacturing	296	472	465	515	1,109	1,826	1,192	1,443

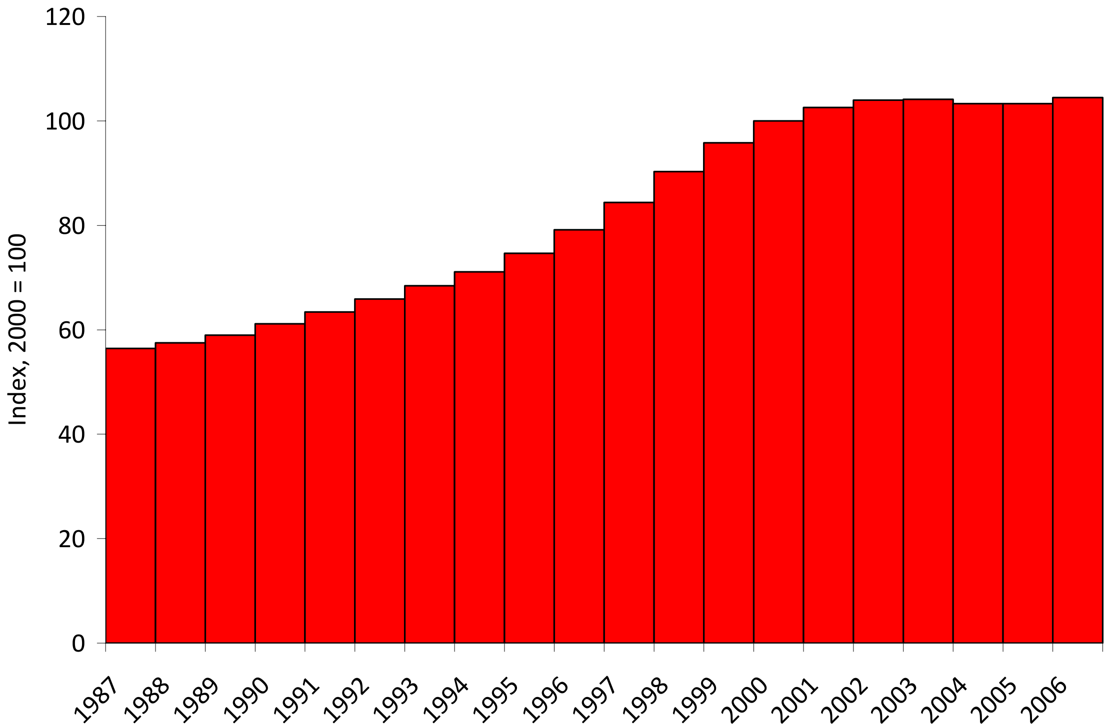
Source: U.S. Bureau of Economic Analysis at http://www.bea.gov/international/index.htm#iip.

While U.S. investments and output in China have been expanding, investments by manufacturers in the United States have been stagnant. This is demonstrated by data on U.S. capital stock of equipment in manufacturing maintained by the U.S. Bureau of Labor Statistics. **Figure 1** illustrates that the stock of equipment in manufacturing has stagnated during 2001 to 2006, a time of rising trade deficits with China and growing U.S.-driven investments in the Chinese economy.[396] Had U.S. manufacturing behaved during 2000-2006 as it did during 1990-1996, a comparable period that also included a recession, the level of equipment stock would have been 27 percent higher by 2006. In

[396] Stagnating capital stock means that new investments in plant and equipment are barely keeping pace with depreciation. It is not strictly comparable with the flow data presented for China. However, given the rising annual investment levels in China and relatively new age of U.S. investments there, the stock of equipment in China is undoubtedly rising rapidly.

the growth-accounting framework of analysis, economic growth results from expanding capital stock, labor hours, and/or productivity-type factors.[397] Given the stagnation in the stock of U.S. equipment in manufacturing, the performance of manufacturing, in particular its ability to serve domestic demand, has been seriously compromised.

Figure 1. Stock of equipment at U.S. manufacturers, 1987-2006



Source: U.S. Bureau of Labor Statistics at http://www.bls.gov/mfp/mprdload.htm.

Experiment 3 seeks to incorporate this dynamic into **Experiment 2**. This is accomplished by reducing the capital stock in China and increasing capital stock in the United States. First, we assume that capital stock in China would have been 5 percent lower in China absent China's subsidies and FDI inducements. We then distribute this

[397] Robert M. Solow, "Technical Change and the Aggregate Production Function," The Review of Economics and Statistics, Vol. 39, No. 3. (Aug., 1957), pp. 312-320.

amount to the capital stock of U.S. industries.[398] The results of this experiment are summarized in **Tables 33-35.**

Table 35 demonstrates that reversing China's subsidies and the resulting shifts in capital stocks lead to a further improvement in the U.S. economic performance compared with **Experiment 2**. Domestic sales from U.S. industries expand by $95 billion, and in the industries that China deems strategic and heavyweight, U.S. exports expand by $22 billion, and imports from China decline by $13 billion. Labor earnings and the trade balance improve, though the increase in earnings is lower than for **Experiment 2**.[399] China's trade balance improves, but the exports of the strategic and heavyweight industries decline by $44 billion.

Table 33. Impact of reducing subsidies in China's strategic and heavyweight industries and reversing shifts in capital stock

Item	Impact
U.S. data	*$ millions*
Domestic sales	94,618
Exports (strategic/hwgt)	21,929
Imports from China (strategic/hwgt)	-12,930
Labor earnings	24,527
Balance of goods and services	26,137
Chinese data	
Exports (strategic/hwgt)	-43,729
Imports (Strategic/hwgt)	-4,407
Balance of goods and services	7,602

Table 34 details how U.S. industries disadvantaged by Chinese subsidies perform once those subsidies are reduced and capital stock increases. In all, domestic sales rise by $39 billion and individual industries experience gains ranging from $835 million to $12.1 billion. **Table 35** summarizes the changes in welfare by country. Welfare in the

[398] Specifically, capital stock in China was shocked by -5 percent and the capital stock in the United States was shocked by 1.9333 percent. This increase in U.S. capital stock is far smaller than the shortfall illustrated in **Figure 1**.
[399] This occurs because a larger share of factor earnings must go to the expanded capital base.

United States rises by $33 billion while welfare in China declines by a similar amount. The economies of other regions also experience welfare gains. The U.S. gains in the capital stock scenario significantly exceed those from **Experiment 2**. This outcome suggests that the elimination of any market distortions that lead U.S. firms to replace U.S. investments with investments in China would have beneficial effects on the comparable U.S. industries, and on the U.S. economy overall.

Table 34. Impact on U.S. industries of reducing subsidies in China's strategic and heavyweight industries and reversing shifts in capital stock

Sector	Change in Domestic Sales
	$ millions
Electricity	1,266
Energy	2,003
Petrochem	12,110
Transportation (air and sea)	1,438
Communications	880
Machinery	6,494
Autos	2,480
Electronics	8,440
Construction	835
Steel	1,522
Aluminum	1,654
Total	39,121

Table 35. Impact on national welfare of reducing subsidies in China's strategic and heavyweight industries and reversing shifts in capital stock

Region	Change in Welfare
USA	33,070
China	-33,647
WestRim	3,727
WestHem	1,640
Europe	8,140
WAM	762
Total	13,692

Recent Trends Chinese State Support

China has been reducing state support in order to avoid a significant backlash against its export promotion policies.[400] The elimination of subsidies that supported exporters has been a positive and necessary development, positive because it provides much needed breathing room in competing labor markets where China's policy-driven exports were wreaking havoc and necessary because a reduction in policy-driven support facilitates trade according to comparative advantage, not government largesse. However, because many Chinese producers could not have exported as much as they did without subsidies and an undervalued currency, reductions in subsidies and a stronger Yuan are having predictable impacts on Chinese exporters: they are making less money and in some cases going out of business.[401]

China's steps to reduce state support for the expansion of manufacturing and exports were made at a time when China's exports were expanding rapidly and the country's annual GDP growth regularly exceeded 10 percent. Now that growth in China has begun to moderate, China has begun to renew support for its exporters. Provincial governments are rescuing exporters who would otherwise go out of business.[402] The central government has halted the appreciation of the Yuan, begun reinstituting export

[400] Steven R. Weisman, "China agrees to end a dozen subsidies that trouble trade relations," *International Herald Tribune* (November 29, 2007).

[401] See, for example, Fu Yanyan, "Panic, Shutdowns Spread in Toy Industry," *Caijing Magazine* (October 23, 2008); and "China considers increasing some steel export rebates," *Steel Business Briefing* (October 24, 2008). Twenty-three of China's 71 major mills were running at a loss even before the full weight of the global slowdown had hit China's steel industry.

[402] See, for example, Shen Hu, "Textile Firms Getting Government Bailouts," *Caijing Magazine* (October 22, 2008). "Authorities in Shaoxing, a Zhejiang Province city in the heart of eastern China's textile manufacturing region, are ready to rescue teetering textile companies struggling to pay their debts. Feng Jianrong, vice governor for the city's Shaoxing County, which is also one of China's wealthiest counties, said the local government would bail out four private enterprises, regardless of cost."

rebates, and leaned on government-owned banks to provide loans to uncreditworthy borrowers.[403]

This policy reversal reveals that GOC export support played a significant role in supporting rapid Chinese export growth. Even prior to the global financial crisis, Chinese producers whose export expansion depended on direct government support and the weak currency were experiencing trouble. Some of these difficulties, such as high levels of lead in toys, cannot be attributed to a reduction in state support for exporters. However, press reports from China indicate that higher costs were contributing importantly to the troubles of Chinese exporters prior to the global recession.[404] These higher costs reflect a reduction in policy support, as the GOC allowed electricity prices to rise closer to market levels, changed the labor law in ways that resulted in higher Chinese wages, and allowed the Yuan to appreciate. The latter is critical to an adjustment of global imbalances because a stronger Yuan raises China's costs relative to the costs of competitors in the United States and other countries whose workers have born the brunt of China's support for Chinese exporters. This is why marginal Chinese exporters were being squeezed prior to the financial crisis.

If China's subsidy reversal enables these policy-dependent exporters to renew their competitiveness in international markets, worker dislocations in competing U.S. industries will continue.

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[403] See, for example, "China considers increasing some steel export rebates," *Steel Business Briefing* (October 24, 2008); and Yan Jiangning, "Sewing Machine Manufacturer Rattling Crisis," *Caijing Magazine* (June 5, 2008). From July 10, 2008 to March 16, 2009, the Yuan's noon buying rate in New York City has been in the band between 6.78 and 6.89 per dollar.

[404] See, for example, Fu Yanyan, "Panic, Shutdowns Spread in Toy Industry," *Caijing Magazine* (October 23, 2008). "Profit margins for toy manufacturers have been squeezed by rising production costs and increasingly fierce competition *in the past two years*. Statistics show production cost for toymakers since 2007 have increased around 60 percent, even though revenues from international orders have remained unchanged." (Italics added.)

Conclusions

The Chinese economy has made a remarkable transition during the past 30 years. Its once communist, isolated economy is now a major participant in global markets. Its firms export a wide variety of products, form joint ventures with non-Chinese multinational corporations, and raise money by offering shares in Chinese and foreign stock exchanges.

Yet despite these dramatic reversals, the Chinese government continues to exert significant control over important aspects of China's economy. In case anyone was unsure about China's intent, the government erased all doubt when it announced its list of strategic and heavyweight industries in December 2006. The strategic industries, military, electric power and distribution, oil and petrochemicals, coal, civil aviation, and shipping will be wholly-owned or absolutely controlled by the state. The state is also to maintain relatively strong control over heavyweight industries, such as machinery, motor vehicles, information technology, construction, and ferrous and non-ferrous metals. These are major industries in China and the United States.

This study reviewed 16 firms from these industries whose shares are listed on the Hong Kong Stock Exchange, as well as other international markets. These firms have private shareholders, but according to official financial statements, the Chinese government holds the majority of shares through state-owned enterprises. Thus, no one should be deluded into thinking that listed shares shield Chinese firms from government control.

The review conducted for this report also demonstrates that China uses market incentives to achieve the state's goals for the Chinese economy. China is an active user of targeted incentives such as preferential lending, preferential tax rates, and government grants. These incentives are used to attract foreign firms, encourage research and development, restructure certain industries, prolong the life or transfer ownership of failing firms, encourage the use of domestic equipment, promote the development of selected industries, provide cheap inputs to favored companies, to promote economic development in certain regions, and to counteract the adverse economic effects of price controls.

To determine the scale of these subsidies, this study examined countervailing duty investigations of Chinese subsidies performed by the Department of Commerce and corporate annual reports to shareholders. Both sources indicate that subsidies can vary widely from firm to firm and industry to industry. A good ball park range is 1.5 to 10 percent of revenue, though there were certainly instances when subsidies were much higher, especially when debt forgiveness was involved. It is also possible that the range is higher, because not all incidents of subsidization are detailed in the annual reports.

This subsidy range may understate the benefits available to U.S. and other Western firms that have invested in China. Many of the subsidies China offers confer benefits on firms that contain foreign investment. Such companies are often attracted to promotional zones where investment in high technology industries and export oriented industries is encouraged. The benefits to foreign firms that invest in these zones are potentially more lucrative than the ones encountered in our review of strategic and heavyweight firms. U.S. data on foreign investment by majority-owned affiliates of U.S.

companies operating in China demonstrate that Chinese subsidies are potentially diverting resources to develop and produce products to China and away from the United States.

As China's role in the global economy increases, so will the role played by firms subsidized and controlled by Beijing. If these subsidies persist, they will continue to provide Chinese firms with a significant competitive advantage vis-à-vis U.S. firms. In addition to this competitive advantage, U.S. firms must be aware that decisions made by Chinese competitors from strategic and heavyweight industries could reflect government incentives and control, not market incentives and profit. The possibility that Chinese firms in government controlled and heavyweight industries would sacrifice economic profits to achieve official aims should not be discounted.

This study has sought to quantify how Chinese subsidies to strategic and heavyweight industries affect U.S. industries and the U.S. economy overall using the GTAP applied general equilibrium model and database. The first simulation demonstrates that eliminating a single input subsidy to the aluminum industry in China would increase U.S. sales of aluminum to the U.S. market, reduce aluminum imports from China, and increase the earnings of U.S. workers in the aluminum industry. At the same time, China's aluminum exports to the world would decline, its aluminum imports from the world would increase, and its trade surplus overall would decline.

The second simulation demonstrates that the elimination of Chinese subsidies consistent with those observed in the annual reports would increase U.S. sales in the U.S. market by approximately $80 billion. U.S. exports would also increase. While the elimination of the subsidies would lead to an increase in the overall level of prices in the United States, overall U.S. economic welfare increases.

The third simulation considered the possibility that the stagnation in the stock of equipment in U.S. manufacturing during the 2000-2006 period has occurred because U.S. manufacturers have invested in China instead of the United States. When a small portion of Chinas capital stock is diverted back to the United States, the gains to the U.S. economy from the removal of Chinese subsidies are even greater.

For many years, the U.S. government did little to address Chinese subsidies. In recent years, however, the U.S. government has sought to eliminate these subsidies through action at the WTO and by reversing a longstanding policy of not investigating subsidies from China. The WTO cases have brought about policy changes by the Chinese government that should reduce the pronounced policy tilt in favor of foreign investment. The USTR is now addressing China's "famous brands" program at the WTO, with the support of many other concerned countries

The Department of Commerce has investigated Chinese subsidies in several industries, and many of these investigations have led to countervailing duties being placed on the imports of subsidized Chinese firms. For U.S. industries in competition with such firms, these U.S. government actions are a very welcome development.

Appendix 1: Illustrative List of Export Subsidies, Agreement on Subsidies and Countervailing Measures

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available(**57**) on world markets to their exporters.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes (**58**) or social welfare charges paid or payable by industrial or commercial enterprises. (**59**)

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).(**60**) This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

(i) The remission or drawback of import charges58 in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

Notes:

57. The term “commercially available” means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

58. For the purpose of this Agreement:
The term “direct taxes” shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term “import charges” shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term “indirect taxes” shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

“Prior-stage” indirect taxes are those levied on goods or services used directly or indirectly in making the product;

“Cumulative” indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

“Remission” of taxes includes the refund or rebate of taxes;

“Remission or drawback” includes the full or partial exemption or deferral of import charges.

59. The Members recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Members reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Member may draw the attention of another Member to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Members under GATT 1994, including the right of consultation created in the preceding sentence

Paragraph (e) is not intended to limit a Member from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another Member.

60. Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

Source: http://www.wto.org/english/docs_e/legal_e/index_i_e.htm>

Appendix 2: List of China's Subsidies Reported to the WTO Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement

I. Preferential tax policies for foreign-invested enterprises
II. Preferential tax policies for foreign-invested export enterprises
III. Preferential tax policies for foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas
IV. Preferential tax policies for foreign-invested enterprises engaged in energy, transportation infrastructure projects
V. Preferential tax policies for Chinese-foreign equity joint ventures engaged in port and dock construction
VI. Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive
VII. Preferential tax policies for enterprises with foreign investment in the border cities
VIII. Preferential tax policies for enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones, and for advanced technology enterprises invested in and operated by foreign businesses
IX. Preferential tax policies for enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones
X. Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area)
XI. Preferential tax policies for enterprises with foreign investment established in the costal economic open areas and in the economic and technological development zones
XII. Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai
XIII. Preferential tax policies for enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone
XIV. Preferential tax policies in the western regions
XV.
XVI. Preferential tax policies for enterprises established in the poverty stricken areas
XVII. Fiscal funds to alleviate poverty
XVIII. Specific subsidy on agricultural production and construction in the poverty stricken areas of Hexi and Dingxi of Gansu Province and Xihaigu of Ningxia Hui Autonomous Region
XIX. Interests discount of poverty alleviation loans
XX. Preferential tax policies for enterprises which utilize the waste materials

XXI. Preferential tax policies for enterprises suffering from natural disasters
XXII. Preferential tax policies for welfare enterprises
XXIII. Preferential tax policies for enterprises making little profits
XXIV. Preferential tax policies for township enterprises
XXV. Preferential tax policies for enterprises which provide employment for unemployed people
XXVI. Preferential tax policies for scientific research institutions under transformation
XXVII. Preferential tax policies for the research and development of enterprises
XXVIII. Preferential tax policies for the research and development of foreign-invested enterprises
XXIX. Preferential tax policies for enterprises transferring technology
XXX. Preferential tax policies for the key leading enterprises engaged in agricultural industrialization
XXXI. Preferential tax policies for the enterprises engaged in forestry
XXXII. Funds for supporting technological innovation for the technological small and medium-sized enterprises (SMEs)
XXXIII. Development funds for SMEs
XXXIV. Fund for international market exploration by SMEs
XXXV. Special fund for establishment of service system for SMEs
XXXVI. Fund for subsidizing the training of the rural migrant labour force
XXXVII. Outlay for training of youngster farmers on science and technology
XXXVIII. Fund for specialized cooperatives of farmers
XXXIX. Subsidy for popularization of agricultural technologies
XL. Subsidy for growing superior grain cultivars
XLI. Subsidy for purchasing agricultural machinery and tools
XLII. Subsidy for actualizing agricultural technology
XLIII. Fund provided for agricultural industrialization
XLIV.
XLV. Fund for agricultural disaster relief
XLVI. Fund provided to exempt from or reduce agriculture tax on farmers suffering from poor harvest after disasters
XLVII. Subsidy for major flood control and drought resistance
XLVIII. Fund for construction of small irrigation facilities in rural areas
XLIX. Fund for construction of small ecological facilities in rural areas
L. Fund for projects on collection, reservation and utilization of rainfall
LI. Fund for interest discount of loans for the purpose of agricultural water-saving irrigation
LII. Subsidies for national key construction projects on water and soil conservation
LIII. Special fund for projects on protection of natural forestry
LIV. Cash subsidy for returning cultivated land to forests
LV. Compensation fund for forestry ecological benefits
LVI. Interest discount for loans for the purpose of desertification prevention in forestry
LVII. Subsidy for prevention from and control of pest and disease in forestry
LVIII. Subsidy for grass seed sowing by airplanes

LIX. Preferential tax policies for integrated circuit industry

LX. Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipments.

LXI. Preferential tax policies for domestic enterprises purchasing domestically produced equipments for technology upgrading purpose

LXII. Exemption of tariff and import VAT for the imported technologies and equipments

LXIII. Preferential tax policies for enterprises of grain or oil reserves

LXIV. Preferential tax policies for the imports of China Grain Reserves Corporation for the purpose of rotation of grain reserves

LXV. Preferential tax policies for the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grass land, and the grain rations for the migrants from the reservoir areas

LXVI. Preferential tax treatment for tea sold in the border areas

LXVII. Preferential tax treatment for imported products for the purpose of replacing the planting of poppies

LXVIII. Preferential tax policies on imports of seeds (seedlings), breeding stock (fowl), fish fries (breeds) and non profit-making wild animals and plants kept as breeds during the period of the "Tenth Five-Year Plan"

LXIX. Preferential tax treatment for specimens of endangered wild animals and plants returned by the government of Hong Kong, China to the Office of the Administration of Import and Export of Endangered Species.

LXX. Preferential tax treatment for endangered wild animals and plants as well as their products returned by foreign governments, by the government of Hong Kong, China or the government of Macao, China to the Office of the Administration of Import and Export of Endangered Species

LXXI. Preferential tax treatment for building material products produced with integrated utilization of resources

LXXII. Preferential tax treatment for other products produced with integrated utilization of resources

LXXIII. Preferential tax treatment for imported products for scientific and educational purposes

LXXIV. Preferential tax treatment for imported products exclusively used by the disabled people

LXXV. Preferential tax treatment for products for the disabled people

LXXVI. Preferential tax treatment to anti-HIV-AIDS medicine

LXXVII. Refund of import VAT of raw copper materials

LXXVIII. Preferential tax treatment for casting and forging products

LXXIX. Preferential tax treatment to dies products

Appendix 3: Calculated CVD rates in U.S. subsidy investigations involving China

Case	Date Initiated**	Companies Investigated	Prelim**	Rates	AFA/ Calc	Final**	Rates	AFA/ Calc
Coated Free Sheet Paper	11/27/2006	Gold East Paper	4/9/2007	20.35	Calc	10/17/2007	7.4	Calc
Coated Free Sheet Paper	11/27/2006	Shandong Chenming Paper	4/9/2007	10.9	Calc	10/17/2007	44.25	AFA
Coated Free Sheet Paper	11/27/2006	All others	4/9/2007	18.16		10/17/2007	7.4	
Circular Welded Pipe	7/5/2007	The Shuangjie Group	11/6/2007	264.98	AFA	7/22/2008	616.83	AFA
Circular Welded Pipe	7/5/2007	Weifang East Steel Pipe	11/6/2007	0	Calc	7/22/2008	29.62	Calc
Circular Welded Pipe	7/5/2007	The Kingland Group	11/6/2007	16.59	Calc	7/22/2008	44.93	Calc
Circular Welded Pipe	7/5/2007	All others	11/6/2007	16.59		7/22/2008	37.28	
OTR Tires	8/7/2007	Hebei Starbright Tire Co. Ltd	12/17/2007	2.38	Calc	7/15/2008	14	Calc
OTR Tires	8/7/2007	Guizhou Tyre Co., Ltd.	12/17/2007	3.13	Calc	7/15/2008	2.45	Calc
OTR Tires	8/7/2007	Tianjin United	12/17/2007	6.59	Calc	7/15/2008	6.85	Calc
OTR Tires	8/7/2007	All others	12/17/2007	4.44		7/15/2008	5.62	
Light-walled Rectangular Pipe	7/24/2007	Zhanjiagang Zhongyuan	11/26/2007	2.99	Calc	6/24/2008	15.28	Calc
Light-walled Rectangular Pipe	7/24/2007	Qingdao Xiangxing Steel	11/26/2007	77.85	AFA	6/24/2008	200.58	AFA
Light-walled Rectangular Pipe	7/24/2007	Kunshan Lets Win	11/26/2007	0.27	Calc	6/24/2008	2.17	Calc
Light-walled Rectangular Pipe	7/24/2007	All others	11/26/2007	2.99		6/24/2008	15.28	
Woven Sacks	7/25/2007	Shandong Shouguang	12/3/2007	2.57	Calc	6/24/2008	352.82	AFA
Woven Sacks	7/25/2007	Zibo Aifudi Plastic*	12/3/2007	11.59	Calc	6/24/2008	29.54	Calc
Woven Sacks	7/25/2007	Han Shing Chemical	12/3/2007	57.14	AFA	6/24/2008	223.74	AFA
Woven Sacks	7/25/2007	Ningbo Yong Feng	12/3/2007	57.14	AFA	6/24/2008	223.74	AFA
Woven Sacks	7/25/2007	Shandong Qilu Plastic	12/3/2007	57.14	AFA	6/24/2008	304.4	AFA
Woven Sacks	7/25/2007	All others	12/3/2007	2.57		6/24/2008	226.85	
Magnets	10/18/2007	China Ningbo Cixi	2/25/2008	70.41	AFA	7/10/2008	109.95	AFA
Magnets	10/18/2007	Polyflex Magnets	2/25/2008	70.41	AFA	7/10/2008	109.95	AFA
Magnets	10/18/2007	All others	2/25/2008	70.41		7/10/2008	109.95	
Light weight Thermal Paper	10/29/2007	Guangdong Guanhao High-Tech	3/14/2008	5.68	Calc	11/24/2008	13.63	Calc
Light weight Thermal Paper	10/29/2007	Shanghai Hanhong Paper	3/14/2008	0.57	Calc	11/24/2008	0.57	Calc
Light weight Thermal Paper	10/29/2007	Shenzhen Yuanming	3/14/2008	59.5	AFA	11/24/2008	138.53	AFA
Light weight Thermal Paper	10/29/2007	Xiamen Anne Paper	3/14/2008			11/24/2008	123.65	AFA
Light weight Thermal Paper	10/29/2007	MDCN Technology	3/14/2008	59.5	AFA	11/24/2008	124.93	AFA
Light weight Thermal Paper	10/29/2007	All others	3/14/2008	5.68		11/24/2008	13.63	
Sodium Nitrate	11/29/2007	Shanxi Jiaocheng	4/11/2008	93.56	AFA	7/8/2008	169.01	AFA
Sodium Nitrate	11/29/2007	Tianjin Soda Plant	4/11/2008	93.56	AFA	7/8/2008	169.01	AFA
Sodium Nitrate	11/29/2007	All others	4/11/2008	93.56		7/8/2008	169.01	
Circular Welded Austenitic Stainless Pressure Pipe	2/25/2008	Winner Companies	8/7/2008	1.47	Calc			
Circular Welded Austenitic Stainless Pressure Pipe	2/25/2008	Froch Enterprise	8/7/2008	105.73	AFA			
Circular Welded Austenitic Stainless Pressure Pipe	2/25/2008	All others	8/7/2008	53.04				
Circular Welded Line Pipe	4/29/2008	Liaoning Northern Steel Pipe	9/9/2008	31.65	Calc	11/24/2008	40.05	Calc
Circular Welded Line Pipe	4/29/2008	Huludao Companies	9/9/2008	18.89	Calc	11/24/2008	35.63	Calc
Circular Welded Line Pipe	4/29/2008	All others	9/9/2008	25.27		11/24/2008	37.84	
Citric Acid and Citrate Salts	5/12/2008	TTCA Co.	9/19/2008	1.41	Calc			
Citric Acid and Citrate Salts	5/12/2008	Yixing Union Biochemical	9/19/2008	3.92	Calc			
Citric Acid and Citrate Salts	5/12/2008	Anhui BBCA Biochemical	9/19/2008	97.72	AFA			
Citric Acid and Citrate Salts	5/12/2008	All others	9/19/2008	2.67				

Case	Date Initiated**	Companies Investigated	Prelim**	Rates	AFA/ Calc	Final**	Rates	AFA/ Calc
Tow-Behind Lawn Groomers	7/21/2008	Princeway Limited	11/24/2008	0.95	Calc			
Tow-Behind Lawn Groomers	7/21/2008	Jiashan Superpower Tools	11/24/2008	2.77	Calc			
Tow-Behind Lawn Groomers	7/21/2008	Maxchief Investments	11/24/2008	254.52	AFA			
Tow-Behind Lawn Groomers	7/21/2008	Qingdao EA Huabang Instrument	11/24/2008	254.52	AFA			
Tow-Behind Lawn Groomers	7/21/2008	Qingdao Hundai Tools	11/24/2008	254.52	AFA			
Tow-Behind Lawn Groomers	7/21/2008	Qingdao Taifa Group	11/24/2008	254.52	AFA			
Tow-Behind Lawn Groomers	7/21/2008	World Factory	11/24/2008	254.52	AFA			
Tow-Behind Lawn Groomers		All others	11/24/2008	2.77				
Certain Kitchen Appliance Shelving and Racks	8/26/2008	Guangdon Wireking Housewares and Hardware	12/23/2008	13.22				
Certain Kitchen Appliance Shelving and Racks	8/26/2008	Asber Enterprise Co.	12/23/2008	197.14	AFA			
Certain Kitchen Appliance Shelving and Racks	8/26/2008	Changzhou Yixiong Metal Products Co.	12/23/2008	162.87	AFA			
Certain Kitchen Appliance Shelving and Racks	8/26/2008	Foshan Winleader Metal Products Co.	12/23/2008	162.87	AFA			
Certain Kitchen Appliance Shelving and Racks	8/26/2008	Kingsun Enterprises Group Co.	12/23/2008	162.87	AFA			
Certain Kitchen Appliance Shelving and Racks	8/26/2008	Yuyao Hanjun Metal Work Co./ Yuyao Hanjun Metal Products Co.	12/23/2008	162.87	AFA			
Certain Kitchen Appliance Shelving and Racks	8/26/2008	Zhongshan Iwatani, Co.	12/23/2008	162.87	AFA			
Certain Kitchen Appliance Shelving and Racks	8/26/2008	All others	12/23/2008	13.22				

* Voluntary company, not included in all others calculation
** Dates reflect the publication dates for the Federal Register notices, including publication of any amended rates.

Average non-AFA rate (final or prelim)	13.99	%
Average AFA rate (final or prelim)	199.96	%
Average all others rate	53.43	%

Appendix 4: China CVD rates by program and firm

Firm:	Gold East Paper	Shandong Chenming Paper	The Shuangjie Group	Weifang East Steel Pipe 1/	The Kingland Group 1/
Product/Industry:	*Coated Free Sheet Paper*		*Circular Welded Pipe*		
State Key Technology Renovation Project Fund		AFA	AFA		
Superstar Enterprise Grant		AFA	AFA		0.02%
Funds for the Outward Expansion of Industries in Guandong Province		AFA	AFA		
Zhanjiang Municipality and ZETDZ Export Related Assistance		AFA	AFA		
Environmental Protection		AFA	AFA		
Liaoning Province Grants		AFA	AFA		
Anqiu Finance Bureau Grant		AFA	AFA		
Foreign Trade Development Fund		AFA	AFA		
Provincial Export Interest Subsidies		AFA	AFA		
Export Loans		AFA	AFA		
Policy Lending		AFA	AFA	1.14%	
Shareholder Loans		AFA	AFA		
Debt Forgiveness		AFA	AFA	1.08%	
"Torch" Income Tax Program		AFA	AFA		
"Two Free, Three Half" Income Tax Program	0.76%	AFA	AFA		
Income Tax Reductions for Export-oriented FIEs		AFA	AFA		
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs		AFA	AFA		
Tax Subsidies to FIEs Based on Location	0.76%	AFA	AFA		
Local Income Tax Exemption and Reduction Program for "Productive" FIEs	0.15%	AFA	AFA		
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise		AFA	AFA		
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area		AFA	AFA		
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs		AFA	AFA		
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies		AFA	AFA		
VAT Rebates on FIE Purchases of Domestically Produced Equipment	0.08%	AFA	AFA		
VAT and Tariff Exemptions on Imported Equipment	1.51%	AFA	AFA		
Domestic VAT Refunds for Companies in Certain Locations (Zones)	0.04%	AFA	AFA		
VAT Fixed Asset Refunds for Certain Industries		AFA	AFA		
Stamp Tax Exemption on Share Transfer		AFA	AFA		
FIE Land Tax Waiver		AFA	AFA		
Provision of Land for Less than Adequate Remuneration		AFA	AFA		
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel		AFA	AFA	27.35%	44.84%
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil		AFA	AFA		
Provision of Inputs for Less than Adequate Remuneration: Rubber		AFA	AFA		
Provision of Inputs for Less than Adequate Remuneration: Electricity		AFA	AFA		
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene		AFA	AFA		
Famous Brands Program		AFA	AFA		
Total	3.30%			29.57%	44.86%
Number of programs	6	-	-	3	2

Firm:	Hebei Starbright Tire	Guizhou Tyre	Tianjin United
Product/Industry:		*Off-The-Road Tires*	
State Key Technology Renovation Project Fund		0.15%	
Superstar Enterprise Grant			
Funds for the Outward Expansion of Industries in Guandong Province			
Zhanjiang Municipality and ZETDZ Export Related Assistance			
Environmental Protection			
Liaoning Province Grants			
Anqiu Finance Bureau Grant			
Foreign Trade Development Fund			
Provincial Export Interest Subsidies			
Export Loans			
Policy Lending	0.56%	1.87%	
Shareholder Loans			
Debt Forgiveness	11.83%		6.14%
"Torch" Income Tax Program			
"Two Free, Three Half" Income Tax Program			
Income Tax Reductions for Export-oriented FIEs			
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs			
Tax Subsidies to FIEs Based on Location			0.13%
Local Income Tax Exemption and Reduction Program for "Productive" FIEs			0.06%
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise			
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area			
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs			
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies			
VAT Rebates on FIE Purchases of Domestically Produced Equipment		0.25%	0.44%
VAT and Tariff Exemptions on Imported Equipment			
Domestic VAT Refunds for Companies in Certain Locations (Zones)			
VAT Fixed Asset Refunds for Certain Industries			
Stamp Tax Exemption on Share Transfer		0.01%	
FIE Land Tax Waiver			
Provision of Land for Less than Adequate Remuneration	1.61%		
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel			
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil			
Provision of Inputs for Less than Adequate Remuneration: Rubber	0.00%	0.17%	0.08%
Provision of Inputs for Less than Adequate Remuneration: Electricity			
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene			
Famous Brands Program			
Total	14.00%	2.45%	6.85%
Number of programs	4	5	5

Firm:	Zhanjiagang Zhongyuan	Qingdao Xiangxing Steel	Kunshan Lets Win
Product/Industry:	*Light-walled Rectangular Pipe*		
State Key Technology Renovation Project Fund		AFA	
Superstar Enterprise Grant		AFA	
Funds for the Outward Expansion of Industries in Guandong Province		AFA	
Zhanjiang Municipality and ZETDZ Export Related Assistance		AFA	
Environmental Protection		AFA	
Liaoning Province Grants		AFA	
Anqiu Finance Bureau Grant		AFA	
Foreign Trade Development Fund		AFA	
Provincial Export Interest Subsidies		AFA	
Export Loans		AFA	
Policy Lending		AFA	
Shareholder Loans		AFA	
Debt Forgiveness		AFA	
"Torch" Income Tax Program		AFA	
"Two Free, Three Half" Income Tax Program		AFA	
Income Tax Reductions for Export-oriented FIEs		AFA	
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs		AFA	
Tax Subsidies to FIEs Based on Location		AFA	0.27%
Local Income Tax Exemption and Reduction Program for "Productive" FIEs		AFA	
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise		AFA	
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area		AFA	
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs		AFA	
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies		AFA	
VAT Rebates on FIE Purchases of Domestically Produced Equipment		AFA	
VAT and Tariff Exemptions on Imported Equipment		AFA	
Domestic VAT Refunds for Companies in Certain Locations (Zones)		AFA	
VAT Fixed Asset Refunds for Certain Industries		AFA	
Stamp Tax Exemption on Share Transfer		AFA	
FIE Land Tax Waiver		AFA	
Provision of Land for Less than Adequate Remuneration	0.10%	AFA	
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel	15.18%	AFA	1.90%
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil		AFA	
Provision of Inputs for Less than Adequate Remuneration: Rubber		AFA	
Provision of Inputs for Less than Adequate Remuneration: Electricity		AFA	
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene		AFA	
Famous Brands Program		AFA	
Total	15.28%		2.17%
Number of programs	2	-	2

Firm:	Shandong Shouguang 1/	Zibo Aifudi Plastic	Han Shing Chemical	Ningbo Yong Feng	Shandong Qilu Plastic
Product/Industry:			*Woven Sacks*		
State Key Technology Renovation Project Fund	AFA		AFA	AFA	AFA
Superstar Enterprise Grant	AFA		AFA	AFA	AFA
Funds for the Outward Expansion of Industries in Guandong Province	AFA		AFA	AFA	AFA
Zhanjiang Municipality and ZETDZ Export Related Assistance	AFA		AFA	AFA	AFA
Environmental Protection	AFA		AFA	AFA	AFA
Liaoning Province Grants	AFA		AFA	AFA	AFA
Anqiu Finance Bureau Grant	AFA		AFA	AFA	AFA
Foreign Trade Development Fund	AFA		AFA	AFA	AFA
Provincial Export Interest Subsidies	AFA		AFA	AFA	AFA
Export Loans	AFA		AFA	AFA	AFA
Policy Lending	AFA	0.06%	AFA	AFA	AFA
Shareholder Loans	AFA		AFA	AFA	AFA
Debt Forgiveness	AFA		AFA	AFA	AFA
"Torch" Income Tax Program	AFA		AFA	AFA	AFA
"Two Free, Three Half" Income Tax Program	AFA		AFA	AFA	AFA
Income Tax Reductions for Export-oriented FIEs	AFA		AFA	AFA	AFA
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs	AFA		AFA	AFA	AFA
Tax Subsidies to FIEs Based on Location	AFA		AFA	AFA	AFA
Local Income Tax Exemption and Reduction Program for "Productive" FIEs	AFA		AFA	AFA	AFA
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise	AFA		AFA	AFA	AFA
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area	AFA		AFA	AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs	AFA		AFA	AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies	AFA		AFA	AFA	AFA
VAT Rebates on FIE Purchases of Domestically Produced Equipment	AFA		AFA	AFA	AFA
VAT and Tariff Exemptions on Imported Equipment	AFA		AFA	AFA	AFA
Domestic VAT Refunds for Companies in Certain Locations (Zones)	AFA		AFA	AFA	AFA
VAT Fixed Asset Refunds for Certain Industries	AFA		AFA	AFA	AFA
Stamp Tax Exemption on Share Transfer	AFA		AFA	AFA	AFA
FIE Land Tax Waiver	AFA		AFA	AFA	AFA
Provision of Land for Less than Adequate Remuneration	AFA	13.36%	AFA	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel	AFA		AFA	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil	AFA		AFA	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Rubber	AFA		AFA	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Electricity	AFA		AFA	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene	AFA	16.12%	AFA	AFA	AFA
Famous Brands Program	AFA		AFA	AFA	AFA
Total		29.54%			
Number of programs	-	3	-	-	-

Firm:	China Ningbo Cixi	Polyflex Magnets
Product/Industry:	*Magnets*	
State Key Technology Renovation Project Fund	AFA	AFA
Superstar Enterprise Grant	AFA	AFA
Funds for the Outward Expansion of Industries in Guandong Province	AFA	AFA
Zhanjiang Municipality and ZETDZ Export Related Assistance	AFA	AFA
Environmental Protection	AFA	AFA
Liaoning Province Grants	AFA	AFA
Anqiu Finance Bureau Grant	AFA	AFA
Foreign Trade Development Fund	AFA	AFA
Provincial Export Interest Subsidies	AFA	AFA
Export Loans	AFA	AFA
Policy Lending	AFA	AFA
Shareholder Loans	AFA	AFA
Debt Forgiveness	AFA	AFA
"Torch" Income Tax Program	AFA	AFA
"Two Free, Three Half" Income Tax Program	AFA	AFA
Income Tax Reductions for Export-oriented FIEs	AFA	AFA
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs	AFA	AFA
Tax Subsidies to FIEs Based on Location	AFA	AFA
Local Income Tax Exemption and Reduction Program for "Productive" FIEs	AFA	AFA
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise	AFA	AFA
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area	AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs	AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies	AFA	AFA
VAT Rebates on FIE Purchases of Domestically Produced Equipment	AFA	AFA
VAT and Tariff Exemptions on Imported Equipment	AFA	AFA
Domestic VAT Refunds for Companies in Certain Locations (Zones)	AFA	AFA
VAT Fixed Asset Refunds for Certain Industries	AFA	AFA
Stamp Tax Exemption on Share Transfer	AFA	AFA
FIE Land Tax Waiver	AFA	AFA
Provision of Land for Less than Adequate Remuneration	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Rubber	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Electricity	AFA	AFA
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene	AFA	AFA
Famous Brands Program	AFA	AFA
Total		
Number of programs	-	-

Firm:	Guangdong Guanhao High-Tech	Shanghai Hanhong Paper	Shenzhen Yuanming	MDCN Technology
Product/Industry:	*Light weight Thermal Paper*			
State Key Technology Renovation Project Fund		0.18%	AFA	AFA
Superstar Enterprise Grant			AFA	AFA
Funds for the Outward Expansion of Industries in Guandong Province	0.08%		AFA	AFA
Zhanjiang Municipality and ZETDZ Export Related Assistance	0.05%		AFA	AFA
Environmental Protection	0.05%		AFA	AFA
Liaoning Province Grants			AFA	AFA
Anqiu Finance Bureau Grant			AFA	AFA
Foreign Trade Development Fund			AFA	AFA
Provincial Export Interest Subsidies			AFA	AFA
Export Loans			AFA	AFA
Policy Lending	8.31%		AFA	AFA
Shareholder Loans	0.97%		AFA	AFA
Debt Forgiveness	2.32%		AFA	AFA
"Torch" Income Tax Program	0.75%		AFA	AFA
"Two Free, Three Half" Income Tax Program	0.08%		AFA	AFA
Income Tax Reductions for Export-oriented FIEs			AFA	AFA
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs			AFA	AFA
Tax Subsidies to FIEs Based on Location	0.02%		AFA	AFA
Local Income Tax Exemption and Reduction Program for "Productive" FIEs	0.01%		AFA	AFA
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise			AFA	AFA
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area		0.39%	AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs			AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies			AFA	AFA
VAT Rebates on FIE Purchases of Domestically Produced Equipment			AFA	AFA
VAT and Tariff Exemptions on Imported Equipment	0.64%		AFA	AFA
Domestic VAT Refunds for Companies in Certain Locations (Zones)			AFA	AFA
VAT Fixed Asset Refunds for Certain Industries			AFA	AFA
Stamp Tax Exemption on Share Transfer	0.02%		AFA	AFA
FIE Land Tax Waiver	0.09%		AFA	AFA
Provision of Land for Less than Adequate Remuneration	0.17%		AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Rubber			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Electricity	0.07%		AFA	AFA
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene			AFA	AFA
Famous Brands Program			AFA	AFA
Total	13.63%	0.57%		
Number of programs	15	2	-	-

Firm:	Shanxi Jiaocheng	Tianjin Soda Plant	Winner Companies	Froch Enterprise
Product/Industry:	*Sodium Nitrate*		*C. W. Aust. SS Pressure Pipe*	
State Key Technology Renovation Project Fund	AFA	AFA		AFA
Superstar Enterprise Grant	AFA	AFA		AFA
Funds for the Outward Expansion of Industries in Guandong Province	AFA	AFA		AFA
Zhanjiang Municipality and ZETDZ Export Related Assistance	AFA	AFA		AFA
Environmental Protection	AFA	AFA		AFA
Liaoning Province Grants	AFA	AFA		AFA
Anqiu Finance Bureau Grant	AFA	AFA		AFA
Foreign Trade Development Fund	AFA	AFA		AFA
Provincial Export Interest Subsidies	AFA	AFA		AFA
Export Loans	AFA	AFA		AFA
Policy Lending	AFA	AFA		AFA
Shareholder Loans	AFA	AFA		AFA
Debt Forgiveness	AFA	AFA		AFA
"Torch" Income Tax Program	AFA	AFA		AFA
”Two Free, Three Half” Income Tax Program	AFA	AFA		AFA
Income Tax Reductions for Export-oriented FIEs	AFA	AFA		AFA
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs	AFA	AFA		AFA
Tax Subsidies to FIEs Based on Location	AFA	AFA	0.08%	AFA
Local Income Tax Exemption and Reduction Program for “Productive” FIEs	AFA	AFA		AFA
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise	AFA	AFA		AFA
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area	AFA	AFA		AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs	AFA	AFA		AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies	AFA	AFA		AFA
VAT Rebates on FIE Purchases of Domestically Produced Equipment	AFA	AFA		AFA
VAT and Tariff Exemptions on Imported Equipment	AFA	AFA		AFA
Domestic VAT Refunds for Companies in Certain Locations (Zones)	AFA	AFA		AFA
VAT Fixed Asset Refunds for Certain Industries	AFA	AFA		AFA
Stamp Tax Exemption on Share Transfer	AFA	AFA		AFA
FIE Land Tax Waiver	AFA	AFA		AFA
Provision of Land for Less than Adequate Remuneration	AFA	AFA		AFA
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel	AFA	AFA		AFA
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil	AFA	AFA	1.39%	AFA
Provision of Inputs for Less than Adequate Remuneration: Rubber	AFA	AFA		AFA
Provision of Inputs for Less than Adequate Remuneration: Electricity	AFA	AFA		AFA
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene	AFA	AFA		AFA
Famous Brands Program	AFA	AFA		AFA
Total			1.47%	
Number of programs	-	-	2	-

Firm:	Liaoning Northern Steel Pipe	Huludao Companies	TTCA	Yixing Union Biochemical	Anhui BBCA Biochemical
Product/Industry:	*Circular Welded Line Pipe*		*Citric Acid and Citrate Salts*		
State Key Technology Renovation Project Fund					AFA
Superstar Enterprise Grant					AFA
Funds for the Outward Expansion of Industries in Guandong Province					AFA
Zhanjiang Municipality and ZETDZ Export Related Assistance					AFA
Environmental Protection					AFA
Liaoning Province Grants		0.30%			AFA
Anqiu Finance Bureau Grant			0.20%		AFA
Foreign Trade Development Fund	0.05%	0.08%			AFA
Provincial Export Interest Subsidies	0.43%				AFA
Export Loans	1.76%	0.35%			AFA
Policy Lending		0.16%	0.90%		AFA
Shareholder Loans					AFA
Debt Forgiveness					AFA
"Torch" Income Tax Program					AFA
"Two Free, Three Half" Income Tax Program	4.11%			0.35%	AFA
Income Tax Reductions for Export-oriented FIEs					AFA
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs				2.07%	AFA
Tax Subsidies to FIEs Based on Location				0.17%	AFA
Local Income Tax Exemption and Reduction Program for "Productive" FIEs				0.50%	AFA
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise					AFA
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area					AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs				0.11%	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies		0.38%			AFA
VAT Rebates on FIE Purchases of Domestically Produced Equipment			0.23%		AFA
VAT and Tariff Exemptions on Imported Equipment			0.08%	0.69%	AFA
Domestic VAT Refunds for Companies in Certain Locations (Zones)					AFA
VAT Fixed Asset Refunds for Certain Industries		0.10%			AFA
Stamp Tax Exemption on Share Transfer					AFA
FIE Land Tax Waiver					AFA
Provision of Land for Less than Adequate Remuneration		0.78%			AFA
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel	33.70%	33.48%			AFA
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil					AFA
Provision of Inputs for Less than Adequate Remuneration: Rubber					AFA
Provision of Inputs for Less than Adequate Remuneration: Electricity					AFA
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene					AFA
Famous Brands Program				0.03%	AFA
Total	40.05%	35.63%	1.41%	3.92%	
Number of programs	5	8	4	7	-

Firm:	Princeway Limited	Jiashan Superpower Tools	Maxchief Investments	Qingdao EA Huabang Instrument
Product/Industry:	*Tow-Behind Lawn Groomers (partial)*			
State Key Technology Renovation Project Fund			AFA	AFA
Superstar Enterprise Grant			AFA	AFA
Funds for the Outward Expansion of Industries in Guandong Province			AFA	AFA
Zhanjiang Municipality and ZETDZ Export Related Assistance			AFA	AFA
Environmental Protection			AFA	AFA
Liaoning Province Grants			AFA	AFA
Anqiu Finance Bureau Grant			AFA	AFA
Foreign Trade Development Fund			AFA	AFA
Provincial Export Interest Subsidies			AFA	AFA
Export Loans			AFA	AFA
Policy Lending			AFA	AFA
Shareholder Loans			AFA	AFA
Debt Forgiveness			AFA	AFA
"Torch" Income Tax Program			AFA	AFA
"Two Free, Three Half" Income Tax Program	0.46%	1.32%	AFA	AFA
Income Tax Reductions for Export-oriented FIEs		0.15%	AFA	AFA
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs			AFA	AFA
Tax Subsidies to FIEs Based on Location		0.66%	AFA	AFA
Local Income Tax Exemption and Reduction Program for "Productive" FIEs			AFA	AFA
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise		0.64%	AFA	AFA
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area			AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs			AFA	AFA
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies			AFA	AFA
VAT Rebates on FIE Purchases of Domestically Produced Equipment			AFA	AFA
VAT and Tariff Exemptions on Imported Equipment	0.49%		AFA	AFA
Domestic VAT Refunds for Companies in Certain Locations (Zones)			AFA	AFA
VAT Fixed Asset Refunds for Certain Industries			AFA	AFA
Stamp Tax Exemption on Share Transfer			AFA	AFA
FIE Land Tax Waiver			AFA	AFA
Provision of Land for Less than Adequate Remuneration			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Rubber			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration: Electricity			AFA	AFA
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene			AFA	AFA
Famous Brands Program			AFA	AFA
Total	0.95%	2.77%		
Number of programs	2	4	-	-

Firm:	Qingdao Hundai Tools	Qingdao Taifa Group	World Factory	Total, By Program
Product/Industry:	*Tow-Behind Lawn Groomers (ctd.)*			
State Key Technology Renovation Project Fund	AFA	AFA	AFA	0.33%
Superstar Enterprise Grant	AFA	AFA	AFA	0.02%
Funds for the Outward Expansion of Industries in Guandong Province	AFA	AFA	AFA	0.08%
Zhanjiang Municipality and ZETDZ Export Related Assistance	AFA	AFA	AFA	0.05%
Environmental Protection	AFA	AFA	AFA	0.05%
Liaoning Province Grants	AFA	AFA	AFA	0.30%
Anqiu Finance Bureau Grant	AFA	AFA	AFA	0.20%
Foreign Trade Development Fund	AFA	AFA	AFA	0.13%
Provincial Export Interest Subsidies	AFA	AFA	AFA	0.43%
Export Loans	AFA	AFA	AFA	2.11%
Policy Lending	AFA	AFA	AFA	13.00%
Shareholder Loans	AFA	AFA	AFA	0.97%
Debt Forgiveness	AFA	AFA	AFA	21.37%
"Torch" Income Tax Program	AFA	AFA	AFA	0.75%
"Two Free, Three Half" Income Tax Program	AFA	AFA	AFA	7.08%
Income Tax Reductions for Export-oriented FIEs	AFA	AFA	AFA	0.15%
Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs	AFA	AFA	AFA	2.07%
Tax Subsidies to FIEs Based on Location	AFA	AFA	AFA	2.09%
Local Income Tax Exemption and Reduction Program for "Productive" FIEs	AFA	AFA	AFA	0.72%
Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise	AFA	AFA	AFA	0.64%
Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area	AFA	AFA	AFA	0.39%
Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs	AFA	AFA	AFA	0.11%
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies	AFA	AFA	AFA	0.38%
VAT Rebates on FIE Purchases of Domestically Produced Equipment	AFA	AFA	AFA	1.00%
VAT and Tariff Exemptions on Imported Equipment	AFA	AFA	AFA	3.41%
Domestic VAT Refunds for Companies in Certain Locations (Zones)	AFA	AFA	AFA	0.04%
VAT Fixed Asset Refunds for Certain Industries	AFA	AFA	AFA	0.10%
Stamp Tax Exemption on Share Transfer	AFA	AFA	AFA	0.03%
FIE Land Tax Waiver	AFA	AFA	AFA	0.09%
Provision of Land for Less than Adequate Remuneration	AFA	AFA	AFA	16.02%
Provision of Inputs for Less than Adequate Remuneration: Hot-rolled Steel	AFA	AFA	AFA	156.45%
Provision of Inputs for Less than Adequate Remuneration: Stainless Steel Coil	AFA	AFA	AFA	1.39%
Provision of Inputs for Less than Adequate Remuneration: Rubber	AFA	AFA	AFA	0.25%
Provision of Inputs for Less than Adequate Remuneration: Electricity	AFA	AFA	AFA	0.07%
Provision of Inputs for Less than Adequate Remuneration:Biaxial-oriented Polypropylene	AFA	AFA	AFA	16.12%
Famous Brands Program	AFA	AFA	AFA	0.03%
Total				
Number of programs	-	-	-	

Appendix 5: China CVD rates in Canadian investigations

Product/Industry	***Steel Fastners***		***Laminate Flooring***	
Date of Initiation	April 28, 2004		October 4, 2004	
Date of Finding	December 9, 2004		May 17, 2005	
Company and Rate (% of EP)	Company	Rate	Company	Rate
	GOC	31.53%	Asia Dekor Industries	5.30%
			Beijing Kronoshnuhua	3.10%
			Fujian Yongan Forestry	8.70%
			Shanghai Everglory	0.30%
			Shanghai Oceanic Furniture	0.00%
			Sichuan Shengda	0.30%
			Vohringer Wood	2.00%
			Yekalon Industry	3.80%
			All Others (FA)	9.20%
	Country-Wide (AFA)	31.53%	Weighted Average	3.00%

Program	Steel Fastners	Laminate Flooring
Grants		
Export Assistance		
Debt-to-Equity Swap		
State Key Technology Renovation Projects		
Research and Development Assistance of Wuxing District		
Innovative Experimental Enterprise Assistance		
Key Enterprises in Equipment Manufacturing Industry of Zhongshan		
Loan Interest Assistance of Shenzhen Foreign Trade Development Fund		
Loan Interest Assistance for Investments in Fast-Growth-High-Yield Plantations		X
Superstar Enterprise		
Development Zone Management Committees Under the Authority of Town Governments		X
Newly Established Companies in the Pudong New Area of Shanghai		X
Supportive Fund Provided by Government of Xuyi in Jiangsu Province		
Loans		
Repaying Foreign Currency Loan by Returned VAT		
Preferential Income Tax Policies		
National Exemption for SEZs and Designated Areas		X
Local Deduction for Designated Areas		X
Preferential Policies Research and Development		
National Reduction for Export Oriented Enterprises		X
Productive FIEs Scheduled to Operate for 10 Years		X
FIEs in Industries and Sectors Where Investment is Encouraged		X
Re-Investment of Profits by Foreign Investor		X
Enterprises Operating in Forestry Industry		X
Domestic Enterprises Purchasing Domestically Produced Equipment		
Accelerated Depreciation on Fixed Assets in Tianjin Binhai New Area		
Relief from Duties and Taxes on Inputs		
VAT and Tariff Exemptions on Imported Equipment		X
VAT Refund for Production of Goods Using Fuel Wood and Other Low Value Wood		X
Purchase of Goods from SOEs		
Hot-Rolled Steel		

Product/Industry	***Copper Pipe Fittings***		***Carbon or Alloy Oil and Gas Casing***	
Date of Initiation	June 8, 2006		August 13, 2007	
Date of Finding	January 18, 2007		February 7, 2008	
Company and Rate (% of EP)	Company	Rate	Company	Rate
	Tianli Pipe Fitting	0.00%	Dalipal Pipe Company	3.00%
	Zhuji City Howhi Air Conditioners	0.00%	Hengyang Steel Tube Group	2.00%
			Shandong Molong Petro Machinery	2.00%
			Tianjin Pipe Corporation	7.00%
			Wuxi Seamless Oil Pipe	4.00%
			Energy Alloys	7.00%
	All Others (AFA)	51.00%	All Others (AFA)	38.00%
	Weighted Average (AFA)	51.00%	Weighted Average	19.00%
Program				
Grants				
Export Assistance				
Debt-to-Equity Swap				X
State Key Technology Renovation Projects				X
Research and Development Assistance of Wuxing District				
Innovative Experimental Enterprise Assistance				
Key Enterprises in Equipment Manufacturing Industry of Zhongshan				
Loan Interest Assistance of Shenzhen Foreign Trade Development Fund				
Loan Interest Assistance for Investments in Fast-Growth-High-Yield Plantations				
Superstar Enterprise				
Development Zone Management Committees Under the Authority of Town Governments				
Newly Established Companies in the Pudong New Area of Shanghai				
Supportive Fund Provided by Government of Xuyi in Jiangsu Province				X
Loans				
Repaying Foreign Currency Loan by Returned VAT				X
Preferential Income Tax Policies				
National Exemption for SEZs and Designated Areas				X
Local Deduction for Designated Areas				X
Preferential Policies Research and Development				X
National Reduction for Export Oriented Enterprises				
Productive FIEs Scheduled to Operate for 10 Years				
FIEs in Industries and Sectors Where Investment is Encouraged				
Re-Investment of Profits by Foreign Investor				
Enterprises Operating in Forestry Industry				
Domestic Enterprises Purchasing Domestically Produced Equipment				X
Accelerated Depreciation on Fixed Assets in Tianjin Binhai New Area				X
Relief from Duties and Taxes on Inputs				
VAT and Tariff Exemptions on Imported Equipment				X
VAT Refund for Production of Goods Using Fuel Wood and Other Low Value Wood				
Purchase of Goods from SOEs				
Hot-Rolled Steel				

Product/Industry	***Carbon Steel Welded Pipe***		***Thermo Coolers and Warmers***	
Date of Initiation	January 23, 2008		May 15, 2008	
Date of Finding	July 21, 2008		November 10, 2008	
Company and Rate (% of EP)	Company	Subsidy / Ton*	Company	Rate
	Guangdong Walsall	1,130	Mobicool Electronic	0.80%
	Tianjin Shuangjie Steel Pipe	1,616		
	Weifang East Steel Pipe	1,449		
	Zhejiang Kingland Pipe	1,670		
	*Rates range from 25% to 113%			
	All Others (AFA)	5,280	All Others (AFA)	37.00%
	Weighted Average	73.00%	Weighted Average	9.90%
Program				
Grants				
Export Assistance		X		
Debt-to-Equity Swap				
State Key Technology Renovation Projects				
Research and Development Assistance of Wuxing District		X		
Innovative Experimental Enterprise Assistance		X		
Key Enterprises in Equipment Manufacturing Industry of Zhongshan		X		
Loan Interest Assistance of Shenzhen Foreign Trade Development Fund				X
Loan Interest Assistance for Investments in Fast-Growth-High-Yield Plantations				
Superstar Enterprise		X		
Development Zone Management Committees Under the Authority of Town Governments				
Newly Established Companies in the Pudong New Area of Shanghai				
Supportive Fund Provided by Government of Xuyi in Jiangsu Province				
Loans				
Repaying Foreign Currency Loan by Returned VAT				
Preferential Income Tax Policies				
National Exemption for SEZs and Designated Areas		X		X
Local Deduction for Designated Areas		X		X
Preferential Policies Research and Development				
National Reduction for Export Oriented Enterprises				
Productive FIEs Scheduled to Operate for 10 Years				
FIEs in Industries and Sectors Where Investment is Encouraged				
Re-Investment of Profits by Foreign Investor				
Enterprises Operating in Forestry Industry				
Domestic Enterprises Purchasing Domestically Produced Equipment				X
Accelerated Depreciation on Fixed Assets in Tianjin Binhai New Area				
Relief from Duties and Taxes on Inputs				
VAT and Tariff Exemptions on Imported Equipment				
VAT Refund for Production of Goods Using Fuel Wood and Other Low Value Wood				
Purchase of Goods from SOEs				
Hot-Rolled Steel		X		

Appendix 6: Summary of GTAP aggregations and experiments

GTAP 16x6x5 aggregation
Developed to analyze the competitive effects of Chinese subsidies.
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I. SUMMARY
This version of GTAP uses a 16-sector, 6-region aggregation. The sectors are designed to isolate "absolute control" and "heavyweight industries from other sectors. Standard and long-run closures are employed in different simulations.

II. REGIONS AND COMMODITIES

The 6 regions are:

USA	United States of America
China	People's Republic of China
WestRim	West Rim of the Pacific, ex. China: Australia, New Zealand, Rest of Oceania, Hong Kong, Japan, Korea, Taiwan, Rest of East Asia, Cambodia, Indonesia, Lao, Myanmar, Malaysia, Philippines, Singapore, Thailand, Viet Nam, Rest of Southeast Asia, Bangladesh, India, Pakistan, Sri Lanka, Rest of South Asia
WestHem	Western Hemisphere, ex. USA: Canada, Mexico, Rest of North America, Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uraguay, Venezuala, Rest of South America, Costa Rica, Guatemala, Nicaragua, Panama, Rest of Central America, Caribbean
Europe	Europe: Austria, Belgium, Cyprus, Czech republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania,Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Switzerland, Norway, Rest of EFTA, Albania, Bulgaria, Belarus, Croatia, Romania, Russian Federation, Ukraine, Rest of Eastern Europe, Rest of Europe
WAM	West Asia, Africa, Middle East: Kazakhstan, Kyrgyzstan, Rest of Former Soviet Union, Armenia, Azerbaijan, Georgia, Islamic Republic of Iran, Turkey, Rest of Western Asia, Egypt, Morocco, Tunisia, Rest of North Africa, Nigeria, Senegal, Rest of Western Africa, Central Africa, South Central Africa, Ethiopia, Madagascar, Malawi, Mauritius, Mozambique, Tanzania, Uganda, Zambia, Zimbabwe, Rest of Eastern

Africa, Botswana, South Africa, Rest of South African Customs

The 16 commodity sectors are:

Electricity	Electricity
Energy	Coal, oil, and gas
Petrochem	Petrol, chemical, and coal products
Trans	Air/sea transportation
Comm	Communications
Machinery	Machinery
Autos	Motor vehicles
Electronics	Electronic equipment
Construction	Construction
Steel	Iron and steel
Aluminum	Non-ferrous metals
OtUtil	Utilities (ex. electricity)
AgFd	Agriculture, livestock, meat, and food
OtEx	Other extraction
OtManuf	Other manufacturing
OtServ	Other services

Which are aggregated as follows:

Electricity:	Electricity
Energy:	Coal, oil, gas
Petrochem:	Petroleum, coal products; chemical, rubber, plastic products
Trans:	Sea transport, air transport
Comm:	Communication
Machinery:	Machinery and equipment nec
Autos:	Motor vehicles and parts
Electronics:	Electronic equipment
Construction:	Construction
Steel:	Ferrous metals
Aluminum:	Metals nec
OtUil:	Gas manufacture and distribution, water

AgFd: Paddy rice; wheat; cereal grains nec; vegetables, fruit, nuts; oil seeds, sugar cane and sugar beet; plant-based fibers; crops nec; cattle, sheep, goats, and horses; animal products not elsewhere classified; raw milk; wool, silk-worm cocoons; bovine cattle, sheep and goat, horse meat products; meat products nec; vegetable oils and fats; dairy products; processed rice; sugar; food products nec; beverages and tobacco products

OtEx: Forestry, fishing, minerals nec

OtManuf: Textiles; wearing apparel; leather products; wood products; paper products and publishing; mineral products nec; metal products, excluding machinery; transport equipment nec; manufactured goods nec

OtServ: Other transport nec, wholesale trade, retail trade, financial services nec, insurance, business services nec, recreation and other services, dwellings, and public administration, defense, health, and education

The 5 factors are: land, unskilled labor, skilled labor, capital, and natural resources.

III. EXPERIMENT FILES: SHOCKS, CLOSURES AND SOLUTION METHOD:

EXPERIMENTS, SHOCKS, AND CLOSURES

Experiment 1:

This experiment assesses the impact of removing a ten percent subsidy to aluminum producers in China. The subsidy is in the form of electricity prices sold at preferential rates to Chalco and other large aluminum producers. The altertax routine in GTAP is used to impose a 10 percent subsidy on aluminum industry purchases of electricity. The database resulting from this experiment is then shocked to eliminate the subsidized electricity price. The standard closure is applied, but government spending is fixed by swapping yg("China") and dpsave("China").

Experiment 2:

This experiment assesses the impact of preferential tax rates, preferential loan rates, and other subsidies on strategic and heavyweight industries. Subsidies to strategic and heavyweight industries are reduced by increasing China's output tax, "to", by amounts that reflects the subsidies uncovered in Part II of the report. The standard closure with fixed government spending in China is applied.

Experiment 3:

The equipment portion of U.S. capital stock in manufacturing has been stagnant since 2001 at a time of rising U.S. demand, rising trade deficits with China, and increasing capital investment in China's export-oriented industries by U.S. corporations. This experiment explores the economic impact of this dynamic by shifting a portion of China's capital stock (an amount equal to 5% of the capital stock in strategic and heavyweight industries) to the United States, while also reducing subsidies to strategic and heavyweight industries in China. This experiment uses the standard closure and fixed government spending in China.

SOLUTION METHOD

Gragg 2-4-6 with automatic accuracy.

Canada Border Services Agency   Agence des services frontaliers du Canada

OTTAWA, March 27, 2012

4214-31/AD/1390
4218-30/CV/127

STATEMENT OF REASONS

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

CERTAIN PUP JOINTS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

On March 12, 2012, pursuant to paragraph 41(1)*(a)* of the *Special Import Measures Act,* the President of the Canada Border Services Agency made final determinations of dumping and subsidizing respecting oil country tubular goods pup joints, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm) originating in or exported from the People's Republic of China.

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

Canada

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SUMMARY OF EVENTS

[1] On July 22, 2011, the Canada Border Services Agency (CBSA) received a written complaint from Alberta Oil Tool (AOT), a division of Dover Corporation (Canada) Limited of Edmonton, Alberta, (hereafter, "the Complainant") alleging that imports of certain pup joints originating in or exported from the People's Republic of China (China) are being dumped and subsidized and causing injury to the Canadian industry.

[2] On August 12, 2011, 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 China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy portion of the complaint, which excluded sections dealing with normal value, export price and margin of dumping.

[3] On September 9, 2011 consultations were held with the GOC in Ottawa pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*. During these consultations, China made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy portion of the complaint.

[4] On September 12, 2011, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain pup joints from China.

[5] On September 13, 2011, the Canadian International Trade Tribunal (Tribunal) 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 certain pup joints from China have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods. On November 14, 2011, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that there is evidence that discloses a reasonable indication that the alleged dumping and subsidizing of certain pup joints have caused injury or retardation or are threatening to cause injury to the domestic industry.

[6] On December 12, 2011, the CBSA made preliminary determinations of dumping and subsidizing with respect to certain pup joints originating in or exported from China pursuant to subsection 38(1) of SIMA, and began imposing provisional duties on imports of the subject goods pursuant to subsection 8(1) of SIMA.

[7] On December 13, 2011, the Tribunal initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry.

[8] The CBSA continued its investigations and, on the basis of the evidence, the President is satisfied that certain pup joints originating in or exported from China have been dumped and subsidized and that the margins of dumping and the amounts of subsidy are not insignificant. Consequently, on March 12, 2012, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)*(a)* of SIMA.

[9] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duties will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal has announced that it will issue its finding by April 10, 2012.

PERIOD OF INVESTIGATION

[10] Each of the two investigations has its own separate Period of Investigation (POI). The dumping POI includes shipments of subject pup joints released into Canada from July 1, 2010 to June 30, 2011, while the subsidy POI includes shipments of subject pup joints released into Canada from January 1, 2010 to June 30, 2011.

INTERESTED PARTIES

Complainant

[11] The Complainant accounts for a major proportion of the production of like goods in Canada. The Complainant's goods are produced at manufacturing facilities in Edmonton, Alberta.

[12] The name and address of the Complainant are:

Dover Corporation (Canada) Limited – Alberta Oil Tool Division
9530 – 60th Avenue
Edmonton, Alberta
T6E 0C1

[13] Of the other producers certified to produce the like goods in Canada, only Tenaris Canada (Tenaris), of Sault Ste. Marie, Ontario, confirmed that they are manufacturing them. Tenaris produces like goods which are premium pup joints in relatively small quantities and provided a letter supporting the complaint.[1]

Exporters

[14] At the initiation of the investigations, the CBSA identified 109 potential exporters and producers of the goods under investigation. The CBSA sent a Dumping Request for Information (RFI) to each potential exporter and section 20 and subsidy RFIs to each potential exporter and producer in China.

[15] The CBSA received two responses, but one company's response was determined to involve only non-subject goods.[2] One exporter, Hengshui Weijia Petroleum Equipment Manufacturing Co., Ltd. (Hengshui Weijia), provided responses to the three RFIs (dumping, subsidy and section 20). This exporter also provided additional information to supplement and clarify their responses.[3]

[1] Dumping Exhibit 41 (NC). Subsidy Exhibit S7 (NC).
[2] Dumping Exhibit 67 (PRO). Wuxi Forest Petroleum Technology Co., Ltd. is an exporter and not a manufacturer. The reported goods were *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* products subject to Tribunal Inquiry No. NQ-2007-001 Finding issued by the Tribunal on March 10, 2008.
[3] Subsidy Exhibits S59, S64, S68 and S96 (PRO). Dumping Exhibits 90 (PRO), 94 (PRO), 97 (NC) and 110 (PRO).

Importers

[16] At the initiation of the investigations, the CBSA identified 17 potential importers of the subject goods from information provided by the Complainant and CBSA import documentation over the period of January 1, 2010 to June 30, 2011.

[17] The CBSA sent an importer RFI to each of these parties and four importers provided substantially complete responses.[4]

Government of China

[18] For the purpose of these investigations, "Government of China" 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.

[19] At the initiation of the investigations, the CBSA sent subsidy and section 20 RFIs to the GOC. The GOC provided responses to both RFIs. The CBSA reviewed the responses and while some of the information requested was provided, some of the GOC's responses were limited.

[20] The GOC provided an incomplete response to the subsidy RFI as information in respect of only the subsidy programs attributable to the sole cooperating exporter, Hengshui Weijia, was provided but was not provided for non-participating exporters that shipped subject goods during the POI.

[21] The GOC's section 20 RFI response, discussed in greater detail below, was also fundamentally insufficient as they provided limited responses to questions which required more detail. In short, the GOC indicated that their seminal macro-economic policies in respect of the Chinese steel industry, which are most notably the *National Steel Policy* (NSP) and *2009 Steel Revitalization/Rescue Plan*[5] remain unchanged and, as a result, the status quo remains for the Chinese steel industry. Further details regarding the GOC's section 20 submission is provided in the "Section 20 Inquiry" section of this document.

Surrogate Countries

[22] As part of the section 20 inquiry, RFIs were sent to all known producers of pup joints in other countries (excluding China). This list of certified producers was obtained directly from the American Petroleum Institute (API). Although seven producers indicated their intention to provide a response, no complete response to the Surrogate RFI was ever received.

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[4] Dumping Exhibits 69, 71, 73 and 75 (PRO).
[5] Dumping Exhibit 39 (PRO).

PRODUCT DEFINITION

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

> "Oil country tubular goods pup joints, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm) originating in or exported from the People's Republic of China."

Additional Product Information

[24] Pup joints are oil country tubular goods (OCTG) made from carbon or alloy steel pipes used for the exploration and exploitation of oil and natural gas. These pipes may be made by the electric resistance welded (ERW) or seamless production method, and are supplied to meet API specification 5CT or equivalent standard.[6]

[25] Pup joints are primarily used for the purpose of adjusting the depth of strings or down hole tools, particularly where exact depth readings in a well are required for any given purpose, such as setting valves, packers, nipples or circulating sleeves. Pup joints are also used with down hole pumps. The number and lengths of pup joints may vary widely from well to well, depending on the various equipment and performance requirements established by engineers of the purchasing end users.

[26] Pup joints may range from 2 feet to 12 feet in length with a permitted tolerance of plus or minus three inches. The sizes are generally 2, 4, 6, 8, 10 and 12 feet in length.

[27] The pup joints subject to these investigations are, by virtue of the characteristics such as the outside diameter range, essentially short lengths of OCTG tubing.

Production Process

[28] Pup joints are manufactured in Canada by the Complainant using plain end tube as an input. For J55 grade pup joints, a length of J55 OCTG tubing is employed. For L80 grade pup joints, the input is an A-519 mechanical tube with the appropriate steel chemistry for L80 OCTG. The L80 input tube does not qualify for the API 5CT designation until it has been tested in accordance with API requirements. The Complainant performs the testing required.

[29] The Complainant acquires the input tubes for all its pup joints through arms length suppliers.

[30] The production process of the input pipe itself is virtually identical to that employed for OCTG tubing and casing. There are, however, significant subsequent costs associated with transforming the input tubing into pup joints including: cutting to length, end finishing, threading, and testing to meet the certification required.

[6] Perforated pup joints are an exception as they do not meet API 5CT.

[31] For J55 grade pup joints, the Complainant produces an upset end by heating (upset forging) and butting to thicken the end of the pipe diameter for threading. J55 tubing is cut 8 inches longer than the required pup joint length to accommodate this process. In the case of L80 grade pup joints, the production process uses profiling rather than upset ends, and accordingly only 1/4 inch of additional length is needed to accommodate finishing. Profiling refers to machining the pipe towards the ends of the pipe so it is thicker at the far ends. This process is used instead of upsetting because upsetting a pipe with steel chemistry for an L80 grade would require the producer to heat-treat the pipe again.

[32] Testing includes drift testing which is an assessment of the straightness within the hollow part of the tube, to ensure no bends or kinks exist after the pup joint was forged, and hydrostatic testing which assesses the pup joint's ability to withstand internal pressure.

[33] For further information on the production process of the input tubes, see the CBSA's Initiation *Statement of Reasons* for *Certain Oil Country Tubular Goods* (September 8, 2009).[7]

Classification of Imports

[34] The subject goods are usually classified under the following Harmonized System (HS) classification codes:

7304.29.00.51	7304.29.00.69
7304.29.00.59	7304.29.00.71
7304.29.00.61	7304.29.00.79

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

CANADIAN INDUSTRY

[36] The Complainant accounts for the major proportion of known domestic production of like goods.

[37] The only other identified Canadian producer, Tenaris (Canada) Ltd., officially stated their position of fully supporting the complaint in their letter dated September 1, 2011.[8]

IMPORTS INTO CANADA

[38] During the final phase of the investigations, the CBSA refined the total volume of imports based on data from its internal information system, CBSA import documentation and other information received from the cooperative exporter and importers.

[7] Initiation Statement of Reasons for *Certain Oil Country Tubular Goods*, paragraphs 21-27, September 8, 2009.
[8] Dumping Exhibit 41 (NC). Subsidy Exhibit S7 (NC).

[39] The following table presents the CBSA's calculation of the volume of imports of pup joints for purposes of the dumping final determination:

Imports of Pup Joints (July 1, 2010 – June 30, 2011)

Countries	Total Import Volume (Metric Tonnes)	% of Total Import Volume
China (subject goods)	368.3	71.7%
United States	126.7	24.6%
All Other Countries	18.9	3.7%
Total Imports	**513.9**	**100%**

<u>INVESTIGATION PROCESS</u>

[40] Regarding the dumping investigation, information was requested from known and potential exporters, vendors and importers, concerning shipments of subject pup joints released into Canada during the dumping POI of July 1, 2010 to June 30, 2011.

[41] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters and the GOC concerning financial contributions made to exporters or producers of subject pup joints released into Canada during the subsidy POI of January 1, 2010 to June 30, 2011.

[42] In addition, known and possible exporters and producers of pup joints, along with the GOC, were requested to respond to the section 20 RFI for the purposes of the section 20 Inquiry.

[43] As previously stated, Hengshui Weijia was the lone responding exporter. After reviewing their responses to the RFIs, supplemental RFIs were sent to clarify information submitted by the company.[9] Responses to those supplemental RFIs were provided by Hengshui Weijia in advance of the close of the record.[10] The company's responses were considered sufficient for the purposes of calculating amounts of subsidy on the basis of information provided by the exporter.

[44] As previously stated, the GOC's section 20 RFI response was found to be fundamentally insufficient for the purposes of the section 20 inquiry. Further details regarding the GOC's section 20 submission is provided in the "Section 20 inquiry" section of this document.

[45] Similarly, the GOC's subsidy RFI response was also found to be incomplete. The GOC made no further response to the subsidy RFI following the CBSA notification of incompleteness on January 19, 2012.[11]

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[9] Dumping Exhibits 84 (PRO), 96 (PRO) and 102 (PRO). Subsidy Exhibits S44 (PRO), S53 (PRO), S61 (PRO), S70 (PRO).

[10] Dumping Exhibits 90 (PRO), 94 (PRO) and 110 (PRO). Subsidy Exhibits S48 (PRO), S54 (PRO), S64 (PRO), S96 (PRO).

[11] Subsidy Exhibit S72 (PRO).

[46] Further details regarding the GOC's subsidy response can be found in the "Subsidy Investigation" section of this document.

[47] In summary, 80 subsidy programs were reviewed and two of the subsidy programs were determined to be conferring benefits to the cooperative exporter during the subsidy POI.

[48] As part of the final stage of the investigations, case briefs were provided by the legal representatives of the Complainant, Hengshui Weijia and the GOC.[12] Reply submissions were provided by the legal representatives of the Complainant and the GOC.[13] Details of all representations can be found in **Appendix 2** to this document.

DUMPING INVESTIGATION

Section 20 Inquiry

[49] Section 20 is a provision under the *Special Import Measures Act* (SIMA) that is applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country[14] under paragraph 20(1)*(a)* of SIMA, section 20 is applied where, in the opinion of the President, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market. Where section 20 is applicable, the normal values of goods are not determined using domestic prices or costs in that country.

[50] For purposes of a dumping proceeding, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation absent sufficient information to the contrary. The President may form an opinion where there is sufficient information that the conditions set forth in paragraph 20(1)*(a)* of SIMA exist in the sector under investigation.

[51] The following are guidelines that the CBSA considers when examining factors that suggest domestic prices may be substantially determined by the government of an exporting country under investigation.

[52] These are factors which would suggest that the government directly determines pricing:

- the government or a government body sets minimum and/or maximum (floor or ceiling) price levels in respect of certain goods which permits prices to be established no lower or no higher than the minimum or maximum price levels;
- the government or a government body sets absolute pricing levels for certain goods;
- the government or a government body sets recommended or guidance pricing at which it is expected that sellers will adhere to within a certain range above and/or below that value;
- there are government or regulatory bodies which are responsible for establishing the price levels and for regulating and enforcing these price levels;

[12] Dumping Exhibits 139 (NC), 142 (NC) and 143 (NC).
[13] Dumping Exhibits 145 (NC) and 146 (NC).
[14] China is a prescribed country under section 17.1 of the Special Import Measures Regulations.

- there are government-owned or controlled enterprises that set the price of their goods in consultation with the government or as a result of government-mandated pricing policies and, because of their market share or dominance, become price-leaders in the domestic market.

[53] Governments can also indirectly determine domestic prices through a variety of mechanisms that can involve the supply or price of the inputs (goods and services) used in the production of the subject goods or by influencing the supply of the subject goods in order to affect their price. For example:

- governments can control import and export levels through licensing, quotas, duties or taxes to maintain domestic prices at a certain level;
- governments can subsidize producers by providing direct financial subsidies or low-priced inputs in order to maintain the selling price of the product at a certain level;
- governments can purchase goods in sufficient quantities to raise the domestic price of the goods or they can sell stockpiled goods to put downward pressure on prices;
- through taxation or other policies, governments can regulate the level of profits that a company can earn which will affect selling prices;
- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.

[54] The CBSA is also required to examine the price effect resulting from substantial government determination of domestic prices and whether there is sufficient information on the record for the President to have reason to believe that the resulting domestic prices are not substantially the same as they would be in a competitive market.

[55] The Complainant requested that section 20 be applied in the determination of normal values due to the alleged existence of the conditions set forth in paragraph 20(1)*(a)* of SIMA. In their complaint, the Complainant provided information to support these allegations concerning the steel industry in China including the OCTG sector, which includes pup joints.[15]

[56] At the initiation of the dumping investigation, the CBSA had sufficient information from the Complainant, the CBSA's own research and previous CBSA section 20 opinions to support the initiation of a section 20 inquiry to examine the extent of GOC involvement in pricing in the OCTG sector, which includes pup joints. The information indicated that domestic prices in China have been influenced by various GOC industrial policies concerning the Chinese steel industry including the OCTG sector, which includes pup joints.

[57] Consequently, the CBSA sent section 20 RFIs to the GOC and all known Chinese OCTG producers/exporters to obtain information on the matter.

[58] In response to the section 20 RFIs, the CBSA received a substantially complete and timely response from one exporter, Hengshui Weijia.

[59] In respect of the GOC's section 20 submission, the GOC provided some of the information requested but some of the GOC's responses were limited. As a result, the GOC's submission is considered to be insufficient and incomplete.

[15] Dumping Exhibit 1 (PRO).

[60] As part of the CBSA's examination of the OCTG sector in China, which includes pup joints, the GOC was requested to provide information concerning the Chinese manufacturers of OCTG by region, the type of products produced (i.e. welded versus seamless) and their respective steel production capacities. In addition, the GOC was requested to indicate the ownership structure of each manufacturer along with information pertaining to OCTG manufacturers that are State-Owned Enterprises (SOE).

[61] In response, the GOC provided OCTG sector information that was limited to the sole cooperating exporter in China, Hengshui Weijia. The GOC provided no further details on the other producers in the Chinese OCTG sector. In its response, the GOC indicated that:

> "The GOC does not have detailed official statistics of OCTG producers...Other information would presumably come from public sources and is available to the CBSA. The GOC cannot vouch for its accuracy."[16]

[62] It is the CBSA's understanding from previous verifications conducted with the GOC, that production figures and other statistics are submitted to the GOC through timely monthly submissions to the Chinese National Bureau of Statistics by the producers of OCTG.

[63] Furthermore, according to recent legislation passed by the GOC, through the *Criterion for the Production and Operation of Steel Industry* – GY [2010] No. 105,[17] there is an application process that requests this information from producers along with additional detailed information concerning output value, sales revenue, profits etc. At minimum, the GOC has the information available from its SOEs, which comprise a substantial proportion of the top OCTG producers in the sector. This indicates that the information requested by the CBSA is available to the GOC and current information from the GOC regarding the OCTG sector in China, which includes pup joints, would have been useful to the CBSA in its analysis.

[64] This is the same sector that was examined in the CBSA's investigations of certain *Seamless Steel Casing* (2008) and certain *OCTG* (2010). Each of those section 20 inquiries concluded that domestic prices in the OCTG sector in China are substantially determined by the GOC and that there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[65] The following is the CBSA's analysis of the relevant factors that prevail in the Chinese steel industry, which subsequently affect the OCTG sector, which includes pup joints.

[16] Dumping Exhibit 82 (NC) – GOC response to Part C 1(a)(b).
[17] Dumping Exhibit 107 (NC) – GOC supplemental RFI Response.

Industrial Policies

[66] As cited in previous section 20 inquiries, *The Development Policies for the Iron and Steel Industry – Order of the National Development and Reform Commission [No. 35],* [18] (National Steel Policy - NSP) was promulgated on July 8, 2005 and outlines the GOC's future plans for the Chinese domestic steel industry. The major objectives of the NSP are:

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

[67] On March 20, 2009, the GOC promulgated the *Blueprint for the Adjustment and Revitalization of the Steel Industry issued by the General Office of the State Council* (2009 *Steel Revitalization/Rescue Plan*).[19]

[68] This macro-economic policy was the GOC's response to the global financial crisis and is also the action plan for the steel industry for the 2009 through 2011 period. This plan includes the following major tasks:

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

[69] There are common measures between these two GOC policies, as the 2009 *Steel Revitalization/Rescue Plan* is an acceleration of the major objectives of the NSP. In the 2009 plan, the GOC asserts its strict control over new or additional steel production capacity, promotes new GOC directed mergers and acquisitions to reform the Chinese steel industry into larger conglomerates, along with an increased emphasis on steel product quality.

[18] Dumping Exhibit 38 (PRO) – Exhibit 1.
[19] Dumping Exhibit 38 (PRO) – Exhibit 3.

[70] The 2009 *Steel Revitalization/Rescue Plan* also applies to the OCTG sector in China, which includes pup joints. There is evidence on the record confirming that the GOC specifically directed one of the cooperating exporters in the *OCTG* (2010) investigation, which was one of the largest SOE producers, and possibly the largest seamless OCTG manufacturer, to reorganize with another company.[20]

12th Five-Year Development Plan: Iron and Steel (2011-2015)

[71] In the CBSA's supplemental section 20 RFI to the GOC, the CBSA requested the GOC to provide the *12th Five-Year Plan: Iron and Steel* along with an English translation. The GOC subsequently provided this document.[21]

[72] On November 7, 2011, the GOC's Ministry of Industry and Information Technology released the *12th Five-Year Plan: Iron and Steel* (*Development Plan for the Steel Industry*). For the preliminary phase of the section 20 inquiry, the CBSA had a summary of the draft plan that had been published in May 2011 by KPMG, an international accounting firm. A review of the official *12th Five Year Development Plan for the Steel Industry* indicates that the KPMG details in the draft were similar to the final official GOC document. The *12th Five-Year Development Plan for the Steel Industry* serves as the guiding document for the development of the Chinese steel industry for the 2011-2015 period and its directives include:

- Increased mergers and acquisitions to create larger, more efficient steel companies;
- GOC restrictions on steel capacity expansion;
- Upgrading of steel industry technology;
- Greater GOC emphasis on high-end steel products;
- GOC directed relocation of iron and steel companies to coastal areas.[22]

[73] Also included in this plan are minimum requirements for steel production in order to eliminate smaller players in the market. Through this plan, the GOC is continuing its reform and restructuring of the Chinese steel industry. The GOC's target is that by 2015, China's top 10 steel producers will represent 60% of the country's total steel output. According to the NSP (2005), the long-range GOC target for mergers and acquisitions is to have the top 10 Chinese steel producers account for 70% of total national steel production by 2020.[23] This plan is the next development stage of GOC directives aimed at achieving this long-range 2020 target.

[74] *The 12th Five-Year Development Plan for the Steel Industry* addresses existing issues in the steel industry with the directive to strictly control expansion of steel production capacity, accelerate the development of new material for steel and producer service and to continue to advance mergers and restructuring.[24]

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[20] Dumping Exhibit 38 (PRO) – Exhibit 3: *Blueprint for the Adjustment and Revitalization of the Steel Industry* issued by the General Office of the State Council on March 20, 2009 – Under Major Tasks detailed "The Regional reorganization between Tianjin Pipe and Tian Tie Group."

[21] Dumping Exhibit 92 (NC) – Supplemental GOC Response – Exhibit 2.

[22] Dumping Exhibit 92 (NC) – Supplemental GOC Response – Exhibit 2.

[23] Dumping Exhibit 38 (PRO) – Exhibit 1.

[24] Dumping Exhibit 92 (NC) – Supplemental GOC Response – Exhibit 2.

[75] According to the plan, the more highly concentrated steel industry will reduce overcapacity, decrease pollution and will improve Chinese steel producers' bargaining power when negotiating prices on iron ore imports. In addition, through the *12th Five-Year Development Plan for the Steel Industry*, the GOC is progressing with its initiative in the 2009 *Steel Revitalization/Rescue Plan* to move Chinese steel production facilities to China's coast. By the end of this GOC directed plan in 2015, 40% of China's steel production will be relocated to the coast.[25]

[76] In this *12th Five-Year Development Plan for the Steel Industry*, the GOC's policies and measures include:

- Improve the industry management system. This would include the GOC's *Criterion for the Production and Operation of the Steel Industry* (Steel Operations Standards) released in 2010;
- Create an environment for fair competition, strengthen and improve macro adjustment and control;
- Regulate the production and operation of the steel industry;
- Standardize the operation of the industry;
- Strengthen the macro guidance of the policy;
- Promote international exchange and co-operation;
- Improve industry information flow, capital flow and material flow. Support enterprise groups to establish and improve the information system in different regions;
- Improve planning by regional authorities of industries to develop the steel industry, combine the regional mergers and reconstruction and eliminate obsolete construction. Related enterprises should put forward the planning scheme corresponding to the foregoing plan. The China Iron and Steel Industry should assist and put forward advice on the policy.

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

[78] In its supplemental section 20 RFI response, the GOC stated:

> "We would like to draw the attention of the CBSA to the fact all these three Five-Year Plans (National 12th Five-Year Plan, 12th Five-Year Plan for Hebei and 12th Five-Year Plan: Iron and Steel) we submitted above are only instructive and guiding rather than compulsory binding to the steel industry and companies."[26]

[25] Dumping Exhibit 38 (PRO) – Exhibit 14: "Steel industry plan forged," China Daily, Zhang Qi, January 27, 2011.
[26] Dumping Exhibit 92 (NC) – GOC response to B10(e).

[79] Only one of the Five-Year Plans referenced by the GOC in the above quote was provided in their entirety and this was the *12th Five-Year Plan: Iron and Steel.* An examination of this document indicates that the "Basic Principles" include to:

> "strictly control expansion of production capacity, accelerate the development of new material for steel and producer service, continue to advance merger and restructuring and further enhance industrial clustering."[27]

[80] Together with the GOC's recent legislation: *Criterion for the Production and Operation of Steel Industry* – GY [2010] No. 105[28] and *Several Observations of the General Office of the State Council on Further Strengthening Energy-saving and Emission Reduction Efforts,* as well as the *Accelerating of Restructuring of Steel Industry* – GBF (1010) No. 34,[29] these plans set out the detailed requirements for existing production and operations of steel enterprises in China. For construction and renovation projects in the steel industry, the GOC's development policies for the steel industry apply (i.e. the *12th Five-Year Plan: Iron and Steel* and *2009 Steel Revitalization/Rescue Plan*).

[81] Should steel enterprises not acquiesce to the GOC's requirements, laws and industrial policies, there are repercussions which include the withdrawal of steel production licenses and credit support. In respect of new construction or renovation of Chinese steel enterprises, the GOC's steel development policies also apply.

[82] The above GOC statement that the Five-Year Plans are merely instructive and guiding are inconsistent with the reality of the GOC's macro-economic policies/measures that support the GOC's stated objectives. The GOC's measures, notices and observations as addressed in this section 20 inquiry serve to illustrate the fact that the GOC is closely administering the steel industry in China.

[83] Based on the information on the record, the scope of the GOC's macro-economic policies/measures provide a compelling factual basis that the GOC is influencing the Chinese steel industry including the OCTG sector, which includes the pup joints under investigation.

[84] One of the factors that indicate section 20 conditions exist is when the government administers control of production capacity of the goods in the specified sector. The CBSA considers a government's regulation or control of production levels in an industry as an influence on the supply of goods that indirectly affects the price of the goods. This factor is indicative that section 20 conditions are present when prices are not substantially the same as they would be if they were determined in a competitive market. The CBSA's section 20 inquiry concerning the OCTG sector in the *Seamless Steel Casing* investigation confirmed that the GOC's control of new or additional steel production capacity extended to the OCTG sector.[30]

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[27] Dumping Exhibit 92 (NC) - Supplemental GOC Response *12th Five-Year Development Plans for the Steel Industry.*
[28] Dumping Exhibit 92 (NC) - Supplemental GOC Response *12th Five-Year Development Plans for the Steel Industry.*
[29] Dumping Exhibit 107 (NC) - Supplemental GOC Response.
[30] Final determination *Statement of Reasons* for *Seamless Steel Casing* – February 22, 2008.

[85] In its second supplemental section 20 RFI response, the GOC provided the document, *Several Observations of the General Office of the State Council on Further Strengthening Energy-saving and emission Reduction Efforts* as well as *Accelerating of Restructuring of Steel Industry-* GBF (2010) No. 34.[31]

[86] The intent of this legislation is to further support and carry out the 2009 *Steel Revitalization/Rescue Plan*, to achieve the energy-saving and emission targets, in addition to the restructuring of the steel industry in China as approved by the State Council. One main objective of the State Council is to "resolutely suppress the excessive growth of steel production capacity" and "strictly implement the approval and review process of steel projects."[32]

[87] In addition to the GOC's actions to eliminate obsolete steel production and reduce energy-emissions, the GOC has clearly identified its plans for mergers and acquisitions. The GOC calls for provincial, autonomous regional and municipal governments to focus on formulating and reporting 2010-2011 iron and steel enterprise merger and restructuring plans to be organized, upon approval by the Ministry of Industry and Information Technology. The GOC directs that the implementation/improvement of policies for promoting mergers and restructuring be improved. These are compelling facts that the GOC is in charge of the reform of the Chinese steel industry.

[88] Information on the record further illustrates that GOC macro-economic policies/measures are compulsory and followed by local governments, with substantive impacts on the commercial decisions of producers of pup joints.[33]

<u>China Steel Pipe Industry 12th Five-Year Plan</u>

[89] The "*China Steel Pipe Industry 12th Five-Year Plan*" was released by the Steel Pipe Branch of the China Steel Construction Society.[34] In its response to the section 20 RFI, the China Iron and Steel Association (CISA) stated that the Steel Pipe Branch is one of its member institutions.[35] The CBSA considers CISA to be "Government" as it is under the administration of SASAC as per its Articles of Association. This plan directs that the output of steel pipe should be controlled at 67-75 million metric tonnes (mmt). The scope of the GOC's reform of the Chinese steel industry thus extends to the Chinese pipe sector, with the industry concentration targets through mergers and acquisitions to be attained by the end of 2015. Additional details of the *China Steel Pipe Industry 12th Five-Plan* were addressed in the *Statement of Reasons* for the preliminary determination.

[90] In respect of the OCTG sector, one of the GOC directives under this plan is to expand the development of OCTG products such as high collapse, anti-corrosion pipe.[36] These GOC objectives are likely to conflict with the commercial interests of OCTG producers, affecting production volumes and ultimately prices.

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[31] Dumping Exhibit 107 (NC) - Supplemental GOC Response.
[32] Dumping Exhibit 107 (NC) – Supplemental GOC Response.
[33] Dumping Exhibit 110 (PRO) – Hengshui Weijia Petroleum Equipment Manufacturing Co. Ltd response to 1(a).
[34] Dumping Exhibit 38 (PRO) – Exhibit 6: *China Steel Pipe Industry 12th Five-Year Plan.*
[35] Dumping Exhibit 82 (NC) – CISA response to Question D11.
[36] Dumping Exhibit 38 (PRO) – Exhibit 6: *China Steel Pipe Industry 12th Five-Year Plan.*

Domestic Prices

[91] Wuxi Forest Petroleum Technology Co., Ltd. (Wuxi Forest) had provided a response to the CBSA's dumping RFI which had Chinese domestic sales of pup joints.[37] Wuxi Forest is a Chinese trading company and is not a manufacturer of pup joints. The company's exports to Canada were subsequently found to be non-subject to the investigation. Wuxi Forest had purchased pup joints in China for re-sale during the POI. The acquisition cost of these pup joints represent actual Chinese domestic sales of pup joints. These Chinese domestic sales are all grade P110 pup joints which is a high-end API 5CT specification.[38] The CBSA used these Chinese domestic selling prices of pup joints for the following analysis.

[92] Firstly, the CBSA compared the overall average selling price of these P110 goods sold in China, with U.S. selling prices of High Collapse P110 (HCP) as reported by Pipe Logix during the POI.[39] Pipe Logix does not report U.S. domestic selling prices for ordinary P110 grade product, as it is not normally sold in the US domestic market. However, P110 is required for some applications in the Canadian oilfield where there are sour gas environments. HCP pipe is not an equivalent grade but a very comparable specification to the P110. A comparison of the HCP to the P110 grades based on like outside diameters (OD) and nominal weights of 11.6 pounds per foot (lbs/ft) for the Chinese and U.S. products indicates that the selling price of Chinese P110 pup joints was less than the selling prices of standard length HCP casing in the U.S. (likely about a 30 foot length), on a metric tonne basis.

[93] To put this in perspective, if the Chinese domestic pup joints were all of 10 foot lengths, there would be approximately 19 pup joints in a metric tonne with each end piece finished and tested according to the API 5CT specification. [40] In contrast, the reported U.S. Pipe Logix selling price, on a metric tonne basis, is comprised of average standard lengths of about 30 feet, meaning each tonne would comprise roughly six 30 foot lengths with finished and tested ends according to the API 5CT specification.[41] With the same OD and 11.6 lbs/ft nominal weight in each example, the Chinese domestic prices do not reflect the additional cost and resulting incremental value in selling price for the additional 13 finished end pieces of pup joints. This is a conservative example in respect of the Chinese selling price. One metric tonne of the Chinese goods could alternatively be comprised of 63 three foot pup joints, each with finished and tested ends according to the API 5CT specification.[42] This would illustrate an even greater cost and a substantial selling price differential.

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[37] Dumping Exhibit 67 (PRO) – Appendix 4A: Cost of Sales.
[38] Dumping Exhibit 68 (NC) – Response to Question D21(a) Regarding Acquisition Costs.
[39] Dumping Exhibit 140 (PRO) – Pipe Logix Prices over POI.
[40] 10 ft X 11.6 lbs/ft = 116 lbs. 2,204.6/116 = 19.
[41] 30 ft X 11.6 lbs/ft = 348 lbs. 2,204/348 = 6.3.
Note: using the shortest length of casing permitted under API 5CT (16 feet) would still only yield less than 12 lengths 16 X 11.6 = 186. 2,204/186 = 11.8.
[42] 3 ft X 11.6 lbs/ft = 34.8 lbs. 2,204.6/34.8 = 63.

[94] In a second comparison, the CBSA considered P110 pup joint selling prices from the United States to Canada during the POI.[43] In this comparison, the CBSA did not have sales of P110 in the same OD and lbs/ft as the Chinese goods but both were similar. The OD and nominal weight for the US selling prices were 3.5 inches and 9.3 lbs/ft compared to the Chinese product of 4.5 inches and 11.6 lbs/ft, which are sufficiently similar for comparison purposes. The lengths of the pup joints were the same at six feet. This comparison of selling prices indicates that the Chinese pup joints were 86% below that of the U.S. selling price. Consequently, in this comparison, the Chinese pup joint price is markedly lower than competitive market pricing for the same grade and same length of pup joint.

[95] In a third comparison, the CBSA compared the overall average domestic Chinese P110 pup joint selling price with the lowest U.S. selling prices of the lowest grade of API 5CT specification, J55, as per the Pipe Logix report over the POI.[44] The Chinese selling price was 34% lower than the U.S. J55 selling price.

[96] Each of the CBSA's comparisons indicates that Chinese domestic pup joint selling prices are substantially below corresponding competitive market prices. Based on the CBSA's price analysis, the evidence indicates that Chinese domestic OCTG pup joint prices are not substantially the same as they would be if they were determined in a competitive market.

Section 20 Inquiry Conclusion

[97] The wide range and material nature of the GOC measures have resulted in significant influence on the Chinese steel industry including the OCTG sector, which includes pup joints. The conditions described in paragraph 20(1)(*a*) of SIMA exist in this sector. Domestic prices are substantially determined by the GOC, and there is sufficient reason to believe that the domestic prices of pup joints are not substantially the same as they would be in a competitive market.

[98] Based on the above analysis, for the purposes of the final determination, the President affirmed the opinion rendered at the preliminary determination that the conditions described in paragraph 20(1)*(a)*apply in the OCTG sector in China, which includes pup joints.[45]

Normal Value

[99] Normal values of goods sold to importers in Canada are generally calculated based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or 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 pursuant to paragraph 19*(b)* of SIMA. Where, in the opinion of the President, sufficient information has not been furnished or is not available, normal values are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

[43] Dumping Exhibits 121 and 122 (PRO).
[44] Dumping Exhibits 121 and 122 (PRO).
[45] Preliminary determination *Statement of Reasons* for Pup Joints; December 28, 2011, paragraphs 87 and 88.

[100] For purposes of the preliminary determination, normal values could not be calculated on the basis of domestic selling prices in China or on the full cost of goods plus profit, as the President formed the opinion that the conditions described in section 20 exist in the OCTG sector, which includes pup joints.

[101] At the preliminary determination, normal values were calculated by advancing the export price of the goods by 32.4%. This was the average margin of dumping estimated from information provided in the complaint filed by AOT.

[102] Where section 20 conditions exist, the CBSA may determine normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)*(c)* of SIMA. However, sufficient surrogate country data on the necessary domestic pricing and costing information relating to the goods under investigation was not provided to the CBSA.

[103] Alternatively, normal values may be determined on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the President, pursuant to paragraph 20(1)*(d)* of SIMA. However, sufficient information was not submitted by importers in response to the importer RFI to allow for the application of paragraph 20(1)*(d)*.

[104] Accordingly, the CBSA has used an alternative method to determine normal values for the cooperative exporter for the purposes of the final determination, pursuant to a ministerial specification under subsection 29(1) of SIMA.

[105] While the CBSA does not have sufficient pricing, costing or import data available relating to a surrogate country, it does have pricing information for pup joints imported into Canada from, and originating in, the United States. This information was acquired from internal import data and from brokers representing the importers of these goods.[46] For the purposes of the final determination, normal values were determined on the basis of these prices.

[106] The normal values for each subject good exported to Canada by Hengshui Weijia over the period of investigation was based on the price of imported pup joints from the United States which matched the major characteristics used to identify these goods. Where such a match was not possible on a given transaction, the difference between the total normal value and the total export price for all other transactions for which matches were made, expressed as a percentage of this total export price, was used to establish the normal value.

[46] Dumping Exhibit 122 (PRO).

Export Price

[107] The export price of goods sold to importers in Canada is generally calculated pursuant to 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. Where, in the opinion of the President, 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.

[108] For purposes of the final determination, export prices for the cooperative exporter were determined using their reported export price of the goods. For all other exporters, import pricing information available from the CBSA's internal information systems and, where applicable, importer RFI responses, were used for the purposes of determining export prices.

Results of Dumping Investigation

[109] The CBSA determined the margin of dumping for the cooperative exporter by comparing the total normal value with the total export price. When the total export price is less than the total normal value, the difference is the margin of dumping.

[110] For the exporters that did not respond to the RFI, the normal values were determined under a ministerial specification pursuant to section 29 of SIMA.

[111] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter has been determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e. 100%) is considered dumped. Similarly, where a given exporter's net aggregate dumping results are zero, then the total quantity of exports deemed to be dumped by that exporter is zero.

[112] In calculating the margin of dumping for the country, the margins of dumping found in respect of each exporter were weighted according to each exporter's volume of subject goods exported to Canada during the dumping POI.

[113] Based on the preceding, 100% of the subject goods from China were dumped by a weighted average margin of dumping of 144%, expressed as a percentage of the export price.

[114] Under paragraph 41(1)(*a*) of SIMA, the President shall make a final determination of dumping when he is satisfied that the goods have been dumped and that the margin of dumping of the goods of a country is not insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% is defined as insignificant. The margin of dumping of certain pup joints from China is not less than 2% and is, therefore, not insignificant.

[115] For purposes of a preliminary determination of dumping, the President has responsibility for determining whether the actual and potential volumes of dumped goods are negligible. After a preliminary determination of dumping, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its injury inquiry in respect of any goods if the Tribunal determines that the volume of dumped goods is negligible.

[116] A summary of the margins of dumping determined for this investigation is found in **Appendix 1**.

Hengshui Weijia

[117] The company's response to the exporter and section 20 RFIs were received by the October 19, 2011 deadline.[47] The company also cooperated in responding to several supplemental RFIs.[48]

[118] Hengshui Weijia was the second largest known exporter of subject goods to Canada during the dumping POI.[49]

[119] A review of the information submitted by Hengshui Weijia revealed that the company had no domestic sales during the POI. All Hengshui Weijia production is for export and all products are pup joints.

[120] Normal values for Hengshui Weijia were determined pursuant to a ministerial specification under subsection 29(1) of SIMA. The normal values for each subject good exported to Canada by Hengshui Weijia over the period of investigation was based on the price of imported pup joints from the United States which matched the major characteristics used to identify these goods. Where such a match was not possible on a given transaction, the difference between the total normal value and the total export price for all other transactions for which matches were made, expressed as a percentage of this total export price, was used to establish the normal value.

[121] Hengshui Weijia exported the subject goods to its related importer in Canada, and consequently the exporter and importer are considered associated persons in accordance with subsection 2(2) of SIMA. As such, a reliability test is conducted in order to determine whether the export price under section 24 (the lesser of the importer's purchase price or exporter's selling price) is reliable within the context of SIMA. This test is conducted by comparing the section 24 export price with the section 25 "deductive" export price 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, all costs incurred in reselling the goods (including duties and taxes), and an amount representative of the average industry profit in Canada.

[47] Dumping Exhibits 77 (PRO) and 79 (PRO).
[48] Dumping Exhibits 90 (PRO), 94 (PRO) and 97 (NC).
[49] There were no further exports from Hengshui Weijia in the incremental subsidy POI of Jan - Jun 2010.

[122] The amount for profit used in the reliability test was determined in the manner described in paragraph 22*(b)* of the SIMR, based on the profit information derived from three submissions on the record.[50]

[123] The importer provided additional documentation to verify the re-sale prices as reported in their submission.[51]

[124] The results of the reliability analysis revealed that 96% of Hengshui Weijia's export prices determined pursuant to section 24 of SIMA were reliable. As such, the export prices were determined pursuant to section 24 of SIMA, based on the ex-works price of the goods reported by Hengshui Weijia, which was equal to the price paid by the importer of the goods in Canada.

Hengshui Weijia – Margin of Dumping

[125] The total normal value, as calculated in the manner described above, was compared with the total export price for all subject goods imported into Canada during the dumping POI. It was found that the goods exported by Hengshui Weijia were dumped by a weighted average margin of dumping of 80.2%, expressed as a percentage of the export price.

All Other Exporters – Margin of Dumping

[126] For all other exporters, import pricing information available from the CBSA's internal information systems was used for the purposes of calculating the export price. The normal value and related margin of dumping was determined by advancing export prices by the highest amount by which the normal value exceeded the export price on an individual transaction (173.4%) for the cooperating exporter in accordance with the ministerial specification.

Summary of Results – Dumping

Period of Investigation - July 1, 2010 to June 30, 2011

Country	Dumped Imports as Percentage of All Subject Imports	Country Margin of Dumping	Imports as Percentage of All Country Imports	Dumped Imports as Percentage of All Country Imports
China	100%	144%	71.7%	71.7%

[127] A summary regarding the margins of dumping for this investigation are provided in **Appendix 1.**

[50] Dumping Exhibit 1 (PRO) – Complaint; Dumping Exhibit 69 (PRO) – Imex Importer RFI Response; Dumping Exhibit 71 (PRO) – WestCan Oilfield Importer RFI Response.
[51] Dumping Exhibit 113 (PRO).

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

[128] Following the January 26, 2012 close of the record, a series of case briefs and reply submissions were received from counsel for the Complainant, the exporter Hengshui Weijia and the GOC.

[129] Issues raised by participants through case arguments and reply submissions pertaining to the dumping investigation and the CBSA's response to these issues are provided in **Appendix 2**.

SUBSIDY INVESTIGATION

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

[131] 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.

[132] 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.

[133] The following terms are defined in section 2 of SIMA. A "prohibited subsidy" is either an export subsidy or a subsidy or portion of 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 also including a group of enterprises, an industry and a group of industries.

[134] Notwithstanding that a subsidy is not specific in law pursuant to subsection 2.7(2) 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/or
(d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[135] 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, export or import of goods under investigation have benefited from the subsidy.

[136] At initiation, the CBSA identified 80 potential subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) and other Designated Areas Incentives;
2. Grants;
3. Equity Programs;
4. Preferential Loan Programs;
5. Preferential Income Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Reduction in Land Use Fees; and
8. Goods/Services Provided by the Government at Less than Fair Market Value.

[137] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. **Appendix 3** to this *Statement of Reasons* has been updated to reflect the programs found not to have been used by the cooperative exporter.

Results of the Subsidy Investigation

[138] As previously stated, the information submitted by the GOC for the purposes of the subsidy investigation was considered to be incomplete. The GOC did not provide the CBSA with sufficient information to enable a proper analysis of the programs for the final determination.

[139] Due to the status of the GOC submission, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, amounts of subsidy were calculated for the cooperative exporter, in consideration of the level of cooperation received from them, which enabled the CBSA to perform the necessary calculations.

[140]. With respect to calculations of amounts of subsidy for the non-cooperative exporters, the CBSA has no information, or incomplete information, regarding benefits received by the non-cooperative exporters. Therefore, the CBSA was unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under a ministerial specification pursuant to subsection 30.4(2) of SIMA, the details of which are described in the following section.

Hengshui Weijia

[141] Of the total 80 potential actionable programs, the following programs were found at the preliminary determination to benefit the cooperative exporter, Hengshui Weijia:

Program 1: *Preferential Tax Policies for Enterprises with Foreign Investment* (FIEs);
Program 32: *Grants for Export Activities*;
Program 74: *Exemption of VAT on Purchases of Equipment*

[142] A further review during the final phase of the investigation resulted in a calculation revision to Program 1: *Preferential Tax Policies for Enterprises with Foreign Investment* (FIEs) established in Special Economic Zones (SEZ), excluding Shanghai Pudong Area. A further review during the final phase of the investigation also demonstrated that Program 32: *Grants for Export Activities*, as reported by Hengshui Weijia, did confer benefits to them during the subsidy POI, while the CBSA removed from consideration Program 74: *Exemption of VAT on Purchases of Equipment*.

[143] Consequently, on the basis of the available information, Programs 1 and 32 constitute financial contributions pursuant to subsection 2(1.6) of SIMA.

Program 1: *Preferential Tax Policies for Enterprises with Foreign Investment* (FIEs):

[144] During the preliminary phase of the investigation, the CBSA reviewed documents submitted for the record and determined that Hengshui Weijia had received benefits under Program 1: *Preferential Tax Policies for Enterprises with Foreign Investment* (FIEs) *Established in Special Economic Zones* (excluding Shanghai Pudong Area).

[145] After the preliminary determination, Hengshui Weijia made a submission contesting that they are not established in any Special Economic Zones (SEZ) and as such are not a recipient of Preferential Tax Policies for Enterprises with Foreign Investment in any SEZ.[52]

[146] Furthermore, the exporter challenged the CBSA's calculation on the income tax amount stating that: "The CBSA's flawed methodology resulted from its application of the 25% enterprise income tax rate to Hengshui Weijia's operating income (otherwise known as its accounting income) rather than to its taxable income."[53]

[147] The CBSA acknowledges that the program title used for the purposes of the preliminary determination is not completely accurate. However, the CBSA investigation has determined that Hengshui Weijia is a recipient of preferential tax policies.

[52] Subsidy Exhibit S100 (NC) – Submission from Hengshui Weijia contesting its preliminary determination subsidy results, pages 6-7.
[53] Subsidy Exhibit S100 (NC) – Submission from Hengshui Weijia contesting its preliminary determination subsidy results, page 9.

[148] In the final phase of the investigation, the CBSA requested that the exporter provide information about the law which determined its taxable income as a percentage of its total revenue. In response, the company provided a copy of *The issue of the circular of the state administration of taxation on the procedures for verification and collection of enterprise income tax* (trial implementation), which states the following: [54]

Taxable Income = Taxable Revenue * Taxable Income Rate
Payable Income Tax = Taxable Income * Applicable rate

[149] The circular further states that "the taxable income rate shall be determined in accordance with the standards at ranges in the following table:"

Industry	Taxable Income rate (%)
Agriculture, Forestry, Husbandry and Fishery	3-10
Manufacturing	5-15
Wholesaling and Retailing	4-15
Transportation	7-15

[150] Hengshui Weijia pays income tax at the applicable rate of 25% and its taxable income rate, as evidenced from its income tax forms, is substantially less. Given the range in the manufacturing sector of 5% - 15%, the CBSA sent supplemental RFIs to Hengshui Weijia requesting that they explain why its taxable income rate was a comparatively lower rate.[55] In the absence of a satisfactory answer, the highest taxable income rate of 15% was used to calculate the subsidy benefit.

[151] The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA by distributing the benefit received by the exporter represented by the exemption in tax payable, over the total quantity of goods to which the benefit was attributable.

[152] The benefit from this program resulted in an amount of subsidy of 454.2 RMB/MT.

<u>Program 32: *Grants for Export Activities*</u>

[153] Hengshui Weijia and the GOC each acknowledged that Hengshui Weijia received benefits from the government in the form of a grant for market promotion and trade development.

[154] The amounts of subsidy were calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit received by the exporter represented by the grant received, over the total quantity of goods to which the benefit was attributable.

[155] The benefit from this program resulted in an amount of subsidy of 109.7 RMB/MT.

[54] Subsidy Exhibit S100 (NC) – Submission from Hengshui Weijia contesting its preliminary determination subsidy results – Exhibit IV.
[55] Subsidy Exhibit S96 (PRO).

Program 74: *Exemption of VAT on Purchases of Equipment*

[156] As previously stated, the CBSA did not include Program 74: *Exemption of VAT on Purchases of Equipment* as part of its subsidy calculations for the final determination. In response to the supplemental RFI, the exporter explained that the VAT refund was due to the difference in the input VAT rate of 17% and the export VAT rate of 13%. The VAT tax return form provided by Hengshui Weijia demonstrated that the refund was lower then the amount the company paid for input VAT and thus, the refund did not constitute a benefit.[56] After reviewing the responses provided by Hengshui Weijia to the supplemental RFIs, the CBSA excluded the program from its subsidy calculations.

Hengshui Weijia – Amount of Subsidy

[157] Expressed as a percentage of export price, the amounts of subsidy as determined by the CBSA for the cooperative exporter, Hengshui Weijia, is 2.5%. Expressed in RMB per metric tonne, the cooperative exporter's amount of subsidy was determined to be 563.9 RMB/MT.

All other Exporters - Amount of Subsidy

[158] For all other exporters, the amount of subsidy was determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:

(1) the amount of subsidy (RMB/MT) estimated for each of the two actionable subsidy programs for the cooperative exporter located in China; plus;
(2) the subsidy amount per metric tonne for the actionable subsidy program in (1) above which was identified by both the GOC and the cooperative exporter, applied to each of the remaining 78 potentially actionable subsidy programs for which information is not available or has not been provided.

[159] Using the above methodology, the amount of subsidy calculated for non-cooperative exporters is 9,125.6 RMB/MT. The total amount of subsidy for non-cooperative exporters expressed as a percentage of the export price is 44.7%.

[160] In summary, 100% of the goods from China are subsidized and the amount of subsidy is 31.4%, as a percentage of the export price.

[56] Subsidy Exhibit S96 (PRO) – Supplemental RFI Response from Hengshui Weijia Petroleum Equipment Manufacturing Co. Ltd.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - January 1, 2010 to June 30, 2011

Country	Subsidized Goods as Percentage of Country Imports	Amount of Subsidy as Percentage of Export Price	Country Imports as Percentage of Total Imports	Subsidized Goods as Percentage of Total Imports
China	100%	31.4%	74.4%	74.4%

[161] A summary regarding the amounts of subsidy for this investigation are provided in **Appendix 1.**

[162] In making a final determination of subsidizing under subsection 41(1) of SIMA, the President must be satisfied that the subject goods have been subsidized and that the amount of subsidy on the goods of a country is not insignificant. According to subsection 2(1) of SIMA, an amount of subsidy that is less than 1% of the export price of the goods is considered insignificant.

[163] However, according to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures* when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a product from a developing country should be terminated as soon as 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.

[164] SIMA does not define or provide any guidance regarding the determination of a "developing country" for purposes of Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance.[57] As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. As the preceding table illustrates, the amount of subsidy found during this investigation is not insignificant.

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

[57] The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at January 1, 2006, the document is available at: www.oecd.org/dataoecd/23/34/37954893.pdf

REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION

[166] Following the January 26, 2012 close of the record, a series of case briefs and reply submissions were also received from counsel for the Complainant, the exporter Hengshui Weijia and the GOC.

[167] Issues raised by participants through case arguments and reply submissions pertaining to the subsidy investigation and the CBSA's response to these issues are provided in **Appendix 2**.

DECISIONS

[168] On the basis of the results of the investigation, the President is satisfied that certain pup joints originating in or exported from the People's Republic of China, have been dumped and that the margin of dumping is not insignificant. Consequently, on March 12, 2012, the President made a final determination of dumping pursuant to paragraph 41(1)*(a)* of SIMA respecting the subject goods.

[169] Similarly, on the basis of the results of the investigation, the President is satisfied that certain pup joints originating in or exported from the People's Republic of China have been subsidized and that the amount of subsidy is not insignificant. As a result, the President also made a final determination of subsidizing pursuant to paragraph 41(1)*(a)* of SIMA respecting the subject goods on this same date.

[170] **Appendix 1** contains a summary of the margins of dumping and amounts of subsidy relating to the final determinations.

FUTURE ACTION

[171] The provisional period began on December 12, 2011, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by April 10, 2012. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available on the CBSA Web site at: http://www.cbsa-asfc.gc.ca/sima-lmsi

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

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

[174] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty (AMP) could be imposed. The provisions of the *Customs Act*[58] 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.

[175] Normal values and the amount of subsidy have been provided to the cooperating exporter for future shipments to Canada in the event of an injury finding by the Tribunal. The normal values and amount of subsidy will come into effect the day after the date of the injury finding, if there is one. Information regarding normal values of the subject goods should be obtained from the exporter.

[176] Exporters who were not cooperative in the dumping investigation will have normal values established by advancing the export price by 173.4% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters who were not cooperative in the subsidy investigation will be subject to a countervailing duty amount of 9,125.6 Renminbi per metric tonne, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[177] Under certain circumstances, anti-dumping and countervailing duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on 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 Tribunal issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determinations could be subject to anti-dumping and/or countervailing duty.

[178] However, in respect of importations of subsidized goods that have caused injury, this provision is only applicable where the President 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.

PUBLICATION

[179] 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.

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[58] *Customs Act* R.S.C. 1985.

INFORMATION

[180] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site, in both English and French, at the address below. For further information, please contact the officers identified as follows:

Mail	SIMA Registry and Disclosure Unit Anti-dumping and Countervailing Directorate Canada Border Services Agency 100 Metcalfe Street, 11th Floor Ottawa, Ontario K1A 0L8 CANADA	
Telephone	Andrew Manera Barbara Chouinard	613-946-2052 613-954-7399
Fax	613-948-4844	
E-mail	SIMARegistry@cbsa-asfc.gc.ca	
Web site	www.cbsa-asfc.gc.ca/sima-lmsi	

C. Ardito-Toffolo

Caterina Ardito-Toffolo
A/Director General
Anti-Dumping and Countervailing Directorate

Attachments

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

Exporter	Margin of Dumping (as Percentage of Export Price)	Amount of Subsidy (Renminbi per metric tonne)	Amount of Subsidy (as Percentage of Export Price)
Hengshui Weijia	80.2%	563.9	2.5%
All Other Exporters	173.4%	9,125.6	44.7%
China Overall	**144%**	**5,295.1**	**31.4%**

APPENDIX 2 – DUMPING AND SUBSIDY REPRESENTATIONS

The details of representations made to the CBSA with respect to the dumping and subsidy investigations, including case arguments and reply submissions from Hengshui Weijia, the GOC and the Complainant are listed below. Following the representations on the issues is a response explaining the position of the CBSA. Since there are at times common positions from multiple parties, the CBSA may make specific reference to only one or two parties when documenting the issue raised.

Given that the CBSA's final determination supersedes any decision made at the preliminary determination stage of the investigation, the CBSA will only address issues raised within the context of the preliminary determination to the extent that these issues carry relevance for the final determination.

The CBSA's International Obligations

Counsel for the GOC made representations identifying the CBSA's obligations under the WTO's *Anti-Dumping Agreement* and *Agreement on Subsidies and Countervailing Measures* as it relates to both the procedures and methodologies employed in the respective anti-dumping and countervailing investigations. In identifying these obligations, counsel has alleged a number of CBSA violations of these agreements including, but not limited to, the CBSA's determination that the GOC's response to the subsidy and section 20 RFIs was incomplete.[59]

CBSA Response:

The CBSA acknowledges its obligations to the WTO Agreements and believes it has met the standards set forth in both the *Anti-Dumping Agreement* and the *Agreement on Subsidies and Countervailing Measures*.

With this said, the CBSA's anti-dumping and countervailing investigations were conducted under the authority of the *Special Import Measures Act* (SIMA). The CBSA's responsibility is to administer and follow the relevant Canadian legislation in the form of SIMA. The CBSA believes it has adhered to the standard set forth in SIMA in the conduct of these investigations.

The CBSA's Process and GOC Involvement

Counsel for the GOC stated that the "CBSA's denial of an extension of the deadline to file RFIs past October 19, 2011 was unreasonable." [60] Counsel further suggested that "any information deemed as insufficient or limited by the CBSA could have been addressed or cured by providing sufficient time to respond or by issuing supplemental questionnaires."[61] Counsel for the GOC concluded by stating that "Canada's refusal to grant an extension of the deadlines to file RFI responses denied China the opportunity to meaningfully participate in this proceeding.[62]

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[59] Subsidy Exhibit S103 – Case Arguments from GOC, pages 4 and 5.
[60] Subsidy Exhibit S103 – Reply Submissions from GOC, paragraph 15.
[61] Subsidy Exhibit S103 – Reply Submissions from GOC, paragraph 19.
[62] Subsidy Exhibit S106 – GOC reply submissions, paragraph 39.

Counsel for the GOC also disagreed with the CBSA's determination that the GOC's subsidy RFI response was incomplete. Counsel stated that this determination denied the "GOC's right to fully participate in the investigation" and objected to the CBSA characterizing the GOC's RFI response as providing some information but being otherwise "limited" in its responses. Counsel also objected that the CBSA did not verify the GOC's RFI responses. [63]

Counsel for the Complainant rebutted the GOC's characterization of its RFI response, as well as the lack of verification of the response by stating that there "is no point in verifying an incomplete response. Further, verification is not a requirement of Canadian Law."[64]

As part of their allegation that the CBSA denied the GOC's participatory rights in this investigation, counsel for the GOC also identified documents which the CBSA had marked "Protected" on the administrative record, preventing, according to counsel, its client's ability to be "reviewed and/or confirmed by competent Chinese government officials."[65]

CBSA Response:

The CBSA does not believe that its denial of the deadline extension request from the GOC in respect of its RFI responses in any way denied the GOC its right to meaningfully participate in the investigations. The CBSA in fact afforded the GOC the opportunity to provide information right up until the close of the record, which was January 26, 2012, which is far beyond the RFI deadline of October 19, 2011. This is consistent with the CBSA's handling of similar requests in other investigations involving the GOC.

In no way did the CBSA prevent the GOC from participating in the investigation. There was ample time to submit a complete response to the RFI in advance of the close of the record, which was January 26, 2012. Furthermore, the CBSA is confident that the information requested was well within the GOC's ability to provide within the timelines provided and was relevant to the proceeding and that the subsequent response from the GOC fell substantially short of the fulsome response required.

With respect to the issue raised by counsel for the GOC that the CBSA designated certain documents as "Protected," which the GOC alleges prevented them from appropriately commenting on the information cited by the CBSA, the CBSA can find no record of a request from counsel to change any documentation from "Protected" to "Non-Confidential." Each of the documents referenced by counsel for the GOC appears to have been placed on the CBSA's administrative record on the date of initiation, September 12, 2011.[66]

[63] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraphs 38-42.
[64] Subsidy Exhibit S105 (NC) – Alberta Oil Tool reply submission, paragraph 20.
[65] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraphs 43-44.
[66] Dumping Exhibit 38 (PRO).

Furthermore, counsel for the GOC has not explained how a review of these documents would have put the GOC in a better position to respond, given that counsel states that "many of the official versions of the documents were indeed provided by the GOC in the RFIs filed for this investigation."[67]

The CBSA's Consideration of the Facts

In their case arguments, counsel for the GOC made numerous denials concerning alleged conduct of the GOC as stated in the CBSA's *Statement of Reasons* at the preliminary determination or in other documents on the record.[68] In general, counsel for the GOC objected to the CBSA's reliance on its own evidence, denied that the GOC's role includes any form of interference in the OCTG market respecting mergers and consolidations,[69] denied that the GOC has an approval process for OCTG producers who wish to make capacity additions,[70] and denied that the GOC has any direct/indirect influence on the "daily operations" of companies for which they are a shareholder (i.e. SOEs).[71]

In a critique of the CBSA's consideration of the facts available, the GOC stated the following in regards to the CBSA's preliminary determination:

> "Instead of relying on (or at least considering) the GOC's timely and verifiable evidence, the CBSA has, yet again, cast aside the detailed documentary evidence provided by the GOC in this investigation."[72]

Similarly, the GOC protested that:

> "It is difficult to be more emphatic than this in response to the CBSA's queries but yet the CBSA continues to conveniently decide based on its own biases and preconceived, unverified assumptions."[73]

With respect to their macro-economic measures, the GOC stated:

> "The GOC specifically addressed these points in its RFI responses, wherein it states at Question B18 that it "does not request specific mergers or consolidations; furthermore there is no specific request put through to various regions to form mergers or consolidations."[74]

With respect to the GOC's arguments regarding the State Assets Supervision and Administration Commission (SASAC), the GOC stated that:

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[67] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraphs 44.
[68] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraphs 48 and 55.
[69] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 49.
[70] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 50.
[71] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 51.
[72] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 37.
[73] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 50.
[74] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 49.

"In respect of the State Assets Supervision and Administration Commission (SASAC), the CBSA concludes that the 'GOC's mandates compete with market demands in corporate decisions.' This conclusion is arrived at based on apparent "contradictory statements," when in fact, again the GOC has emphatically stated that "in case a company is invested by the government, the government acts as an investor/shareholder, which has no direct or indirect influence on the company's daily operation."[75]

In addition to the issue of the role of SASAC, the GOC stated that:

"The mere fact that SASAC has a representative on a company's board does not make that company a "public body." Legal arguments on "public body" are provided below in Section III(a) and clearly establish that GOC mandates do not compete with market demands in corporate decisions since a government-invested entity is not a "public body."[76]

Finally in reference to the *China Steel Pipe Industry 12th Five-Year Plan*,[77] the GOC stated that it:

"...could not identify the document requested by the CBSA. Despite this, the CBSA based its conclusions on a protected document that was never seen by competent officials of the GOC and concluded, with no substantiation whatsoever, that "Chinese OCTG producers are not motivated solely by commercial interests, but must operate and be attentive to the GOC's objectives, which may conflict with commercial interests." This bald-faced statement can be said of any enterprise operating in a market economy. It certainly cannot lead to the conclusion that macro-economic policies and measures result in significant influences on pricing within the Chinese steel industry."[78]

With respect to the value of the evidence provided by the GOC in its RFI response, counsel for the Complainant characterized the GOC's information as "an attempt to manipulate the outcome through the selective provision of information."[79]

Counsel for the Complainant also made numerous specific references in case arguments to alleged incomplete responses, contradictory statements and inconsistencies in the GOC's RFI responses, relative to other information on the record, which counsel believes provide the justification for the CBSA to use alternative information and consider the GOC's responses incomplete.[80]

CBSA's Response:

The information on the record does not support the GOC's general position which asserts that detailed information was provided by them and should have been relied upon in place of other information on the record. The GOC has not taken into consideration the CBSA's letter of January 3, 2012 concerning the incomplete items in the GOC's submission.[81] In addition, the GOC

[75] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 51.
[76] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 54.
[77] Dumping Exhibit 38 (PRO) – Exhibit 6: *China Steel Pipe Industry 12th Five-Year Plan.*
[78] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 55.
[79] Subsidy Exhibit S105 (NC) – Alberta Oil Tool reply submission, paragraph 12.
[80] Dumping Exhibit 139 (NC) – Alberta Oil Tool case arguments, paragraphs 5 – 26.
[81] Dumping Exhibit 112 (PRO).

did not provide additional information to rectify the incomplete responses by the closing of the record date on January 26, 2012.

The GOC's statement in regards to mergers and acquisitions is inconsistent with the GOC's macro-economic policies and legislation. For instance, the *2009 Steel Revitalization/Rescue Plan* - Item 3 under Major Tasks states:

> "We shall further give play to the role of Bao Steel. An-Ben Steel, Wu Steel and other large size enterprise groups as leaders of the industry, assist An-Ben Steel Group, Guangdong Steel Group Guangxi Steel Group, Ilebei Steel Group and Shandong Steel Group in making a substantial reorganization for the unified management of production, supply and marketing as well as staff: property and materials within their groups, promote the trans-regional reorganization between An-Ben Steel and Pan Steel, Dongbei Special Steel as well as between Baosteel Group and Baogang Group, Ningbo Iron & Steel Co., Ltd, and facilitate the regional reorganization between Tianjin Pipe and Tian Tie Group. Tianjin Iron & Steel Co., Ltd., Tianjin Metallurgy Company as well as between Taiyuan Iron & Steel (Group) Co., Ltd. and the steel enterprises within the same province (Shanxi). We shall do our best to form a few huge steel enterprises with a production capacity of 50 million tons or more and a relatively strong international competitiveness such as Baosteel Group, An-Ben Group and Wuhan Steel Group as well as a number of large-size steel enterprises with a production capacity of 10 million tons up to 30 million tons."[82]

Furthermore, in the *12th Five- Year Development Plan: Iron and Steel* under *Accelerating Restructuring and Mergers*, the GOC directs that it will:

> "Mainly support large-scale steel enterprises to launch trans-regional and ownership, merger and restructuring. Perform the leading role of Bao Steel, Anshan Iron and Steel, Wuhan Iron and Steel, Shougang and other large-scale steel enterprises to form 3 to 5 enterprise groups of strong core competitiveness and international influence. Mainly promote and improve merger and restructuring of Anshan Iron and Steel, Panzhihua Iron and Steel, Benxi Iron and Steel, San'gang, and Bao Steel and Guangdong Steel, Wuhan and Yunnan, Guangxi Iron and Steel Company, Shougang and Jilin, Guizhou, Shanxi and other steel enterprises."[83]

In respect of the GOC purporting that there is no approval process for additional or new production capacity the GOC in its case arguments stated:

> "More specifically, in regards to operations or production capacity of companies in the OCTG sector, the GOC has stated unequivocally that there is no approval required concerning additional capacity and/or joint venture and that modifications on additions of capacity and/or joint ventures concerning OCTG are ultimately decided by the producers themselves."[84]

[82] Dumping Exhibit 82 (NC) – Exhibit 3.
[83] Dumping Exhibit 92 (NC).
[84] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 50.

The GOC's propositions in the above statement to the CBSA are in direct conflict with the GOC's macro-economic policies and legislation including:

- *National Iron and Steel Policy* – July 2005 [85]
- 2009 *Steel Revitalization/Rescue Plan* [86]
- *12th Five-Year Development Plan: Iron & Steel* [87]
- *China Steel Pipe Industry 12th Five-Year Plan* [88]
- *Criterion for the Production and Operation of Steel Industry* – GY [2010] No. 105 [89]
- *Several Observations of the General Office of the State Council on Further Strengthening Energy-saving and Emission Reduction Efforts as well as Accelerating of Restructuring of Steel Industry* – GBF (2010) No. 34 [90]

In Particular, the GOC's mandate in the National *12th Five-Year Development Plan: Iron and Steel* for 2011-2015 for the administration of production capacity in the Chinese steel industry is clear as it directs to:

> "Adhere to structural adjustment: take as the priorities of structural adjustment varieties expansion, quality enhancement, service improvement, steel usage reduction, energy conservation and emission reduction advancement, backwardness elimination, layout optimization; strictly control expansion of production capacity, accelerate the development of new material for steel and producer service, continue to advance merger and restructuring and further enhance industrial clustering level."[91]

The GOC's allegations in its case arguments are not supported by the GOC's macro-economic policies and legislative actions. The evidence on the record demonstrates that the CBSA's determinations have not been based on its own biases and preconceived, unverified assumptions as alleged by the GOC. The GOC's arguments conflict with the information on the record, the latter of which is often sourced from the GOC's own policy and legislation.

Regarding the GOC's assertions on the role of SASAC and SOEs, when asked by the CBSA for a further explanation concerning the role, activities and responsibilities of the SASAC directors, the GOC responded that:

> "According to the Company law of China, the SASAC director is a representative of the shareholder. SASAC guides and pushes the reform and restructuring of state-owned enterprises, as well as supervises the maintenance and appreciation of state assets value for those state-invested enterprises."[92]

[85] Dumping Exhibit 82 (NC) – Exhibit 2.
[86] Dumping Exhibit 82 (NC) – Exhibit 3.
[87] Dumping Exhibit 92 (NC) – Exhibit 2.
[88] Dumping Exhibit 38 (PRO).
[89] Dumping Exhibit 92 (NC) – Exhibit 3.
[90] Dumping Exhibit 107 (NC).
[91] Dumping Exhibit 92 (NC) – Exhibit 2.
[92] Dumping Exhibit 82 (NC) – response to Question C8(b).

This response characterizes SASAC's role as far more involved than the more passive voice suggested by the GOC in its case arguments above, where SASAC was described as having "no direct or indirect influence."[93]

Regarding the comments made by the GOC in respect of the *China Steel Pipe Industry 12' Five-Year Plan*, the CBSA identified the GOC's macro-economic policies along with legislative actions by the names commonly found in the public domain. At no point did the GOC request clarification on the title of the document and provided official translations of the seminal documents as per the CBSA's request. The document referenced is produced by a CISA affiliated body. The GOC was cognizant of the references and the documents referenced. Consequently, the GOC's arguments appear to be without basis in fact.

The CBSA's Assessment of Subsidy Programs

In their case arguments, counsel for Hengshui Weijia contested the CBSA's assessment of two of the subsidy programs estimated at the preliminary determination to confer actionable benefits upon the exporter.[94]

Counsel for Hengshui Weijia challenged the CBSA's consideration of Program 74: *Exemption of VAT on Purchases of Equipment* claiming the arrangement is a non-actionable subsidy, in large part due to the fact that the 13% VAT refund on exported goods is a lower rate than the 17% rate assessed on purchases in the domestic market. Counsel also cited the following CBSA statement on this issue from the *Seamless Steel Casing* investigation:

> "The Chinese VAT rebate system is consistent with the WTO Subsidies Agreement as long as the exemption or remission of indirect taxes on the production and distribution of exported goods is not in excess of the indirect taxes levied on the production and distribution of the same products sold in the domestic market."[95]

Counsel for the Complainant rebutted the position of Hengshui Weijia in their reply submissions, providing an example which demonstrated that a simple comparison between the percentage of VAT paid versus the percentage of VAT refunded is insufficient to assess whether or not a net financial benefit has actually been received, given that the respective rates are applied to different values (i.e. VAT paid is on domestically purchased inputs, VAT refunded is a factor of export price). As stated by counsel for the Complainant:

> "Quite simply, the VAT rate on inputs and the VAT on export are measured from different bases, and accordingly, the percentage amounts are not directly comparable; rather, it is the consequence of the relative price of inputs and the selling price which determines whether a subsidy has been accorded."[96]

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[93] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 50.
[94] Subsidy Exhibit S102 (NC) – Hengshui Weijia case arguments.
[95] CBSA *Seamless Steel Casing* final determination *Statement of Reasons*, paragraph 211, February 22, 2008.
[96] Subsidy Exhibit S105 (NC) – Alberta Oil Tool case arguments, paragraph 45.

Counsel for Hengshui Weijia also contested the CBSA's estimated subsidy amount at the preliminary determination for Program 1: *Preferential Tax Policies for Enterprises with Foreign Investment* (FIEs). Counsel challenged both the calculation and the basis for the calculation, stating that the CBSA lacked the specificity component required to consider a subsidy program actionable, as the rules under the "Income Tax Circular automatically apply to all enterprises in China and the criteria and conditions are strictly adhered to."[97]

Counsel for the Complainant rebutted this argument by stating that:

> "The very fact of the range of these differential tax computation rates indicate an economic benefit being given to a certain industry or industries, and further certain preferences given within an industry. The highest rate indicated is Article 8 [Income Tax Circular] is 30%. It is submitted that anything less than a 30% rate constitutes a countervailable subsidy, since it confers an economic benefit, and provides a benefit to a specific industry or industries relative to other industries."[98]

CBSA Response:

In regards to Program 74: *Exemption of VAT on Purchases of Equipment*, for the purposes of the preliminary determination, this program addressed a VAT refund shown in the financial statements of the company. A further review by the CBSA since the preliminary determination revealed that the VAT refund was not related to the purchase of equipment. Rather, it was related to the VAT refunded on the export of the subject goods. As a result, the CBSA excluded the program from Hengshui Weijia's subsidy calculations.

The CBSA considered the Complainant's argument concerning the percentage of VAT paid versus the percentage of VAT refunded and, based on the information provided by the exporter, the CBSA determined that the actual refunded amounts of VAT did not exceed the amounts of VAT paid.[99]

With regards to the subsidy calculation for *Preferential Tax Policies*, the CBSA found that Hengshui Weijia had not sufficiently responded to the question as to why their income tax rate was substantially below the standard rate for corporations in China. The company actually responded that for the CBSA to "assume that Hengshui Weijia should be aware of why its tax rate was [x%] instead of 10% or 15% is ludicrous."[100]

The CBSA does not believe that the request was ludicrous. The reasoning for the rate should be well within the company's ability to respond. As previously stated, in the absence of a satisfactory answer, the highest taxable income rate of 15% was used to calculate the subsidy benefit. The CBSA found that the difference in tax rates between the standard corporate rate and that received by Hengshui Weijia, along with the company's inability to explain the preferential rate to be sufficient in satisfying the CBSA's determination.

[97] Subsidy Exhibit S102 (NC) – Hengshui Weijia case arguments, paragraphs 42-43.
[98] Subsidy Exhibit S105 (NC) – Alberta Oil Tool reply submissions.
[99] Subsidy Exhibit S96 (PRO) – Hengshui Weijia SRFI response.
[100] Subsidy Exhibit S97 (NC) – Hengshui Weijia SRFI response.

The CBSA's Evidence in Support of the Application of Section 20

Counsel for the GOC stated that the CBSA's reliance on section 20 is "misplaced."[101] In making these comments, the GOC cited China's Accession Protocol to the WTO as support to its position that Chinese prices and costs should be used as the primary methodology in making the necessary "pricing or costing comparisons involved in investigating dumping claims."[102]

Counsel for the Complainant countered these arguments relating the Accession Protocol by drawing attention to the condition in Article 15 which states that the primary methodology alluded to above should be used:

> "If the producers under investigation can clearly show that market economy conditions prevail in the industry."[103]

It is the position of counsel for the Complainant that the producers in this investigation, of which there is only one respondent, have not so shown this.

Counsel for the GOC also emphasized the "two-fold test" to paragraph 20(1)(*a*) of SIMA, where domestic prices must be substantially determined by the government and those prices must not be substantially the same as they would be if they were determined in a competitive market in order to satisfy the basis of the President's opinion.[104] To meet each of these requirements, counsel contended that "a modicum of rigor that prices differ from what they would otherwise be in a competitive market" must be used by the CBSA in its analysis.[105]

Counsel for the GOC further cited the CBSA's public section 20 policy as requiring that investigations be initiated under the presumption that the conditions described in section 20 do not exist "unless there is evidence that suggests otherwise."[106] Counsel stated that this presumption entails that any such evidentiary reliance must be "compelling and accurate" as section 20 is to be used only in exceptional circumstances.[107]

Counsel for the Complainant rebutted the allegations from the GOC's counsel that the CBSA's investigation into section 20 was unwarranted. In so doing, counsel referred to two previous CBSA section 20 determinations on the same industry in the *Seamless Steel Casing* (2008) and *Oil Country Tubular Goods* (2010) investigations, where the decision in the former was upheld by the Federal Court of Appeal.[108]

CBSA Response:

As part of the preliminary determination of dumping, the President formed the opinion that the conditions of section 20 exist in the Chinese OCTG sector, which includes pup joints.

[101] Dumping Exhibit 143 (NC) – GOC case arguments, Part III, page 6.
[102] Dumping Exhibit 143 (NC) – GOC case arguments, paragraph 18.
[103] Dumping Exhibit 145 (NC) – Alberta Oil Tool reply submissions, paragraph 14.
[104] Dumping Exhibit 143 (NC) – GOC case arguments, paragraph 24.
[105] Dumping Exhibit 143 (NC) – GOC case arguments, paragraph 26.
[106] Dumping Exhibit 143 (NC) – GOC case arguments, paragraph 28.
[107] Dumping Exhibit 143 (NC) – GOC case arguments, paragraph 29.
[108] *Tianjin Pipe (Group) Corporation* v. *TenarisAlgomaTubes Inc.*, 2009 FCA 164.

The CBSA has undertaken extensive research into the GOC's involvement in the steel industry, including the Chinese OCTG sector, which includes pup joints. The CBSA has formed the section 20 opinion on the OCTG sector in China in two previous investigations – *Seamless Steel Casing* (2008) and *Oil Country Tubular Goods* (2010). The full details of this research are available on the CBSA's listing of exhibits.

It is important to note that RFI responses from interested parties form only part of the information on the record. The results of the CBSA's analysis in this case are consistent with the evidence on the record and the President's previous section 20 opinions regarding steel industry sectors, including OCTG.[109]

Further explanation of the CBSA's position regarding its section 20 opinion can be found in the "Section 20 Inquiry" portion of this document. In addition, all other relevant evidence used to affirm the section 20 opinion can be found on the CBSA's listing of exhibits.

The CBSA's Determination of Normal Values

Counsel for the GOC objected to the CBSA using any methodology for calculating normal values that was not based upon the "timely filed, verifiable and accurate information governing the pup joints sector in China."[110] The GOC also claimed that the "GOC and its producers have clearly established that market economy conditions prevail in the OCTG industry."[111]

Counsel for the GOC further objected to the CBSA using a surrogate market such as the United States to establish normal values, alleging that such an effort is an "apples to oranges" comparison. Counsel for the GOC characterized normal values calculated using the United States as one that produces "aberrationally high normal values that cannot be compared to Chinese prices."[112] Counsel further suggested that Brazil would be a more appropriate surrogate given its status as a major OCTG producer and consumer as well as having major oil production and refining capacities.[113]

CBSA Response:

At the time of the preliminary determination, the President formed the opinion that the conditions of section 20 exist in the OCTG sector, which includes pup joints. Where section 20 conditions exist, the CBSA may determine normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)*(c)* of SIMA or, failing that, paragraph 20(1)(*d*) of SIMA provides for calculating normal values using re-sales in Canada of goods imported from a third country. The CBSA was unable to obtain sufficient information for either of these two approaches and accordingly used an alternative method to estimate normal values for purposes of the preliminary determination.

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[109] CBSA *Pup Joints* preliminary determination *Statement of Reasons*, paragraph 85.
[110] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 57.
[111] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 58.
[112] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 118.
[113] Subsidy Exhibit S103 (NC) – GOC case arguments, paragraphs 60-61.

In estimating normal values for the preliminary determination, the CBSA used margin of dumping estimates established in the CBSA's complaint analysis for the initiation of the investigation.[114]

For the purposes of the final determination, a more comprehensive analysis using actual imports of goods matching the subject good characteristics from the United States were used as basis for normal values. These normal values were compared with the exported goods from the cooperative exporter. The CBSA considers this to be the best available information, given the lack of pricing information on the record, in spite of the CBSA's efforts to obtain it from other producers of pup joints.

Furthermore, although counsel for the GOC suggested the use of Brazil as a more appropriate surrogate alternative to, for example, domestic selling prices in the United States, the CBSA notes that counsel provided no evidence of such prices for the CBSA's consideration. In fact, all statements made in relation to Brazil in case arguments, regarding its production capability for both oil and OCTG etc. were without any reference to evidence on the record. Had counsel for the GOC or any other interested party submitted documentation to support these statements, the CBSA would have considered it as part of its surrogate country analysis. As such, the CBSA had very little information in regards to domestic selling prices in other countries for OCTG in general, let alone pup joints.

It is also worthy to note that at the initiation of the investigation, the CBSA did contact producers of pup joints in Brazil, requesting that they respond to the RFI provided to them for the purposes of a surrogate country analysis.[115] As stated earlier, no responses to the surrogate RFI were received.

The CBSA's Consideration of Public Bodies

Counsel for the GOC submitted that the State Assets Supervision and Administration Commission (SASAC) does not carry out or enforce compliance with government mandates, that government mandates are not a priority for State-Owned Enterprises (SOEs), and that SASAC does not oversee, administer, or operate day-to-day company activities of SOEs. Consequently, counsel alleged that the CBSA did not satisfy the evidentiary burden for the treatment of SOEs as public bodies as set out by the WTO Appellate Body in DS379.[116]

In support of this allegation, counsel cited Article 7 of the *Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises*, which states that:

> "people's governments at various levels shall strictly execute the laws and regulations on the administration of state-owned assets, shall observe the separation of the government's function of administration of public affairs and the function as the contributor of state-owned assets, and ensure the separation of government bodies and enterprises and the separation of ownership and management power."[117]

[114] Dumping Exhibit 1 (PRO) – CBSA Complaint Analysis.
[115] Dumping Exhibit 57 (NC).
[116] Subsidy Exhibit S103 (NC) – GOC case arguments, page 23-26.
[117] Dumping Exhibit 82 (NC) – GOC Section 20 RFI Response, Question C4; as cited in Subsidy Exhibit S103 (NC) – GOC case arguments, paragraph 84.

CBSA Response:

As previously stated, the CBSA's investigation was conducted under the authority of SIMA. Subsection 2(1) of SIMA defines a government, in relation to any country other than Canada, to mean the government of that country, including:

> "Any person, agency or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state, municipal or other local or regional government."

In order to assess the level of government authority over SOEs, the CBSA asked the GOC several questions on the legal status, ownership, function, and level of control that the government exercises with regard to SOEs. The CBSA also sent questionnaires to exporters that were to be passed on to input suppliers to help assess these same criteria, with the goal of establishing whether the SOEs possess, exercise, or are vested with government authority. The CBSA did not receive responses, or received inadequate responses, to these questions. Regardless, in this case, the CBSA did not assess any actionable subsidies against cooperative exporters stemming from inputs provided by public bodies or SOEs.

Double Counting in Relation to Dumping Margins and Domestic Subsidies

Counsel for the GOC submitted that the dual imposition of anti-dumping duties and countervailing duties on goods exported from a non-market economy, where normal values have been established based on surrogate sales or cost data that is not reflective of the effects of domestic subsidization which are reflected in export prices, results in double counting. Counsel argues that this double counting is in violation of international obligations and has the effect of levying excessive duties.[118]

CBSA Response:

With respect to the double counting issue, the CBSA is in the process of assessing any possible implications of the Appellate Body decision in DS379. Among the factors that we will be considering is how the United States, the subject of this appeal, implements the Appellate Body decision in its system. At this time we are not in a position to make any further comments.

[118] Subsidy Exhibit S103 (NC) – GOC case arguments, page 27.

APPENDIX 3 – SUBSIDY PROGRAMS NOT USED BY THE COOPERATIVE EXPORTER

The following programs were also included in the current investigation. Questions concerning these programs were included in the RFI sent to the GOC and to all known exporters of the goods in China. None of the cooperative exporters reported using these programs during the subsidy POI. Without a complete response to the subsidy RFI from the GOC and all known exporters, the CBSA does not have detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not constitute actionable subsidies. In other words, the CBSA does not have sufficient information to determine that any of these programs should be removed from the investigation for the purposes of the final determination.

I. Special Economic Zones (SEZ) and other Designated Areas Incentives

Program 2: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
Program 3: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
Program 4: Preferential Tax Policies in the Western Regions
Program 5: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
Program 6: Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
Program 7: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas
Program 8: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas
Program 9: Income Tax Refund where Profits Re-invested in SEZs and other Designated Areas
Program 10: Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas

II. Grants

Program 11: The State Key Technology Renovation Projects
Program 12: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
Program 13: Repaying Foreign Currency Loan by Returned VAT
Program 14: Government Export Subsidy and Product Innovation Subsidy
Program 15: Export Assistance Grant
Program 16: Research & Development (R&D) Assistance Grant
Program 17: Innovative Experimental Enterprise Grant
Program 18: Superstar Enterprise Grant
Program 19: Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
Program 20: Export Brand Development Fund
Program 21: Provincial Scientific Development Plan Fund
Program 22: Technical Renovation Loan Interest Discount Fund
Program 23: Venture Investment Fund of Hi-Tech Industry
Program 24: National Innovation Fund for Technology Based Firms
Program 25: Guangdong – Hong Kong Technology Cooperation Funding Scheme

Program 26: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
Program 27: Innovative Small and Medium-Sized Enterprise Grants
Program 28: Product Quality Grant
Program 29: 2009 Energy-saving Fund
Program 30: Energy-Saving Technique Special Fund
Program 31: Grants to Privately-Owned Export Enterprises
Program 33: Grants for International Certification
Program 34: Liaoning High-Tech Products & Equipment Exports Interest Assistance
Program 35: Emission Reduction and Energy-saving Award
Program 36: Grant for Market Promotion and Trade Development
Program 37: Refund of Land Transfer Fee
Program 38: Grant – Assistance for Exhibition Booth Fees
Program 39: Grant – Patent Application Assistance
Program 40: Grant – State Service Industry Development Fund
Program 41: Grant – Changzhou Five Major Industries Development Special Fund
Program 42: Grant – Ecological Garden Enterprise Reward
Program 43: Grant – Municipal Construction Reward
Program 44: Grant – Cleaning-production Qualified Enterprise Reward
Program 45: Grant – Provisional Industry Promotion Special Fund
Program 46: Grant – Jiangsu Province Finance Supporting Fund
Program 47: Grant – Guaranteed Growth Fund
Program 48: Grant - Water Pollution Control Special Fund for Taihu Lake
Program 49: Grant – Provincial Foreign Economy and Trade Development Special Fund
Program 50: Grant – Subsidy from Water Saving Office
Program 51: Grant – Insurance Expense Compensation
Program 52: Grant – Industrial Science and Technology Breakthrough Special Fund
Program 53: Grant – Special Supporting Fund for Commercialization of Technological Innovation and Research Findings
Program 54: Grant – Changzhou City Key Supporting Industry Upgrading Special Fund
Program 55: Grant – Special Fund for Fostering Stable Growth of Foreign Trade in 2009
Program 56: Grant – Financial Subsidies from Wei Hai City Gao Cun Town Government
Program 57: Grant – Policy on Value-added Tax for Recyclable Resources
Program 58: Grant – Large Taxpayer Award
Program 59: Grant – Resources Conservation and Environment Protection Grant

III. Equity Programs

Program 60: Debt-to-Equity Swaps
Program 61: Exemptions for SOEs from Distributing Dividends to the State

IV. Preferential Loan Programs

Program 62: Loans and Interest Subsidies Provided Under the Northeast Revitalization Program

V. Preferential Income Tax Programs

Program 63: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years
Program 64: Preferential Tax Policies for Foreign Invested Export Enterprises
Program 65: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
Program 66: Preferential Tax Policies for the Research and Development of FIEs
Program 67: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments
Program 68: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose
Program 69: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
Program 70: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps
Program 71: Corporate Income Tax Reduction for New High-Technology Enterprises

VI. Relief from Duties and Taxes on Materials and Machinery

Program 72: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment
Program 73: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs
Program 74: Exemption of VAT on Purchases of Equipment

VII. Reduction in Land Use Fees

Program 75: Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices
Program 76: Deed Tax Exemptions For Land Transferred through Merger or Restructuring

VIII. Goods/Services Provided by Government at Less than Fair Market Value

Program 77: Input Materials Provided by Government at Less than Fair Market Value
Program 78: Utilities Provided by Government at Less than Fair Market Value
Program 79: Acquisition of Government Assets at Less than Fair Market Value
Program 80: Coke Provided by Government at Less than Fair Market Value

CLICK HERE FOR FREE MEPS STEEL PRICES ON YOUR WEBSITE

MEPS - ASIA ALL PRODUCTS STAINLESS STEEL PRICE INDEX (GRADE 304)

Grade 304	ASIA STAINLESS STEEL PRICE ($US/tonne)	ASIA STAINLESS STEEL INDEX Index, 1997=100
Sep-13	247[illegible]	141.3
Aug	2[illegible]	139.0
Jul	23[illegible]	135.4
Jun	24[illegible]	139.9
May	25[illegible]	146.0
Apr	26[illegible]	150.2
Mar	26[illegible]	153.4
Feb	267[illegible]	152.4
Jan-13	272[illegible]	155.4
Dec	272[illegible]	155.7
Nov	2754	157.2
Oct	2801	159.9
Sep-12	2765	154.4

Note:-Click here for product and price definitions

All price and market data is researched by MEPS staff and our local correspondents. The information in the tables have been calculated from respondents who we consider provide accurate intelligence on the relevant steel markets. We make our best endeavours to be assured that the information is correct and that our analysis is reliable. MEPS (INTERNATIONAL) LTD cannot be made liable for any loss resulting from the use of these prices however it may arise.

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MEPS - N.AMERICA ALL PRODUCTS STAINLESS STEEL PRICE INDEX (GRADE 304)

Grade 304	N AMERICA STAINLESS STEEL PRICE ($US/tonne)	N AMERICA STAINLESS STEEL INDEX Index, 1997=100
Sep-13	2669	128.4
Aug	257[illegible]	123.9
Jul	[illegible]	127.0
Jun	[illegible]	132.0
May	[illegible]	158.2
Apr	[illegible]	142.5
Mar	3045	149.6
Feb	[illegible]	144.0
Jan-13	3150	151.4
Dec	3050	146.6
Nov	3005	144.4
Oct	29[illegible]	141.5
Sep-12	2919	140.4

Note:-**Click here for product and price definitions**

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MEPS - EU ALL PRODUCTS STAINLESS STEEL PRICE INDEX (GRADE 304)

Grade 304	EU STAINLESS STEEL PRICE ($US/tonne)	EU STAINLESS STEEL INDEX Index, 1997=100
Sep-13	2712	150.8
Aug	271[illegible]	151.0
Jul	279[illegible]	155.2
Jun	28[illegible]	160.4
May	30[illegible]	168.6
Apr	29[illegible]	166.0
Mar	30[illegible]	171.2
Feb	32[illegible]	179.1
Jan-13	309[illegible]	172.0
Dec	29[illegible]	163.9
Nov	312[illegible]	173.5
Oct	306[illegible]	170.6
Sep-12	2958	164.4

Note: **Click here for product and price definitions**

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CLICK HERE FOR FREE MEPS STEEL PRICES ON YOUR WEBSITE

MEPS - GLOBAL ALL PRODUCTS STAINLESS STEEL PRICE INDEX (GRADE 304)

Grade 304	GLOBAL STAINLESS STEEL PRICE ($US/tonne)	GLOBAL STAINLESS STEEL INDEX Index, 1997=100
Sep-13	2619	139.6
Aug	2576	137.3
Jul	2602	138.6
Jun	2693	143.5
May	2915	150.1
Apr	2861	152.4
Mar	2938	156.6
Feb	2966	158.0
Jan-13	2988	159.2
Dec	2920	155.6
Nov	2959	157.7
Oct	2938	156.5
Sep-12	2860	152.4

Note:-**Click here for product and price definitions**

All price and market data is researched by MEPS staff and our local correspondents. The information in the tables have been calculated from respondents who we consider provide accurate intelligence on the relevant steel markets. We make our best endeavours to be assured that the information is correct and that our analysis is reliable. MEPS (INTERNATIONAL) LTD cannot be made liable for any loss resulting from the use of these prices however it may arise.

Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2013-001

Galvanized Steel Wire

Finding issued
Tuesday, August 20, 2013

Reasons issued
Wednesday, September 4, 2013

Canada

TABLE OF CONTENTS

IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

THE DUMPING OF GALVANIZED STEEL WIRE ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE STATE OF ISRAEL AND THE KINGDOM OF SPAIN AND THE SUBSIDIZING OF GALVANIZED STEEL WIRE ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of cold-drawn carbon or alloy steel wire, of solid cross section with an actual diameter of 1.082 mm (0.0426 inch) to 12.5 mm (0.492 inch), plated or coated with zinc or zinc alloy, whether or not coated with plastic, excluding flat wire, originating in or exported from the People's Republic of China, the State of Israel and the Kingdom of Spain and the subsidizing of the above-mentioned goods originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated July 22, 2013, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned goods have not caused injury or retardation and are not threatening to cause injury.

Serge Fréchette
Serge Fréchette
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Daniel Petit
Daniel Petit
Member

Gillian Burnett
Gillian Burnett
Acting Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	July 22 to 26, 2013
Tribunal Members:	Serge Fréchette, Presiding Member Jason W. Downey, Member Daniel Petit, Member
Tribunal Staff:	Lisa Backa Demers, Research Director Mark Howell, Acting Associate Research Director Rhonda Heintzman, Senior Research Officer Marie-Josée Monette, Research Officer Daniel Bettencourt, Research Assistant Adam Suwalski, Research Assistant Nick Covelli, Senior Counsel and Case Manager Laura Little, Counsel Michel Parent, Manager, Registrar Programs and Services Lindsay Vincelli, Senior Registrar Officer Alexis Chénier, Acting Registrar Support Officer

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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry[1] is to determine whether the dumping of galvanized steel wire (GSW) originating in or exported from the People's Republic of China (China), the State of Israel (Israel) and the Kingdom of Spain (Spain) and the subsidizing of GSW originating in or exported from China (the subject goods) have caused or threaten to cause material injury to the domestic industry for GSW.

2. This inquiry stems from a complaint filed on March 23, 2012, by Tree Island Steel Ltd. (Tree Island) and the subsequent decision of the President of the Canada Border Services Agency (CBSA) to initiate dumping and subsidizing investigations.

3. The CBSA's decision triggered a preliminary injury inquiry by the Tribunal. On March 22, 2013, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury.

4. On April 22, 2013, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods and the commencement of this inquiry. On July 22, 2013, the CBSA made final determinations of dumping and subsidizing.[2]

5. If the Tribunal determines that such dumping and subsidizing have caused or threaten to cause material injury to the domestic industry for GSW, then the CBSA will impose definitive anti-dumping and countervailing duties on imports of the subject goods.

6. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2010, to December 31, 2012, and two interim periods, from January 1 to March 31, 2012, and the corresponding period in 2013. On this basis, Tribunal staff issued questionnaires to domestic producers, importers, purchasers and foreign producers of GSW. Using the questionnaire replies, Statistics Canada import data and data from the CBSA, staff prepared public and protected staff reports that were distributed, along with the questionnaire replies themselves, to counsel of record for the entities that filed notices to participate in the inquiry.[3] Parties were then afforded the opportunity to file case briefs and evidence.

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1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 [*SIMA*].
2. Tribunal Exhibit NQ-2013-001-04, Administrative Record, Vol. 1A at 2.
3. All public exhibits were made available to the parties. Protected exhibits, including the protected staff report and the confidential portion of questionnaire replies, were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2012-005), replies to questionnaires, public and protected versions of the pre-hearing staff report and revisions, requests for information and replies thereto, witness statements, all other exhibits filed by the parties and the Tribunal throughout the inquiry, and the transcript of the hearing.

7. The parties which have actively participated in the inquiry are the following: Tree Island and ArcelorMittal Montreal (AMM), domestic producers of GSW; Sacks Industrial Corp. (Sacks), an importer; Structa Wire Corp. (Structa), a purchaser and producer of welded stucco lath; Moreda Riviere Trefilerias S.A. (MRT), a Spanish exporter; and Yehuda Welded Mesh Ltd. (Yehuda), an Israeli exporter.[4]

8. From July 22 to 26, 2013, the Tribunal heard oral submissions from counsel for these parties, as well as testimony from their witnesses in public and *in camera* sessions.

RESULTS OF THE CBSA'S INVESTIGATIONS

9. The CBSA's period of investigation for its dumping investigation covered January 1 to December 31, 2012. The period of investigation for its subsidizing investigation covered January 1, 2011, to December 31, 2012. The CBSA made the following determinations:[5]

- for the goods originating in or exported from China, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 100.5 percent, and 91.5 percent of the subject goods had been subsidized at a weighted average amount of subsidy of 14.9 percent;
- for goods originating in or exported from Spain, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 14.2 percent; and
- for goods originating in or exported from Israel, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 10.2 percent.

PRODUCT

Product Definition

10. The CBSA has defined the subject goods as follows:

> cold-drawn carbon or alloy steel wire, of solid cross section with an actual diameter of 1.082 mm (0.0426 inch) to 12.5 mm (0.492 inch), plated or coated with zinc or zinc alloy, whether or not coated with plastic, excluding flat wire, originating in or exported from the People's Republic of China, the State of Israel and the Kingdom of Spain.

Product Information[6]

11. GSW can be round, flat or shaped and is typically sold in coils. It is plated or coated with zinc or zinc alloy, whether by hot-dipping or electroplating. For the purpose of this inquiry, the definition of the subject goods covers most GSW, but does not extend to flat wire. Flat wire is a more expensive specialty product with two flat sides and is produced on a separate rolling mill or by drawing the wire a second time through a special set of dies.

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4. Tree Island, Structa, Sacks, MRT and Yehuda filed case briefs with documentary evidence and, with the exception of Yehuda, witness statements in support of their respective positions. AMM and, through Tree Island, Sivaco Wire Group (Sivaco Wire) filed witness statements. Other participants that were not represented by counsel and only sought access to the Tribunal's public record include the following: Quincaillerie A. Karpat Ltée, an importer; the Delegation of the European Union to Canada; and Continental Steel Ltd., the parent company of Davis Wire Ltd. (Davis Wire), a domestic producer of GSW.
5. Tribunal Exhibit NQ-2013-001-04, Administrative Record, Vol. 1A at 23.
6. Tribunal Exhibit NQ-2013-001-01A, Administrative Record, Vol. 1 at paras. 26-31.

12. The subject goods include all galvanized coatings. In North America, galvanizing standards are reflected in the ASTM A641 standard. There are similar standards that may be applicable in other jurisdictions. ASTM A641 provides for minimum mass of zinc per unit of area to qualify under particular classes. The amount of zinc varies with the wire diameter. In addition, zinc-coated wire produced as "regular coating" (also known as commercial grade) does not have a specified minimum weight of coating and tends to range from 50 g/m^2 (0.17 oz./ft^2) and less. Commercial grades are not covered by ASTM A641.

13. GSW is available in a wide range of gauges (diameters), carbon levels, tensile strengths and coating thicknesses. GSW may be sold for use as baling wire or vineyard wire, or for production into a wide range of products, including fencing, fasteners and construction products. For certain applications, GSW may be further coated with polyvinyl chloride plastic (PVC).

14. Products with higher carbon content have increased hardness and are accordingly more difficult to draw. These products tend to be in the higher range of prices for GSW because of the more demanding engineering specifications. The wire must be drawn more slowly, resulting in a higher energy cost per tonne and generates higher wear and tear on equipment such as dies. Major markets for high carbon GSW are the pulp baling market and certain waste baling applications.

15. The gauge or thickness of the wire is also an important determinant of cost. The thinner the wire, the more the product must be drawn, and the higher the relative cost by weight. Similarly, zinc coating can vary. The thicker the coating, measured in ounces per square foot or grams per square metre, the more it costs to produce the product.

16. There is a wide range of terminology used to describe the thickness of the wire. Diameter is most accurately expressed in millimetres or in inches; but the industry commonly refers to the *gauge* of a wire. Although American Steel & Wire wire gauges are most commonly used, other gauge measurements may differ; some with different size ranges, and others that do not incorporate fractional sizes. In addition, there are permitted tolerances for each gauge size or fractional size.

LEGAL FRAMEWORK

17. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with "injury" being defined, in subsection 2(1), as ". . . material injury to a domestic industry". In this regard, "domestic industry" is defined in subsection 2(1) by reference to the domestic production of "like goods".

18. Accordingly, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis.

19. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect) in this inquiry. Given that the subject goods originate in or are exported from more than one country, the Tribunal must also determine if the prerequisite conditions are met in order to make a cumulative assessment of the effect on the domestic industry of the dumping and subsidizing of the subject goods from all the subject countries (i.e. whether it will conduct a single injury analysis or a separate analysis for each subject country).

20. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.[7] Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.[8] As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.[9]

21. In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping and subsidizing.

LIKE GOODS AND CLASSES OF GOODS

22. In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.[10]

23. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

> (*a*) goods that are identical in all respects to the other goods, or
>
> (*b*) in the absence of any goods described in paragraph (*a*), goods the uses and other characteristics of which closely resemble those of the other goods.

24. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses, and whether the goods fulfill the same customer needs).[11]

25. In its preliminary injury inquiry, the Tribunal found that domestically produced GSW of the same description as the subject goods were like goods in relation to the subject goods.

26. During the present inquiry, the Tribunal did not receive any submissions challenging this finding, and the Tribunal sees no reason to depart from it. The evidence indicates that the characteristics of domestically produced GSW closely resemble those of the subject goods when produced to the required specifications.[12]

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7. The Tribunal will proceed to determine the effect of the dumping and subsidizing of the subject goods on the domestic industry, for individual countries or for the cumulated countries, as appropriate.
8. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.
9. Subsection 2(1) of SIMA defines "retardation" as ". . . material retardation of the establishment of a domestic industry".
10. Should the Tribunal determine that there is more than one class of goods, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).
11. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
12. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 33, 34, 35.

27. The subject goods and domestically produced GSW are also substitutable, as they generally compete against one another in the Canadian market, have the same end uses and are distributed through the same channels.[13]

28. In terms of distribution channels, the evidence shows that both domestically produced GSW and imported GSW are sold primarily to end users,[14] although some of these end users act as resellers. A relatively small share of sales from domestic production was sold to distributors during the POI.[15]

29. In the preliminary injury inquiry, the Tribunal accepted an argument advanced by Structa that there may be two classes of goods: (1) 17/18 gauge GSW (diameter ranging from 1.082 mm to 1.41 mm); and (2) the remainder of the subject goods. The Tribunal indicated however that it would examine this issue further in the context of a final inquiry. To this end, it asked parties to submit specific submissions on whether those goods, also known, respectively, as category 1 GSW and category 2 GSW, constituted separate classes of like goods. After considering the evidence and submissions of parties,[16] the Tribunal concludes that there is only one class of goods[17] for the following reasons.

30. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If those goods are "like goods" in relation to each other, they will be regarded as comprising a single class of goods.[18]

31. While Structa relied on differences between category 1 GSW and category 2 GSW in terms of size and tensile break strength, production processes, pricing, and end use, the preponderance of the evidence suggests that both types of GSW fall along a continuum of GSW products ranging in size, chemistry and end use, incremental differences which exist across the entire range of subject goods and not just category 1 GSW and category 2 GSW. These differences are not sufficient to treat category 1 GSW and category 2 GSW as distinct classes of goods, especially given that both types of GSW are made using similar input materials and sold through similar distribution channels.

32. Structa argued, in particular, that there is virtually no substitutability between the two proposed classes of goods because category 1 GSW is used almost exclusively for the production of stucco laths, whereas lower gauge GSW has a multitude of other end uses. However, the preponderance of the evidence shows that 16 gauge GSW can be used in the production of woven or welded wire stucco laths, among other

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13. *Ibid.* at 27, 31.
14. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 197.
15. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 118; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.
16. Both Structa and Tree Island filed submissions on the issue of classes of goods in response to the Tribunal's invitation to interested parties in the notice of commencement of inquiry.
17. On May 16, 2013, the Tribunal decided to conduct its injury analysis on the basis of a single class of goods and indicated that it would provide its reasons later. See Tribunal Exhibit NQ-2013-001-26, Administrative Record, Vol. 1B at 2-3.
18. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see, also, *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

downstream products.[19] Moreover, category 1 GSW has been used for purposes other than the production of woven or welded wire stucco laths, even if that is its primary end use.[20]

33. Accordingly, the Tribunal finds that domestically produced GSW, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

34. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

> . . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

35. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.

36. There are six producers of like goods in Canada: Tree Island, AMM, Bekaert Canada Ltd. (Bekaert), Davis Wire, Oval International (Oval) and Sivaco Wire.[21] Tree Island, AMM, Bekaert and Sivaco Wire collectively account for a large majority of total domestic production of the like goods and provided complete responses to the Tribunal's producers' questionnaire. In response to the Tribunal's production orders, Davis Wire and Oval provided some limited information. The information provided by Davis Wire and Oval covered domestic production and sales of domestically produced GSW, but did not include information in respect of the companies' income statements or production and sales of the benchmark products.

37. Therefore, for the purposes of this inquiry and the assessment of whether the dumping and subsidizing of the subject goods have caused or threaten to cause material injury to the domestic industry, the domestic industry generally includes Tree Island, AMM, Bekaert and Sivaco Wire and, in some instances[22], extends to Davis Wire and Oval.

38. A significant proportion of domestic production includes production on a tolling basis along with production for further internal processing.[23] Tree Island, notably, uses a portion of the like goods that it produces to manufacture downstream stucco lath products. Income statements in respect of these portions of domestic production were not requested by the Tribunal.

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19. Tribunal Exhibit NQ-2013-001-22.02, Administrative Record, Vol. 1.4, Appendix 1 at 20, 31, 36; Tribunal Exhibit NQ-2013-001-24.01, Administrative Record, Vol. 1.4, attachment 1.
20. Tribunal Exhibit NQ-2013-001-25.01 (protected), Administrative Record, Vol. 2.4, confidential attachment 2. See, also, Tribunal Exhibit PI-2012-005-08.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-005, Vol. 3, Attachment 1 at 15-19; Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 32; Tribunal Exhibit NQ-2013-001-14.06, Administrative Record, Vol. 5 at 70.
21. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 17.
22. The Tribunal's injury analysis of import volumes and price effects of the dumped and subsidized goods takes into account the information provided by all six domestic producers.
23. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 51; *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 75, 76.

39. The Tribunal is satisfied that the issue of accounting for production for further internal processing was sufficiently addressed at the hearing[24] for the purposes of its assessment of the effect of the dumping and subsidizing of the subject goods on the domestic industry.

40. The Tribunal has also taken into account, in its injury analysis, the fact that domestic production on a tolling basis for certain domestic producers is not reflected in the domestic industry's financial results for sales of like goods.

CUMULATION

41. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the subject goods from each country is not insignificant, the volumes of dumped and subsidized goods from each subject country is not negligible,[25] and cumulation is appropriate taking into account conditions of competition between the goods of each country or between them and the like goods.

42. In this case, on the basis of the CBSA's final determinations of dumping and subsidizing, the Tribunal is satisfied that the margins of dumping and the amount of subsidy are not insignificant.

43. Likewise, the Tribunal is satisfied that the import volumes are not negligible. For all three full years of the POI, the volume of subject goods from each country exceeded 3 percent of the total volume of GSW imports from all countries.[26] Although, in the first quarter of 2013, the share of subject goods from one country was slightly less than 3 percent before rounding,[27] the Tribunal is of the view that this is too short a period to justify a reversal of its finding that, overall, during the POI, import volumes were not negligible.

44. In determining whether a cumulative assessment would be appropriate taking into account the conditions of competition, the Tribunal normally considers whether the goods of each country and the like goods are interchangeable, have similar quality and pricing, are distributed through the same channels and by the same modes of transportation, arrive in the Canadian market at the same time and have an overlapping geographic dispersion within the market.[28] However, there may be other factors that the Tribunal could consider in a given case, and no single factor is necessarily determinative.[29]

45. The evidence discloses that the goods of each subject country and the like goods are largely interchangeable,[30] have comparable quality and pricing,[31] are mostly reported as being sold through the same distribution channels[32] and typically have overlapping delivery times, especially between the

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24. *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 144-46.
25. Subsection 2(1) of *SIMA* defines "negligible" as meaning, ". . . in respect of the volume of dumped goods of a country, (*a*) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods . . . ."
26. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 171.
27. *Ibid.* at 169.
28. See, for example, *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28.
29. *Ibid.*; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.
30. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 27.
31. *Ibid.*; protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 183.
32. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 31.

subject goods.[33] In addition, it would seem that the subject goods from each country are transported to Canada via ocean freighter. Because the like goods are available in both Eastern Canada and Western Canada,[34] there is no issue about geographic dispersion between the subject goods and the like goods.

46. Despite these similar conditions of competition, MRT and Yehuda would have the Tribunal assess the effect of the dumping of the subject goods from Spain and Israel separately. MRT submits that the subject goods from Spain are not causing injury simultaneously with the subject goods from the other countries. Similarly, Yehuda would like a separate assessment for the subject goods from Israel because it contends that the volumes and prices of such goods are not injurious. However, that is not how the legislative scheme works. The Tribunal must decide whether to conduct a cumulative assessment before it determines whether the dumping of the subject goods is causing or threatening to cause injury, not vice versa. The Tribunal cannot assess injury from each country separately and then use the outcome of such assessment to decide whether a cumulative or separate assessment of injury would be appropriate.

47. MRT also emphasizes, among other factors, a lower-cost manufacturing process, which it claims to have, and the fact that only the subject goods from China benefit from subsidies. Having a cost advantage, whether due to an innovative manufacturing technique or production subsidies, however, does not alter the fact that the subject goods from Spain and China compete with each other and with the subject goods of Israel, or with the like goods, in the Canadian market.

48. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases,[35] the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects, and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively. For that reason, the Tribunal's practice is to cumulatively assess the effects of dumping and the effects of subsidizing.

49. Therefore, the Tribunal is satisfied that a cumulative assessment of the effect on the domestic industry of the dumping and subsidizing of the subject goods is appropriate.

INJURY ANALYSIS

50. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

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33. *Ibid.*
34. Tree Island, Bekaert and Davis Wire are located in British Columbia, while AMM and Sivaco Wire are located in Quebec.
35. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* at para. 147.

Import Volume of Dumped and Subsidized Goods

51. Paragraph 37.1(1)(*a*) of the *Regulations* directs the Tribunal to consider the volume of the dumped and subsidized goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

52. Although the import estimates of Tribunal staff, the CBSA and Statistics Canada vary somewhat, the Tribunal is satisfied that the data contained in the staff report are reliable. The estimates of total apparent imports and the total apparent market are based on a combination of numerous replies to questionnaires, as well as on Statistics Canada data. The CBSA's estimates are based, in part, on fewer complete questionnaire responses and import entry data relating to a shorter period of investigation. Therefore, the Tribunal bases its volume analysis on evidence contained in the staff report.

53. The evidence reveals that the absolute apparent import volume of the subject goods almost doubled between 2010 and 2012, and then tripled in the first quarter of 2013 compared to the first quarter of 2012.[36] While these absolute increases occurred in the context of an expanding market, they translated into a substantial increase in market share for the subject goods in 2012 and in the first quarter of 2013 at the expense of the like goods.[37]

54. Indeed, relative to the production of the like goods, the import volume of the subject goods, when expressed as a percentage of domestic production, held steady in 2011 before nearly doubling in 2012, and then quadrupling in the first quarter of 2013 compared to the first quarter of 2012.[38] When expressed as a percentage of domestic sales of the like goods, the import volume of the subject goods held steady in 2011, but increased by about 50 percent in 2012, year-over-year before more than quadrupling in the first quarter of 2013 compared to the first quarter of 2012.[39]

55. Therefore, by all the prescribed measures, there has been a significant increase in the import volume of the subject goods.

Price Effects of Dumped and Subsidized Goods

56. Paragraph 37.1(1)(*b*) of the *Regulations* direct the Tribunal to consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

Positions of Parties

57. Tree Island and AMM have taken the position that purchasers of GSW are price sensitive and that the subject goods have significantly undercut, depressed and suppressed the price of like goods. They rely in large part on the average prices of the subject goods and the like goods, as well as on account-specific evidence. The parties opposite dispute that the subject goods have had any significant price effects.

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36. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 169, 170.
37. *Ibid.* at 179.
38. *Ibid.* at 169; protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 49.
39. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 169, 177.

Importance of Price

58. The record shows that price is an important consideration when purchasing GSW, but the price sensitivity of purchasers should not be overstated.[40] Although the majority of purchasers reported that they usually purchase the lowest-priced product,[41] non-price factors such as product consistency, long-term supply relationships, quality, technical specifications, delivery time and terms, and reliability of supply/supplier also influence purchasing decisions.[42] With the notable exception of quality, for which the subject goods and the like goods are highly comparable, the domestic industry tends to have a bit of an advantage in respect of non-price factors.[43] Some purchasers also reported that no price advantage would ever trump non-price factors.[44] Only a minority of purchasers said that a 5 percent price difference would be sufficient to outweigh such factors.[45]

Price Undercutting

59. Average pricing information contained on the record suggests, at first blush, that there was significant price undercutting throughout the POI. The average price of the subject goods was from $209 to $248 per tonne less than the average price of the like goods.[46] That equates to apparent price undercutting in the range of 16 to 18 percent. In fact, considering that the net sales values reported by certain domestic producers did not include freight charges,[47] the apparent price undercutting is probably a little greater (by approximately 1 percent).[48]

60. However, the Tribunal believes that the average prices as reflected in the *Staff Report* represent a mix of products and that the initial conclusion suggested by average pricing information for GSW must be considered in that light.

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40. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 32.
41. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 41.
42. *Ibid*. at 42.
43. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 31, 33-35.
44. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 42.
45. *Ibid*.
46. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.
47. *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 77-78, Vol. 2, 23 July 2013, at 284.
48. Freight costs reported in RFIs were used to determine a net delivered selling value for those domestic producers that did not include delivery charges in their reported net delivered selling values. This information was used along with the net delivered selling value provided by other domestic producers to derive consolidated net delivered selling values on a $/tonne basis for the domestic industry for the total apparent market and for each market segment and benchmark product grouping discussed. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 72, 73, 76, 77, 79-81, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 180, 183, 185-95; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6; Tribunal Exhibit NQ-2013-001-RI-01A (protected), Confidential Appendix 2, Administrative Record, Vol. 10; Tribunal Exhibit NQ-2013-001-RI-10A (protected), Administrative Record, Vol. 10 at 24; Tribunal Exhibit NQ-2013-001-12.02D (protected), Administrative Record, Vol. 4C at 53.28-53.31; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 97-106.

61. Witnesses for the domestic industry testified that the different kinds of GSW can vary in price depending on factors such as diameter, gauge, coating, carbon content and package size.[49] Category 1 GSW, for example, commands higher prices than category 2 GSW and, within category 2 GSW, PVC-coated chain-link fence wire is higher-priced than baling wire, which in turn is more expensive than chain-link fence wire, which is more expensive than core wire.[50]

62. This product mix issue can have an impact on the ultimate reliability of average pricing, since average pricing may overstate the evidence of price undercutting where this is a higher value (price per tonne) mix of like goods compared to a lower value (price per tonne) mix of subject goods. Moreover, as will be discussed below, the mix of like goods differs from the mix of subject goods.[51]

63. Consequently, in this inquiry, the Tribunal needs to consider whether average prices constitute a reliable indicator of price undercutting in the apparent market. To this end, the Tribunal will examine pricing information for benchmark products, both individually and grouped by end-use market segment, and account-specific allegations of price undercutting.

64. In consultation with domestic producers and other market participants, the Tribunal's staff collected pricing data for five benchmark products, all of which are category 2 GSW. Three of these benchmark products are for use in the fencing market: zinc-coated chain-link fence wire, PVC-coated chain-link fence wire and core wire for further coating with PVC. Tree Island submitted that this segment shows the best evidence of price undercutting; however, on balance, the evidence suggests otherwise.

65. The price of the subject zinc-coated chain-link fence wire (made to the ASTM A641 standard) was higher than the price of the like goods in the third quarter of 2011, fourth quarter of 2011 and the last three quarters of 2012.[52] Although the subject goods were lower-priced in the second quarter of 2011, first quarter of 2012 and first quarter of 2013, the degree of price undercutting ranged from less than 1 percent to 1.5 percent. Sales of the subject PVC-coated chain-link fence wire undercut the price of like goods in two quarters only. In one quarter, the undercutting was approximately 4 percent, in the other, it was approximately 19 percent.[53] The volumes, however, of sales of this benchmark product by both domestic producers and importers were very small throughout the period examined for the benchmark products. There was price undercutting of domestic core wire in two quarters of the POI, ranging from less than 0.5 percent to approximately 3 percent.[54] In most quarters, the price of the subject benchmark products was higher than the price of the corresponding like goods.

66. When the prices of these three fencing benchmark products are examined cumulatively, the perspective remains essentially the same. There were 6 points of comparison between the subject fencing wire and the like goods in the three quarters of 2011. The subject goods undercut the price of the like goods only once, and by only less than 1 percent.[55] In 2012, there were 10 points of comparison, and 3 instances of

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49. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 50-52, Vol. 2, 23 July 2013, at 115-16.
50. *Ibid*., Vol. 1, 22 July 2013, at 57-58.
51. See discussion below.
52. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 185.
53. *Ibid*. at 187.
54. *Ibid*. at 194.
55. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 76, 77, 79, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 185, 186, 187, 194, 195.

price undercutting, ranging from less than 1 percent to approximately 9 percent.[56] In the first quarter of 2013, there were 3 points of comparison, and the subject goods undercut the like goods in all three instances by less than 1 percent to 19 percent. Across all 8 quarters examined, the price of the subject goods was higher than the price of the like goods 12 times out of 19.[57]

67. The other two benchmark products are high-carbon baling wire and low-carbon baling wire. There is no evidence that either of these products was imported from the subject countries during the POI. Therefore, there is no evidence of price undercutting in respect of these two benchmark products.[58]

68. While it was not identified as a benchmark product, there is extensive evidence on file in relation to category 1 GSW, and it is clear that the price of the subject category 1 GSW has undercut the price of like goods to a considerable degree. In the overall scheme, however, this evidence is of limited use to the Tribunal. The domestic producers of category 1 GSW had substantially different selling prices for these goods during the POI, which were also markedly different from the prices of the subject goods. In the Tribunal's view, the high degree of price variation points to a mix of products within this segment that, to some degree, are not directly competing with one another or the subject goods.

69. Moreover, the domestic industry produces only small quantities of category 1 GSW for sale in the domestic market, and the volumes of subject category 1 GSW represent a relatively small proportion of the total apparent market for GSW.[59] The Tribunal is of the view that these small volumes are explained, to a certain extent, by non-price factors, including the fact that the major importer of the subject category 1 GSW, Sacks, imports it for its affiliate Structa, which competes with Tree Island in the downstream production and sale of stucco lath.[60] Witnesses for Sacks and Structa indicated that they cannot, as a matter of reasonable business practices, purchase from competitors and prefer not to rely upon Tree Island as its source for category 1 GSW.[61] Sivaco Wire also produces category 1 GSW, but it does not actively supply Western Canada, which is where Structa operates.[62] In addition, the witnesses for Structa and Sacks testified that the like goods do not meet Structa's very strict technical specifications regarding lead content.[63]

70. Therefore, although the subject goods have undercut the price of the like goods in this segment, the presence of a product mix, small volumes of the like goods and the subject goods, and other factors diminishes the actual effect that the undercutting had on the price of the like goods.

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56. *Ibid.*
57. *Ibid.*
58. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 189, 191.
59. Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.11A (protected), Administrative Record, Vol. 6A at 94; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6; Tribunal Exhibit NQ-2013-001-15.10 (protected), Administrative Record, Vol. 6A at 49; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.
60. Tribunal Exhibit NQ-2013-001-30.01, Administrative Record, Vol. 1.3 at 18, paras. 26, 27.
61. *Ibid.* at 21-22, paras. 39-41; Importer's Exhibit C-03 at paras. 16-17, Administrative Record, Vol. 13.
62. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 93, 94, 101, 102.
63. Tribunal Exhibit NQ-2013-001-30.01, Administrative Record, Vol. 1.3 at 23, 25, paras. 45-46, 52; Importer's Exhibit C-03 at paras. 23, 24, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 181-84.

71. After removing the reported volumes and values of the fencing benchmark products, baling wire benchmark products and category 1 GSW from the estimate of the total apparent market, the weighted average unit values of the remaining volumes of the subject goods in each period of the POI were notably less than the price of the corresponding like goods.[64] However, the Tribunal believes that it is reasonable to conclude that these data are also unreliable indicators of price undercutting for the same reason that the average prices are unreliable, i.e. they are a reflection of product mix.

72. The remaining volumes consist of a wide variety of GSW[65] that, in the Tribunal's view, also likely differs in price per tonne. The like goods that fit this bill include merchant wire and vineyard wire, both of which are packaged in small amounts.[66] As such, they are on the higher-price-per-tonne end of the spectrum.[67] Vineyard wire is an important product for Tree Island.[68] As far as the Tribunal knows, the prices of the remaining volume of subject goods could have been less than the price of the like goods because they included a higher proportion of lower-value GSW than the segments of GSW that the domestic industry competes in or supplies, including vineyard wire. There is no positive evidence that these subject goods have undercut the price of like goods.[69]

73. For sake of completeness, the Tribunal also considered the potential effect on the above pricing analysis, for the benchmark products and category 1 GSW, caused by the failure of certain producers to include delivery costs in their net delivered selling value.[70] Having added freight charges to the price of like goods for those domestic producers that did not include such delivery costs in their net delivered selling value, the Tribunal's conclusion remains that, ultimately, the data for the benchmark products and category 1 GSW do not support a finding that the subject goods have significantly undercut the price of like goods.

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64. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 72, 73, 76, 77, 79-81, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 180, 183, 185-95; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6.
65. Tribunal Exhibit NQ-2013-001-11.03, Administrative Record, Vol. 3A at 119; Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 32; Tribunal Exhibit NQ-2013-001-11.04, Administrative Record, Vol. 3A at 136; Tribunal Exhibit NQ-2013-001-20.07, Administrative Record, Vol. 5.2A at 3; Tribunal Exhibit NQ-2013-001-14.05, Administrative Record, Vol. 5 at 56; Tribunal Exhibit NQ-2013-001-14.17, Administrative Record, Vol. 5A at 41; Tribunal Exhibit NQ-2013-001-14.06, Administrative Record, Vol. 5 at 70; Tribunal Exhibit NQ-2013-001-14.08, Administrative Record, Vol. 5 at 102; Tribunal Exhibit NQ-2013-001-20.03, Administrative Record, Vol. 5 at 88; Tribunal Exhibit NQ-2013-001-14.13, Administrative Record, Vol. 5 at 163; Tribunal Exhibit NQ-2013-001-14.21, Administrative Record, Vol. 5A at 91.
66. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 51, 52.
67. *Ibid*. at 53.
68. *Ibid*. at 68.
69. Article 3.1 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>) requires that a determination of injury be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products. The *Agreement on Subsidies and Countervailing Measures* (15 April 1994, online: WTO <http://www.wto.org/english/docs_e/legal_e/final_e.htm>) includes the same requirement with respect to the determination of injury caused by subsidized imports. The Tribunal can thus only make its determination on the basis of positive evidence. In the present case, it finds that there is a lack of positive evidence to suggest significant price undercutting by the remaining volume of subject goods.
70. *Supra*, note 48.

74. Finally, the domestic industry has submitted several account-specific allegations of price undercutting, which, it says, support a finding that the subject goods have significantly undercut the price of the like goods. However, the Tribunal concludes that many of these allegations are unverifiable, unsubstantiated or speculative. For instance, the Tribunal heard that some of the sales alleged to have been lost by the domestic industry *could* have been lost to non-subject imports or even to other domestic producers.[71] In other instances, the allegations were significantly discredited by witness testimony.[72] In addition, the volume lost in the remaining sales allegations only account for less than 2 percent of total domestic production during the POI.[73]

75. Even if the Tribunal were to give the domestic industry the benefit of the doubt,[74] including those allegations that were unverifiable or unsubstantiated, the total volume lost would only equate to less than 2 percent of total domestic production during the POI. Mr. John Suchecki of AMM testified that there were other instances of sales lost to the subject goods, but he provided no elaboration or further substantiation.[75] Moreover, the large majority of these allegations and volumes relate to the fencing segment[76] and, as discussed above, the benchmark pricing analysis reveals that any price undercutting that has taken place in that segment is not significant.

76. Therefore, on balance, the Tribunal finds that the subject goods have not significantly undercut the price of like goods.

Price Depression

77. The Tribunal also finds, for the reasons which follow, that the subject goods have not significantly depressed the price of like goods.

78. The weighted average unit selling values of the like goods increased by 5 percent in 2011 and held steady in 2012.[77] The average price did drop in the first quarter of 2013, but by just 2 percent.[78]

79. Although the average price masks a product mix component, the trends in the price of benchmark products are broadly similar. From the second quarter of 2011 to the second quarter of 2012, the price of domestic zinc-coated chain-link fence wire held firm.[79] In the subsequent three quarters, the domestic price dropped, but by a small percentage.[80] The price of domestic PVC-coated chain-link fence wire actually increased in 2012 before declining in the second half of 2012 and then increasing again in the first quarter of 2013.[81]

71. *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 198-201.
72. *Ibid*., Vol. 1, 22 July 2013, at 45-50.
73. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 173-76; Manufacturer's Exhibit A-08 (protected), Administrative Record, Vol. 12 at paras. 10-13.
74. When asked to compare the net price of the like goods and that of the subject goods, several purchasers gave the advantage to the subject goods. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 33-35.
75. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 113-14.
76. *Ibid*., Vol. 1, 22 July 2013, at 25; *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 42-44.
77. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 184.
78. *Ibid*.
79. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 185.
80. *Ibid*.
81. *Ibid*. at 187.

The price of domestic core wire increased modestly overall through to the second quarter of 2012 before declining to lower levels on very small volumes.[82] The price of baling wire was similarly up and down, but there were no imports of these subject goods during the POI,[83] and there was little or no evidence of offers for these goods to purchasers in Canada, meaning that it could not have been the subject goods which caused this price depression.

80. The weighted average selling price of the like goods category 1 GSW was not depressed over the POI, in spite of the apparent undercutting. Although there was a decline in the selling price of these like goods in the first quarter of 2012 compared to the first quarter of 2013, the weighted average selling price experienced consistent year-over-year increases between 2010 and 2012.[84]

81. The Tribunal also examined account-specific evidence. Tree Island and Sivaco Wire alleged that they had to lower their prices to retain some business. The sum of these allegations, however, amounts to less than 1 percent of the domestic industry's sales in the domestic market over the POI and, in some instances, the Tribunal was not provided with both an initial proposed price and a final sale price with which to make a comparison. Where the domestic producers provided both, few of the final sales prices were significantly lower than the initial price offered.[85]

82. Mr. Jordi Gotor of MRT testified that GSW prices in Canada have remained among the highest in the world.[86]

83. Therefore, while there has been some price depression, especially toward the end of the POI, it has not been significant and cannot be entirely attributed to the presence of the subject goods in the market.

Price Suppression

84. The domestic producers have alleged that the subject goods have caused significant price suppression by preventing them from raising the price of like goods to offset cost increases.

85. In 2011, the domestic industry's cost of goods sold on a dollar-per-tonne basis increased by almost twice the amount of the increase in the average unit selling price of the like goods (dollars per tonne).[87] A comparison of cost of goods sold with net sales values on a dollar-per-tonne basis delivers the same result.[88]

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82. *Ibid*. at 194, 195.
83. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 80, 81; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 188-93.
84. Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65.
85. Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 173-78; Tribunal Exhibit NQ-2013-001-12.01 (protected), Administrative Record, Vol. 4 at 57-59; Tribunal Exhibit NQ-2013-001-12.01A (protected), Administrative Record, Vol. 4 at 112; Tribunal Exhibit NQ-2013-001-12.03B (protected), Administrative Record, Vol. 4C at 140.
86. *Transcript of Public Hearing*, 26 July 2013, Vol. 5 at 328.
87. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 183.
88. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97.

It appears that the cost increase was due to a significant rise in the cost of direct materials, including wire rod, as well as higher labour and overhead costs.[89]

86. However, on balance, there is insufficient evidence that the domestic industry's failure to pass along this increase in the cost of goods sold to customers is attributable to the presence of the subject goods in the market. The average apparent market unit value of the subject goods imported by importers increased by 5 percent in 2011, the same percent by which the average unit selling price of the like goods increased.[90] It is possible that the prices of the like goods would have increased more in 2011 had it not been for competition from low-priced subject goods in 2010, but, as discussed, the Tribunal is not satisfied that the subject goods had significantly undercut or depressed the price of like goods.

87. There was no increase in the domestic industry's cost of goods sold per tonne in 2012 or in the first quarter of 2013.[91]

88. Therefore, although there was some price suppression in 2011, none has occurred since then and not to a significant extent overall.

Resultant Impact on the Domestic Industry

89. Paragraph 37.1(1)(*c*) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.[92] In addition, paragraph 37.1(3)(*b*) directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury.[93] The Tribunal must ultimately determine whether any resultant impact of the subject goods on the state of the domestic industry, separate and apart from the impact of other factors, constitutes material injury. The extent, timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".[94]

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89. *Ibid.* at 100, 102.
90. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 184.
91. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97.
92. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.
93. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.
94. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of SIMA" [emphasis added].

Positions of Parties

90. Tree Island, supported by AMM, has taken the position that the dumping and subsidizing of the subject goods have caused material injury in such forms as reduced volumes, sales, market share and gross margins, as well as in the forms of operating losses and stagnant capacity utilization. MRT, Sacks and Structa, and Yehuda have taken the opposite position, noting that some of the domestic industry's performance indicators improved during the POI and that, if the domestic industry has been held back, it is attributable to such other factors as a slow recovery in demand, the lack of investment and innovation, and mismanagement.

Market Conditions

91. In the aftermath of the 2008 financial crisis, the global economy entered a recession, as did Canada and the United States. As a result of the decline in economic activity in Canada and the United States, particularly in the residential and commercial construction sectors, there was a slowdown in the domestic market for GSW.[95] The Tribunal heard testimony verifying the downward trend in the market for GSW starting in 2008, when ". . . all hell broke loose",[96] with demand hitting bottom in 2009. Domestic producers of GSW also faced challenges in relation to plummeting steel rod prices in mid-2008, the major material input in the production of GSW.[97]

92. As economic conditions and construction activity improved in Canada and the United States during the POI,[98] the demand for GSW also began to recover. The apparent market for GSW in Canada steadily increased by 25 percent from 2010 to 2012 and by 4 percent from the first quarter of 2012 to the first quarter of 2013.[99] The cost of direct materials, including wire rod, also increased sharply in 2011 compared to 2010.[100] According to witness testimony, the domestic industry saw gradual growth in the market for GSW during the POI, although not yet returned to the pre-2008 levels,[101] with continued growth expected in 2013 and 2014.[102]

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95. Importer's Exhibit C-05 at 193, Administrative Record, Vol. 7; Importer's Exhibit C-08 at 1, Administrative Record, Vol. 13; Exporter's Exhibit D-05, Tree Island Income Fund Annual Information Form (March 31, 2010) at 13, Administrative Record, Vol. 13A.

96. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 121.

97. Importer's Exhibit C-05 at 193, Administrative Record, Vol. 7; Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 67; Exporter's Exhibit D-05, Tree Island Income Fund Annual Information Form (March 31, 2010) at 13, Administrative Record, Vol. 13A; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 127-28.

98. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 46; Importer's Exhibit C-08 at 1, Administrative Record, Vol. 13.

99. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.

100. Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 113; Exporter's Exhibit D-05, Tree Island Income Fund Annual Information Form (March 31, 2010) at 14, 15, Administrative Record, Vol. 13A; *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 100.

101. Manufacturer's Exhibit A-03 at 9, para. 39, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 26, Vol. 2, 23 July 2013, at 114-15; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 257-59.

102. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 114-15; Importer's Exhibit C-08 at 1, Administrative Record, Vol. 13.

Production

93. The presence of the subject goods in the market did not stop domestic production from expanding between 2010 and 2012. In that period, domestic production of like goods increased by 4 percent.[103] Factoring out domestic production for further manufacture and for other firms under tolling arrangements, domestic production for domestic and export sales increased by 3 percent between 2010 and 2011 and a further 1 percent between 2011 and 2012.[104] These figures, however, hide a weaker export performance in 2011-2012 compared to 2010.[105] Domestic sales of like goods increased approximately 12 percent between 2010 and 2012, meaning that there was a corresponding increase in production of like goods for domestic sales.[106]

94. Despite this expansion of production, there is evidence of shutdowns of production lines within the domestic industry. Tree Island closed a production line in 2010.[107] AMM shut down a line in 2012.[108] Both events were in response to reduced orders. However, in one case, this was in no small part due to the lingering effects of the recession and, in the other case, the evidence suggests that the main culprit was a decline in sales to export markets.[109]

95. Domestic production for domestic and export sales dropped by 13 percent in the first quarter of 2013 compared to the first quarter of 2012.[110] Exports of domestically produced GSW increased in the first quarter of 2013 compared to the first quarter of 2012, meaning that the decline in domestic production was largely attributable to a decline in sales of like goods for sale in the domestic market.[111] Virtually all of this lost volume was concentrated in the fencing segment. More specifically, the large majority of this lost volume was in respect of a single type of GSW: zinc-coated chain-link fence wire.[112] Notably, this decrease coincided with an 8 percent decrease in construction activity.[113] A decline in construction would logically imply a drop in demand for fencing products, including zinc-coated chain-link fence wire, and therefore was likely a factor. In any event, to put this into further perspective, this decreased volume of zinc-coated chain-link fence wire represents a very small percentage of the total domestic production of the like goods in 2012 and was not enough to offset the earlier increases in total output.[114] Interestingly, in this quarter, one of Tree Island's two lines ran at full capacity to meet heavy demand for other types of GSW.[115]

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103. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.
104. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 50.
105. *Ibid*. at 98.
106. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.
107. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 26-28, 83.
108. *Ibid*., Vol. 2, 23 July 2013, at 126.
109. *Ibid*., Vol. 1, 22 July 2013, at 26, 28-29, 83, Vol. 2, 23 July 2013, at 112; *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 98, 101.
110. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.
111. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 3.1A at 49, 70; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.
112. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 186.
113. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A, at 46.
114. *Ibid*. at 49; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.
115. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 38, 39, *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 7, 8.

Sales

96. The same trend is apparent in the domestic sales from domestic production and the domestic industry's market share. Sales of like goods increased by 9 percent in 2011 and by 3 percent in 2012.[116] These data are consistent with the lack of significant price effects of the subject goods despite, in the case of China, the amount of dumping and the amount of subsidy being of an important magnitude. The importance of non-price purchasing factors is therefore telling. Sales decreased by 23 percent in the first quarter of 2013 compared to the first quarter of 2012.[117] While the reported sales of the subject zinc-coated chain-link fence wire doubled in this quarter,[118] the absolute volume of sales of the subject goods was significantly less than the decline in the sales volume of the like goods, and sales of GSW from non-subject countries declined rather than increase in order to fill the void left by a decline in sales of like goods.[119] This implies that, rather than the dumping and subsidizing of the subject goods, the decline in sales in the first quarter of 2013 was largely caused by reduced demand for zinc-coated chain-link fence wire in that quarter compared to the first quarter of 2012.

Market Share

97. The domestic industry's market share was between 71 and 72 percent through 2010-2011 and peaked at 77 percent in the first quarter of 2012.[120] It fell to 64 percent for 2012 as a whole and to 57 percent in the first quarter of 2013. On an aggregate level, there was a direct correlation between these movements and the market share of the subject goods. The market share of the subject goods was flat in 2010 and 2011, fell in the first quarter of 2012, but then increased significantly in the remainder of 2012 and in the first quarter of 2013.[121] However, while some of this loss in the market share to the subject goods reflects the loss of sales of domestic chain-link fence wire, some of it can be explained by the reduced demand for zinc-coated chain-link fence wire. Overall, imports of the subject benchmark products did not otherwise increase appreciably.

98. The other segments where volumes of the subject goods increased are category 1 GSW and the other non-benchmark products for which there is little or no evidence of direct competition between the domestic industry and the subject goods.[122] Indeed, the recent experience of the domestic industry has not been uniform; almost half of the loss in market share in 2012 over 2011 was suffered by one of the two largest domestic producers of fencing wire, while the others saw their market share hold fairly steady.[123]

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116. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 178.
117. *Ibid*. at 177-78.
118. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 186.
119. *Ibid*.
120. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.
121. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 167.
122. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 72,73,76, 77, 79-81, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 180, 183, 185-95; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6. At least four domestic producers do not have common accounts with the importers of the subject good that responded to the Tribunal's questionnaire. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 92.
123. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 179.

Employment and Wages

99. The subject goods have had no discernible effect on the workforce. The number of persons employed by the domestic industry steadily increased throughout the POI, including in the first quarter of 2013.[124] The number of person-hours was slightly lower in the first quarter of 2013 compared to the first quarter of 2012, but the 2012 level was 8 percent higher than the starting point in 2010.[125] Wages paid by domestic producers were slightly lower in the first quarter of 2013 compared to the first quarter of 2012, but increased strongly from 2010 to 2012.[126]

Productivity

100. Productivity expressed as tonnes per employee increased by 3 percent in 2011 compared to 2010, then decreased by 8 percent in 2012.[127] A similar trend was experienced in the first quarter of 2013, when productivity decreased by 15 percent compared to the first quarter of 2012.[128] When expressing productivity as tonnes per thousands of hours worked, the trends are similar.[129]

101. Given that productivity was lower in 2012 than in 2010, but production volumes and sales were higher in 2012 and 2010, it could be that the domestic industry ramped up employment too much. At the same time, there were significant labour relations issues within the domestic industry during the POI, including a lock-out of employees, and struggles to find and retain experienced personnel. It is therefore unclear to what extent, if any, the subject goods have had an effect on productivity.

102. The decline in productivity is also consistent with the charge levelled at Tree Island by its founder that the company is devoid of much needed investment in modern equipment, engineers and R&D.[130] By comparison, the Spanish producer, MRT, has boosted productivity by using a much lower-cost mechanical descaling method instead of the "old-fashioned" acid pickling process,[131] while Sacks and Structa's Chinese supplier is said to operate a "state-of-the-art" facility.[132]

103. While Tree Island sought to refute its founder's claims, the record shows that it invested as much in its GSW operations between 2003 and 2009 as it had in 2002 alone, much of which may actually have consisted of maintenance expenses, and that very little investment was made during the POI.[133] Indeed, the productivity rates have varied greatly among the domestic producers, though a great deal of this has to do

124. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 103; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.
125. *Ibid*. at 168.
126. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 105.
127. *Staff Report*, revised, 26 June 2013, Tribunal Exhibit NQ-2013-001-06B, Administrative Record, Vol. 1.1A at 165.
128. *Ibid.*
129. *Ibid.*
130. *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 135-36, 138-39.
131. Exporter's Exhibit D-01 at 17-18, para. 48, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 200.
132. *Ibid*. at 143.
133. Manufacturer's Exhibit A-13 at 1, para. 3, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 138-39; Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 163.

with variations in product mix and diameters in particular.[134] When asked to account for a significant financial improvement in 2012, a witness for a domestic producer cited an effort to increase productivity. This suggests that any effect that the subject goods has had on productivity is secondary to other factors.

Investment

104. Total investments by the domestic industry increased in value during the POI.[135] This trend is expected to be short-lived due to a projected decline in investments for 2013 compared to 2012. However, in 2014, investments are anticipated to increase again. Indeed, rather than alleging that the subject goods have impaired the ability of the domestic industry to invest, in this inquiry, the domestic industry has had to defend its record of investment from the charge that it has not invested enough to compete with imports and meet the needs of purchasers.

105. Further, little evidence was submitted to show that the subject goods have adversely affected the return on the domestic industry's investments, and there is nothing to suggest that the domestic industry has lost its ability to raise capital as a result of the presence of the subject goods in the Canadian market.[136]

Capacity Utilization

106. The domestic industry's practical plant capacity was steady from 2010 to 2012 before experiencing a slight decline in the first quarter of 2013 compared to the first quarter of 2012.[137] The capacity utilization rate stayed virtually the same from 2010 to 2012 and, despite a peak in the first quarter of 2012, returned to the full year 2012 level in the first quarter of 2013.[138] As discussed, at certain points during the POI, Tree Island ran a line at full capacity and even had to resort to replacing exports of like goods to its U.S. affiliate with imports of GSW from China.[139]

Inventory

107. There is also little evidence that the subject goods have adversely affected inventories. The inventory level of the like goods increased by 27 percent in 2011, but decreased by 11 percent in 2012 and by a further 17 percent in the first quarter of 2013 compared to the first quarter of 2012.[140] This suggests that the domestic industry has not been having difficulty finding buyers for its goods.

Financial Performance

108. If the increasing volumes of the subject goods were causing material injury, then one would expect to see a progressive deterioration in the domestic industry's financial performance.[141] While financial results

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134. Protected *Staff Report*, revised, 26 June 2013, Tribunal Exhibit NQ-2013-001-07B (protected), Administrative Record, Vol. 2.1A at 165.
135. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 108.
136. *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 27.
137. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 167.
138. *Ibid*.
139. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 37-39.
140. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 109.
141. See World Trade Organization Report of the Appellate Body, *Argentina - Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R (14 December 1999) at paras. 144-45.

were poor throughout the POI, the domestic industry's fortunes have been improving. Revenues, or total net sales value, from domestic sales of like goods were down in the first quarter of 2013 compared to the first quarter of 2012, reflecting the decline in sales volume that quarter, but they were otherwise progressively higher during the POI.[142] The domestic industry's gross margins improved from 2011 to 2012 and, especially, in the first quarter of 2013 compared to the first quarter of 2012.[143] Net income before tax worsened in 2011, but markedly improved in 2012 and in the first quarter of 2013.[144]

109. These recent improvements seem to have coincided with important decreases in the cost of goods manufactured, especially direct material costs, but also factory overhead.[145] In general, there is no apparent correlation between the downturn output, sales and market share in the first quarter of 2013 and the financial indicators for that quarter. On the whole, while the domestic industry is still not healthy, it is less unhealthy than it was at the beginning of the POI and is progressing in the right direction as demand slowly returns, notwithstanding the dumping and subsidizing of the subject goods.

Other Factors

110. Besides slow demand, weak export performance, high costs, underinvestment and a lack of innovation, other factors have also weighed on the domestic industry. Tree Island recently experienced a period of corporate turmoil, which recently culminated in the shareholders' decision to effect a major change in the company's direction, forcing out the former chairman before restoring what they currently consider as managerial stability.[146]

111. Another domestic producer experienced prolonged labour problems, including a lock-out and the moving of major production equipment out of the country, seriously disrupting output in 2010-2011with the fallout continuing to be felt through 2012. Imports from non-subject countries have been a continual source of competition, and new entrants to the domestic market have recently emerged.[147] Exchange rate fluctuations between 2010 and 2012 have at times made the like goods from Israel and Spain significantly less competitive to the extent that price is important for some purchasers.[148] The combination of all these factors has held the domestic industry back to a much greater degree than have the subject goods. In addition, these non-price circumstances likely contributed to making the subject goods more attractive to purchasers at certain times during the POI.

Summary

112. The above suggests that the dumping and subsidizing of the subject goods have adversely affected the domestic industry, but only for a limited duration and limited extent in terms of lower production volumes, sales, revenues and market share, particularly in the first quarter of 2013. Even then, much of this impact has been limited to a single product (zinc-coated chain-link fence wire) for which there has been no

142. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97.
143. *Ibid*.
144. *Ibid*.
145. *Ibid*. at 100.
146. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 14-16, Vol. 3, 24 July 2013, at 131.
147. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 169; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 187, 189, 198, 214-15.
148. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 114, 115; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 195.

significant price undercutting, price depression or price suppression. This has not translated into a noticeable impact on the consolidated income statement.

113. The domestic industry suffered more significantly in other ways during the POI, including in terms of productivity and profitability, primarily due to factors that are not attributable to the dumping or subsidizing of the subject goods. On the basis of the above analysis, the Tribunal concludes that, to the extent that the subject goods have had an adverse impact on the domestic industry, it is not sufficient to constitute material injury.

MASSIVE IMPORTATION

114. The domestic industry submitted that the conditions exist for a finding of massive importation pursuant to paragraphs 42(1)(*b*) and (*c*) of *SIMA*. However, a finding of material injury to the domestic industry is a condition precedent to a finding of massive importation[149] and, therefore, the Tribunal determines that there is no basis for a finding of massive importation in this case.

THREAT OF INJURY ANALYSIS

115. Having found that the dumping and subsidizing of the subject goods have not caused material injury to the domestic industry, the Tribunal must now consider whether they are threatening to cause material injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.[150] Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent. Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) of the *Regulations*, and whether any factors other than the dumping and subsidizing of the goods are threatening to cause injury.

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149. *SIMA*, paras. 42(1)(*b*) and (*c*). See, also, *Waterproof Footwear and Waterproof Footwear Bottoms* (7 January 2003), NQ-2002-002 (CITT) at 17.

150. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (*a*) the nature of the subsidy in question and the effects it is likely to have on trade; (*b*) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (*c*) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (*d*) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (*e*) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (*f*) inventories of the goods; (*g*) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (*g*.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (*g*.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (*h*) any other factors that are relevant in the circumstances."

Positions of Parties

116. Tree Island submitted that there is evidence of a threat of injury that is clearly foreseen and imminent in the present case. In argument, Tree Island relied on the following factors: a significant rate of increase in the volume of imports of the subject goods during the POI; the likelihood of significant freely disposable capacity of exporters; the potential for product shifting; and the potential impact of the subject goods on the prices of like goods. Tree Island's written submissions also referred to China's pro-export policies for higher value-added steel products and the substantial reliance of MRT and Yehuda on export markets as indicators of threat of injury.

117. Structa and MRT opposed a threat of injury finding on the following grounds: the domestic industry has shown signs of improved performance; exporters are already operating at high rates of capacity utilization that, in some cases, are set to increase; and the fact that no anti-dumping or countervailing duties have been imposed on GSW in other countries. Further, Structa argued that there is low likelihood of product shifting and that the markets for GSW and downstream products, such as GSW mesh, are likely to grow in both Canada and the United States. For its part, Yehuda opposed a threat of injury finding but did not elaborate its position other than to note the falling share of the subject import volumes and values from Israel. However, in light of the Tribunal's decision to conduct a cumulative assessment of threat of injury, it has not considered imports of the subject goods from Israel separately from the other subject goods.

Time Frame

118. In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding. The Tribunal is not necessarily bound by this time frame, as each case is unique. In the present case, the Tribunal notes that very little evidence on the record squarely addresses the domestic industry's perceived threat of injury. Nevertheless, the Tribunal analyzed the prescribed factors in turn on the basis of the available evidence before it. Given that delivery times for direct imports of the subject goods are fairly short,[151] the Tribunal used a 12-month time frame in this inquiry.

Likely Volumes

119. Looking at the imports of the subject goods during the POI and the two interim periods, there was a significant rate of increase in volume which may indicate a likelihood of substantially increased imports of the subject goods into Canada. In particular, the volume of imports of the subject goods increased year-over-year, rising by 7 percent in 2011 and by 71 percent in 2012. Imports of the subject goods during the first quarter of 2012 increased by 215 percent when compared to the first quarter in 2011.[152] As discussed above, there has also been a significant increase in the import volume of the subject goods relative to the production of the like goods and domestic sales of the like goods.

120. This trend could continue, considering that GSW prices in Canada are among the highest in the world and, therefore, are attractive to foreign exporters. The Tribunal also recognizes that, because the Canadian market for GSW is relatively small, i.e. compared to the U.S. market, small increases in import volumes are more likely to have a disruptive effect on domestic producers. However, the trends in import volumes must be considered in light of the fact that, apart from the fencing segment, there has been little direct competition between the subject goods and the like goods. Also, for the reasons discussed below, it is not clear that the exporters of the subject goods will have the means or motive to significantly increase shipments to Canada.

151. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 31.
152. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 170.

Disposable Capacity

121. In addition, the ability of the exporters of the subject goods to increase the volumes of the subject goods to an injurious level is handicapped by their production capacity. There is also a major evidentiary gap with respect to the freely disposable capacity of Chinese exporters. As noted by Structa, however, the recent investigation by the United States International Trade Commission of GSW from China and Mexico showed high Chinese capacity utilization rates of 86 percent in both 2010 and 2011, followed by a projected 2012 rate of 87.2 percent.[153]

122. Similarly, in respect of Spain and Israel, both MRT and Yehuda reported high capacity utilization rates during the POI and the 2013 interim period.[154] According to Mr. Gotor's testimony, MRT is already near full capacity utilization for GSW production.[155] No evidence was filed to suggest future increases in export capacity and/or export orientation in any of the subject countries. On the basis of the limited evidence available, the Tribunal does not find that there is freely disposable capacity of exporters to a degree that indicates a likelihood of a substantial increase of dumped or subsidized GSW.

Product Shifting

123. In terms of product shifting, the limited evidence on the record of exporters in the subject countries indicates that, in some cases, the machinery used to produce the subject goods is used to produce other goods and, in other cases, it is not.[156] The Tribunal also heard testimony from Mr. Richard Lebel of Sivaco Québec that the machinery used in the production of GSW can differ between the machinery which is designed to produce only wire for chain-link fencing and more sophisticated equipment that is needed to produce higher value-added wires with high carbon content.[157] Mr. Abe Sacks also testified that, typically, in a wire mill, equipment is extremely purpose-specific.[158] Accordingly, the Tribunal is of the view that there may be some potential for product shifting that would likely depend, to a certain extent, on the exporter's product mix and whether or not the machinery used to produce the subject goods can be used to produce other goods. That being said, the Tribunal finds that product shifting is unlikely to be a source of *significantly* increased volumes of the subject goods.

Inventories

124. With respect to inventories of the subject goods, the record shows that there were no inventories of the subject goods reported by importers during the POI.[159] Accordingly, inventories held by importers are unlikely to be a source of increased sales of the subject goods in the domestic market.

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153. Importer's Exhibit C-07 at 88, Administrative Record, Vol. 7A.
154. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 111.
155. *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 201; *Transcript of In Camera Hearing*, Vol. 3, 24 July 2013, at 320-23.
156. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 111.
157. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 108.
158. *Ibid.*, Vol. 4, 25 July 2013, at 244.
159. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 109.

Anti-dumping Measures

125. It is also notable that no anti-dumping or countervailing measures have been imposed on GSW in the much larger U.S. market or elsewhere, including markets that are much more proximate to China, Spain and Israel than Canada. Accordingly, there does not appear to be a risk of diversion of increasing volumes of the subject goods to Canada from other export markets.

Demand

126. Also, while there is little evidence with respect to demand forecasts in China and Israel, Mr. Gotor testified that MRT is expecting a small recovery in both Europe and its other export markets.[160]

127. Likewise, there is little evidence that exporters in these countries are making a concerted effort to target the Canadian market for increased sales and market share. On the contrary, Mr. Gotor testified that MRT was neither looking for new customers in Canada nor realistically capable of developing much more business here.[161]

128. While prices in Canada are presently higher than in the United States, U.S. demand is likely to grow at a faster rate than in Canada. There are strong signs of recovery in the U.S. economy, driven by the housing recovery.[162] While Canada is forecast to experience increased economic growth in 2013, the Organisation for Economic Co-operation and Development's economic outlook projects relatively stronger growth of gross domestic product, investment and consumption in the United States.[163] In particular, home-building activity in the United States is expected to accelerate in 2013 and 2014, with growth forecasts ranging from 20 to 50 percent.[164] Consequently, in terms of volume if not price, the United States will likely be a relatively more attractive market for exporters of the subject goods than the Canadian market.

129. For all the above reasons, it is speculative to think that the exporters of the subject goods will increasingly sell their sales to Canada at dumped or subsidized prices instead of selling more volumes in their home markets at normal values.

Likely Price Effects

130. Even if the volumes were to increase significantly, it is unlikely that they will have sudden significant price effects in the next year. Despite a significant margin of dumping and amount of subsidy, at least in the case of China, the subject goods did not significantly undercut, depress or suppress the price of like goods during the POI. The Tribunal sees little or no evidence that this will likely change. The subject goods have already increased their market share without significantly underselling the domestic industry, in large part because they are not directly competing to a great extent across the various product segments due to various non-price factors.

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160. *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 200-201.
161. *Ibid*. at 198.
162. Importer's Exhibit C-08 at 1, 2, 4, 10, 15, Administrative Record, Vol. 13.
163. Importer's Exhibit C-09 at 1, Administrative Record, Vol. 13.
164. Importer's Exhibit C-08 at 1, 4, 13, Administrative Record, Vol. 13.

Likely Performance of the Domestic Industry

131. Furthermore, the fortunes of the domestic industry are likely to continue to improve gradually. As discussed above, the evidence also shows that the domestic industry has recently brought costs down. This will help the bottom line. In addition, while there is limited evidence with respect to market demand forecasts in Canada, the evidence suggests that the recovery of demand from the 2008 recession will continue. As stated above, the apparent market for GSW steadily increased by 25 percent from 2010 to 2012 and by 4 percent from the first quarter of 2012 to the first quarter of 2013.[165]

132. The evidence also indicates an upswing in construction activity in Canada during the POI, with a 2 percent increase in building permits in 2011 compared to 2010 and a further 9 percent increase from 2011 to 2012.[166] Building permits in the first quarter of 2013 declined by 8 percent compared to the first quarter of 2012, but Mr. Suchecki testified that domestic demand for GSW will continue a gradual uptick for the balance of 2013 and into 2014, stating that "[w]e are far from the pre-recession levels, but it is gradually growing".[167] The domestic industry also stands to benefit substantially from growing export sales, given its focus on exports[168] and the uptick in U.S. demand.

Summary

133. There are no clearly foreseeable and imminent circumstances upon which the Tribunal could find that the dumping and subsidizing of the subject goods are threatening to cause material injury to the domestic industry.

CONCLUSION

134. Therefore, pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping of GSW originating in or exported from China, Israel and Spain, and the subsidizing of GSW originating in or exported from China have not caused injury and are not threatening to cause injury.

Serge Fréchette
Serge Fréchette
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Daniel Petit
Daniel Petit
Member

165. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.
166. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 46.
167. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 115-16.
168. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 70; Tribunal Exhibit NQ-2013-001-12.01 (protected), Administrative Record, Vol. 4 at 109.

Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2012-002

Steel Piling Pipe

Finding issued
Friday, November 30, 2012

Reasons issued
Monday, December 17, 2012

Canada

TABLE OF CONTENTS

IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

THE DUMPING AND SUBSIDIZING OF STEEL PILING PIPE ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from the People's Republic of China, have caused injury or retardation or are threatening to cause injury to the domestic industry.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated October 31, 2012, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned goods have not caused injury but are threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 29 to November 1, 2012
Tribunal Members:	Serge Fréchette, Presiding Member Pasquale Michaele Saroli, Member Jason W. Downey, Member
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Research Manager:	Simon Glance
Senior Research Officer:	Nadine Apollon-Cabana
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STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,[1] has conducted an inquiry to determine whether the dumping and subsidizing of carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.

2. On May 4, 2012, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Atlas Tube Canada Inc. (Atlas Tube) of Harrow, Ontario, initiated investigations into whether carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from China (the goods described in the CBSA's notice of initiation of investigations) had been dumped or subsidized. The complaint was supported by DFI Corporation (DFI) and Nova Tube Inc. (Nova Tube), two other domestic producers of steel piling pipe.

3. On May 7, 2012, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of the goods described in the CBSA's notice of initiation of investigations had caused injury or retardation or were threatening to cause injury.

4. On July 3, 2012, as part of its preliminary injury determination, the Tribunal found that a subset of the goods described in the CBSA's notice of initiation of investigations were subject to the finding that it had made, pursuant to subsection 43(1) of *SIMA*, in Inquiry No. NQ-2008-001,[2] concerning the dumping and subsidizing of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from China.

5. Pursuant to paragraph 35(1)(*b*) of *SIMA*, the Tribunal concluded that the evidence did not disclose a reasonable indication that the dumping and subsidizing of this subset of the goods described in the CBSA's notice of initiation of investigations had caused injury or retardation or were threatening to cause injury to the domestic industry. Therefore, pursuant to paragraph 35(3)(*a*), the Tribunal terminated the preliminary injury inquiry in respect of carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and

1. R.S.C. 1985, c. S-15 [*SIMA*].
2. *Carbon Steel Welded Pipe* (20 August 2008) (CITT) [*CSWP*].

including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.[3]

6. Pursuant to subsection 37.1(1) of *SIMA*, the Tribunal made a preliminary determination that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the remainder of the goods described in the CBSA's notice of initiation of investigations, that is, those goods in respect of which the preliminary injury inquiry had not been terminated under section 35, had caused injury or were threatening to cause injury to the domestic industry.

7. Those goods include the following: (1) carbon steel welded pipe, in the nominal size range of greater than 6 inches up to and including 16 inches (greater than 16.8 cm to 40.6 cm) in outside diameter, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from China; and (2) carbon steel welded pipe for use as foundation piles, in nominal sizes of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm), dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, that were excluded from the injury finding in *CSWP*.

8. On July 18, 2012, in the statement of reasons for its preliminary determination of injury, the Tribunal noted that there was insufficient evidence on the record to determine with certainty the precise scope or extent of the overlap between the goods subject to the preliminary determination of injury and the steel products which are covered by the Tribunal's finding in *CSWP* and, potentially, goods subject to other orders or findings.

9. In this connection, the Tribunal stated that, to the extent that there is a possibility that a broader subset of goods described in the CBSA's notice of initiation of investigations is already subject to anti-dumping or countervailing duties as a result of being subject to other Tribunal orders or findings, it was the Tribunal's intention to establish a process whereby it could reach an early decision on this issue during an inquiry conducted pursuant to section 42 of *SIMA*, if the CBSA were to make a preliminary determination that the goods in respect of which the preliminary injury inquiry was not terminated under section 35 have been dumped or subsidized.

10. In addition, in its statement of reasons for the preliminary injury inquiry, the Tribunal found, on the basis of the evidence on the record at that time, that steel piling pipe produced by the domestic industry was "like goods" in relation to the subject goods. The Tribunal stated that the question as to whether there was merit to expand the definition of "like goods" to include certain oil country tubular goods (OCTG), line pipe and standard pipe, which may be used in piling applications, was an issue that would need to be fully addressed in the context of a final injury inquiry.

11. On August 2, 2012, the CBSA issued preliminary determinations that the subject goods (i.e. those in respect of which the preliminary injury inquiry had not been terminated under section 35 of *SIMA*) had

3. Carbon steel welded pipe in the nominal pipe sizes 1/2 inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, were excluded from the Tribunal's injury finding in *CSWP*.

been dumped and subsidized, that the margin of dumping and the amount of subsidy were not insignificant, and that the volumes of dumped and subsidized goods were not negligible.

12. In addition, further to the Tribunal's decision to terminate the preliminary injury inquiry in respect of the goods that it found to be subject to the finding in *CSWP*, the CBSA revised the product definition that it had provided when it initiated its dumping and subsidizing investigations on May 4, 2012, in order to exclude those goods from the scope of its investigations. The revised definition of the subject goods provided by the CBSA is set out in paragraph 1.

13. On August 3, 2012, the Tribunal issued a notice of commencement of inquiry.[4] In its notice, the Tribunal requested submissions on the issue of product overlap, i.e. whether there remained a product overlap between the subject goods and steel products that are subject to other Tribunal orders or findings and, if so, to identify the extent of the overlap. The Tribunal also requested submissions on the issue of whether there was merit to expand the definition of "like goods" in this inquiry to include certain OCTG, line pipe and standard pipe, which may be used in piling applications. The Tribunal also set out the applicable deadlines for the filing of submissions and replies thereto.

14. The Tribunal's period of inquiry (POI) covered three and one half full years, from January 1, 2009, to June 30, 2012.

15. As part of its inquiry, the Tribunal requested domestic producers, importers/distributors and foreign producers of steel piling pipe and/or other steel pipe products[5] to complete questionnaires. From these questionnaires, the Tribunal collected information for three full years, from January 1, 2009, to December 31, 2011, and for two interim periods, from January 1 to June 30, 2011 (first half of 2011) and the corresponding period in 2012 (first half of 2012). The Tribunal also requested that purchasers of steel piling pipe and/or other steel pipe products in Canada complete a questionnaire on market characteristics.

16. On August 23, 2012, the Tribunal issued revisions to its producers', importers' and purchasers' questionnaires, amending the information requested in respect of other steel pipe products and seconds or downgraded steel pipe products (seconds or downgraded pipe).[6]

17. On September 10, 2012, in response to a request from Atlas Tube, the Tribunal requested, pursuant to rule 56 of the *Canadian International Trade Tribunal Rules*,[7] that the CBSA provide the Tribunal with

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4. C. Gaz. 2012.I.130.
5. For the purposes of the Tribunal's questionnaires, issued on August 3, 2012, the term "other steel pipe products" referred to steel pipe products that can potentially be substituted for, compete with, or have the same end uses as steel piling pipe, i.e. pipe products that are produced to higher standards than steel piling pipe and for other applications, that can potentially be substituted for, compete with, or have the same end uses as steel piling pipe, such as other standard pipe (such as ASTM A53), tubular goods (such as OCTG API-5CT), line pipe (such as API-5L) and casing products, whether welded or seamless, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive.
6. For the purposes of the Tribunal's revised questionnaires, issued on August 23, 2012, the term "downgraded pipe or seconds from other steel pipe products" referred to pipe products that were originally produced to higher standards than steel piling pipe and for other applications, but that, as a result of being downgraded or scrapped, for example, were used in a steel piling pipe application. For example, these products include pipe that has been downgraded or scrapped that was originally specified as standard pipe (such as ASTM A53), tubular goods (such as OCTG API-5CT), line pipe (such as API-5L) and casing products, whether welded or seamless, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive.
7. S.O.R./91-499 [*Rules*].

certain protected exhibits from the administrative records of its dumping and subsidizing investigations. The exhibits related to information submitted by Platinum Grover Int. Inc. (Platinum Grover), Pipe & Piling Supplies Ltd. (Pipe & Piling) and Varsteel Ltd. (Varsteel) for the purposes of the CBSA's investigations. The CBSA transmitted the exhibits to the Tribunal on September 12, 2012.

18. On September 12, 2012, the Tribunal distributed short-form questionnaires to three additional potential domestic producers of steel piling pipe: Pipe & Piling, Atlantic Tube & Steel Inc. (Atlantic Tube) and Spiralco Inc. (Spiralco).

19. On September 18, 2012, the Tribunal dismissed a motion filed on behalf of Pipe & Piling on August 31, 2012, under subrule 24(1) of the *Rules*, for an order disqualifying all counsel of the firm Miller Thomson LLP from acting as counsel of record for DFI in these proceedings.

20. On September 20, 2012, the Tribunal issued its determinations on the overlap of product definitions and the scope of the like goods. After having considered the evidence on the record and the arguments made by parties, the Tribunal determined that there was no overlap between the subject goods in this inquiry and goods subject to other Tribunal orders or findings. In this regard, the Tribunal determined that the only overlap of product definitions was that which had been identified in the Tribunal's determination in the preliminary injury inquiry.

21. The Tribunal also determined that carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, produced in Canada, constituted like goods in relation to the subject goods, even though they are excluded from the definition of the subject goods.

22. The Tribunal also determined that the scope of "like goods" did not include domestically produced OCTG, line pipe or standard pipe (other than standard pipe supplied to meet ASTM A252 or equivalent specifications), which may be used in piling applications. Accordingly, the Tribunal concluded that tubular goods (such as OCTG API-5CT), line pipe (such as API-5L), standard pipe (such as ASTM A53) and other steel pipe products that are not commonly identified as piling pipe produced in Canada did not constitute like goods in relation to the subject goods. The Tribunal therefore decided to conduct its injury analysis on the basis that domestically produced "like goods" were confined to goods that were commonly identified as steel piling pipe.

23. On September 24, 2012, Platinum Grover indicated, in a letter to the Tribunal, that it was withdrawing from the inquiry.

24. On September 24, 2012, on the basis of the replies to the questionnaires and other information on the record, the Tribunal's staff prepared and issued public and protected staff reports on steel piling pipe. Revisions to both staff reports were issued on October 18, 2012, which included responses to questionnaires from one additional producer, Atlantic Tube, and one additional purchaser.

25. In its notice of commencement of inquiry, the Tribunal referred to the procedures for filing requests for specific product exclusions. The Tribunal did not receive requests for exclusions.

26. On October 31, 2012, the CBSA issued final determinations of dumping and subsidizing.

27. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from October 29 to November 1, 2012.

28. Atlas Tube and DFI filed written submissions, provided evidence and made arguments in support of a finding of injury or, alternatively, a finding of threat of injury. Atlas Tube and DFI were both represented by counsel and presented witnesses at the hearing.

29. Pipe & Piling, an importer of the subject goods, filed written submissions, provided evidence and made arguments opposing a finding of injury or threat of injury. Pipe & Piling was represented by counsel and presented witnesses at the hearing.

30. The Tribunal also received a notice of participation from 4361814 Canada Inc. (o/a Noble Canada), an importer of steel pipe products, which was represented by counsel in this inquiry. Noble Canada filed written submissions but did not participate in the hearing.

31. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2012-002), replies to questionnaires, certain protected exhibits from the administrative records of the CBSA's dumping and subsidizing investigations, public and protected versions of the staff report and revisions, requests for information and replies thereto, witness statements, all other exhibits filed by the parties and the Tribunal throughout the inquiry, and the transcript of the hearing.

32. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

33. The Tribunal issued its finding on November 30, 2012.

RESULTS OF THE CBSA'S INVESTIGATIONS

34. On October 31, 2012, the CBSA determined that 100 percent of the subject goods imported into Canada from January 1, 2011, to March 31, 2012, had been dumped at an estimated weighted average margin of dumping of 89.6 percent, when expressed as a percentage of the export price.[8]

35. The CBSA also determined that 100 percent of the subject goods imported into Canada from January 1, 2011, to March 31, 2012, had been subsidized at an estimated overall weighted average amount of subsidy of 11.7 percent, when expressed as a percentage of the export price.[9]

36. The CBSA concluded that the overall margin of dumping and amount of subsidy were not insignificant.[10]

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8. Tribunal Exhibit NQ-2012-002-04, Administrative Record, Vol. 1 at 227.
9. *Ibid.*
10. Tribunal Exhibit NQ-2012-002-04, Administrative Record, Vol. 1 at 223.

PRODUCT

Product Definition

37. The goods subject to this inquiry are defined as follows:

> carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from China.

Additional Product Information[11]

38. The most common specifications of steel piling pipe are ASTM A500 and ASTM A252 (including "modified" ASTM A252 with increased yield strength), or comparable internationally recognized specifications. Steel piling pipe can also be produced to higher standards which allow the goods to be dual certified or multiple certified for other applications, such as OCTG (casing), API-5L (line pipe) or ASTM A53 (standard pipe).

39. The vast majority of steel piling pipe is made from carbon steel, although small amounts of piling pipe may be made with high-strength low alloy steel or other steels depending on project requirements.

40. Steel piling pipe is available in a variety of sizes, lengths, wall thicknesses and load tolerances. In addition, steel piling pipe can be drilled or driven into the ground on site, using a variety of techniques and specialized equipment.

41. The subject goods are commonly referred to as "steel piling pipe". However, other names can be used interchangeably, including: pipe piles, driven piles, drilled shafts, caissons, mini caissons, micro piles, piers and casings.

Product Applications

42. Steel piling pipe is commonly used as a permanent load-carrying member, or as a shell to form cast-in-place concrete piles, to form deep foundations in situations when soil and ground conditions are not suitable or strong enough to support the structure load. In such applications, the steel piling pipe is used to transfer the structure load to rock formations or to stronger soil conditions deep beneath the ground.[12]

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11. The information in this section is derived from the CBSA's statement of reasons, information contained in Atlas Tube's complaint and responses to Tribunal questionnaires. Tribunal Exhibit NQ-2012-002-04A, Administrative Record, Vol. 1 at 236-37.
12. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at 65, 239; Manufacturer's Exhibit A-04 (protected) at para. 30, Administrative Record, Vol. 12.

43. Steel piling pipe has been used in load-bearing applications, including structural supports, building columns, highway signs, road boring, oil field structures, communication towers, foundations for oil and gas platforms, power stations, high-rise buildings, bridges, marine structures, harbours, etc.[13]

Production Process

44. Steel piling pipe is produced either through electrical-resistance welding (ERW) or seamless processes. Regardless of the production process, welded and seamless piling pipe are identical in terms of physical, tensile and other properties. They are covered by the same ASTM or comparable specifications and are fully substitutable in terms of end-use applications.

45. ERW pipe production is either by longitudinal welding or by spiral (also called helical-butt or helical lap) welding.

46. In longitudinal welding, hot-rolled coil is passed through a series of rollers to form a tubular shape and the edges of the strip are heated electrically and welded together under heat and pressure. Once the round is welded, the pipe passes through a series of cold-forming stands to size it to the appropriate dimension and then cut to length.

47. In spiral/helical welding, pipe of different diameters can be made from a single coil of hot-rolled steel strip. Instead of slitting along its length as in ERW processes, the coil is unrolled and then re-coiled in spiral fashion on a coiler to the desired outside dimension prior to welding. The welding process is more complex and hence more expensive than the ERW welding process because of the spiral form of the steel coil. However, the end product is identical to ERW pipe in its inherent properties.

48. Finally, steel piling pipe produced and certified to meet the applicable standards are stencilled accordingly.[14]

DOMESTIC PRODUCERS

49. The Tribunal identified seven known producers of steel piling pipe in Canada, namely, Atlas Tube, DFI, Evraz Inc. NA (Evraz), Nova Tube, Spiralco, Atlantic Tube and Pipe & Piling. Atlas Tube, DFI, Evraz and Nova Tube provided complete replies to the Tribunal's producers' questionnaire. Pipe & Piling did not provide a response to the Tribunal's producers' questionnaire. However, it submitted a response to the Tribunal's importers' questionnaire. Spiralco did not provide a response to the Tribunal's producers' questionnaire.[15] Atlantic Tube provided a complete reply to the Tribunal's short-form producers' questionnaire.

Atlas Tube

50. Atlas Tube is a division of JMC Steel Group, with its head office in Chicago, Illinois.

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13. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at 236; Manufacturer's Exhibit A-01 at para. 23, Administrative Record, Vol. 11.
14. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at 70.
15. Spiralco is based in Saint-Félix-de-Kingsey, Quebec. Spiralco's product line starts at 16 inches and goes up to 120 inches (40.6 cm to 304.8 cm) in outside diameter. Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at 31-32.

51. Atlas Tube has the capacity to produce steel piling pipe in sizes ranging from 3 1/2 inches to 16 inches (8.9 cm to 40.6 cm) in outside diameter at its Harrow plant, using the ERW process. Its production includes steel piling pipe produced to ASTM A500-B/C and ASTM A252, Grades 2 and 3, as well as CSA G40.21-50.55, 60.65, 70W specifications, with plain ends. The company also produces hollow structural steel tubing which is not subject to this inquiry.[16]

52. During the POI, Atlas Tube produced steel piling pipe in various sizes ranging from 3 1/2 inches to 16 inches (16.8 cm to 40.6 cm) in outside diameter, to ASTM A252, Grades 2 and 3 specification, ASTM A500, as well as CSA G40.21-50.55, 60.65, 70W specifications.[17] All of Atlas Tube's sales of steel piling pipe in the domestic market are to distributors and end users.

53. Atlas Tube also imported limited sizes of steel piling pipe from its affiliated operations in the United States. Atlas Tube has exported steel piling pipe to the United States since 2000.

DFI

54. DFI, of Edmonton, Alberta, is an independently owned and operated oil and gas service company with over 40 years of oilfield experience. DFI operates a pipe mill that has the capability to manufacture and supply steel piling pipe using the ERW process.

55. DFI principally provides foundation construction services, including the manufacture and installation of steel piling pipe. In addition, DFI provides drilling, oilfield trucking, picker, hydro vacuum and infrastructure rehabilitation services. DFI primarily supplies and installs steel piling pipe within the Western Canadian Sedimentary Basin.[18]

56. During the POI, DFI produced steel piling pipe in various sizes ranging from 4 inches to 16 inches (10.2 cm to 40.6 cm) in outside diameter, to ASTM A252, Grades 1 to 3, specification.[19] All of DFI's sales of steel piling pipe in the domestic market are to end users. Its products serve primarily the company's pile driving services.

57. DFI also exported some steel piling pipe to the United States.[20]

Evraz

58. Evraz, of Regina, Saskatchewan, is primarily a producer of OCTG (API 5CT) and line pipe (API 5L), but has produced small quantities of steel piling pipe and sold small volumes of seconds or downgraded pipe into the steel piling pipe market.[21]

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16. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 42-43; Manufacturer's Exhibit A-01 at 13, Administrative Record, Vol. 11; Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at para. 13.
17. Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 21, 22; Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 42.
18. Tribunal Exhibit NQ-2012-002-15.04, Administrative Record, Vol. 3 at 92.
19. *Ibid.* at 98.
20. *Ibid.* at 95.
21. Tribunal Exhibit NQ-2012-002-15.06, Administrative Record, Vol. 3 at 140, 154. Evraz also participated in previous Tribunal inquiries as a domestic producer of plate.

59. During the POI, Evraz produced steel piling pipe in various sizes ranging from 8.6 inches to 16 inches (21.8 cm to 40.6 cm) in outside diameter, to ASTM A252, Grade 3, specification.[22] All of Evraz's steel piling pipe is sold in the domestic market to end users.[23]

60. Evraz did not import or export steel piling pipe.

Nova Tube

61. Nova Tube, of Montréal, Quebec, is a wholly owned subsidiary of Novamerican Steel Inc. of Montréal and, as of 2009, wholly owns Delta Tube Inc. of Montréal. Nova Tube's focus is on the production and sale of pipe and tubular products.

62. During the POI, Nova Tube produced ASTM A252, ASTM A500 and ASTM A589 specification pipe,[24] in sizes ranging from 3 inches to 6 inches (7.6 cm to 15.2 cm) in outside diameter.[25] All of Nova Tube's steel piling pipe is sold in the domestic market to distributors.

63. Nova Tube also sold seconds or downgraded pipe, some of which may have been sold to and entered the steel piling pipe market. It estimated that 5 percent of its seconds or downgraded pipe is used for piling pipe applications.

64. Nova Tube did not import or export steel piling pipe.

Pipe & Piling

65. Pipe & Piling, of St. Hubert, Quebec, identified itself as a producer and distributor of steel piling pipe, as well as other steel pipe products, beams and sheet piling to end users throughout Canada. Notwithstanding the foregoing, as indicated earlier, Pipe & Piling did not provide a response to the Tribunal's producers' questionnaire.

66. In addition to being a producer, Pipe & Piling is an importer of steel piling pipe from China and the United States. It imports single certified (ASTM A252 specification) steel piling pipe and dual certified (ASTM A252 and API 5L specifications) steel piling pipe.

67. Pipe & Piling's imports of the subject goods are dual-stencilled to meet the requirements of both specification ASTM A252 and specification API 5L, with bevelled ends, in sizes ranging from 4 1/2 inches to 16 inches (11.4 cm to 40.6 cm) in outside diameter.

Atlantic Tube

68. Atlantic Tube is based in Mississauga, Ontario. It identified itself as a producer of round and shaped tubing that does not market steel piling pipe.[26] Notwithstanding the foregoing, Atlantic Tube produces certain steel pipe that corresponds to the product description of the subject goods.

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22. Tribunal Exhibit NQ-2012-002-15.06, Administrative Record, Vol. 3 at 146.
23. *Ibid.* at 143; Tribunal Exhibit NQ-2012-002-16.06A (protected), Administrative Record, Vol. 4C at 22.
24. Tribunal Exhibit NQ-2012-002-15.05, Administrative Record, Vol. 3 at 125.
25. *Ibid.* at 126.
26. Tribunal Exhibit NQ-2012-002-41.01, Administrative Record, Vol. 5.3 at 8, 9.

69. Atlantic Tube manufactures steel piling pipe in sizes ranging from 2 1/2 inches to 6 inches (6.4 cm to 15.2 cm) in outside diameter.[27] Atlantic Tube's sales of steel piling pipe have been to distributors.[28]

IMPORTERS

70. The Tribunal requested 32 of the largest potential importers of steel piling pipe to complete importers' questionnaires. The Tribunal received 21 replies from importers, including 5 complete replies from companies that import steel piling pipe. The Tribunal received 15 replies from companies that indicated that they were not the importers of record.

PURCHASERS

71. The Tribunal sent purchasers' questionnaires on market characteristics to 22 companies identified as potential purchasers of steel piling pipe. In addition to the eight complete replies, the Tribunal received a response from one company indicating that it was not a purchaser of the subject goods or the like goods during the POI.

FOREIGN PRODUCERS

72. The Tribunal sent foreign producers' questionnaires to 166 companies identified by the CBSA as exporters of the subject goods. The Tribunal received only one reply stating that the company did not export carbon and alloy steel pipe piles to Canada during the POI.[29]

MARKETING AND DISTRIBUTION

73. In Canada, imported and domestically produced steel piling pipe is marketed and sold directly to distributors/service centres or end users, typically piling pipe contractors/installers.[30]

74. Distributors/service centres may sell the steel piling pipe to other distributors or to other smaller service centres or large end users. Distributors/service centres may also offer custom cutting services to their customers and supply smaller end users and contractors/installers. These distributors/service centres also supply the more immediate needs of accounts that would normally purchase directly from domestic producers.

75. The end-user market segment primarily consists of industrial and commercial applications, including large-scale construction projects, in which steel piling pipe is sold on a project-specific basis and delivered directly to the project site from the mill or distributor. Steel piling pipe may be purchased as part of a "bundle" of products, which may include products other than steel piling pipe, to complete an order, and may also include some piling pipe customization.[31]

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27. Tribunal Exhibit NQ-2012-002-41.01, Administrative Record, Vol. 5.3 at 9.
28. Tribunal Exhibit NQ-2012-002-41.01A, Administrative Record, Vol. 5.3 at 23.
29. Tribunal Exhibit NQ-2012-002-21.02, Administrative Record, Vol. 5.1 at 44.
30. Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at para. 46; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 6; Importer's Exhibit C-04 at para. 24, Administrative Record, Vol. 13.
31. Tribunal Exhibit NQ-2012-002-15.04, Administrative Record, Vol. 3 at 92; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 266-67.

76. A significant proportion of market sales of steel piling pipe are made directly to large end users (oil and gas operating companies) without passing through a distributor. Steel piling pipe may also be sold directly to end users as complementary products to foundation construction services, i.e. the installation of steel piling pipe.

77. Domestic producers market their steel piling pipe products through their sales forces, which either contact customers directly or receive customer requests.[32]

78. Steel piling pipe is imported either by traders/importers for resale into the market segments noted above (end users or distributors[33]) or occasionally directly by domestic producers.[34]

79. Importers market and sell their steel piling pipe products in a variety of ways. Certain importers source the products from foreign suppliers, determining product availability and pricing, in response to customer inquiries, requests or orders.[35] Therefore, the steel piling pipe products that they import are effectively pre-sold. Importers can also order steel piling pipe in advance, in anticipation of upcoming projects based on their market knowledge.[36]

80. Other importers utilize advertising and sales agents, or have a dedicated sales force to contact customers and seek orders.[37] This is typically done when importers have steel piling pipe products in inventory. Other importers both fill and solicit orders.[38]

81. Importers/distributors typically have large inventories available to meet the needs of their customers.[39]

82. Seconds and downgraded pipe (i.e. pipe products that were originally produced to higher standards than steel piling pipe for other applications) also enter the Canadian steel piling pipe market for use in piling pipe applications.[40]

PRICING

83. Steel piling pipe is generally purchased through requests for quotation, although it can also be purchased through competitive bidding or direct negotiation with established suppliers.[41]

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32. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 40-41; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 281-82; Manufacturer's Exhibit A-10 (protected), tab 2 at 4, 5 10, 16, 17, 21, 24, 26, Administrative Record, Vol. 12.
33. The Tribunal notes that certain companies are both importers and distributors of steel piling pipe.
34. During the POI, domestic producers imported steel piling pipe from the subject and non-subject countries.
35. Steel trading companies/importers may also be approached and solicited directly by foreign suppliers.
36. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 385-86.
37. Tribunal Exhibit NQ-2012-002-18.20, Administrative Record, Vol. 5A at 10, 14; Tribunal Exhibit NQ-2012-002-18.24, Administrative Record, Vol. 5A at 64.
38. Tribunal Exhibit NQ-2012-002-18.17, Administrative Record, Vol. 5 at 124.
39. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 385, 386.
40. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 122; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 155.
41. *Protected Pre-hearing Staff Report*, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 164.

84. Transactions can be concluded individually on a “spot price” basis, reflecting the prevailing market prices for steel piling pipe, or on the basis of a fixed-term contract, with adjustments for transaction-specific demands.[42] The vast majority of domestic and imported steel piling pipe sales are made on a “spot price” per hundredweight or per ton delivered basis.[43] Several companies did however report purchasing some steel piling pipe on a fixed-term contract basis, with the term of such contracts averaging approximately two years.[44]

85. The price of steel piling pipe is largely dependent on the cost of hot-rolled coil, which is the major raw material used in the production of that product.

86. The domestic producers sell to customers either on a freight prepaid (delivered) basis or free on board (FOB) the Canadian mill.[45]

87. Importers can have the steel piling pipe shipped directly to their customers from the source producers,[46] sell FOB unloading dock in Canada,[47] sell FOB their warehouses[48] or sell on a delivered basis,[49] depending on the customers’ preferences. Published price lists are not commonly used in the steel piling pipe industry.[50]

ANALYSIS

88. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

89. Accordingly, the Tribunal must first determine what constitutes “like goods”. As noted above, the Tribunal informed the parties of its decision on this issue on September 20, 2012. On the basis of that determination, the Tribunal must determine what constitutes the “domestic industry” for the purposes of its injury analysis. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will

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42. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 45; Tribunal Exhibit NQ-2012-002-25.07A (protected), Administrative Record, Vol. 6.2A at 128-31; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 166.
43. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 166.
44. *Ibid.*
45. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 45; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 6.
46. Tribunal Exhibit NQ-2012-002-19.17 (protected), Administrative record, Vol. 6 at 74; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 132.
47. *Transcript of Public hearing*, Vol. 1, 29 October 2012, at 138-39; Tribunal Exhibit NQ-2012-002-19.06 (protected), Administrative Record, Vol. 6 at 14.
48. Tribunal Exhibit NQ-2012-002-19.20A (protected), Administrative Record, Vol. 6A at 93.
49. Tribunal Exhibit NQ-2012-002-18.21, Administrative Record, Vol. 5A at 36; Tribunal Exhibit NQ-2012-002-19.20A (protected), Administrative Record, Vol. 6A at 93.
50. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 46; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 164.

determine whether there exists a threat of injury to the domestic industry.[51] If necessary, the Tribunal may also consider the question of retardation.[52]

90. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods.

91. In conducting its injury analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry so as to ensure that any injury caused by such other factors is not attributed to the effects of the dumping or subsidizing of the subject goods.

92. Before turning to the foregoing issues, the Tribunal must address certain preliminary matters that have arisen in this inquiry.

Preliminary Matters

<u>DFI's Request for Leave to File Additional Documentary Evidence</u>

93. On October 26, 2012, DFI transmitted additional documentary evidence to the Tribunal as part of the Tribunal's process for "Matters Arising". At the outset of the hearing, DFI requested leave to file this additional documentary evidence, which included copies of DFI's shipping and receipt records in connection with a transaction involving one of the other parties to the hearing. DFI argued that this evidence was necessary in order for it to rebut allegations that it was unable or unwilling to supply steel piling pipe to domestic distributors. DFI also submitted that the filing of this evidence would not be prejudicial to the parties opposite and that DFI was not able to file this evidence earlier because it was not aware of these documents until recently.

94. Pipe & Piling objected to the acceptance of these additional documents onto the record. It argued that DFI had ample time and opportunity to respond to the allegations that it was unable or unwilling to supply domestic distributors and that DFI has not justified why the evidence could not have been filed sooner.

95. After considering the parties' submissions, the Tribunal denied DFI's request for leave to file additional documentary evidence. In this regard, the Tribunal found that the allegations which DFI was attempting to rebut were known (or should have been known) to it on October 10, 2012, when Pipe & Piling filed its brief and witness statement. The Tribunal found that DFI failed to provide a sufficient explanation as to why these documents were not filed earlier. The Tribunal also determined that it would be unfair to the parties opposed to allow the introduction of new evidence at such a late stage of the inquiry.

<u>Information that Was Struck from the Transcript</u>

96. During the *in camera* testimony of the witnesses for DFI, an issue arose with respect to the content of a question posed by counsel for Pipe & Piling. The Tribunal was of the view that this question could be construed as counsel for Pipe & Piling giving evidence, a practice which is prohibited by the Tribunal as

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51. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.
52. Subsection 2(1) of *SIMA* defines "retardation" as ". . . material retardation of the establishment of a domestic industry". Therefore, should the Tribunal determine that a domestic industry is already established, it will not need to consider the question of retardation.

being contrary to the rules of procedure. The Tribunal also agreed with DFI's submission that the question posed by counsel for Pipe & Piling referred to a document that did not form part of the record of the proceedings.

97. The Tribunal therefore ordered that both the question posed by Pipe & Piling and the response given by Mr. Mark Agnew be stricken from the record.[53]

DFI's Motion Seeking the Removal of a Document Included in Pipe & Piling's Aid to Argument

98. During the argument portion of the hearing, Atlas Tube and DFI objected to the contents of Pipe & Piling's aid to argument, claiming that it was unfair, as it presented new material that was selectively taken from the record, with Atlas Tube not having had the opportunity to cross-examine the author of the document on its contents. In this regard, DFI argued that the aid to argument contained evidence that could have been submitted as part of Pipe & Piling's case brief.

99. DFI also brought a motion to strike a portion of the aid to argument from the record, claiming that it did not contain any reference to the record in this inquiry.[54]

100. In response, Pipe & Piling submitted that all the data contained in its aid to argument were based on information that was already on the record and that no new evidence was being introduced through this document.

101. After considering the parties' submissions, the Tribunal decided to admit the aid to argument (which appeared to contain reconfigurations of, and extrapolations from, evidence on the record) in its entirety, indicating that it would give the document the weight that it deserved. It cautioned however that it would not accept any new evidence under the guise of argument.

Product Overlap

102. On July 3, 2012, the Tribunal terminated its preliminary injury inquiry with respect to some of the goods that were covered by the product definition that the CBSA provided when it initiated its dumping and subsidizing investigations on May 4, 2012, because it found that those goods were subject to the finding that the Tribunal made, pursuant to subsection 43(1) of *SIMA*, in *CSWP*, concerning the dumping and subsidizing of certain carbon steel welded pipe. In its statement of reasons for its preliminary determination of injury, issued on July 30, 2012, the Tribunal noted that there was insufficient evidence on the record to determine with certainty the precise scope or extent of the overlap between the subject goods, as they were then defined by the CBSA, and the steel products which are covered by the Tribunal's finding in *CSWP* and, potentially with goods subject to other Tribunal orders or findings. The Tribunal gave notice that, if the CBSA made a preliminary determination that the subject goods, in respect of which the preliminary injury inquiry had not been terminated pursuant to section 35, had been dumped or subsidized, it would seek submissions from the parties to delineate the precise scope or extent of the overlap of product definitions and to determine whether overlapping goods could be a cause of injury to the domestic industry.

103. Accordingly, the Tribunal, in the notice of commencement of inquiry issued on August 3, 2012, invited parties to file submissions on whether there was an overlap between the subject goods, as re-defined by the CBSA further to the Tribunal's preliminary determination of injury, and steel products which are

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53. More specifically, lines 12-23 of *Transcript of In Camera Hearing*, Vol. 2, 30 October 2012, at 113, were struck from the record.

54. DFI moved that page 10 of tab 4 of Pipe & Piling's aid to argument be struck.

covered by existing Tribunal orders and findings, having particular regard to *CSWP*, Inquiry No. NQ-2007-001[55] and Inquiry No. NQ-2009-004.[56] The parties were also asked for submissions on whether and how goods already covered by a Tribunal order or finding, and therefore already subject to remedial measures, could be a cause of injury to the domestic industry. Parties were requested to file submissions with the Tribunal by August 21, 2012, and replies by August 27, 2012.

104. On August 17, 2012, the Tribunal sent a letter to the CBSA requesting clarification regarding the definition of the subject goods. On August 20, 2012, the Tribunal received a response from the CBSA. This letter was circulated to the parties on August 21, 2012, and the parties were given a revised deadline of August 28, 2012, to file submissions. The deadline to file replies was moved to September 4, 2012.

105. Submissions were received from Atlas Tube, DFI, Pipe & Piling, Platinum Grover and Noble Canada. Replies were received from Atlas Tube, DFI, Pipe & Piling and Platinum Grover. Atlas Tube and DFI submitted that there was no overlap between the subject goods defined in the CBSA's preliminary determinations and goods that are covered by existing Tribunal orders and findings. Atlas Tube and DFI also submitted that imports of goods already covered by existing Tribunal orders and findings cannot be taken to cause or threaten to cause injury. Pipe & Piling and Platinum Grover submitted that there was an overlap between the subject goods defined in the present inquiry and the goods in *CSWP*, *Oil and Gas Well Casing* and *OCTG*.

106. Atlas Tube submitted that this case concerns piling pipe and goods that are "commonly identified as piling pipe" and that other steel pipe products, such as OCTG, line pipe, liquid or gas carrying pipe, or tubular structural goods, are not piling pipe.

107. Atlas Tube submitted that piling pipe, which is used for weight-bearing applications, is marketed as a unique product. It also claimed that piling pipe made to the ASTM A252 specification is recognized as a distinct specification in provincial building and construction codes and that piling pipe is imported under a different heading of the schedule to the *Customs Tariff*[57] from both line pipe and OCTG.

108. Atlas Tube argued that the goods covered by *Oil and Gas Well Casing* and *OCTG* are higher end products that are subject to more stringent product specifications and demanding pressure testing requirements. Atlas Tube also claimed that these products are not used for weight-bearing applications and that those goods command a substantially higher selling price than does piling pipe.

109. Finally, Atlas Tube argued that, with respect to standard and other pipe, the revised definition of the subject goods does not include piling pipe that is covered by the Tribunal's finding in *CSWP*, that is, ASTM A252 piling pipe from 3 1/2 inches up to and including 6 inches in outside diameter, but that dual-stenciled piling pipe which was excluded from the Tribunal's finding in *CSWP* remains part of the subject goods, since it is clearly not covered by that finding.

110. In its reply, Atlas Tube underscored the fact that, by definition, OCTG and seamless casing are tubular goods, not pipe, which are made to different specifications set by different bodies and have different end uses. It also noted that the assertions made by the importers of piling pipe were made without reference to ASTM, API or other standards.

55. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 20008) (CITT) [*Oil and Gas Well Casing*].
56. *Oil Country Tubular Goods* (23 March 2010) (CITT) [*OCTG*].
57. S.C. 1997, c. 36.

111. For its part, DFI contended that its piling pipe cannot be used for OCTG or line pipe applications. It also submitted that dual-stenciled goods in the nominal size range of 3 1/2 inches to 6 inches meeting the ASTM A252 specification, which were excluded from the findings in *CSWP*, are included in the definition of subject goods. DFI further argued that the definition of subject goods should be simplified in this case and interpreted to cover steel pipe that is certified to meet the ASTM A252, Gades 1 to 3, specification or equivalent specifications, whether single, dual or multiple certified, for use in a structural application.

112. Pipe & Piling and Platinum Grover submitted that the definition of the subject goods is overly broad and imprecise and captures any pipe imported from China, within the size ranges specified in the definition of the subject goods, which can be used as piling pipe.

113. Pipe & Piling and Platinum Grover argued that seamless carbon or steel oil and gas well casing are carbon or alloy steel pipe, which are sold in commercial quality and in various forms, and are supplied to meet a specific or comparable grade, namely, API 5CT. Therefore, in their submission, oil and gas well casing falls within the scope of the definition of the subject goods, thus creating overlap. Similarly, Pipe & Piling and Platinum Grover submitted that OCTG also meets the requirements of the definition of subject goods, resulting in further overlap.

114. Pipe & Piling and Platinum Grover also argued that goods which are the subject of the Tribunal's previous orders and findings do not cause or threaten to cause injury and, therefore, recommended that the Tribunal terminate its inquiry with respect to those goods.

115. In their reply submission, Pipe & Piling and Platinum Grover argued that Atlas Tube improperly interpreted the definition of subject goods as being limited to goods meeting the ASTM A252 specification or goods used for weight-bearing applications. They emphasized that goods "commonly referred to as piling pipe" should be interpreted to mean goods often but not always identified as piling pipe and that, therefore, the definition of the subject goods includes goods that are not identified as piling pipe. They also submitted that Atlas Tube's references to building codes, the CBSA's letter to the Tribunal and their own production and marketing of piling pipe are irrelevant considerations. They argued that the *Customs Tariff* cannot be relied on to determine the scope of the subject goods, especially because piling pipe is not specifically described in the *Customs Tariff*.

116. On September 20, 2012, the Tribunal determined that there was no overlap between the subject goods and any goods covered by existing Tribunal orders or findings. In this regard, the Tribunal determined that the only overlap in product definitions was that which was identified in the Tribunal's preliminary determination of injury and noted that the definition of the subject goods provided by the CBSA in its preliminary determinations expressly excluded the goods that the Tribunal found to be subject to the finding that it made in *CSWP*. The reasons for that determination are set out below.

117. In order to determine whether there was an overlap between the subject goods and any goods covered by existing Tribunal orders or findings, it was necessary to circumscribe the universe of subject goods as defined by the CBSA. It was only when the scope of the goods to which the preliminary determinations apply was clarified that the Tribunal was in a position to determine whether some of those goods were already subject to an existing Tribunal finding or order.

118. As its point of departure, the Tribunal reaffirms that it must accept the definition of the subject goods provided by the CBSA, that the words of the definition of the subject goods must be ascribed their

contextual, plain and ordinary meaning, and that the Tribunal may clarify the scope of the subject goods only where the definition is ambiguous.[58]

119. As correctly noted, for example, by Pipe & Piling and Platinum Grover, ". . . the [product overlap] analysis [must begin] with the product definition as it is actually written . . . on the basis of the ordinary meaning of the words in context . . .",[59] with "[t]he Tribunal [having no authority] to amend or revise the product definition adopted by the CBSA . . . ."[60] In short, ". . . the Tribunal has the authority to interpret or clarify terms within the product definition that are unclear or ambiguous, but it has no authority to modify the scope of the product definition."[61]

120. The CBSA initially defined the subject goods as follows:

> carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People's Republic of China.

121. After terminating the inquiry with respect to certain of the above-mentioned goods, the Tribunal clarified the scope of the goods to which preliminary determinations pursuant to subsection 37.1(1) of *SIMA* applied, which caused the CBSA to revise the product definition to read as follows:

> *carbon and alloy steel pipe piles*, *commonly identified as piling pipe*, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, *usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards*, *whether single, dual or multiple certified*, *originating in or exported from the People's Republic of China*, *excluding* carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, *other than* carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stenciled to meet the requirements of both specification ASTM *A252*, *Grades 1 to 3*, *and specification API 5L*, with beveled ends in random lengths, for use as foundation piles.
>
> [Emphasis added]

122. In order to clarify the definition of the subject goods, the Tribunal will consider the operative words of this definition.

"carbon and alloy steel pipe piles"

123. The Tribunal notes that the introductory words of the definition indicate that it is *not* carbon and alloy steel pipe that is covered by the product definition, but rather carbon and alloy steel pipe "*piles*". Contrary to the assertion of Pipe & Piling and Platinum Grover that "[n]othing in the product definition limits subject goods to those 'made for in-ground installation to support super-imposed structures'",[62] the term "pipe pile" is defined in the *McGraw-Hill Science & Technology Dictionary*[63] as follows:

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58. *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) [*Pup Joints*] at paras. 69-76.
59. Tribunal Exhibit NQ-2012-002-28.02, Administrative Record, Vol. 1.4A at paras. 4-5.
60. *Ibid.* at para. 6.
61. *Ibid.* at para. 8.
62. *Ibid.* at para. 16.
63. http://www.accessscience.com/overflow.aspx?SearchInputText=pipe+pile&ContentTypeSelect=4, *s.v.* "pipe pile".

> [civil engineering] A steel pipe 6-30 inches (15-76 centimeters) in diameter, usually filled with concrete and *used for underpinning*.
>
> [Emphasis added]

This runs counter to the claim of Pipe & Piling and Platinum Grover that "[n]othing in the product definition limits subject goods to 'weight-bearing' products."[64] The Tribunal finds that the reference to "pipe piles" at the very outset of the product definition clearly excludes, from its ambit, carbon and alloy steel pipe not of the class of pipes specifically designed for foundation applications.

<u>"commonly identified as piling pipe"</u>

124. In their submission, Pipe & Piling and Platinum Grover claim that "common" is defined to mean "often". In the Tribunal's view, this disregards more contextually appropriate meanings of the word. For instance, the definition of "common" in the *Merriam-Webster's Dictionary of Synonyms*[65] includes the term "ordinary", and the definition of "commonly" in the *Shorter Oxford English Dictionary*[66] includes the terms "usually" and "ordinarily". Read in the broader context of the definition of the subject goods as a whole, including the reference in the immediately preceding phrase to pipe piles, the Tribunal finds that "ordinarily" or "usually" are more appropriate synonyms, such that the scope of the definition of the subject goods is limited to pipes that are "ordinarily or usually" identified as piling pipes.

125. The claim of Pipe & Piling and Platinum Grover that ". . . nothing in the actual product definition supports Atlas' interpretation that subject goods are a distinct and limited class of steel pipe",[67] bears directly on the question of whether or not there exists a discernible group of steel products "commonly identified as piling pipe". In the Tribunal's view, the issue of whether piling pipe is a separate or distinct class of goods is one of fact that turns on the nature of piling pipe itself.

126. In this regard, the Tribunal agrees with Atlas Tube's contention that that piling pipe is a separate and distinct class of goods that is commonly identified as such. Indeed, the evidence on the record and the submissions of Atlas Tube and DFI support the Tribunal's view that piling pipe is, by definition, a weight-bearing product (unlike carbon steel welded pipe, OCTG, line pipe, standard pipe and other steel pipe) that is specifically intended for piling applications (i.e. in-ground installation to support super-imposed structures).[68] The Tribunal also accepts that piling pipe involves a simpler manufacturing process, is typically cheaper to make than OCTG, casing, line pipe and other types of steel pipe, and typically commands a lower price.[69] Moreover, the Tribunal notes that the fact that piling pipe is classified in provisions in the schedule to the *Customs Tariff* that are distinct from those for line pipe, OCTG or other tubular steel products is also consistent with Atlas Tube's submission.

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64. Tribunal Exhibit NQ-2012-002-28.02, Administrative Record, Vol. 1.4A at para. 15.
65. 1984, *s.v.* "common".
66. 2002, *s.v.* "commonly".
67. Tribunal Exhibit NQ-2012-002-28.02, Administrative Record, Vol. 1.4A at para. 18.
68. Tribunal Exhibit PI-2012-002-2.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at 176, 188; Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4A at para. 10; Tribunal Exhibit NQ-2012-002-26.02, Administrative Record, Vol. 1.4A at 2.
69. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4A at paras. 33-35, 40, Annex D; Tribunal Exhibit NQ-2012-002-27.01 (protected), Administrative Record, Vol. 2.4, Confidential Annex.

<u>"usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards"</u>

127. The Tribunal agrees with the submission of Pipe & Piling and Platinum Grover that the word "usually" implies that the subject goods are often, *but not always*, supplied to the listed standards or specifications. The Tribunal does not agree however with their follow-up assertion that the definition of the subject goods is therefore open-ended so as to include all standards or specifications beyond those listed or determined in accordance with the product definition or all steel pipe regardless of its standard or specification. In the Tribunal's view, the word "usually", read contextually, is subject to, and constrained by, the preceding phrase "commonly identified as piling pipe", such that the only other specifications captured by the product definition are those commonly associated with piling pipe. Indeed, the open-ended interpretation advocated by Pipe & Piling and Platinum Grover would arguably deprive the phrase "ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications" of effective purpose.

<u>"comparable specifications or standards"</u>

128. In its letter to the Tribunal of August 20, 2012, the CBSA indicated that the word "comparable" was used in the sense of "equivalent", such that "[c]arbon steel pipe originating in or exported from China meeting ASTM A252, ASTM A500, and/or CSA G.40.21, or meeting other equivalent specifications or standards . . ."[70] would be considered to meet the definition of the subject goods, provided the pipe fell within the size parameters set out in the definition. The Tribunal notes that generally accepted synonyms of the word "comparable" include "equivalent".[71] In the Tribunal's view, the interpretation of the phrase "comparable standards" as meaning "equivalent standards" is consistent with a contextual reading of the phrase "comparable standards" as it relates exclusively to piling pipe.

<u>"whether single, dual or multiple certified"</u>

129. The Tribunal finds that dual or multiple certified pipe remains part of the subject goods, provided one of the certifications is as piling pipe. Interpreted in the context of the definition as a whole, this phrase indicates that, as long as the imported steel pipe is certified to meet ASTM A252, ASTM A500, CSA G.40.21 or equivalent specifications or standards, it will be included in the discernible group of steel products commonly identified as piling pipe, even if it may also be certified to meet other specifications or standards.

<u>"other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stenciled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with beveled ends in random lengths, for use as foundation piles"</u>

130. The inclusion of these goods in the definition of the subject goods is consistent with the Tribunal's acceptance that ASTM A252 is a generally recognized piling pipe standard and that dual or multiple certified pipe remains part of the subject goods, provided one of the certifications is as piling pipe. The Tribunal does not agree with Pipe & Piling and Platinum Grover that the API 5L standard is rendered a "comparable standard" to those specifically listed in the product definition by virtue of the fact that it is stenciled with ASTM A252, a generally recognized piling pipe standard.

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70. Tribunal Exhibit NQ-2012-002-33, Administrative Record, Vol. 1.A at 8.
71. Online: Thesaurus: English (U.S.), http://thesaurus.com/browse/comparable, *s.v.* "comparable".

131. These goods are products that were specifically excluded from the Tribunal's finding in *CSWP*. They meet the definition of the subject goods because they are carbon steel welded pipe, of which piling pipe is a subset, which is supplied to meet the ASTM A252 specification and is not covered by the Tribunal's finding in *CSWP*. As discussed above, any dual or multiple certified piling pipe is included in the product definition because it is piling pipe and certified as such (i.e. certified to meet ASTM A252, ASTM A500, CSA G.40.21 or equivalent specifications or standards), whatever other certifications it may bear. The mere fact that such goods may be certified to also meet the requirements of the API 5L specification does not imply that this specification is a "comparable standard" relative to the ASTM A252 specification or a generally recognized piling pipe standard in the industry.

132. In fact, the Tribunal accepts Atlas Tube and DFI's argument that the API 5L specification is not a standard that is normally associated with steel products used as structural support or for other load-bearing applications. Rather, the API 5L specification relates to steel pipe which is generally intended for the conveyance of steam, water, natural gas, air and other liquids and gases.

133. Finally, the Tribunal rejects the CBSA's statement at the end of its August 20, 2012, letter to the Tribunal, in purported clarification of its definition of the subject goods, that carbon steel pipe falling within the size parameters of the definition of the subject goods that does not meet the criteria of ASTM A252, ASTM A500, CSA 0.40.21 or comparable specifications or standards was not considered part of the subject goods ". . . *unless these goods are imported for use in a piling pipe application*"[72] [emphasis added].

134. The Tribunal must interpret the definition of the subject goods as it is actually written. While the statements made by the CBSA in its letter to the Tribunal dated August 20, 2012, could provide certain guidance to the importer community as to the manner in which the CBSA may administer any positive finding made by the Tribunal under section 43 of *SIMA*, they are not binding on the Tribunal. The Tribunal's analysis must be grounded on what is stated on the face of the product definition provided by the CBSA. Information found in extraneous materials is not determinative.[73]

135. The Tribunal notes, in this regard, that there is no explicit or necessarily implied basis in the definition of the subject goods, as framed by the CBSA, for a usage-based determination of subjectivity. For this reason, carbon steel welded pipe, OCTG, oil and gas well casings, and other steel pipe outside the discernible class of goods commonly identified as piling pipe cannot be brought within the scope of the subject goods on the basis of their possible usage, for example as seconds, in piling applications.[74]

72. Tribunal Exhibit NQ-2012-002-33, Administrative Record, Vol. 1A at 9.
73. *Pup Joints* at paras. 69-75.
74. In this regard, the Tribunal recognizes that the definition of the subject goods includes carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stenciled to meet the requirements of both specification ASTM *A252, Grades 1 to 3,* and specification *API 5L*, with beveled ends in random lengths, *for use as foundation piles*. However, this is a reference to the goods that were specifically excluded from the Tribunal's finding in *CSWP*, a finding which covered certain carbon steel welded pipe that may be used in applications other than piling or load-bearing applications. The inclusion of the phrase "for use as foundation piles" simply limited the scope of the exclusion to certain dual-stenciled carbon steel welded pipe used as piling pipe. In this inquiry, the definition of the subject goods has been expressly and specifically crafted so as to cover only the class of pipes specifically designed for foundation applications, which *includes* the goods that were excluded from the Tribunal's finding in *CSWP*. Therefore, the reference "for use as foundation piles" at the end of the product definition cannot reasonably be interpreted to extend the scope of the definition of the subject goods to all steel products that, while not intended for that purpose, may potentially be used as foundation piles.

136. These goods should be captured under existing applicable orders if they are imported, even if they may potentially go to a pilling pipe application. The Tribunal agrees with the argument made by Atlas Tube that the concept of substitutability should not be brought into subjectivity considerations unless the language of the definition requires it explicitly or by necessary implication. The definition of the subject goods in this case does not include such language.

137. In short, the Tribunal is of the view that, correctly interpreted, the definition of the subject goods provided by the CBSA covers a discernible class of steel pipe that is not subject to any existing Tribunal orders or findings. For the foregoing reasons, the Tribunal finds that there is no overlap between the subject goods and goods that are already covered by the Tribunal's existing orders and findings.

Like Goods

138. Given that the Tribunal must determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, the Tribunal must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.

139. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

> (*a*) goods that are identical in all respects to the other goods, or
>
> (*b*) in the absence of any goods described in paragraph (*a*), goods the uses and other characteristics of which closely resemble those of the other goods.

140. In its preliminary injury inquiry, the Tribunal found that domestically produced steel piling pipe constitutes like goods in relation to the subject goods and that steel piling pipe constitutes a single class of goods. The Tribunal, however, gave notice that it would seek submissions from the parties on whether there was merit in expanding the definition of like goods to include certain OCTG, line pipe and standard pipe that could be used in piling applications.

141. Accordingly, in its notice of commencement of inquiry dated August 3, 2012, the Tribunal invited parties to file evidence and arguments on whether certain carbon steel welded pipe, OCTG, line pipe, standard pipe or other steel pipe products (that can potentially be substituted for, compete with or have the same end uses as steel piling pipe) constituted like goods in relation to the subject goods, with parties being asked to address, in their submissions, the physical and market characteristics of the goods, whether the goods fulfilled the same customer needs, and any other relevant factors. Parties were requested to file submissions with the Tribunal by August 21, 2012, and replies by August 27, 2012. The parties were later given a revised deadline of August 28, 2012, to file submissions. The deadline to file replies was moved to September 4, 2012.

142. Submissions were received from Atlas Tube, DFI, Pipe & Piling, Platinum Grover, Tenaris, and Noble Canada. Replies were received from Atlas Tube, DFI, Pipe & Piling, and Platinum Grover. Atlas Tube, DFI, Tenaris and Noble Canada each submitted that certain carbon steel welded pipe, OCTG, line pipe, standard pipe and other steel pipe products were not like goods, while Pipe & Piling and Platinum Grover countered that they were like goods.

143. Atlas Tube and DFI submitted that like goods consist of piling pipe made to ASTM A252 or equivalent specifications made by Atlas Tube, DFI and other producers in the Canadian piling pipe industry.

Atlas Tube also argued that expanding the scope of the like goods to include all other pipe and tubular products made in Canada would have the effect of depriving it of its recourse under Canadian law.

144. Atlas Tube and DFI both submitted that piling pipe manufactured in Canada to the ASTM A252 specification is identical to the subject goods and that, therefore, the Tribunal does not need to determine if there are goods which closely resemble the subject goods in this case.

145. Atlas Tube contended that, even if the Tribunal were to consider closely resembling goods in this case, tubular goods, line pipe and carbon steel welded pipe are not like goods because they do not share the necessary physical and market characteristics of piling pipe. Specifically, it submitted that these other goods are all made to different and more stringent specifications than piling pipe, with these standards being set by completely different bodies. Atlas Tube submitted that, whereas piling pipe is used in weight-bearing applications, these other steel products are intended for such applications as the conveyance of liquids and gases. Atlas Tube also submitted that other pipe and tubular goods command a higher price than piling pipe.

146. DFI also indicated that piling pipe has different distribution channels than tubular goods, line pipe or standard pipe and fulfills different customer needs, as piling pipe is only used to be driven into the ground to support structures.

147. Finally, Atlas Tube and DFI submitted that line pipe, standard pipe and tubular goods from China that are dual-stenciled to meet the ASTM A252 specification are part of the subject goods and may compete with piling pipe.

148. In reply, Atlas Tube submitted that the importers have failed to address the many differences between piling pipe and other types of steel pipe. Atlas Tube rejected the argument that downgrades and seconds of higher-value pipe can “step down” and be used in piling pipe applications. It asserted that piling pipe is a distinct structural product produced to a well-established set of ASTM and comparable specifications.

149. Tenaris submitted that OCTG does not compete with piling pipe by virtue of the fact that OCTG must conform to specific steel and chemical composition requirements in accordance with a stringent API regime and is therefore typically sold at higher prices than piling pipe. In addition, Tenaris submitted that OCTG is sold through oil and gas distributors, whereas piling pipe is sold through construction distributors. Nonetheless, Tenaris was of the view that Chinese producers could and likely would be willing to sell OCTG in the Canadian piling pipe market at dumped prices, were it not for the Tribunal’s findings in *Oil and Gas Well Casing* and *OCTG*.

150. Noble Canada submitted that standard pipe used for non-piling purposes is priced higher than piling pipe and that standard pipe and line pipe, as a general rule, are leak-proof, whereas piling pipe is not.

151. Pipe & Piling and Platinum Grover argued that, due to the broad definition of the subject goods, like goods include tubular goods, line pipe, standard pipe, and all other carbon and alloy steel pipe products produced in Canada within the size range specified in the definition of the subject goods.

152. In particular, Pipe & Piling and Platinum Grover argued that the Tribunal’s preliminary determination of injury, in which the Tribunal found that the definition of the subject goods overlapped, in part, with the definition of the goods in *CSWP*, was a recognition that water well casing, piling pipe, sprinkler pipe and fencing pipe are part of the subject goods, as well as an acceptance that the range of comparable standards includes ASTM A53, ASTM A135, ASTM A589, ASTM A795, ASTM F1083 or

Commercial Quality, or AWWA C200-97 or equivalent specifications. Pipe & Piling and Platinum Grover further argued that because of this determination, domestically produced steel pipe which meets these criteria are like goods.

153. With respect to market characteristics, Pipe & Piling and Platinum Grover submitted that all carbon and alloy steel pipe can and has been used for piling applications, as long as it meets the minimum standards, because piling pipe is the lowest common denominator pipe product. With respect to physical characteristics, they argued that these pipes meet the physical characteristics of the definition of the subject goods because they are all made of carbon or alloy steel, are all produced in commercial quality and in any form or finish, are all produced in specific size ranges and are all produced in any grade.

154. On September 20, 2012, the Tribunal informed the parties that it would confine its inquiry to goods that are commonly identified as piling pipe, having determined on the basis of the evidence before it that domestically produced carbon steel welded pipe, OCTG, line pipe, standard pipe (other than standard pipe supplied to meet ASTM A252 or equivalent specifications) and other steel pipe products produced in Canada that are not commonly identified as piling pipe are not like goods in relation to the subject goods. The reasons for that determination are set out below.

155. As noted above, subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

> (*a*) goods that are identical in all respects to the other goods, or
>
> (*b*) *in the absence of any goods described in paragraph (a),* goods the uses and other characteristics of which closely resemble those of the other goods.
>
> [Emphasis added]

156. A plain reading of this definition, which ascribes meaning and purpose to all its elements, suggests that, in defining the universe of like goods, recourse can be had to paragraph (*b*) of the definition of "like goods" in subsection 2(1) of the *SIMA*, if, and only if, there are no domestically produced goods that are identical in all respects to the subject goods.

157. The determination of the Federal Court of Appeal, in *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal,*[75] that the purpose of anti-dumping measures is to protect domestically produced goods that are in competition with the subject goods, usefully informs the interpretation of the definition of like goods in subsection 2(1) of *SIMA*.[76]

158. In the Tribunal's view, circumstances could arise where competition with the subject goods is restricted to domestically produced goods that are physically identical in all respects[77] with those goods, such as in situations where there is a requirement in the market for strict adherence to prescribed product standards or specifications. In these situations, it is reasonable to find that the universe of like goods may necessarily be confined to those identical goods.

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75. [1982] 2 F.C. 283 (F.C.) [*Noury*].
76. The issue before the Federal Court of Appeal in *Noury* involved the interpretation of the definition of "like goods" in subsection 2(1) of the former *Anti-dumping Act*. The Tribunal notes, in this regard, that, while that definition did not include a "uses" criterion in paragraph (*b*), it was otherwise virtually identical to the definition of "like goods" in subsection 2(1) of *SIMA*.
77. Read in light of the Federal Court of Appeal's decision in *Noury*, the Tribunal is of the view that the phrase "in all respects" in paragraph (*b*) of the definition of "like goods" in subsection 2(1) of the *SIMA* is in reference to those aspects of domestically produced goods that bear upon competition with the subject goods.

159. In the present case, the fact that the scope of the subject goods was limited to those imports that satisfied the prescribed standards or specifications for goods commonly identified in the trade as piling pipe suggests that the universe of like goods should be limited in a similar manner to those goods that are "identical" to the subject goods by virtue of their conformity to the same (or equivalent) standards and specifications.

160. Indeed, Atlas Tube and DFI both argued that domestically produced piling pipe manufactured to the ASTM A252 specification is identical in all respects to the subject goods and that there is nothing in the record to warrant a search for closely resembling goods under paragraph (*b*) of the definition of "like goods" found in subsection 2(1) of *SIMA*. Atlas Tube also submitted that the reason for which the definition of like goods in *SIMA* includes closely resembling goods is to allow a complainant access to trade remedies when it does not make identical goods, but makes similar goods which compete with imported goods. It argued that the definition of like goods should be applied in that context. In its reply, Atlas Tube noted that Pipe & Piling and Platinum Grover do not dispute that domestically produced piling pipe is like goods in relation to the subject goods and, in fact, have reported that the goods produced by Atlas Tube are completely substitutable for piling pipe produced in China.[78]

161. At first glance, a conclusion that identical goods exist in this case may appear inconsistent with the Tribunal's position in *Oil and Gas Well Casing*, where the Tribunal stated that the use of the words "identical in all respects" in the definition of "like goods" under subsection 2(1) of *SIMA* creates a very high standard, and the Tribunal did not accept that goods made to the same specifications were necessarily identical.[79] However, in Inquiry No. NQ-2010-001,[80] the Tribunal clarified its view on the issue of identical goods as follows:

> . . . it is unlikely that Parliament would have intended minor differences of an insignificant nature to be sufficient to render goods non-identical. Indeed, to suggest otherwise could lead to unreasonable results, including the overly narrow description of the like goods and the frustration of the remedial effect of anti-dumping and countervailing measures under *SIMA*. In this regard, the Tribunal is of the view that goods will be "identical in all respects" to one another when they are identical in all characteristics of a significant nature. That issue is a question of fact to be determined on a case-by-case basis.[81]

162. A review of the evidence filed in this case demonstrates that there are goods produced in Canada which are identical to the subject goods. The responses to the Tribunal's purchasers' questionnaire reveal that nearly three quarters of respondents indicated that there is physical (or functional) interchangeability between domestic piling pipe and the subject goods, and the same number of firms indicated that there were never any observed differences between domestically produced steel piling pipe and imported steel piling pipe.[82] This presents a different factual scenario from that which the Tribunal faced in *Oil and Gas Well Casing*. In that case, the Tribunal's decision was based in large part on evidence that product quality was an important differentiating factor between the domestically produced goods and the imported goods and that nearly three quarters of responding purchasers indicated that their suppliers were required to be certified or pre-qualified. In this case, all the respondents indicated that they always or usually buy the lowest-priced

78. *Steel Piling Pipe* (3 July 2012), PI-2012-002 (CITT) at para. 63; Tribunal Exhibit NQ-2012-002-01A, Administrative Record, Vol. 1 at para. 41.
79. *Oil and Gas Well Casing* at para. 58.
80. *Greenhouse Bell Peppers* (19 October 2012) (CITT).
81. *Ibid.* at note 16.
82. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 157, 160.

product, and all or almost all of the respondents indicated that product availability and delivery time were reasons for not purchasing the lowest-priced product. Significantly fewer respondents (just over half) cited product quality as a factor.[83] In addition, less than 50 percent of respondents in this case indicated that certification or pre-qualification of suppliers was a requirement.[84]

163. However, even if the previous view is rejected and the Tribunal were to consider whether there are goods that closely resemble the subject goods despite the alleged presence of identical goods, the Tribunal does not consider that carbon steel welded pipe, OCTG, line pipe or standard pipe could be brought within the ambit of like goods through application of the closely resembling uses and characteristics criteria in paragraph (*b*) of the definition of "like goods" in subsection 2(1) of *SIMA*. In that respect, the Tribunal notes that the arguments advanced by Pipe & Piling and Platinum Grover in favour of expanding the scope of the like goods to include certain carbon steel welded pipe, OCTG, line pipe, standard pipe or other steel pipe products are largely rooted in its interpretation of the definition of the subject goods, which, as the Tribunal has explained above, is flawed.

164. Turning first to the issue of physical characteristics, the evidence on the record indicates that carbon steel welded pipe, OCTG, line pipe and standard pipe undergo certain necessary processes that add to their cost of production and which are not necessary for pipe designed for use as what is commonly identified as piling pipe. On this point, the Tribunal agrees with the submissions of Atlas Tube that casing, tubing and line pipe are certified by the American Petroleum Institute and are subject to stricter testing requirements with respect to finishing, surface, straightness and other physical conditions.

165. The Tribunal also notes that there is evidence which indicates that the only specification designed specifically for piling is ASTM A252.[85] In addition, casing, tubing and line pipe products have different, more detailed wall thickness requirements and stricter chemical properties, and are required to be heat-treated.[86] With respect to carbon steel welded pipe, Atlas Tube submitted, and the Tribunal accepts, that piling pipe is generally subject to higher tensile strengths and has thicker walls than other carbon steel welded pipe and that carbon steel welded pipe requires hydrostatic and pressure testing that piling pipe does not require.[87] The Tribunal also accepts the submissions of Atlas Tube that tubular goods, line pipe and carbon steel welded pipe are generally made in different dimensional ranges and lengths and with different ends (i.e. threaded, coupled or beveled) than piling pipe.[88]

166. With respect to Pipe & Piling and Platinum Grover's submissions that the range of standards comparable to the ASTM A252 specification includes specifications ASTM A53, ASTM A135, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, the Tribunal notes that the evidence on the record does not support this assertion. Indeed, there is no evidence that steel products supplied to meet those specifications are generally considered as viable substitutes in piling applications. On the contrary, Atlas Tube has filed evidence indicating that OCTG or line pipe or products that meet, for example, specifications A53, A589 or A795 are not acceptable substitutes for pipe that meets the ASTM A252 specification in piling applications.[89]

83. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 163.
84. *Ibid.* at 166.
85. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at para. 6, Annex A at 87.
86. *Ibid.* at paras. 65-66, 81-85, Annex A.
87. *Ibid.* at paras. 101-104, Annex A.
88. *Ibid.* at paras. 64, 80, 97, 99, 100.
89. Tribunal Exhibit NQ-2012-002-28.01, Administrative Record, Vol. 1.4A at paras. 48-51, Annex B.

167. On the issue of "uses", the Tribunal agrees with the submissions of Atlas Tube and DFI that, in contrast with piling pipe's structural applications, casing and tubing are intended to convey oil and gas and that line pipe is intended to convey liquids. In addition, the Tribunal accepts the submissions of DFI and Tenaris that piling pipe is sold through completely different distribution channels.[90] The additional processing and related higher costs associated with carbon steel welded pipe, OCTG, line pipe and standard pipe clearly indicate that they are designed and intended to compete in the market for higher-end, non-piling applications. That such goods are, in certain circumstances, such as to clear excess inventory or to recoup a part of production costs in the case of "seconds", diverted to the typically lower-end piling pipe market, does not, in the Tribunal's view, meet the closely resembling usage criterion in paragraph (*b*) of the definition of "like goods" in subsection 2(1) of the *SIMA*.

168. Indeed, the Tribunal agrees with the submissions of Atlas Tube that to ascribe a broad interpretation to the notion of closely resembling uses would risk skewing the indicia of injury and depriving domestic producers of a remedy to which they might otherwise be entitled under *SIMA*. For example, an expansion, through an unduly broad interpretation of closely resembling uses, of the definition of "like goods" and, by extension, of the definition of "domestic industry", could result in the understatement of import penetration figures and the overstatement of overall industry performance during the POI.

169. In short, while *SIMA* does not preclude a definition of "like goods" that is somewhat broader than the scope of the subject goods, the Tribunal, guided by the Federal Court of Appeal's decision in *Noury*, as well as the need to avoid depriving *SIMA* of its intended remedial effect, is of the view that the definition of "like goods" in this inquiry is necessarily limited to those goods that compete directly rather than by default with the subject goods. In addition, the Tribunal is of the view that the scope of the like goods does not include domestically produced downgraded pipe products and "seconds", which are not certified to meet a piling pipe standard such as ASTM A252, but may be sold into the piling pipe market and, therefore, compete by default with the like goods.

170. In this regard, the Tribunal notes that, in its case brief, Pipe & Piling argued that the Tribunal determined in its September 20, 2012, decision that these seconds and downgraded pipe products were like goods in relation to the subject goods. This interpretation is incorrect.

171. While the Tribunal's determination did not specifically address the status of seconds and downgraded pipe products initially made to meet a more stringent specification than, for example, the ASTM A252 specification, the Tribunal stated that the scope of the like goods did not include domestically produced OCTG, line pipe and standard pipe (other than standard pipe supplied to meet ASTM A252 or equivalent specifications), which may be used in piling applications. Thus, in accordance with the Tribunal's decision, any steel pipe that was not initially supplied to meet the requisite specifications for use in piling applications (i.e. ASTM A252, ASTM A500, CSA G.40.21 or equivalent specifications or standards) does not constitute like goods in relation to the subject goods, even if it may be used in piling applications. The same reasoning applies to seconds or downgraded pipe products. To the extent that such products are not certified to meet the above-noted specifications, they are not like goods in relation to the subject goods.[91]

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90. Tribunal Exhibit NQ-2012-002-26.02, Administrative Record, Vol. 1.4A at 7; Tribunal Exhibit NQ-2012-002-26.05, Administrative Record, Vol. 1.4A at 1.
91. The Tribunal further notes that, to the extent that seconds or downgraded pipe products are certified or re-certified to meet the ASTM A252 specification or comparable standards, then they can no longer be characterized as seconds or downgraded pipe products and essentially become goods than can be described as piling pipe.

172. In its decision, the Tribunal also stated that the like goods are confined to goods that are "commonly identified as steel piling pipe". On this issue, the Tribunal finds that there is insufficient evidence to conclude that, as a matter of fact, seconds or downgraded pipe products are "commonly identified as steel piling pipe".

173. While Pipe & Piling has filed some evidence which suggests that seconds and downgraded pipe may be ". . . sold as ASTM A252 grade piling pipe . . .",[92] there is no clear evidence on the record that seconds or downgraded steel pipe are "commonly identified as steel piling pipe". In his statement of evidence, Mr. Jack Dym merely stated that these products are sold for use as piling pipe.[93] The Tribunal finds that this statement is not unequivocal and does not necessarily mean that these products are commonly identified as steel piling pipe in the industry. Something may be sold "for use as piling pipe" without constituting piling pipe *per se*.

174. In addition, the Tribunal accepts Atlas Tube's argument that merely because a type of product can be substituted for another does not necessarily mean that it is a like good. Substitutability is only one of the many factors that may be relevant in determining whether goods are like goods in relation to one another. In the context of this inquiry, the Tribunal has already determined that factors such as the physical characteristics of goods commonly identified as steel piling pipe, including their conformity with specifications or standards typically associated with piling pipe products, should be given more weight in the analysis of the issue of like goods than factors such as substitutability or end uses.

175. In light of the foregoing, the Tribunal concludes that steel piling pipe produced in Canada, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods.

176. Moreover, with respect to the goods specifically excluded from the definition of the subject goods because they are covered by the Tribunal's finding in *CSWP*, the Tribunal notes that they constitute goods that are commonly identified as piling pipe on the basis of the fact that they constitute carbon steel welded pipe supplied to meet ASTM A252 or equivalent specifications. For this reason, domestically produced carbon steel welded pipe that corresponds to the description of the goods excluded from the definition of the subject goods (i.e. carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications) constitutes like goods in relation to the subject goods.

177. Turning to the issue of classes of goods, the Tribunal received no submissions during the final injury inquiry stage to challenge the conclusion that it reached during the preliminary injury inquiry that steel piling pipe constitutes a single class of goods. The Tribunal further notes that the parties did not file evidence to persuade the Tribunal to depart from its preliminary determination on this issue. Therefore, on the basis of the evidence before it, the Tribunal finds that steel piling pipe comprises a single class of goods.

Domestic Industry

178. As noted above, subsection 2(1) of *SIMA* defines "injury" as ". . . material injury to a domestic industry".

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92. Manufacturer's Exhibit C-02 at para. 21, Administrative Record, Vol. 13; Manufacturer's Exhibit C-03 (protected) at para. 8, Administrative Record, Vol. 14.
93. Manufacturer's Exhibit C-03 (protected) at paras. 6-8, 41-43, Administrative Record, Vol. 14.

179. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

> . . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

180. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.

181. In its preliminary injury inquiry, the Tribunal found that, for the purposes of that inquiry, the domestic industry was comprised of Atlas Tube, Pipe & Piling, DFI, Spiralco, Nova Tube and Evraz. The Tribunal also found that Atlas Tube accounted for a major proportion of the total production of like goods in Canada.

182. In its preliminary injury inquiry, the Tribunal also noted that, to the extent that certain OCTG, line pipe and standard pipe are to be considered like goods in relation to the subject goods, it followed that the domestic producers of such goods would have to be included in the domestic industry for the purposes of the Tribunal's injury analysis. However, as noted above, the Tribunal has decided against expanding the definition of the like goods to include goods that are not commonly identified as steel piling pipe. Therefore, the domestic producers of certain carbon steel welded pipe, OCTG, line pipe or steel pipe products that may potentially be substituted for steel piling pipe do not form part of the domestic industry for the purposes of this inquiry.

183. Pipe & Piling submitted that the Tribunal does not have sufficient evidence before it concerning domestic production and sale of "seconds" and downgraded pipe sold as piling pipe and does not have any evidence concerning the domestic production of the carbon steel welded pipe excluded from its finding in *CSWP* (i.e. pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends in random lengths, for use as foundation piles) and that, therefore, the Tribunal cannot determine whether the production of like goods by Atlas Tube and DFI constitutes a major proportion of the total domestic production of like goods in this inquiry. The Tribunal is unable to accept this argument.

184. With respect to the domestic production of "seconds" and downgraded pipe sold as piling pipe, Pipe & Piling's argument rests on the premise that the Tribunal determined in its September 20, 2012, decision that these seconds and downgraded pipe products were like goods in relation to the subject goods and that these goods are "commonly identified as steel piling pipe". However, as previously noted, the Tribunal found that seconds and downgraded pipe products are not like goods in relation to the subject goods. Thus, contrary to Pipe & Piling's assertions, any domestic production of such seconds or downgraded pipe products does not have to be included in the total domestic production of like goods.

185. With respect to the domestic production of the carbon steel welded pipe excluded from the Tribunal's finding in *CSWP*, the Tribunal notes that potential producers of such pipe have been canvassed and that there is information on the record concerning the production of such carbon steel welded pipe.[94]

94. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 201-207.

For this reason, Pipe & Piling's claim that there are other unidentified producers of steel piling pipe that should be included in the definition of the domestic industry is not supported by the evidence on the record.

186. The Tribunal further notes that Pipe & Piling identified itself as both a producer and importer of steel piling pipe. However, it did not argue that it should be treated as a producer of like goods in this inquiry, nor did it provide a response to the producer's questionnaire. In view of these facts, the Tribunal finds that Pipe & Piling is, first and foremost, an importer of steel products, including the subject goods.

187. As indicated in the definition of "domestic industry" in subsection 2(1) of *SIMA*, where a domestic producer is an importer of such goods, that producer may be excluded from the "domestic industry". The Tribunal considers that the fundamental question is whether the domestic producer is essentially a producer of like goods in Canada or, instead, essentially an importer of dumped or subsidized goods.[95] There is no evidence on the record which suggests that Pipe & Piling is essentially a producer of like goods in Canada. On that basis, the Tribunal finds that it should be excluded from the domestic industry for the purposes of this inquiry.

188. The information on the record indicates that Atlas Tube, DFI, Nova Tube, Atlantic Tube, Evraz and Spiralco are the Canadian producers of like goods. Among the domestic producers, Atlas Tube and DFI, together, represent the vast majority of the total Canadian production.[96] As Atlas Tube and DFI's collective production constitutes a major proportion of the total domestic production of the like goods, the Tribunal's injury analysis will, where appropriate, focus on the impact of the subject goods on those two large producers.

189. Finally, the Tribunal notes that, at the hearing, Pipe & Piling argued that DFI was not a producer of like goods since its production serves primarily the company's foundation construction and installation services division and is sold in the market by DFI with related installation and engineering services. Indeed, the evidence indicates that DFI's business model is to provide all the materials (including the piling pipe that it produces), labour and equipment required to supply installation services.

190. However, there is no statutory basis to exclude DFI's production from the production of like goods in Canada for the purposes of determining whether the subject goods have caused injury or threaten to cause injury. All production of like goods must be considered. That DFI's production may be sold with related services or as part of contracts for the supply of piling pipe installation services does not change the fact that DFI is a producer of like goods in Canada.

Cross-cumulation

191. As noted above, the Tribunal must determine whether it would be appropriate to assess the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether to cross-cumulate the injurious effects caused by each). While subsection 42(3) of *SIMA* addresses cumulation, (which refers to the assessment of the effects of the dumping of goods from more than one country, taken together, or of the subsidizing of goods from more than one country, taken together), the legislation does not explicitly address the issue of cross-cumulation.

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95. *Cross-Linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at para. 56.
96. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 172.

192. However, as noted in previous cases,[97] subsections 37.1(1) and (2) of the *Special Import Measures Regulations*[98] prescribe certain factors for the Tribunal to consider in making its finding. These factors have, as their focus, the effects that dumped or subsidized goods have had or may have on a number of economic indices.

193. In this regard, the effects of dumping and subsidizing of the same goods from a particular country (in this case, China) are manifested in a single set of price-related effects. It is the Tribunal's view that, in the conduct of an injury analysis, it is not possible to disentangle and isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, they are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.[99]

194. Accordingly, the Tribunal considers it appropriate to cross-cumulate the effects of the dumping and subsidizing of the subject goods in its injury analysis.

INJURY

General Considerations

195. The Tribunal will now turn to the issue of whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry, taking into account the factors prescribed by subsection 37.1(1) of the *Regulations*.

196. Section 37.1 of the *Regulations* prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of the like goods in the domestic market and their resulting impact on the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury caused by these other factors is not attributed to the dumped and subsidized goods.

197. After having considered all relevant factors, the Tribunal will examine whether any injury suffered by the domestic industry during the POI is "material", as contemplated by section 42 of *SIMA*.[100] In this regard, the Tribunal notes that *SIMA* does not define the term "material". However, the Tribunal considers that both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury is "material".[101]

Preliminary Considerations

198. This inquiry presented the Tribunal with several unique challenges, including the manner in which to assess the alleged injury. The Tribunal will therefore address certain preliminary issues that arose during the inquiry before proceeding to the injury analysis itself.

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97. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Oil and Gas Well Casing* at para. 76; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 147.
98. S.O.R./84-927 [*Regulations*].
99. See, for example, *Aluminum Extrusions* at para. 147.
100. The term "injury" in section 42 of *SIMA* is defined as ". . . material injury to a domestic industry" in subsection 2(1).
101. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, i.e.: "However, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of SIMA" [emphasis added].

Regional or National Market

199. Before conducting its analysis of injury to the domestic industry, the Tribunal must clarify what constitutes the production of the domestic industry against which the alleged injury caused by the subject goods is to be measured. The domestic producers' case and, in particular, the submissions of Atlas Tube focused on the impact of the subject goods in Western Canada and on Atlas Tube's performance in that part of the national market.

200. Atlas Tube submitted that it has had limited success in Western Canada, despite its diligent efforts to penetrate that part of the Canadian market, with this being largely due to the influx of the subject goods into that region. According to Atlas Tube, it was able to make sales to only a handful of customers in Western Canada, with these sales being at significantly suppressed and depressed prices. Atlas Tube claimed that, as a result, its performance in Western Canada had been directly and materially injured by the subject goods.

201. For this reason, Atlas Tube presented separate information on production, sales, pricing and financial performance for Western Canada and for Eastern Canada. Atlas Tube further submitted that, while the staff report dealt with the Canadian market as a whole and the domestic industry's financial performance on a Canada-wide basis, the effects of the subject goods must be examined in that part of the national market where they have had the most direct injurious impact, that being Western Canada.

202. Where the requirements of subsections 2(1.1) and 42(5) of *SIMA* are met, an injury inquiry may be conducted on a regional market basis. Given, however, the exceptional nature of a regional market inquiry, stricter thresholds are applicable than in a national market case. The regional market provisions are not intended however to raise the bar for a determination of injury where a dumping or subsidizing complaint is brought on the basis of a national market, even if separate regional markets could be identified within the national market.[102]

203. With the domestic industry having brought its complaint on the basis of a national market, and with the parties agreeing that this is not a regional market case,[103] the Tribunal will not restrict its injury analysis to the effects of the subject goods in Western Canada, but rather will conduct its analysis on the basis of a national market, even though the injurious effects of the subject goods may have been concentrated in the western part of the Canadian market. In this regard, it is possible for domestic producers to do well in one part of the country and, yet, be injured in another to the material detriment of the industry's production as a whole. Simply put, the question is whether any injury suffered in Western Canada is sufficient to be material to the domestic industry's production of like goods as a whole.

204. On the basis of the above, and albeit the fact that any injury to the domestic industry may have been concentrated in Western Canada, the Tribunal will conduct its injury inquiry on the basis of the broader national market. In this respect, should the Tribunal indeed find that injury was concentrated in the western part of the Canadian market, it will consider these injurious effects in the context of the broader national market for the purpose of assessing the materiality of any such injury to the domestic industry.

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102. *Unprocessed Grain Corn* (18 April 2006), NQ 2005-001 (CITT) at paras. 71-74.
103. Tribunal Exhibit PI-2012-002-11.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 3 at 16; Tribunal Exhibit PI-2012-002-07.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 3 at 12-14.

Reliability of the Staff Report Data

205. Pipe & Piling submitted that the staff report does not accurately reflect the steel piling pipe market, as it does not contain sufficient information on imports of seconds and downgraded pipe sold as piling pipe. Consequently, Pipe & Piling argued that the staff report does not provide reliable, positive evidence upon which the Tribunal can base an injury finding.

206. The Tribunal does not accept Pipe & Piling's arguments.

207. Although it had determined that seconds and downgraded pipe sold as steel piling pipe were not like goods in relation to the subject goods,[104] the Tribunal nevertheless solicited information concerning the importation and domestic production of seconds and downgraded pipe products in its questionnaires. As a result, in response to the Tribunal's domestic producers' questionnaire, the Tribunal received data on domestic purchases, imports, production and sales of seconds and downgraded pipe. In response to the importers' questionnaire, the Tribunal received data on the purchases of seconds and downgraded pipe from import sources.

208. Thus, contrary to Pipe & Piling's assertions that the information contained in the staff report on volumes and prices is unreliable due to its failure to include information on seconds and downgraded pipe, the Tribunal is confident that the data that it collected on these performance metrics are reliable, as they specifically included seconds and downgraded pipe products, as reflected in various tables in the staff report.[105]

209. Accordingly, it is the Tribunal's view that the staff report contains ample reliable information on the subject goods and the like goods, as well as seconds and downgraded pipe products, upon which to assess the impact of sales of those products in the steel piling pipe market.

210. The Tribunal notes that the basis for Pipe & Piling's arguments appears to reside in its assertion that Atlas Tube and the CBSA failed to properly identify and define the subject goods at the initiation of CBSA's investigations.[106] In this regard, Pipe & Piling stated the following:

> 78. Because of the failure to properly identify subject goods, it is impossible to know whether imports of allegedly dumped and subsidized subject goods have had any effect on the price of like goods. As noted above, due to the poor product definition which "failed" to properly define subject goods, it is impossible for the Tribunal to know whether information concerning imports of subject goods was properly identified and collected and, therefore, cannot know whether there has been any price impact.
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> 79. In these circumstances, which are due entirely to the failure of Atlas and the CBSA to properly define subject goods, Pipe & Piling submits that the evidence on the record cannot be relied on to accurately determine whether imported subject goods have any price impact.[107]

211. As regards Pipe & Piling's assertion that the data contained in the staff report are unreliable due to the "failure" of the CBSA to properly identify and define the subject goods at the initiation of its

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104. Unless these products are re-certified to meet the requirements of the ASTM A252 specification or equivalent specifications.
105. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 62-69.
106. Importer's Exhibit C-02 at paras. 67-79, Administrative Record, Vol. 13.
107. Importer's Exhibit C-02 at paras. 78-79, Administrative Record, Vol. 13.

investigations and the alleged ". . . vague and imprecise product definition advanced by Atlas and adopted by the CBSA . . .",[108] the Tribunal is of the view that these arguments seek to re-open a preliminary matter upon which the Tribunal has already rendered its decision, which was communicated to the parties on September 20, 2012. In this regard, the Tribunal's data on imports of the subject goods cover the goods to which the CBSA's preliminary determinations apply.

212. Indeed, the data on imports received in response to the Tribunal's importers' questionnaire represented approximately 94 percent of all imports of the subject goods examined by the CBSA.[109] Similarly, the respondents to the Tribunal's purchasers' questionnaire on market characteristics represented 76 percent of the Canadian steel piling pipe market in 2011.

213. For the reasons stated above, the Tribunal is satisfied that the information contained in the staff report is reliable and provides positive evidence with respect to the steel piling pipe market relevant to the Tribunal's injury analysis.

Confidential Information

214. The Tribunal notes that, with two domestic producers representing the large majority of domestic production of steel piling pipe, one of which imported steel piling pipe during the POI, and with the bulk of the subject goods being imported by a few major importers, much of the consolidated information on imports and the apparent market for steel piling pipe is confidential in nature.

215. As a result, the Tribunal had to rely heavily on evidence placed on the confidential record in arriving at its conclusions. While confidentiality requirements may limit the degree to which the Tribunal can disclose specific information in its reasons, the relevant confidential information has been referred to throughout the Tribunal's analysis.

Canadian Market Conditions

216. The Canadian steel piling pipe market is subject to the same economic forces that affect the Canadian industrial and commercial construction industries, particularly in relation to large infrastructure projects in Western Canada. In this regard, demand for steel piling pipe is strongly influenced by pile installation activity in the oil and gas industry.

217. The global financial crisis of 2008 had a negative impact on the Canadian oil and gas industry and, consequently, on the steel piling pipe market.

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108. Importer's Exhibit C-02 at para. 17, Administrative Record, Vol. 13.

109. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 53; Tribunal Exhibit NQ-2012-002-05 (protected), Administrative Record, Vol. 2 at 23.22; Tribunal Exhibit NQ-2012-002-19.06 (protected), Administrative Record, Vol. 6 at 22; Tribunal Exhibit NQ-2012-002-19.17A (protected), Administrative Record, Vol. 6A at 2; Tribunal Exhibit NQ-2012-002-19.17E (protected), Administrative Record, Vol. 6A at 632; Tribunal Exhibit NQ-2012-002-19.21A (protected), Administrative Record, Vol. 6B at 39, 40, 55; Tribunal Exhibit NQ-2012-002-19.20A (protected), Administrative Record, Vol. 6A at 110-11; Tribunal Exhibit NQ-2012-002-19.24 (protected), Administrative Record, Vol. 6B at 125; Tribunal Exhibit NQ-2012-002-19.24A (protected), Administrative Record, Vol. 6B at 149.

218. As a result of the recession in Canada, which began in 2008, and the generally negative spending trends in the oil and gas construction and extraction industry,[110] the market for steel piling pipe contracted by 21 percent, from 2009 to 2010, to reach its lowest level during the POI in 2010.[111]

219. Planned and forecasted investments in the construction and extraction sectors of the oil and gas industry were expected to increase in 2010, and then onwards to at least 2013.[112]

220. To date, these forecasts have proven to be relatively accurate and indeed, following the rebound in spending in the oil and gas construction and extraction industry in 2010, the steel piling pipe market improved significantly, increasing by 156 percent in 2011, for a net overall increase of 101 percent between 2009 and 2011.[113]

221. In line with the forecasts for increased investment and expenditure in 2011 and 2012, the steel piling pipe market continued to improve through the first half of 2012, increasing by 92 percent over the same period in 2011.[114]

222. During the hearing, the Tribunal heard testimony from all witnesses present, corroborating these trends in the Canadian steel piling pipe market. In particular, the Tribunal heard that the steel piling pipe market grew significantly in 2011 and the first half of 2012, with the expectation of continued growth in 2013.[115]

Volume of Imports of Dumped and Subsidized Goods

223. Pursuant to paragraph 37.1(1)(*a*) of the *Regulations*, the Tribunal, in conducting its injury analysis, will consider whether there has been a significant increase in the volume of the dumped and subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

224. The domestic industry submitted that the subject goods had entered Canada in dramatically increasing volumes since 2009.[116] In particular, DFI argued that there was a "surge" in imports of the subject goods in 2011 and in early 2012.[117] Atlas Tube submitted that the evidence before the Tribunal indicated that there was an increase in import volumes of the subject goods both in absolute terms and

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110. In this regard, the Tribunal notes that the effect of spending in the oil and gas construction and extraction industry is not instantaneous and can take some time to filter through to the steel piling pipe market. Therefore, the negative spending pattern in the oil and gas construction and extraction industry prior to 2009 manifested itself in a contraction in the steel piling pipe market in 2009-2010.

111. *Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 175.

112. *Ibid.* at 169; Manufacturer's Exhibit A-09 at 151, Administrative Record, Vol. 11A; Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 48, 58, 63; Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at 222, 226, 227, 241-42, 254, 256, 276; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 210-11.

113. *Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 175.

114. *Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-06, Administrative Record, Vol. 1.1 at 55.

115. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 210-11; *Transcript of Public Hearing*, Vol. 3, 30 October 2012, at 351.

116. Manufacturer's Exhibit A-01 at para. 2, Administrative Record, Vol. 11.

117. Manufacturer's Exhibit B-01 at para. 8, Administrative Record, Vol. 11B.

relative to the production and consumption of the like goods over the POI.[118] Atlas Tube added that, since 2011, the dumped and subsidized goods have dominated the western part of the Canadian market, where the largest volume of steel piling pipe was being sold.[119]

225. The three importers present at the hearing, i.e. Pipe & Piling, Skyline P.H.P. Canada ULC/SRI, a Nucor Company (Skyline) and Varsteel, confirmed the above-described market trends.[120] Varsteel testified that, to its knowledge, imports of the subject goods increased over the POI to capture over 100,000 metric tonnes (MT) of an estimated market of 150, 000 MT in 2011.[121]

226. Pipe & Piling stated that it would not dispute the evidence on the record in respect of the volume or pricing of the subject goods.[122] In oral testimony, Pipe & Piling indicated that it imported significant quantities of the subject goods during the POI and that its imports increased significantly in 2011 and continued at these elevated levels in 2012.[123]

227. The evidence on the record shows that the subject goods accounted for nearly all imports of steel piling pipe during the POI.[124]

228. The evidence on the record also shows that imports of the subject goods generally followed the same trends as the Canadian market for steel piling pipe over the POI, albeit with more pronounced decreases and increases. In particular, after decreasing by 44 percent in 2010, imports of the subject goods increased by a staggering 467 percent in 2011, for a net overall increase of 220 percent between 2009 and 2011. In the first half of 2012, imports of the subject goods increased by 21 percent compared to the same period in 2011.[125] From these data, the Tribunal concludes that there was a significant absolute increase in the volume of the subject goods over the POI.

229. The Tribunal also observes that, as the oil and gas industry recovered over the POI and conditions improved in the steel piling pipe industry, large importers, such as Pipe & Piling, Varsteel and Platinum Grover, increased their volumes of imports of the subject goods, particularly in 2011. This contributed to a significant increase in the share of the domestic market held by the subject goods in that year,[126] with the evidence on the record confirming that the subject goods were highly concentrated in Western Canada.[127]

230. Despite the substantial growth in the Canadian market for steel piling pipe over the POI, domestic production of the like goods remained relatively stable between 2009 and 2011, before increasing significantly in the first half of 2012.[128] The evidence shows that, between 2009 and 2011, the import volume of the subject goods increased by more than threefold (186 percentage points) relative to the volume

118. Manufacturer's Exhibit A-01 at paras. 87-90, Administrative Record, Vol. 11.
119. Manufacturer's Exhibit A-01 at para. 2, Administrative Record, Vol. 11.
120. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 133, 194; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 214, 228-29; *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 359-60.
121. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 214.
122. *Ibid.* at 363-66.
123. *Transcript of In Camera Hearing*, Vol. 3, 31 October 2012, at 200-201.
124. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.
125. *Ibid.*
126. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 176.
127. *Ibid.* at 190.
128. *Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 172; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 172; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.

of domestic production of the like goods.[129] However, in the first half of 2012, the ratio of imports of the subject goods to the domestic production of the like goods fell by 111 percentage points, as the volume of domestic production increased by a much greater extent than did the import volume of the subject goods.[130]

231. From 2009 to 2011, there was a corresponding increase in imports of the subject goods relative to domestic consumption, with the ratio of the volume of imports of the subject goods to domestic consumption also increasing by more than threefold (218 percentage points).[131] In the first half of 2012, this ratio decreased by 161 percentage points, as domestic consumption (i.e. domestic sales from domestic production) increased, while imports of the subject goods decreased.[132]

232. In light of the evidence before it, the Tribunal finds that there was a significant increase in the volume of imports of the subject goods, both in absolute terms and relative to the production and consumption of the like goods.

Effects of Dumped and Subsidized Imports on Prices

233. Pursuant to paragraph 37.1(1)(*b*) of the *Regulation*s, the Tribunal must consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those goods that would otherwise likely have occurred.

234. Atlas Tube alleged that the few sales that it was able to make in Western Canada were at depressed and suppressed prices, and that the price suppression occurred in particular with regard to its sales to distributors.[133]

235. DFI also submitted that the prices at the distributor level had been suppressed, but acknowledged that prices at the end user level had increased with market demand in 2011 and 2012.[134] Furthermore, DFI submitted that, because its installation division sells directly to end users, its prices for steel piling pipe ". . . are not reflective of the wholesale (or merchant) market prices of other domestic producers or importer/distributor prices to regional distributors or contractors."[135]

236. DFI submitted that the evidence on the record shows that the selling prices of the subject goods to end users were below its selling prices to end users in all but one period of the POI.[136]

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129. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 172; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.
130. *Ibid.*
131. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 174; *Protected Pre-hearing Staff Report,* 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.
132. *Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-06, Administrative Record, Vol. 1.1 at 49; *Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 174.
133. Manufacturer's Exhibit A-01 at para. 4, Administrative Record, Vol. 11; Manufacturer's Exhibit A-01 at paras. 103-4, Administrative Record, Vol. 11.
134. Manufacturer's Exhibit B-01 at para. 4, Administrative Record, Vol. 11B.
135. Manufacturer's Exhibit B-03 at para. 10, Administrative Record, Vol. 11B.
136. Manufacturer's Exhibit B-01 at para. 11, Administrative Record, Vol. 11B.

237. The Tribunal also heard that Varsteel began purchasing steel piling pipe from Atlas Tube three to four years ago.[137] In oral testimony, Varsteel explained that, during the POI, the company began to actively source steel piling pipe from China due to the low cost of imports of the subject goods.[138] Indeed, the witness for Varsteel stated that, in the first half of 2012, China was the company's main source of imported steel piling pipe.[139]

238. Although Pipe & Piling did not dispute the evidence on the record in respect of the pricing of imports of the subject goods, it contested the assertions of the domestic industry that the subject goods were the lowest-priced product in the steel piling pipe market.[140] Pipe & Piling submitted that seconds and downgraded pipe, which were present in the Canadian market in significant volumes, were the price leaders in the market and competed directly with the like goods and the subject goods.[141] In support of its position, Pipe & Piling provided evidence of purchases of seconds and/or downgraded pipe at significantly lower prices than the average selling prices of the subject goods.[142]

239. The domestic producers, as well as two importers, Varsteel and Skyline, disagreed with Pipe & Piling and argued that its assertions were not substantiated by the evidence. Varsteel and Skyline submitted that the subject goods were the price leaders in the market.[143] Varsteel argued that the low prices of the subject goods were the main reason for which steel piling pipe imported from China dominated the market in Western Canada.[144]

240. Varsteel and Skyline both added that seconds and downgraded pipe represented only a fraction of the steel piling pipe market and were therefore not significant enough to influence the prices of steel piling pipe in Canada.[145] Skyline testified that seconds and downgraded pipe constituted a small factor in the steel piling pipe market, given their small volumes and intermittent availability. Consequently, according to Skyline and Varsteel, seconds and downgraded pipe could not have had the same overwhelming price impact as the subject goods.[146]

241. Before the Tribunal begins its analysis of the evidence of the adverse price effects of the subject imports (i.e. price undercutting, price depression and price suppression), it will first consider submissions relating to the price sensitivity of steel piling pipe and price leadership in the Canadian market.

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137. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 236-37.
138. *Ibid.* at 211.
139. *Ibid.* at 228-29.
140. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 363-64, 366.
141. Importer's Exhibit C-04 at paras. 40-47, Administrative Record, Vol. 13; Importer's Exhibit C-02 at paras. 84-88, Administrative Record, Vol. 13.
142. Importer's Exhibit C-03 (protected) at paras. 40-44, Administrative Record, Vol. 14.
143. Manufacturer's Exhibit A-07 at para. 15, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 at para. 4, Administrative Record, Vol. 11.
144. Manufacturer's Exhibit A-07 at para. 15, Administrative Record, Vol. 11.
145. Manufacturer's Exhibit A-05 at paras. 30-31, Administrative Record, Vol. 11; Manufacturer's Exhibit A-07 at para. 7, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 136-37; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 215.
146. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 215; Manufacturer's Exhibit A-05 at paras. 30-31, Administrative Record, Vol. 11; Manufacturer's Exhibit A-07 at para. 7, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 136-37.

Price-sensitivity of Steel Piling Pipe

242. The domestic industry submitted that steel piling pipe is a fungible, commodity-like product for which price is usually the principal factor influencing purchasing decisions.

243. Atlas Tube submitted that, because steel piling pipe is produced to established specifications (such as ASTM 252), purchasing decisions are sensitive to price, with the lowest price offer almost always winning the sale.[147] Testimony by Skyline and Varsteel supported these views.[148] Skyline further described steel piling pipe as a “generic” “commodity-like” product where “brand” is not a significant market driver.[149]

244. Pipe & Piling countered that steel piling pipe is not simply a commodity bought and sold solely on the basis of price and that other factors influence purchasing decisions, such as the reputation of the supplier, service, reliability of supply and quality of the product.[150]

245. The Tribunal recognizes that, in terms of pricing and substitutability, the market, on the whole, tends to treat steel piling pipe, a product produced to recognized specifications, as a commodity-like product that is fully interchangeable regardless of source.

246. However, the Tribunal also accepts that price is not the only factor considered by purchasers when purchasing the subject goods or the like goods.

247. While the responses to the Tribunal’s purchasers’ questionnaire on market characteristics are consistent with the view that price is a major factor in purchasing decisions (with seven of the nine respondents indicating that the lowest price was a “very important” factor in a buyer’s decision), other factors, such as technical specifications and reliability of supply, were also considered “very important” by all respondents.[151] All purchasers indicated that they “always” or “usually” purchase the lowest-priced steel piling pipe product.[152]

248. Witness testimony supported the claim that, while price may not be the most important factor, it was a major factor in the purchasing decision of steel piling pipe.[153]

249. Notwithstanding the importance of price in steel piling pipe purchasing decisions, the evidence collected through the purchasers’ questionnaire on market characteristics suggested a reluctance on the part of purchasers to switch suppliers in response to small differences in price. The Tribunal notes that only one quarter of questionnaire respondents indicated that a price difference of 5 percent would be sufficient to

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147. Manufacturer’s Exhibit A-01 at para. 107, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 60-61.
148. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 164; Manufacturer’s Exhibit A-07 at paras. 15, 22, Administrative Record, Vol. 11.
149. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 137-38.
150. Importer’s Exhibit C-02 at para. 89, Administrative Record, Vol. 13.
151. Additional factors considered “very important” are delivery times and terms, quality and experience with suppliers. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A, Administrative Record, Vol. 2.1 at 159.
152. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 163.
153. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 60-61, 164-67.

make them switch suppliers.[154] Half of questionnaire respondents indicated that it would take a price difference of 20 percent or more for them to switch suppliers, while another 25 percent of the respondents indicated that price would never be a primary factor in choosing a supplier.[155]

250. The Tribunal recognizes that non-price factors, such as service, reputation and reliability of the supplier, may play a more prominent role in the purchasing decisions of end users. However, for sales to distributors, the principal trade level at which the subject goods enter the Canadian market, purchasing decisions tend to be more price sensitive.

251. On the basis of the foregoing, the Tribunal finds that steel piling pipe is a commodity-like product which is sensitive to price. In this regard, price is a key criterion used in purchasing decisions, although product quality, reliability of supply and technical specifications are also important factors considered by purchasers.

Price leadership in the Canadian market

252. The Tribunal also considered the assertions made by Pipe & Piling that seconds and downgraded pipe were in fact the price leaders in the Canadian steel piling pipe market.

253. The Tribunal notes that the evidence provided by Pipe & Piling with regard to the presence of seconds and downgraded pipe in the Canadian market covers a very small volume of purchases within a narrow window of a few days in 2012, making comparisons with other data on the record very difficult and inconclusive.

254. As indicated earlier, the Tribunal heard witness testimony to the effect that seconds and downgraded pipe products typically enter the steel piling pipe market on an intermittent basis and at a lower cost than the subject goods and the like goods, but that, due to their small volumes, they had no significant impact on the market price of the subject goods and like goods.[156]

255. The evidence on the record confirms that seconds and downgraded pipe are often sold in the Canadian market, to maximize their salvage value, at prices that are lower than those of steel piling pipe.[157]

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154. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 164.
155. *Ibid.*
156. Manufacturer's Exhibit A-05 at paras. 30-31, Administrative Record, Vol. 11.
157. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188; *Protected Pre-hearing Staff Report,* 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 68.

256. The Tribunal compared the average unit purchase price of the subject goods with the average unit selling price of domestically produced seconds and downgraded pipe.[158] This comparison showed that the average unit selling price of seconds and downgraded pipe was lower than the average unit purchase price of the subject goods in 2009 and 2010, but higher than the average unit purchase price of the subject goods in 2011 and the first half of 2012.

257. Notwithstanding the evidence of lower prices for seconds and downgraded pipe in 2009 and 2010, the Tribunal notes that the volumes of these goods, particularly in direct competition with the subject goods, were quite low.[159] Given these low volumes and the inherently sporadic and unpredictable supply of seconds and downgraded pipe, the Tribunal is not convinced that these goods had any significant impact on price in the domestic market for steel piling pipe. Indeed, as discussed above, the evidence and witness testimony, other than those of Pipe & Piling, point to the subject goods being the price leaders in the steel piling pipe market.

258. On the basis of the foregoing, the Tribunal is of the view that the subject goods, as the price leaders, drive the prices in the steel piling pipe market.

259. The Tribunal will next examine the prices of the subject goods and their impact on the prices of the like goods during the POI.

Price Undercutting

260. The Tribunal began its examination of the evidence on the record to determine if the prices of the subject goods undercut those of the like goods during the POI by comparing the average unit selling prices of the subject goods with the average unit selling prices of the like goods in the steel piling pipe market.

261. The data indicate that the prices of the subject goods undercut the prices of the like goods in each period of the POI. The margin of price undercutting of the subject goods was 24 percent in 2009, 18 percent in 2010, 23 percent in 2011 and 25 percent in the first half of 2012.[160]

262. The Tribunal also notes that five out of eight respondents to the purchasers' questionnaire on market characteristics reported that steel piling pipe imported from China was available at lower prices than domestic steel piling pipe.[161]

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158. The Tribunal compared the average unit purchase price of the subject goods (calculated as the weighted average of the net delivered purchase value of the subject goods imported by distributors and the net delivered selling price of the subject goods by importer-traders to distributors) to the average unit selling price of seconds and downgraded pipe (calculated as the weighted average net delivered selling price of seconds and downgraded pipe from domestic production). As discussed below, this comparison reflects competition at the distributor trade level. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 68; *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 213.

159. The Tribunal notes that, in response to the purchasers' questionnaire on market characteristics, firms indicated that they had purchased a significant volume of seconds and downgraded pipe in 2011. However, a significant portion of these purchases were made by a distributor in Eastern Canada. In its questionnaire response, this company indicated no knowledge of the subject goods. Tribunal Exhibit NQ-2012-002-25.10, Administrative Record (protected), Vol. 6.2B at 85, 119; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 155; *Protected Pre-hearing Staff Report,* 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 62.

160. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 180.

161. *Ibid.* at 161.

263. To evaluate the nature of the price undercutting more thoroughly, the Tribunal examined it at both the distributor and end-user trade levels.

264. Evidence on the record indicates that competition at the distributor trade level takes place primarily between sales of like goods by Atlas Tube and imports of the subject goods by distributors themselves.[162] In fact, the Tribunal notes that Atlas Tube is the major domestic supplier to distributors and that distributors constitute its primary customer base.[163]

265. In view of the above, the Tribunal considers that the appropriate (apples to apples) comparison to assess price undercutting at the distributor trade level is between the net delivered selling prices of the like goods to distributors and distributors' net delivered purchase costs of the subject goods.[164]

266. This comparison shows that distributors' net purchase costs of the subject goods were consistently below the net delivered selling prices of the like goods during the POI. Indeed, the price undercutting of the subject goods increased continuously, from approximately 7 percent in 2009 to 13 percent in 2010, to 15 percent in 2011 and to almost 20 percent in the first half of 2012.[165]

267. At the end-user trade level, evidence on the record indicates that DFI competes largely with distributors selling the subject goods. DFI submitted that virtually all of its sales were to end users during the POI.[166] The evidence also shows that Atlas Tube made some small volume sales of steel piling pipe to end users during the POI.[167]

268. The Tribunal assessed price undercutting at the end-user trade level by comparing the selling prices of the like goods to the selling prices of the subject goods.

269. This analysis indicated that the selling prices of the subject goods by distributors to end users undercut the selling prices of the like goods to end users by a relatively consistent margin in each period of the POI. In this regard, the price undercutting was approximately 33 percent in 2009, 26 percent in 2010, 30 percent in 2011 and 28 percent in the first half of 2012.[168]

270. The Tribunal also examined the pricing information that it gathered for specific "benchmark" products that are representative of the product range and data on sales to common accounts. However, because the Tribunal received limited pricing information for the benchmark products and sales to common

162. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 182, 212; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 58.

163. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 117-18; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 38, 58; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 147.

164. The Tribunal compared the net delivered purchase cost of the subject goods (calculated as the weighted average of the net delivered purchase value of the subject goods imported by distributors and the net delivered selling price of the subject goods by importer-traders to distributors) to the net delivered selling price of the like goods to distributors by domestic producers.

165. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188, 213.

166. Manufacturer's Exhibit B-03 at para. 10, Administrative Record, Vol. 11B; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 30, 50.

167. Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 38, 58.

168. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188, 213.

accounts, it was unable to draw any definitive conclusions from these benchmark products or data on sales to common accounts.

271. Finally, the Tribunal considered the evidence regarding the account-specific injury allegations lodged by the domestic industry in this inquiry.

272. The information shows that, of the 22 injury allegations made by Atlas Tube,[169] in the few instances where Atlas Tube provided competing price information for injury allegations respecting sales to distributors, the price of the subject goods was between 3 percent and 18 percent lower than that offered by Atlas Tube. For injury allegations in respect of end-user accounts, the price of the subject goods undercut Atlas Tube's prices by an average of 4 percent.

273. The Tribunal notes that several of these injury allegations were refuted by Pipe & Piling during the *in camera* session.[170] The Tribunal accepts the arguments put forward by Pipe & Piling in respect of those allegations. However, the Tribunal has carefully examined the remainder of the uncontested injury allegations and notes the extent of price undercutting by the subject goods in those injury allegations.

274. On the basis of the foregoing, the Tribunal is of the view that the evidence demonstrates significant price undercutting of the subject goods during the POI, including at the distributor and the end-user trade levels.

– Price Depression

275. Having determined that the prices of the subject goods undercut those of the like goods during the POI, the Tribunal will next examine whether the undercutting depressed the prices of the like goods (i.e. caused the prices of the like goods to decline).

276. The Tribunal observes that, at the aggregate level, the unit selling price of sales from domestic production demonstrated some price variability from 2009 to 2011, decreasing by 4 percent in 2010 and then increasing by 8 percent in 2011, for a net increase of 4 percent between 2009 and 2011.[171] The unit selling price of the like goods increased by 20 percent in the first half of 2012 compared to the same period in 2011, for a net increase of about 17 percent over the POI.[172]

277. Therefore, although the evidence shows that there was price undercutting throughout the POI, average domestic selling prices only decreased in 2010. In fact, in 2011 and the first half of 2012, the prices of the like goods increased at a higher rate than did the prices of the subject goods.

278. The Tribunal notes that the negative effects of decreased demand in 2010, a time of market contraction, may also have had a negative impact on selling prices. However, the Tribunal further notes that the domestic industry likely benefited, to some extent, from the increased investment and spending in the oil

169. Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 2 at 84-86; Manufacturer's Exhibit A-02 (protected) at 42-46, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 12 at 176-209; Manufacturer's Exhibit A-10 (protected), tab 2 at 9-31, Administrative Record, Vol. 12.

170. Importer's Exhibit C-03 (protected) at paras. 51-56, Administrative Record, Vol. 14; *Transcript of In Camera Hearing*, Vol. 3, 31 October 2012, at 169-71.

171. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 181.

172. *Ibid.*

and gas industry over the POI. In this respect, the evidence clearly indicates that the positive effects of the increased demand for steel piling pipe filtered through to domestic producers in the form of higher selling prices in 2011 and the first half of 2012.

279. At the distributor trade level, the evidence shows that the unit selling price of sales from domestic production to distributors increased continuously over the POI, by 6 percent in 2010 and by 12 percent in 2011, for a net increase of 18 percent between 2009 and 2011.[173] The selling prices of the like goods at this trade level increased again, by almost 7 percent, in the first half of 2012.[174]

280. Therefore, the Tribunal is of the view that the evidence does not indicate price depression at the distributor trade level.

281. At the end-user trade level, the unit selling price of sales from domestic production to end users decreased by 6 percent in 2010 and then increased by 7 percent in 2011, for a net increase between 2009 and 2011 of less than 1 percent. The selling prices of the like goods then increased again, by 14 percent, in the first half of 2012.[175]

282. The results at the end-user trade level are the same as for the aggregate level, i.e. the only year of the POI in which there may have been price depression is 2010.

283. On the basis of the evidence before it, the Tribunal finds that, although there was significant price undercutting by the subject goods throughout the POI, this undercutting did not result in significant price depression.

– Price Suppression

284. To assess the extent of price suppression, the Tribunal compared the changes in the domestic industry's average unit cost of goods manufactured to the changes in the average unit selling price of the like goods.

285. The information on the record in respect of the consolidated cost of goods manufactured shows that the average unit cost of goods manufactured decreased by 6 percent in 2010 and increased by 11 percent in 2011, for a net increase of less than 5 percent between 2009 and 2011.[176] The cost of goods manufactured then increased again by 6 percent in the first half of 2012 compared to the same period in 2011.[177]

286. By comparison, as noted above, the average unit selling price of sales from domestic production decreased by 4 percent in 2010 and then increased by 8 percent in 2011, for a net increase of 4 percent

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173. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188-89.
174. *Ibid.*
175. *Ibid.*
176. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 105.
177. *Ibid.*

between 2009 and 2011.[178] The average unit selling price of the like goods increased by 20 percent in the first half of 2012 compared to the same period in 2011.[179]

287. On the basis of these trends in average cost of goods manufactured and those in average domestic selling prices discussed above, it is difficult to conclude that the domestic industry suffered price suppression.

288. The Tribunal also considered whether there was price suppression at the distributor and end-user trade levels.

289. As noted above, because of the strength of the market for steel piling pipe, prices for sales from domestic production to distributors improved in 2011 and again in the first half of 2012. However, the rate of price increase for the like goods slowed significantly, as price undercutting by the subject goods increased.[180]

290. In contrast, at the end-user trade level, although the subject goods also undercut the prices of the like goods, the extent of undercutting remained relatively constant over the POI. Consequently, the rate of price increase for the like goods did not slow in 2011 and in the first half of 2012.[181]

291. The Tribunal is therefore of the view that the increasing price undercutting by the subject goods on domestic sales to distributors may have suppressed the prices of those goods, in that domestic producers may have been able to increase their prices further had the price undercutting by the subject goods not been increasing. However, the evidence is less convincing with respect to sales to end users, as the more constant price undercutting may not have limited potential price increases for the like goods to end users in the same way as for sales to distributors.

292. On the basis of the evidence before it, the Tribunal finds that, although there was significant price undercutting by the subject goods during the POI, this undercutting did not result in significant price suppression.

Conclusion

293. On the basis of its analysis of the pricing factors prescribed by *SIMA*, the Tribunal finds that the prices of the subject goods significantly undercut the prices of the like goods over the POI. The Tribunal finds however that this price undercutting did not significantly depress or significantly suppress the price of the like goods.

Impact of Imports of the Subject Goods on the Domestic Industry

294. Paragraph 37.1(1)(*c*) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the domestic industry.

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178. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 180-81.

179. *Ibid.*

180. *Protected Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188-89, 213.

181. *Pre-hearing Staff Report,* revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 189, 213.

295. Atlas Tube submitted that capital investment and construction activity in the mining and oil and gas industries, particularly in Western Canada, have increased the market for steel piling pipe in that region to an estimated 150,000 MT in 2011 and are expected to expand further in 2012.[182] According to Atlas Tube, notwithstanding its diligent efforts to penetrate this market since 2009, it has largely been shut out because of the aggressive pricing of the subject goods.[183]

296. To demonstrate the negative effects that the subject goods had on Atlas Tube's financial performance over the POI and to substantiate its claims of price undercutting, price depression and price suppression, Atlas Tube provided an Eastern Canada versus Western Canada comparison of its financial performance on sales of 6.625-inch to 16-inch steel piling pipe.[184] Atlas Tube also provided a total of 22 specific examples of alleged injury.

297. On a national basis, Atlas Tube submitted that, while its net income from sales of steel piling pipe improved over the POI, these financial results were not indicative of the actual material injury that it suffered during that period. In this respect, Atlas Tube claimed that the real impact of the subject goods could only be assessed through an Eastern Canada versus Western Canada comparison.[185]

298. In this regard, Atlas Tube submitted that its net revenues on sales to Western Canada were better than its net revenues in Eastern Canada in 2009. However, in 2010 and onward, average unit net revenues increasingly diverged, with results being much lower in Western Canada. Consequently, its average unit gross margins on sales to Western Canada were lower than for Eastern Canada in 2011 and the first half of 2012.[186]

299. Atlas Tube submitted that its average net income per unit showed a similar divergence by region. In particular, while its average net income per unit was negative for both regions in 2009 and 2010, it was positive on sales in Eastern Canada in 2011 and the first half of 2012, but remained negative in Western Canada.[187] Atlas Tube alleged that the difference in average net income per unit between Eastern Canada and Western Canada caused a significant loss of income.[188]

300. Atlas Tube submitted that the difficulty that it experienced in growing its sales in the rapidly expanding market for steel piling pipe in Western Canada had led to an underutilization of production capacity, with lower production volumes, in turn resulting in lower employment.[189]

301. DFI submitted that domestic producers were unable to share in the market growth of 2011 and 2012, with DFI's sales from domestic production being lower in 2011 than in 2009 and with increasingly large volumes of Chinese steel piling pipe having had a serious impact on DFI's business in 2011.[190]

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182. Manufacturer's Exhibit A-01 at para. 117, Administrative Record, Vol. 11.
183. Manufacturer's Exhibit A-01 at para. 4, Administrative Record, Vol. 11.
184. Manufacturer's Exhibit A-10 (protected), tab 1 at 5-7, Administrative Record, Vol. 12.
185. Manufacturer's Exhibit A-01 at paras. 121-22, Administrative Record, Vol. 11.
186. Manufacturer's Exhibit A-02 (protected) at paras. 126-27, Administrative Record, Vol. 12.
187. Manufacturer's Exhibit A-02 (protected) at 53, 54, Administrative Record, Vol. 12.
188. Manufacturer's Exhibit A-02 (protected) at paras. 128-31, Administrative Record, Vol. 12.
189. Manufacturer's Exhibit A-02 (protected) at paras. 132-33, Administrative Record, Vol. 12.
190. Manufacturer's Exhibit B-01 at paras. 2, 5, 6, Administrative Record, Vol. 11B; Manufacturer's Exhibit B-01 at para. 12, Administrative Record, Vol. 11B; Manufacturer's Exhibit B-04 (protected) at para. 19, Administrative Record, Vol. 12A.

302. DFI indicated that it was operating below half of its capacity over the POI.[191] It submitted that, in 2012, it increased production of steel piling pipe in anticipation of an improved market, but additional sales did not materialize due to the increased volumes of the subject goods in the Canadian market. The forgone sales have resulted in a build-up of inventory.[192]

303. DFI claimed that the price undercutting of the subject goods in the steel piling pipe market is evident, adding that the sale of the subject goods to distributors at prices below its own cost of production and, in certain instances, below its purchase cost for hot-rolled coil explains the significant price suppression or price erosion.[193]

304. Pipe & Piling argued that any material injury to Atlas Tube, if it indeed existed, was self-inflicted, that there was no link between any injury being suffered by Atlas Tube and the dumping and subsidizing of the subject goods and that any injury must be attributed to factors other than dumping and subsidizing.[194]

305. Pipe & Piling alleged that Atlas Tube was a new entrant to the steel piling pipe market in Western Canada, that it had not yet developed an adequate sales network, that it did not yet have the reputation of a reliable supplier[195] and that its market penetration objectives were, and remain, overly optimistic.[196]

306. Pipe & Piling claimed that Atlas Tube's lost sales, if any, were the result of its insufficient sales effort, in part due to its limited sales force, and an ". . . incoherent marketing strategy"[197] for Western Canada. In this regard, and as evidence of an ineffectual marketing strategy, Pipe & Piling testified that, despite it being the largest distributor in Western Canada, it has never been approached by any of Atlas Tube's sales staff.[198]

307. Pipe & Piling suggested that the marketing and selling of steel piling pipe to end users is a departure from Atlas Tube's business model of selling to distributors. In doing so, Pipe & Piling alleged that Atlas Tube sent confusing signals to the distributors in Western Canada with which it was purportedly trying to develop a business relationship.[199]

308. Lastly, Pipe & Piling contended that Atlas Tube's production and capacity utilization had been reduced by the fact that steel piling pipe orders were being filled out of Atlas Tube's Chicago facility rather than being produced at its Harrow facility.[200]

309. Atlas Tube countered that it was not a new entrant to Western Canada, since it had been active for many years in that market as a supplier of hollow structural steel tubing. Atlas added that it was known by

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191. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 270; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 140.
192. Manufacturer's Exhibit B-01 at para. 5, Administrative Record, Vol. 11B.
193. Manufacturer's Exhibit B-03 at para. 25, Administrative Record, Vol. 11B.
194. Importer's Exhibit C-02 at paras. 4-5, 70, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 4, 1 November 2012, at 543, 544.
195. *Transcript of Public Hearing*, Vol. 4, 1 November 2012, at 537, 538; Importer's Exhibit C-02 at para. 69, Administrative Record, Vol. 13.
196. *Transcript of Public Hearing*, Vol. 4, 1 November 2012, at 537, 538.
197. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 434.
198. *Ibid.* at 348.
199. *Ibid.* at 349-50.
200. Importer's Exhibit C-02 at para. 116, Administrative Record, Vol. 13.

distributors of steel piling pipe, such as Varsteel, a long-time customer, that buys more than 50 percent of its purchases from Atlas Tube.[201]

310. Atlas Tube argued that its market penetration objectives were reasonable and not unduly optimistic. According to Atlas Tube, at the time of the recession, it had identified Western Canada as an attractive market for its steel piling pipe. At the beginning, Atlas Tube tried to sell steel piling pipe to the largest distributors with which it was already familiar, including Pipe & Piling,[202] but after several attempts, Atlas Tube realized that it could not compete with the subject goods.

311. Atlas Tube submitted that its marketing strategy in Western Canada was, and remains, to target the distributor trade level. It explained that there are only three or four large distributors representing 80 percent of its sales of all products.[203] Atlas Tube testified that it has the necessary resources to achieve sales in Western Canada.[204]

312. Turning to DFI, Pipe & Piling submitted that DFI had not pursued selling opportunities throughout Western Canada. In this regard, Pipe & Piling claimed that DFI produces steel piling pipe for its own consumption and not for sale into the merchant market. Specifically, Pipe & Piling alleged that DFI refused to sell steel piling pipe to distributors and end users. Pipe & Piling submitted that these self-imposed limitations were holding back DFI's sales of steel piling pipe.[205]

Sales From Domestic Production and Market Share

313. The Tribunal notes that sales from domestic production remained relatively stable throughout the 2009-2011 period before increasing significantly in the first half of 2012, to almost double the amount in the same period of 2011.

314. During the contraction in the market in 2010, domestic producers were able to increase their market share by 12 percentage points. However, in 2011, despite an increase of 150 percent in the size of the market, sales from domestic production declined slightly, with the domestic industry's market share plummeting by 39 percentage points. Even with increased sales in the first half of 2012, the domestic industry's market share managed to recover only to the level achieved at the start of the POI.

315. In contrast, the Tribunal notes that, in 2011, the subject goods captured virtually all the increase in the domestic market.

316. The domestic industry's performance in terms of sales value and market share in value terms followed a similar trend to sales volumes.

317. The Tribunal has considered Pipe & Piling's arguments that any injury suffered by Atlas Tube was self-inflicted because of its late entry in the market and/or its insufficient sales efforts and incoherent marketing strategy in the steel piling pipe market in Western Canada.

318. The Tribunal notes that Atlas Tube only entered the rapidly expanding market for steel piling pipe in Western Canada in 2009, even though testimony before the Tribunal indicated that demand for steel

201. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 52-53.
202. *Ibid.* at 22-23.
203. *Ibid.* at 44.
204. *Ibid.*
205. Importer's Exhibit C-01 (protected) at paras. 127-30, Administrative Record, Vol. 14.

piling pipe in Western Canada had been growing strongly since about 2000.[206] In the meantime, other distributors filled the void and became entrenched as reliable suppliers serving Western Canada.

319. The Tribunal agrees with Pipe & Piling that, as a late comer to the steel pipe and piling market in Western Canada, Atlas Tube could not have reasonably expected to achieve significant market penetration in the short term, even if it was already familiar with some of the large distributors operating in the region. In this regard, and given the importance of supplier reliability, including the timely fulfillment of piling pipe purchase orders, the forging of relationships with potential customers usually takes some time. Accordingly, a new entrant could not reasonably expect to immediately capture a large share of the market.

320. The Tribunal considers that Atlas Tube's expectations in terms of its potential rate of market penetration may have been overly optimistic. Furthermore, its decision to sell to both distributors and end users may have conveyed mixed signals to its preferred, distributor-level, customer base.

321. That being said, there is no testimony or other evidence on the record indicating that Atlas Tube's sales to end users had undercut or otherwise alienated its potential distributor-level customer base. More specifically, there is no positive evidence that Atlas Tube's strategy of not selling exclusively to distributors has resulted in lost sales or, alternatively, that distributors will not buy from Atlas Tube because it had occasionally sold directly to end users. The evidence shows, in this regard, that Atlas Tube's sales volumes at the end-user level over the POI were relatively small.[207]

322. Therefore, on the basis of the evidence before it, the Tribunal is of the view that Atlas Tube's business decisions may have had some adverse impact on its domestic sales of steel piling pipe in Western Canada. Indeed, the Tribunal is of the view that, had Atlas Tube established a more conspicuous presence in this part of the Canadian steel piling pipe market earlier, it likely would have been in a much stronger position to share in the significant growth in the steel piling pipe market over the POI. For this reason, the Tribunal cannot attribute the loss of this business to any negative impact from the subject goods.

323. However, the Tribunal is not convinced that Atlas Tube's business decisions entirely explain its inability, let alone DFI's inability, to share in the growth in the domestic steel piling pipe market over the POI. In the Tribunal's view, it is likely that the domestic industry lost a small volume of sales as a result of the presence of imports of the subject goods in the market.

Production and Capacity Utilization

324. As noted above, domestic production of the like goods remained relatively stable from 2009 to 2011, before increasing in the first half of 2012. More specifically, after declining by 5 percent in 2010, domestic production increased by 8 percent in 2011, for a net increase of only 2 percent from 2009 to 2011. Domestic production then increased significantly by 72 percent in the first half of 2012 compared to the same period in 2011. This latter increase was largely due to a significant increase in DFI's production in the first half of 2012 in anticipation of improved market conditions.

206. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 344.
207. Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 38, 58.

325. As a consequence, capacity utilization dedicated to the production of the like goods remained low but stable over the POI, with the exception of a 9 percentage point increase in the first half of 2012 compared to the same period in 2011.[208]

326. The absence of significant improvement in domestic production volume and capacity utilization takes on added significance when juxtaposed against an apparent market that doubled between 2009 and 2011 and continued to expand in the first half of 2012.

327. With respect to Pipe & Piling's assertions that the production volumes and capacity utilization at Atlas Tube's Harrow facility were intentionally reduced by its own decision to produce the like goods at its Chicago plant, the Tribunal finds that these assertions to be largely unsubstantiated by the evidence on the record. The testimony of the witnesses for Atlas Tube corroborates other evidence on the record that the volumes of steel piling pipe produced at Atlas Tube's Chicago facility and sold in Canada were insignificant.[209]

328. In view of the above, the Tribunal finds that the growing volumes of the subject goods in the expanding Canadian market for steel piling pipe had a negative impact on the production and capacity utilization rates of the domestic industry.

Financial Results

329. The consolidated financial performance of the domestic industry showed a continuous improvement over the POI, in terms of both total sales and sales on a per unit basis.[210] Indeed, both gross margins and net income increased over the period.[211] Net income as a percent of sales increased by more than 50 percent between 2009 and 2011.[212] The first half of 2012 compared to the same period in 2011 shows an even larger improvement in financial performance.

330. On the basis of the foregoing, the Tribunal is of the view that the domestic industry's performance has been positive and improved over the POI.

Other Indicators

331. The Tribunal notes that paragraph 37.1(1)(*c*) of the *Regulations* prescribes that the Tribunal consider certain factors, in addition to those discussed above, in its assessment of the impact of the dumped and subsidized goods on the domestic industry. These factors include any actual or potential decline in productivity or return on investments, any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, and the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods.

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208. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 200.
209. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 26; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 12A at 29-36.
210. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 194.
211. *Ibid.*
212. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 171.

– Employment and Productivity

332. The Tribunal notes that the domestic industry realized growth in direct employment over the POI.[213] In particular, the evidence shows that direct employment increased substantially in 2011 and the first half of 2012. Likewise, the evidence shows that wages and hours worked increased in 2011 and the first half of 2012.[214]

333. In addition to the growth in direct employment, the record indicates improved productivity in terms of both tonnes per hour and tonnes per employee during the period commensurate with the growth in the apparent market.[215]

– Inventories

334. The Tribunal observes that inventories of finished goods held by domestic producers remained fairly stable over the 2009-2010 period. However, coincident with the significant increase in imports of the subject goods, inventory volumes of the like goods increased by almost 50 percent from 2010 to 2011. Inventories for the first half of 2012 were approximately 50 percent higher than in the same period of 2011.[216]

335. The build-up in inventories of finished goods by domestic producers is also evident through an analysis of the trend in the sales-to-inventory ratio, also referred to as inventory turnover. This ratio was 5.2 in 2009 and improved to 6.6 in 2010. Inventory turnover then declined to 4.4 in 2011. For the first half of 2012, the ratio was 2.3, only slightly better than the 1.9 ratio for the first half of 2011.[217]

Margins of Dumping and Amounts of Subsidy

336. Subparagraph 37.1(1)(*c*)(ii.1) of the *Regulations* also prescribes that the Tribunal consider in its assessment ". . . the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods . . . ." The Tribunal notes that the CBSA's information on the subject goods shows that the estimated weighted average margin of dumping and estimated overall weighted average amount of subsidy were not insignificant.[218]

337. The Tribunal is of the view that the magnitude of the margins of dumping and amounts of subsidy were not insignificant.

CONCLUSION

338. In conclusion, the Tribunal finds that, despite a significant increase in the volume of imports of the subject goods in the rapidly expanding market for steel piling pipe during the POI, the domestic industry generally performed well and was able to increase its selling prices and improve financial performance

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213. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 196.
214. *Ibid.* at 197, 198.
215. *Ibid.* at 199.
216. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 114.
217. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 174; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 114.
218. Tribunal Exhibit NQ-2012-002-04, Administrative Record, Vol. 1 at 213-28.

(including gross margin and net income), productivity, employment and wages, in addition to maintaining its sales volume, production, capacity and capacity utilization.

339. In the Tribunal's view, while the evidence suggests that the subject imports had some degree of adverse effect on the price of the like goods during the POI, the resulting injury to the domestic industry did not attain a level of significance that would render it "material", within the intended meaning of that term under *SIMA*. Specifically, the resulting impact on the domestic industry's performance and, in particular, on its sales revenues and market share in Western Canada cannot be considered "material" when assessed against the domestic production of like goods as a whole and the domestic industry's overall performance in the Canadian market during the POI. Indeed, DFI conceded that it had not experienced injury due to imports of the subject goods.[219]

THREAT OF INJURY

340. Having found that the subject goods have not caused injury, the Tribunal must now consider whether they are threatening to cause injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors relevant to a threat of injury analysis.[220] Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent.

341. In conducting its analysis of threat of injury, the Tribunal typically considers a time frame of up to 24 months beyond the date of its finding. Having regard to the limitations imposed by the available data in this case, the Tribunal considers it appropriate to focus on a period of approximately 12 to 18 months.

342. Atlas Tube argued that there was a threat of injury from the subject goods. It submitted that the domination of the market by the subject goods had only been possible through massive dumping and subsidizing. In this regard, Atlas Tube argued that injury to domestic production would become more serious unless permanent anti-dumping and countervailing duties were imposed.[221]

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219. Manufacturer's Exhibit B-03 at para. 21, Administrative Record, Vol. 11B.

220. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (*a*) the nature of the subsidy in question and the effects it is likely to have on trade; (*b*) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (*c*) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (*d*) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (*e*) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (*f*) inventories of the goods; (*g*) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (*g*.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (*g*.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (*h*) any other factors that are relevant in the circumstances."

221. Manufacturer's Exhibit A-01 at para. 6, Administrative Record, Vol. 11.

343. Atlas Tube contended that there is a demonstrated propensity on the part of Chinese producers to export dumped and subsidized carbon and alloy steel pipe products onto world markets.[222]

344. According to Atlas Tube, import permit data showed a clear and substantial rate of growth in imports of the subject goods from 2010 to the first half of 2012.[223] Atlas Tube submitted that the extent and progressive nature of this growth over this short period was evidence of a likelihood of continued import penetration into the latter half of 2012 and into the near future.[224]

345. Atlas Tube submitted that the magnitude of Chinese welded pipe and tube production has been reviewed previously by the Tribunal.[225] While those data cover all classes of welded pipe and tubes, there is little doubt that the scale of Chinese piling pipe production and freely disposable capacity are many times the size of the total Canadian market for these goods.[226]

346. Atlas Tube noted that Chinese producers are export oriented and that export sales have become more critical for Chinese producers of piling pipe as a result of the current economic slowdown in the steel industry in China.[227] In this regard, Atlas Tube noted that the main Canadian importers and distributors of the subject goods, i.e. Pipe & Piling, Platinum Grover and the Varsteel/Dominion Pipe group, have large stocking facilities and well-established channels to source and distribute imported products throughout the Canadian market.[228]

347. Atlas Tube reported making significant investments in the production of steel piling pipe at its Harrow facility. It submitted that, should the presence of dumped and subsidized Chinese goods in Western Canada continue, it would have a seriously negative effect on the expected returns on these investments.[229]

348. DFI alleged that the Chinese propensity to sell at below market prices and the excess capacity in China provides incentive to export, thus threatening to cause injury to the domestic industry.[230] It further alleged that Chinese importers of OCTG can switch between pipe products, as became evident after the Tribunal's finding in *Oil and Gas Well Casing*, which led to an increase in imports of steel tubing, which, in turn, were subsequently investigated in *OCTG*.[231]

349. DFI submitted that the large volumes of the subject goods imported into Canada were suppressing the selling prices realized by steel piling pipe manufacturers, including DFI, to approximately the cost of producing the steel piling pipe and even to the cost of the hot-rolled coil substrate. If DFI's manufacturing division were to transfer pipe to the installation/service division at prevailing market prices, it would be in danger of having to close its steel piling pipe mill.[232]

350. DFI submitted that its inventory of steel piling pipe has increased rapidly in conjunction with the rapid increase in the level of the subject goods into the Canadian market in 2011 and the first half of 2012.[233]

222. Manufacturer's Exhibit A-01 at paras. 175-78, Administrative Record, Vol. 11.
223. Manufacturer's Exhibit A-01 at paras. 83-84, Administrative Record, Vol. 11.
224. Manufacturer's Exhibit A-01 at paras. 85, 151, Administrative Record, Vol. 11.
225. Manufacturer's Exhibit A-01 at paras. 152-56, Administrative Record, Vol. 11.
226. Manufacturer's Exhibit A-01 at para. 152, Administrative Record, Vol. 11.
227. Manufacturer's Exhibit A-01 at para. 159, Administrative Record, Vol. 11.
228. Manufacturer's Exhibit A-01 at paras. 163-64, Administrative Record, Vol. 11.
229. Manufacturer's Exhibit A-01 at paras. 135-36, Administrative Record, Vol. 11.
230. Manufacturer's Exhibit B-01 at para. 7, Administrative Record, Vol. 11B.
231. Manufacturer's Exhibit B-01 at para. 16, Administrative Record, Vol. 11B.
232. Manufacturer's Exhibit B-03 at paras. 25-26, Administrative Record, Vol. 11B.
233. Manufacturer's Exhibit B-01 at para. 5, Administrative Record, Vol. 11B; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 15, 17.

351. The Tribunal notes, on the basis of the evidence before it, that the Canadian economic outlook is positive for the remainder of 2012 and 2013, with forecasted GDP growth of approximately 2.6 percent in 2012 and 2013.[234] With a growth rate of 4 percent, Alberta is projected to achieve the highest growth of all Canadian provinces for 2012. Due to their heavy exposure to the natural resource sector, both Alberta and Saskatchewan are expected to grow by 3.9 percent in 2013, which will be the highest growth rate of all provinces and territories.[235]

352. Indeed, as noted above, forecasts are for increased capital spending in the oil and gas construction and extraction industry in Alberta and Saskatchewan in 2012 and 2013. This suggests continued expansion of the piling pipe market in Western Canada above 2011 levels.[236]

353. The Tribunal heard testimony that the oil and gas industry was expected to increase activity levels in 2012, which were already on track to exceed those of 2011, and that the increase would continue in 2013.[237]

354. In light of this evidence, the Tribunal is of the view that there will likely be an increase in activity in the oil and gas industry in the next 12 to 18 months.

355. The evidence on the record shows that the steel piling pipe market has consistently followed the trends of the oil and gas sectors.[238] The evidence also shows, as noted above, that the performance of the oil and gas industry affects the demand for steel piling pipe.[239]

356. The Tribunal heard corroborating testimony from witnesses, who indicated that the performance of the oil and gas industry was indicative of the performance of the steel piling pipe market, which is expected to expand in 2012 and 2013, to levels above those reached in 2011.[240]

357. In light of this evidence, the Tribunal is of the view that, as activity and capital expenditures in the oil and gas industry are expected to increase in 2012 and 2013, there will be a corresponding increase in demand for steel piling pipe in the Canadian market in the next 12 to 18 months.

358. The positive outlook for the domestic market is in contrast to the forecasts for the global economy, including China, the United States and Europe.[241] The relatively slower pace of economic growth in these regions will accentuate the attractiveness of Canada as one of the few markets with growth opportunities.

359. The Tribunal also considers that Chinese exporters would capture the lion's share of the projected growth in the Canadian steel piling pipe market in the next 12 to 18 months, given their propensity toward aggressive pricing and marketing behaviour, as clearly demonstrated in 2011 when, despite a 150 percent increase in the size of the Canadian market, sales from domestic production actually declined, with China appropriating most of that growth, with subject imports having increased by 467 percent that year.

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234. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 74.
235. *Ibid.*
236. Manufacturer's Exhibit A-01 at para. 67, Administrative Record, Vol. 11.
237. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 210-11; Manufacturer's Exhibit A-07 at paras. 9-10, Administrative Record, Vol. 11.
238. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 169, 174.
239. Manufacturer's Exhibit A-07 at para. 9, Administrative Record, Vol. 11; Manufacturer's Exhibit A-01 at paras. 23, 64, 67; Administrative Record, Vol. 11; Manufacturer's Exhibit B-03 at para. 12, Administrative Record, Vol. 11B; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 124-25.
240. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 124, 125; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 210-11.
241. Manufacturer's Exhibit B-04 (protected) at 12, 264-65, Administrative Record, Vol. 12A.

360. In the Tribunal's view, the testimony of several witnesses also supports the submission by domestic producers that the U.S. and Canadian steel piling pipe markets are integrated into a single North American market[242] and that, therefore, the Canadian steel piling pipe industry is sensitive to the risk of trade diversion of steel piling pipe from the United States to Canada.[243]

361. The Tribunal has no doubt, on the basis of the evidence of its export performance in 2011, that China has both sufficient available capacity and the inclination to capture any growth in the Canadian market for steel piling pipe. Indeed, the evidence indicates that there are a large number of steel piling pipe producers in China[244] with a large underutilized capacity that can be devoted to the production of the subject goods.[245]

362. The evidence shows that imports of the subject goods have been and continue to be imported at a laid-in price much lower than the selling price of the like goods.[246]

363. The Tribunal considers that there is a real possibility that, should the price undercutting continue, additional distributors or purchasers of domestic steel piling pipe may choose to import directly. Indeed, Varsteel testified that, since 2010, it had been actively sourcing the subject goods, with China becoming the main source of its imports of steel piling pipe in 2011.

364. Testimony before the Tribunal has indicated that exports of the subject goods from China are continuing to land in Western Canada at even lower prices than the prices of the subject goods observed during the POI.[247]

365. Should this trend continue, which the Tribunal considers likely given the general economic outlook described above, domestic producers of steel piling pipe will experience increased pricing and market pressures from dumped and subsidized steel piling pipe, which can be expected to have serious repercussions on domestic sales and domestic producers' financial performance. The Tribunal is convinced that there is a real risk that these increased pressures would ultimately drive producers rapidly toward a pricing "cliff" beyond which production in Canada of steel piling pipe would be materially, if not fatally, injured.

366. DFI submitted that the continued importation of the subject goods at delivered prices that have been only marginally above the cost to Canadian producers of hot-rolled steel coil would likely compel it, as a rational economic actor in the pile-driving market, to de-commission its dedicated pipe mill.[248]

367. Similarly, the Tribunal is of the view that the price and market pressures experienced by Atlas Tube in 2011 and the first half of 2012, as a result of the dumped and subsidized goods, will continue and likely be more pronounced into the next 12 to 18 months. In this regard, the Tribunal agrees with Atlas Tube that circumstances will change compared to the 2009-2010 period and will lead to increased imports of even lower-priced steel piling pipe from China.[249]

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242. *Transcript of In Camera Hearing*, Vol. 1, 29 October 2012, at 4-5, 15, 64, 67.
243. Manufacturer's Exhibit A-09, tab 12 at 206, Administrative Record, Vol. 11A; Manufacturer's Exhibit A-01 01 at paras. 179-80, Administrative Record Vol. 11.
244. Tribunal Exhibit NQ-2012-002-05 (protected), Administrative Record, Vol. 2 at 23.6-23.20.
245. Manufacturer's Exhibit B-03 at para. 38, Administrative Record, Vol. 11B.
246. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 363-65, 367-68; *Transcript of In Camera Hearing*, Vol. 3, 31 October 2012, at 180, 189-200; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 173, 180, 188, 213.
247. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 212; *Transcript of In Camera Hearing*, Vol. 2, 30 October 2012, at 77-78.
248. Manufacturer's Exhibit B-04 (protected) at paras. 25, 26, 42-43, Administrative Record, Vol. 12A.
249. *Transcript of Public Hearing*, Vol. 4, 29 October 2012, at 596-97.

368. The relative pricing trends of the subject goods threatens Atlas Tube's continued participation in the growing market for steel piling pipe in Western Canada. The loss of sales and revenues would result in a decline in the economies of scale realized from the production of larger volumes of steel piling pipe and in related employment levels and wages, as well as severely affecting the expected return on investment made to the Harrow facility to service the market for steel piling pipe in Western Canada.

369. In light of the above, the Tribunal considers that there is a clearly imminent and foreseeable threat that the expected price competition and volumes from dumped and subsidized goods will result in price depression, price suppression and loss of sales to the domestic industry which, in turn, will result in reduced domestic production, capacity utilization and negative indices of financial performance.

370. The *Regulations* also require the Tribunal to examine a series of other factors to determine if any factors other than the dumping and subsidizing are threatening to cause injury and to ensure that any threat of injury attributable to those factors is not attributed to the subject goods.

371. The Tribunal finds that the evidence does not disclose that there are other factors on the horizon in the next 12 to 18 months that, independent of the dumping and subsidizing of the subject goods, threaten to cause injury to the domestic industry. Indeed, as noted above, the market for steel piling pipe is likely to continue to grow, which, all other things being equal, would represent an opportunity for the domestic industry to improve its performance. Thus, the Tribunal finds that any threat of injury to the domestic production of like goods is directly attributable to the likely volume and prices of the subject goods.

372. The Tribunal therefore finds that, looking forward to the next 12 to 18 months, the circumstances in which the subject goods would cause injury are clearly foreseen and imminent. For these reasons, the Tribunal finds that the subject goods are threatening to cause injury to the domestic industry.

CONCLUSION

373. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of the subject goods have not caused injury but are threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member

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The Law of the People’s Republic of China on Enterprise Income Tax

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Chapter One General Provisions

Article 1 Taxpayers of enterprise income tax shall be enterprises and other

organizations that obtain income within the People's Republic of China (hereinafter referred to as "Enterprises") and shall pay enterprise income tax in accordance with the provisions of this Law.

This Law shall not apply to wholly individually-owned enterprises and partnership enterprises.

Article 2 Enterprises are divided into resident enterprises and non-resident enterprises. For the purposes of this Law, the term "resident enterprises" shall refer to Enterprises that are set up in China in accordance with the law, or that are set up in accordance with the law of the foreign country (region) whose actual administration institution is in China. For the purposes of this Law, the term "non-resident enterprises" shall refer to

Enterprises that are set up in accordance with the law of the foreign country (region) whose actual administration institution is outside China, but they have set up institutions or establishments in China or they have income originating from China without setting up institutions or establishments in China.

Article 3 Resident enterprises shall pay enterprise income tax originating both within and outside China.

Non-resident enterprises that have set up institutions or premises in China shall pay enterprise income tax in relation to the income originating from China obtained by their institutions or establishments, and the income incurred outside China but there is an actual relationship with the institutions or establishments set up by such enterprises.

Where non-resident enterprises that have not set up institutions or establishments in China, or where institutions or establishments are set up but there is no actual relationship with the income obtained by the institutions or establishments set up by such enterprises, they shall pay enterprise income tax in relation to the income originating from China. Article 4 The rate of enterprise income tax shall be 25%.

Non-resident enterprises that have obtained income in accordance with the provisions of Paragraph Three of Article 3 hereof, the applicable tax rate shall be 20%.

Chapter Two Taxable Income

Article 5 The balance derived from the total income in each taxable year of Enterprises, after deduction of the non-taxable income, tax exempted income, other deductions and the making up of losses of previous years shall be the taxable income.

Article 6 Income obtained by Enterprises from various sources in monetary and non-monetary terms shall be the total income, including

1. income from sale of goods;

2. income from provision of labour services;

3. income from transfer of property;

4. income from equity investment such as dividend and bonus;

5. interest income;

6. rental income;

7. income from royalties;

8. income from donations; and

9. other income.

Article 7 The following income from the total income shall not be taxable

1. financial funding;

2. administrative fees and government funds obtained and included in financial management in accordance with the law; and

3. other non-taxable income prescribed by the State Council.

Article 8 Reasonable expenses that are relevant to the income actually incurred and obtained by Enterprises, including costs, fees, tax payments, losses and other fees may be deducted from the taxable income.

Article 9 In relation to the expenses from charitable donations incurred by Enterprises, the portion within 12% of the total annual profit may be deducted from the taxable income. Article 10 The following expenses may not be deducted from the taxable income

1. income from equity investment paid to investors such as dividend and bonus;

2. payment of enterprise income tax;

3. late payment fines;

4. penalties; fines and losses from confiscated

property;

5. expenses from donations other than those prescribed in Article 9 hereof;

6. sponsorship fees;

7. expenses for non-verified provisions; and

8. other expenses irrelevant to the income obtained.

Article 11 Where Enterprises compute the taxable income, the depreciation of fixed assets calculated in accordance with provisions may be deducted.

No depreciation may be deducted for the following fixed assets

1. fixed assets other than premises and buildings that have not yet been used;

2. fixed assets leased from other parties by means of business lease;

3. fixed assets leased to other parties by means of lease financing;

4. fixed assets that have been depreciated in full but are still in use;

5. fixed assets that are irrelevant to business activities;

6. land credited as fixed assets after independent price valuation;

7. other fixed assets whose depreciation may not be calculated.

Article 12 In Enterprises compute the taxable income, the amortization of intangible assets calculated in accordance with provisions may be deducted.

The amortization of the following intangible assets may not be deducted

1. the fees for self development of intangible assets that have been deducted from the taxable income;

2. self-created goodwill;

3. intangible assets that are irrelevant to business activities; and

4. other intangible assets whose amortization fee may not be calculated.

Article 13 Where Enterprises calculate taxable income, the following expenses incurred by Enterprises as long-term fees to be amortized and that are amortized in accordance with provisions may be deducted

1. reconstruction expenses for fixed assets that have been depreciated in full;

2. reconstruction expenses for fixed assets leased from other parties;

3. heavy repair expenses of fixed assets; and

4. other expenses that shall be treated as long-term amortization fees.

Article 14 During the period when Enterprises invest outside the territory, the cost of investment in assets may not be deducted from the taxable income.

Article 15 The inventory used or sold by Enterprises whose cost is calculated in accordance with provisions may be deducted from the taxable income.

Article 16 Where Enterprises transfer assets, the net value thereof may be deducted from the taxable income.

Article 17 Where Enterprises compute the consolidated enterprise income tax, the losses of business institutions outside the territory may not be offset by the profits of business institutions inside the territory.

Article 18 Where there is a loss in a taxable year of Enterprises, it may be brought forward to the succeeding years and made up by the income of succeeding years, but the limit of bringing forward may not exceed five years.

Article 19 Where non-resident enterprises obtain income provided in Paragraph Three of Article 3 hereof, the taxable income shall be calculated in accordance with the following methods

1. income from equity investment such as dividend and bonus and interest income, rental income and royalties, the total income shall be the taxable income;

2. income from property transfer, the balance derived from the deduction of net asset value from the total income shall be the taxable income;

3. other income whose taxable income shall be calculated with reference to the previous two methods.

Article 20 The income, specific scope and standard of deduction and the specific method of taxation treatment of assets prescribed in this Chapter shall be provided by the departments in charge of finance and taxation under the State Council.

Article 21 In computing the taxable income, where financial and accounting treatment methods of Enterprises are inconsistent with tax laws and administrative regulations, such taxable income shall be computed in accordance with tax laws and administrative regulations.

Chapter Three Payable Tax

Article 22 The taxable income of Enterprises shall be the balance derived from the

taxable income of Enterprises multiplies the applicable rate and minus the tax amount of tax reduction and exemption pursuant to the preferential tax treatment hereof.

Article 23 The income tax that has been paid outside the territory for the following

income obtained by Enterprises may be offset from the payable tax of the current period. The offset limit is the payable tax calculated in accordance with provisions hereof in respect of the income of such item, the portion in excess of the offset limit may be made up by the balance of the offset amount of the current year out of the annual offset limit within the next five years

1. The taxable income originating outside China by resident enterprises;

2. The taxable income incurred outside China that is obtained by institutions or

establishments of non-resident enterprises set up in China with an actual relationship with such institution or establishment.

Article 24 Where income from equity investment such as dividend and bonus originating outside the territory of China is shared by foreign enterprises directly or indirectly controlled by resident enterprises, the portion undertaken by foreign enterprises in the actual income tax actually paid outside the territory by foreign enterprises may be offset in the offset limit prescribed in Article 23 hereof as the income tax that may be offset outside the territory by such resident enterprises.

Chapter Four Preferential Tax Treatment

Article 25 The industries and projects with key support and under encouraged development by the State may be given preferential enterprise income tax treatment. Article 26 The following income of

Enterprises shall be tax-exempted income

1. income from interests on government bonds;

2. income from equity investment income such as dividend and bonus between qualified resident enterprises;

3. income from equity investment such as dividend and bonus obtained from resident enterprises by non-resident enterprises that have set up institutions or establishments in China with an actual relationship with such institutions or establishments;

4. income of qualified non-profit organizations.

Article 27 The following income may be subject to exempted or reduced enterprise income tax

1. income from engaging in projects of agriculture, forestry, animal husbandry and fisheries by Enterprises;

2. income from investment and operation of infrastructure projects with key state support such as habour, pier, airport, railway, highway, electricity and hydroelectricity by Enterprises;

3. income from engaging in qualified projects of environmental protection and energy and water

conservation;

4. income from qualified transfer of technology by Enterprises; and

5. income prescribed by Paragraph Three of Article 3 hereof.

Article 28 Small-scale Enterprises with minimal profits that are qualified are subject to the applicable enterprise income tax rate with a reduction of 20%.

High and new technology Enterprises that require key state support are subject to the applicable enterprise income tax rate with a reduction of 15%.

Article 29 The autonomous authority of ethnic autonomous locality may decide on the reduction or exemption of the portion of enterprise income tax shared by the locality that shall be paid by Enterprises of the ethnic autonomous locality. Where an autonomous

prefecture or autonomous county decides on the reduction or exemption, they must report to

the people’ s government of province, autonomous region or municipality directly under the central government for approval.

Article 30 Weighted deduction may be computed in taxable income for the following expenses of Enterprises

1. research and development fees incurred by Enterprises in the development of new technology, new products and new skills; and

2. the wages paid by Enterprises for job placement of the disabled and of other personnel encouraged by the State.

Article 31 Venture investment enterprises that engage in venture investment requiring key state support and encouragement may offset the taxable income at a certain ratio of the investment amount.

Article 32 Where the fixed assets of Enterprises actually require accelerated

depreciation due to technology advancement, the years of depreciation may be shortened or the accelerated depreciation method may be adopted.

Article 33 The income obtained by Enterprises from the production of products in line with state industrial policies through comprehensive use of resources may be deducted from the taxable income.

Article 34 The investment by Enterprises on procurement of special facilities for environmental protection, energy and water conservation and safe production may be subject to an offset tax amount at a certain ratio.

Article 35 The specific measures of preferential tax treatment prescribed by this Law shall be formulated by the State Council.

Article 36 Where there is a significant impact on the business activities of Enterprises pursuant to the needs of national economy and social development, or due to unexpected public incidents, the State Council may formulate the special preferential policy of enterprise income tax and report to the Standing Committee of the National People’s Congress for the record.

Chapter Five Tax Withheld at Source

Article 37 The payable income tax from income obtained by non-resident enterprises in accordance with Paragraph Three of Article 3 hereof shall be subject to tax withheld at

source, with the payer as the withholding agent. The tax payment shall be withheld from the amount paid or the payable amount due from each tax payment and payable amount of the withholding agent.

Article 38 In respect of the payable income tax from income obtained by non-resident enterprises from project works and labour services in China, the tax authority may designate the payer of project price or labour fee as withholding agent.

Article 39 In respect of the income tax that shall be withheld in accordance with Articles 37 and 38 hereof, where the withholding agent has not withheld or fails to perform the

withholding obligation in accordance with the law, the taxpayer shall pay in the place where the tax is incurred. Where the taxpayer does not pay in accordance with the law, the tax authority may pursue the payable tax amount of such taxpayer from the amount payable by the payer of other income projects in China of such taxpayer.

Article 40 The withholding agent shall turn the tax payment withheld to the treasury within 7 days from the day of withholding, and submit a statement of withholding enterprise

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WORLD TRADE ORGANIZATION

G/SCM/N/155/CHN
G/SCM/N/186/CHN
21 October 2011

(11-5253)

Committee on Subsidies and Countervailing Measures

Original: English

SUBSIDIES

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures

CHINA

The following communication, dated 20 October 2011, is being circulated at the request of the Delegation of China.

The following notification constitutes China's new and full notification of information on programmes granted or maintained at the central government level during the period from 2005 to 2008.

Insofar as the notification is a transparency-orientated obligation that, pursuant to Article 25.7 of the SCM Agreement, does not prejudge either the legal status of the notified programmes under GATT 1994 and the SCM Agreement, the effects under the SCM Agreement or the nature of the programmes themselves, China has included certain programmes in this notification which arguably are not (or are not always) subsidies or specific subsidies subject to the notification obligation within the meaning of the SCM Agreement.

1.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested enterprises.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment.

4. Background and authority for the subsidy

Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM).

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise (1991);

State Council Circular Guo Fa No. 37 of 2000;

Law of the People's Republic of China on Enterprise Income Tax (2007);

Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);

State Council Circular Guo Fa No. 39 of 2007;

MOF Circular Cai Shui No. 1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) Any enterprise with foreign investment of a production nature to operate for a period of no less than 10 years shall, from the year beginning to make profit, be exempted from the enterprise income tax in the first and second years and allowed a reduction by half in the third to the fifth years ("2 years of exemption and 3 years of reduction by half");

2) Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly back into that enterprise to increase its registered capital, or uses the profit as capital investment to establish other enterprises with foreign investment to operate for a period of no less than 5 years may be refunded 40 per cent of the income tax already paid on the reinvested amount;

3) For direct reinvestment in China by foreign investors for the establishment or expansion of export-oriented enterprises or advanced technology enterprises, all the enterprise income tax that has been paid on the reinvested amount may be refunded;

4) Any foreign enterprise which has no establishment or place in China but derives profit, interest, rental, royalty and other income from sources in China, or which though having an establishment or a place in China, derives the said income in a way not effectively connected with such establishment or place, may, since 1 January 2000, be levied the enterprise income tax at the reduced rate of 10 per cent, however, the income tax of the profit that foreign investors make out of foreign invested enterprises shall all be exempted;

5) Income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of communications and transportation industries, agricultural, forestry and animal husbandry production, and the development of important technologies may be levied at the reduced rate of 10 per cent.

Where the technology supplied is advanced or the terms are favourable, the income tax may be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 1991 to the end of 2007, starting from 1 January 2008, enterprises registered before 16 March 2007 for their establishment which are eligible for the preferential treatment of "2 years of exemption and 3 years of reduction by half" may continue to enjoy the treatment till its expiration on them; among these enterprises, for those that have not started to enjoy the treatment due to the fact that they have not begun to make profit, the starting year for them to enjoy the treatment shall be 2008 instead of the year when they first begin to make profit;
2), 3) and 5) 1991 to the end of 2007;
4) 2000 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

2.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested export enterprises.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM.

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

Law of the People's Republic of China on Enterprise Income Tax (2007);

Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);

MOF Circular Cai Shui No. 1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Export-oriented foreign-invested enterprise which in any year has an output value of all export products amounting to 70 per cent or more of the total output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991) reduced by half after the period of enterprise income tax exemption or reduction that it enjoys has expired. However, export-oriented enterprises located in Special Economic Zones and economic and technological development zones and other such enterprises already subject to the reduced enterprise income tax rate of 15 per cent shall pay enterprise income tax at the tax rate of 10 per cent when qualified under the above-mentioned conditions.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1991 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

3.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment in agriculture, forestry or animal husbandry, and in remote underdeveloped areas.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM.

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);
Law of the People's Republic of China on Enterprise Income Tax (2007);
MOF Circular Cai Shui No. 1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas may, upon approval of their application by the competent department for tax affairs under the State Council, be allowed a 15 per cent to 30 per cent reduction of the amount of enterprise income tax payable for a period of another 10 years following the expiration of the period of enterprise income tax exemption or reduction that they enjoy in accordance with the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991).

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1991 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

4.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested enterprises engaged in energy, transportation infrastructure projects.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment in infrastructure construction.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM.

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise (1991);

State Council Circular Guo Fa No.13 of 1999;

Law of the People's Republic of China on Enterprise Income Tax (2007);

Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);

State Council Circular Guo Fa No. 39 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The enterprise income tax of foreign-invested enterprises engaged in energy and transportation infrastructure projects such as harbour and wharf projects may be levied at the reduced rate of 15 per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1999 to the end of 2007. Starting from 1 January 2008, eligible enterprises under this program registered before 16 March 2007 for their establishment were given a 5 year period to phase out the preferential tax treatment, i.e., in 2008, the applicable reduced enterprise income tax rate was 18 per cent; in 2009 it was 20 per cent; in 2010 it was 22 per cent; in 2011 it is 24 per cent; and finally in 2012 the statutory enterprise income tax rate of 25 per cent as stipulated in Law of the People's Republic of China on Enterprise Income Tax (2007) will be applied.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

5.

1. Title of the subsidy programme

Preferential tax policies for Chinese-foreign equity joint ventures engaged in port and dock construction.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into infrastructure construction.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM.

5. Legislation under which it is granted

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
State Council Circular Guo Fa No. 39 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Chinese-foreign equity joint ventures engaged in port and dock construction may be levied enterprise income tax at the reduced rate of 15 per cent; where the period of operation is 15 years or more, the equity joint ventures may be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit and then subject to enterprise income tax at the rate reduced by half for the sixth year through the tenth year ("5 years of exemption and 5 years of reduction by half").

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1999 to the end of 2007. Starting from 1 January 2008, eligible enterprises under this program registered before 16 March 2007 for their establishment were given a 5 year period to fulfil the transition from the preferential tax rate of 15 per cent to the statutory enterprise income tax rate of 25 per cent as stipulated in Law of the People's Republic of China on Enterprise Income Tax (2007), i.e., in 2008, the applicable reduced enterprise income tax rate was 18 per cent; in 2009 it was 20 per cent; in 2010 it was 22 per cent; in 2011 it is 24 per cent; and finally in 2012 the statutory enterprise income tax rate of 25 per cent will be applied; enterprises eligible for the preferential treatment of "5 years of exemption and 5 years of reduction by half" may continue to enjoy the treatment till its expiration on them, among these enterprises, for those that have not started to enjoy the treatment due to the fact that they have not begun to make profit, the starting year for them to enjoy the treatment shall be 2008 instead of the year when they first begin to make profit.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

6.

1. Title of the subsidy programme

Preferential tax policies for advanced technology enterprises with foreign investment.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, Ministry of Science and Technology (MOST).

5. Legislation under which it is granted

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise (1991);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007).

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Advanced technology enterprises with foreign investment which remain advanced technology enterprises after the period of enterprise income tax exemption or reduction has expired in accordance with the provisions of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991) may for an additional 3 years pay enterprise income tax at the tax rate specified in the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991) reduced by half.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1991 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

7.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment in the border cities.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment in border cities and expand their opening up and enhance the development of the border areas.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM.

5. Legislation under which it is granted

SAT Circular Guo Shui Han Fa No.1412 of 1992;
Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
State Council Circular Guo Fa No. 39 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The enterprise income tax of the foreign-invested enterprises of production nature established in 12 border cities, counties or towns (note 1) may be levied at a reduced rate of 24 per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1992 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

8.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, MOST.

5. Legislation under which it is granted

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise (1991);

Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);

State Council Circular Guo Fa No. 39 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The enterprise income tax of the enterprises with foreign investment recognized as high or new technology enterprises and established in the State high or new technology industrial development zones may be levied at a reduced rate of 15 per cent;

2) The Chinese-foreign equity joint ventures recognized as high or new technology enterprises and established in the State high or new technology industrial development zones of which the operation period is 10 years or more may be exempt from the enterprise income tax in the first and second years starting from the year when they begin to make profit. Foreign-invested enterprises established in the high or new technology industrial development zones which are located in the Special Economic Zones and the economic and technological development zones shall be governed by the preferential tax policies concerning the Special Economic Zones and the economic and technological development zones.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 1991 to the end of 2007;

2) 1991 to the end of 2007; starting from 1 January 2008, enterprises registered before 16 March 2007 for their establishment which are eligible for the preferential treatment may continue to enjoy the treatment till its expiration on them; among these enterprises, for those that have not started to enjoy the treatment due to the fact that they have not begun to make profit, the starting year for them to enjoy the treatment shall be 2008 instead of the year when they first begin to make profit.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

9.

1. Title of the subsidy programme

Preferential tax policies for enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress.

4. Background and authority for the subsidy

MOF, SAT, MOST.

5. Legislation under which it is granted

Provisional Regulations of the People's Republic of China on Enterprise Income Tax (1993);
Rules for the Implementation of the Provisional Regulations of the People's Republic of China on Enterprise Income Tax (1994);
MOF Circular Cai Shui Zi No.001 of 1994;
State Council Circular Guo Fa No. 6 of 2006;
MOF Circular Cai Shui No.88 of 2006;
Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
State Council Circular Guo Fa No. 39 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The enterprise income tax of the enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones may be levied at a reduced rate of 15 per cent;
2) The enterprise income tax of the enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones may be exempt in the first and second years from the year beginning production (from the year beginning to make profit after 1 January 2006).

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 1991 to the end of 2007;
2) 1991 to the end of 2007, starting from 1 January 2008, enterprises registered before 16 March 2007 for their establishment which are eligible for the preferential treatment may continue to enjoy the treatment till its expiration on them; among these enterprises, for those that have not started to enjoy the treatment due to the fact that they have not begun to make profit, the starting year for them to enjoy the treatment shall be 2008 instead of the year when they first begin to make profit.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

10.

1. Title of the subsidy programme

Preferential tax policies for high or new technology enterprises.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress.

4. Background and authority for the subsidy

MOF, SAT, MOST.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007).

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The enterprise income tax of the enterprises recognized as high or new technology enterprises shall be levied at a reduced rate of 15 per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

11.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area).

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, MOST.

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

SAT Circular Guo Shui Fa No.139 of 1995;

SAT Circular Guo Shui Fa No.135 of 2003;

Law of the People's Republic of China on Enterprise Income Tax (2007);

Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);

State Council Circular Guo Fa No.39 of 2007;

State Council Circular Guo Fa No.40 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The income tax on enterprises with foreign investment established in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Special Economic Zones and foreign enterprises which have establishments or places in these Special Economic Zones engaged in production or business operations shall be levied at the reduced rate of 15 per cent;

2) The income tax on enterprises with foreign investment of a production nature established in the old urban districts of cities where the above-mentioned zones are located shall be levied at the reduced rate of 24 per cent;

3) The income tax on enterprises with foreign investment of a production nature established in the old urban districts of cities where the above-mentioned zones are located and which are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, with major products enlisted in the "Catalogue of High and New Technology Products of China" promulgated by MOST and the sales revenue of these products of a year accounting for over 50 per cent of the total annual sales revenue of the enterprise of that year; (b) projects with foreign investments of over US$30 million and having long periods for return on investment; and (c) energy resources, transportation and port construction projects, shall be levied at the reduced rate of 15 per cent;

4) Enterprises with foreign investment established in the Hainan Special Economic Zones and engaged in infrastructure projects such as airports, harbours, docks, highways, railways, power stations, coal mines and water conservation projects, and enterprises with foreign investment engaged in the development of and operations in agriculture where the period of operations is fifteen years or more, shall be exempt from enterprise income tax from the first year to the fifth years starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by half for the sixth year through the tenth year ("5 years of exemption and 5 years of reduction by half");

5) Foreign investors who reinvest the profit made from the enterprises established in Hainan Special Economic Zones into the infrastructure construction projects of, or

agricultural development enterprises in, the Hainan Special Economic Zones may be refunded the entire enterprise income tax that has been paid on the reinvested amount;

6) Enterprises registered after 1 January 2008 for their establishment in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Special Economic Zones and recognized as high or new technology enterprises may be exempt from enterprise income tax for the first and second years starting from the year receiving income from their operation or production, and subject to enterprise income tax at the statutory rate of 25 per cent reduced by half from the third year through the fifth year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) and 3) 1984 to the end of 2007, starting from 1 January 2008, enterprises registered before 16 March 2007 for their establishment and eligible under this program for the 15 per cent preferential enterprise income tax rate were given a 5 year period to fulfil the transition from the preferential tax rate of 15 per cent to the statutory enterprise income tax rate of 25 per cent as stipulated in Law of the People's Republic of China on Enterprise Income Tax (2007), i.e., in 2008, the applicable reduced enterprise income tax rate was 18 per cent; in 2009 it was 20 per cent; in 2010 it was 22 per cent; in 2011 it is 24 per cent; and finally in 2012 the statutory enterprise income tax rate of 25 per cent will be applied;

2) 1984 to the end of 2007;

4) 1984 to the end of 2007, starting from 1 January 2008, enterprises registered before 16 March 2007 for their establishment and eligible under this program for the preferential treatment of "5 years of exemption and 5 years of reduction by half" may continue to enjoy the treatment till its expiration on them, among these enterprises, for those that have not started to enjoy the treatment due to the fact that they have not begun to make profit, the starting year for them to enjoy the treatment shall be 2008 instead of the year when they first begin to make profit;

5) 1991 to the end of 2007;

6) 1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

12.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in the costal economic open areas and in the economic and technological development zones.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, MOST.

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);

SAT Circular Guo Shui Fa No.139 of 1995;

SAT Circular Guo Shui Fa No.135 of 2003;

Law of the People's Republic of China on Enterprise Income Tax (2007);

Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);

State Council Circular Guo Fa No.39 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The income tax on enterprises with foreign investment of a production nature established in the economic and technological development zones shall be levied at the reduced rate of 15 per cent;

2) The income tax on enterprises with foreign investment of a production nature established in the coastal economic open areas (note 2) and in the old urban districts of cities where the economic and technological development zones are located shall be levied at the reduced rate of 24 per cent;

3) The income tax on the enterprises with foreign investment of a production nature established in the coastal economic open areas and in the old urban districts of cities where the economic and technological development zones are located and which are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, with major products enlisted in the "Catalogue of High and New Technology Products of China" promulgated by MOST and the sales revenue of these products of a year accounting for over 50 per cent of the total annual sales revenue of the enterprise of that year; (b) projects with foreign investments of over US$30 million and having long periods for return on investment;

and (c) energy resources, transportation and port construction projects, shall be levied at the reduced rate of 15 per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) and 3) 1984 to the end of 2007, starting from 1 January 2008, enterprises registered before 16 March 2007 for their establishment and eligible under this program for the 15 per cent preferential enterprise income tax rate were given a 5 year period to fulfil the transition from the preferential tax rate of 15 per cent to the statutory enterprise income tax rate of 25 per cent as stipulated in Law of the People's Republic of China on Enterprise Income Tax (2007), i.e., in 2008, the applicable reduced enterprise income tax rate was 18 per cent; in 2009 it was 20 per cent; in 2010 it was 22 per cent; in 2011 it is 24 per cent; and finally in 2012 the statutory enterprise income tax rate of 25 per cent will be applied;
2) 1984 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

13.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the area.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM.

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);
Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991);
Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
State Council Circular Guo Fa No.39 of 2007;
State Council Circular Guo Fa No.40 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The income tax on enterprises with foreign investment of a production nature established in Pudong area of Shanghai as well as enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations shall be levied at the reduced rate of 15 per cent. Enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations where the period of operation is 15 years or more may also be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit and then subject to the enterprise income tax rate reduced by half for the sixth year through the tenth year ("5 years of exemption and 5 years of reduction by half");

2) Enterprises registered after 1 January 2008 in Pudong area of Shanghai for their establishment which are recognized as high or new technology enterprises may be exempt from enterprise income tax for the first and second years starting from the year receiving income from their operation or production, and subject to enterprise income tax at the statutory rate of 25 per cent reduced by half from the third year through the fifth year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 1991 to the end of 2007, starting from 1 January 2008, eligible enterprises under this program registered before 16 March 2007 for their establishment were given a 5 year period to fulfil the transition from the preferential tax rate of 15 per cent to the statutory enterprise income tax rate of 25 per cent as stipulated in Law of the People's Republic of China on Enterprise Income Tax (2007), i.e., in 2008, the applicable reduced enterprise income tax rate was 18 per cent; in 2009 it was 20 per cent; in 2010 it was 22 per cent; in 2011 it is 24 per

cent; and finally in 2012 the statutory enterprise income tax rate of 25 per cent will be applied; enterprises eligible for the preferential treatment of "5 years of exemption and 5 years of reduction by half" may continue to enjoy the treatment till its expiration on them, among these enterprises, for those that have not started to enjoy the treatment due to the fact that they have not begun to make profit, the starting year for them to enjoy the treatment shall be 2008 instead of the year when they first begin to make profit;

2) 1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

14.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.034 of 1995;
Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
State Council Circular Guo Fa No.39 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The income tax on enterprises with foreign investment of a production nature established in the Three Gorges of Yangtze River Economic Zone (note 3) shall be levied at the reduced rate of 24 per cent;
2) The income tax on enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone which are engaged in energy resources, transportation, harbour and wharf projects or other projects encouraged by the State, shall be levied at the reduced rate of 15 per cent;
3) The income tax on the enterprises with foreign investment of a production nature established in the old urban districts of the open cities along the Yangtze River such as Yichang, Wanxian and Fuling and etc., shall be levied at the reduced rate of 24 per cent;
4) Among the enterprises mentioned in item 3), those engaged in technology-intensive or knowledge-intensive projects, or projects with foreign investments of over US$30 million and having long periods for return on investment, or energy resources, transportation and port construction projects shall be levied at the reduced rate of 15 per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) and 3) 1995 to the end of 2007;
2) and 4) 1995 to the end of 2007, starting from 1 January 2008, enterprises registered before 16 March 2007 for their establishment and eligible under this program for the 15 per cent preferential enterprise income tax rate were given a 5 year period to phase out the preferential tax treatment, i.e., in 2008, the applicable reduced enterprise income tax rate was 18 per cent; in 2009 it was 20 per cent; in 2010 it was 22 per cent; in 2011 it is 24 per cent; and finally in 2012 the statutory enterprise income tax rate of 25 per cent as stipulated in Law of the People's Republic of China on Enterprise Income Tax (2007) will be applied.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

15.

1. Title of the subsidy programme

Preferential tax policies in the western regions.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To accelerate the development of the western regions, expand the opening up, lessen the imbalance of economic development among different areas and accelerate the development of the regions.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM and other relevant authorities under the State Council.

5. Legislation under which it is granted

State Council Circular Guo Fa No. 33 of 2000;
General Office of State Council Circular Guo Ban Fa No. 73 of 2001;
MOF Circular Cai Shui No. 202 of 2001;
SAT Circular Guo Shui Fa No. 172 of 1999;
Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
State Council Circular Guo Fa No. 39 of 2007;
MOF Circular Cai Shui No.1 of 2008;
MOF GAC SAT Announcement No.43 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The income tax on enterprises, domestic and foreign-invested, established in the western regions (note 4) which are engaged in industries encouraged by the State shall be levied at the reduced rate of 15 per cent from the year 2001 to 2010. For domestic enterprises, industries encouraged by the State refer to those listed in the "Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State", and the enterprises must have the items included in the Catalogue as its major business which should account for over 70 per cent of total revenue. For foreign-invested enterprises, industries encouraged by the State refer to those listed as encouraged in the "Catalogue for the Guidance of the Foreign Investment Industries" and listed in the "Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment", and the enterprises must have the items as listed in the two Catalogues as its major business which should account for over 70 per cent of total revenue.

2) The enterprises, domestic and foreign-invested, which are newly established in the western regions and engaged in business such as transportation, electricity, water conservation and etc., of which the revenue accounts for over 70 per cent of total revenue, shall be, from the year beginning production or operation for domestic enterprises and from the year beginning to make profit for foreign-invested enterprises with the period of operations of ten years or more, exempt from the income tax for the first and second years

and subject to enterprise income tax at the rate reduced by half for the third year through the fifth year.

3) Income from production of agricultural specialty products which is a result of returning cultivated land to forests and returning grazing land to grassland for the sake of environmental protection shall be exempt from the agricultural specialty tax for 10 years from the year beginning to generate revenue.

4) The land taken to construct highways in western regions is exempt from the farmland occupation tax.

5) The domestic and the foreign-invested enterprises established in the western regions and engaged in the encouraged industries respectively as mentioned above in item 1) are exempt from the tariff from 2001 to present and import VAT from 2001 to 31 December 2008 for the imported equipments for self uses within the total amount of the capital invested, except for those listed in "Catalogue for the imported products not subject to tax exemption in foreign invested projects" or in the "Catalogue for the imported products not subject to tax exemption in domestic invested projects".

6) Since 1 January 2000, the foreign-invested enterprises established in nineteen provinces, autonomous regions and municipalities directly under the Central Government in central and western regions, namely Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region, which are engaged in the industries encouraged by the State as enlisted in the "Catalogue for the Guidance of Foreign Investment Industries" as well as engaged in the advantageous industries and projects approved by the State Council, shall be imposed the income tax at the reduced rate of 15 per cent for another three year following the expiration of the period for "two years exemption and three years reduction by half".

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 2001 to 2010;
2) 2001 to present;
3) 2001 to 17 February 2006 or earlier where applicable;
4) 2001 to the end of 2007;
5) 2001 to present for exemption of tariff, and 2001 to 31 December 2008 for exemption of import VAT;
6) 2000 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

16.

1. Title of the subsidy programme

Preferential tax policies for enterprises in Binhai New Area of Tianjin.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the development and opening up of Binhai New Area of Tianjin.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

State Council Circular Guo Fa No. 20 of 2006;
MOF Circular Cai Shui No.130 of 2006.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The enterprise income tax of the enterprises recognized as high or new technology enterprises in Binhai New Area of Tianjin may be levied at a reduced rate of 15 per cent;
2) The depreciation period of the fixed assets of enterprises in Binhai New Area of Tianjin (excluding houses and buildings) may be shortened by at most 40 per cent when the taxable income is calculated.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) and 2) 1 July 2006 to 31 December 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

17.

1. Title of the subsidy programme

Preferential tax policies for enterprises established in the poverty stricken areas.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the alleviation of poverty and accelerate the economic development of the poverty stricken areas.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The income tax of the enterprises newly established in the old revolution base areas during the revolution era, areas with ethnic groups residence, remote areas and poverty stricken areas as designated by the State may be exempt or reduced for three years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

18.

1. Title of the subsidy programme

Fiscal fund to alleviate poverty.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To improve the production and living conditions and increase the income of the poverty stricken population, and to enhance the economic and social development of the poverty stricken areas.

4. Background and authority for the subsidy

MOF, Office of Poverty Alleviation under the State Council, NDRC.

5. Legislation under which it is granted

MOF Circular Cai Nong No.18 of 2000.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The funds are allocated by MOF to local governments according to the allocation programmes which are approved by the Leading Group for Poverty Alleviation of the State Council. The funds are used by local governments to provide subsidies to individuals and organizations for individual subsidization, infrastructure construction and training programmes in the poverty stricken areas.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
12,900	13,600	14,300	16,600

9. Duration of the subsidy and/or any other time-limits attached to it

1980 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

19.

1. Title of the subsidy programme

Preferential tax treatment for public infrastructure projects that are particularly supported by the State.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To promote the construction of infrastructure projects.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
MOF Circular Cai Shui No.46 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Enterprise income tax on the income derived by an enterprise from investment in and operation of public infrastructure projects such as harbours, wharves, airports, railways, highways, urban public transportation, electric power and water conservancy projects as specified in the Catalogue of Public Infrastructure Projects for Preferential Enterprise Income Tax Treatment shall be exempted from the first to the third year beginning from the year in which the first production and operation income is derived from the projects, and such tax shall be reduced by half from the fourth to the sixth year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

20.

1. Title of the subsidy programme

Preferential tax treatment for projects for environmental protection, water and energy conservation.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To protect the environment and encourage the recycle of resources.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
MOF Circular Cai Shui No.48 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) Enterprise income tax on the income derived by an enterprise from the qualified projects of environmental protection or energy and water conservation such as projects of

public sewage treatment, public refuse treatment, comprehensive development and utilization of methane, technological upgrading for energy conservation and discharge reduction, and seawater desalination and etc. shall be exempted from the first to the third year beginning from the year in which the first production and operation income is derived from the projects, and such tax shall be reduced by half from the fourth to the sixth year;

2) Where an enterprise purchases and actually uses the equipment specially designed for environmental protection, energy and water conservation, safe production and etc. as specified in the Catalogue of Special Environmental Protection Equipment for Preferential Enterprise Income Tax Treatment, the Catalogue of Special Energy and Water Conservation Equipment for Preferential Enterprise Income Tax Treatment and the Catalogue of Special Safe Production Equipment for Preferential Enterprise Income Tax Treatment, 10 per cent of its investment in the special equipment may be credited against its tax payable for the current year, and any amount that is not credited in that year may be carried forward and credited in the following five tax years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

21.

1. Title of the subsidy programme

Preferential tax policies for enterprises which utilize the waste materials.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To protect the environment and encourage the recycling of resources.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The income tax of the enterprises which use the waste materials such as waste water, waster residue and waste gas as major materials for production may be exempt or reduced within five years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

22.

1. Title of the subsidy programme

Preferential tax treatment for building material products produced with integrated utilization of resources.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the integrated utilization of resources and protect the environment.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
MOF Circular Cai Shui No.47 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

If an enterprise uses the resources specified in the Catalogue of Comprehensive Use of Resources for Preferential Enterprise Income Tax Treatment as its main raw materials to manufacture products enlisted in the same Catalogue that meet relevant national and industrial standards, its income thus derived shall be included in the total taxable income of the enterprise at a reduced amount of 90 per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

23.

1. Title of the subsidy programme

Preferential tax treatment for building material products produced with integrated utilization of resources.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the integrated utilization of resources and protect the environment.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 44 of 1995;
MOF Circular Cai Shui Zi No. 20 of 1996.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The VAT on building material products made from waste residues shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1995 to the end of 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

24.

1. Title of the subsidy programme

Preferential tax treatment for products produced with integrated utilization of resources.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage integrated utilization of resources and protect the environment.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No. 198 of 2001;
MOF Circular Cai Shui No. 25 of 2004.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The VAT on such product produced with integrated utilization of resources as electric power produced from urban waste shall be refunded;
2) The VAT on electric power produced with wind power and certain new-type wall-building materials produced from coal gangue, slush, oil shale shall be levied at the statutory rate reduced by half.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) and 2) 2001 to 30 June 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

25.

1. Title of the subsidy programme

Preferential tax treatment for renewable resources.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage integrated utilization of renewable resources and protect the environment.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No. 78 of 2001;
MOF Circular Cai Shui No. 157 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

For enterprises purchasing waste materials as production materials, 10 per cent of the amount of the sales invoices for purchasing the waste materials may be deducted from the input VAT.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 May 2001 to the end of 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

26.

1. Title of the subsidy programme

Special fund for the industrialization of wind power equipment.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To promote the research and development of wind power industry and use of renewable energy.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

MOF Circular Cai Jian No.476 of 2008.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided for the research and development of wind power equipment of domestic or domestically controlled enterprises manufacturing equipment and components for the wind power industry. The first 50 sets of megawatt wind turbines and their components newly developed and industrialized may receive the support as per RMB 600/kilowatt, and the support is provided half and half between turbine and key component manufacturers.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
none	none	none	45

9. Duration of the subsidy and/or any other time-limits attached to it

August 2008 to the end of 2009.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

27.

1. Title of the subsidy programme

Preferential tax policies for Clean Development Mechanism.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To reduce the emission of greenhouse gas (GHG).

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.30 of 2009.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) Certain types of income derived by the China Clean Development Mechanism Fund (CDMFUND) which are listed in the Circular shall be exempted from enterprise income tax;
2) The portion of gains derived from the transfer of greenhouse gas emission reductions by CDM project enterprises which are remitted to the Chinese government shall be deducted from the taxable income;
3) The income derived by CDM project enterprises from certain HPC, PFC and N20 projects is eligible for enterprise income tax exemption from the first year to the third year and a 50 per cent reduction in enterprise income tax from the fourth year to the six year, starting from the year in which the income from the transfer of greenhouse gas emission reductions is first received.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1), 2) and 3) 1 January 2007 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

28.

1. Title of the subsidy programme

Preferential tax policies for enterprises making little profits.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To reduce the burden of the enterprises making little profits and to maintain job opportunities.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.009 of 1994;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The income tax of enterprises whose annual taxable income is less than RMB 30,000 may be levied at a reduced rate of 18 per cent;
2) The income tax of enterprises whose annual taxable income is less than RMB 100,000 but more than RMB 30,000 may be levied at a reduced rate of 27 per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) and 2) 1994 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

29.

1. Title of the subsidy programme

Preferential tax policies for enterprises making little profits.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To reduce the burden of the enterprises making little profits and to maintain job opportunities.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007).

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The income tax of qualified small enterprises with low profits may be levied at a reduced rate of 20 per cent. The above-mentioned qualified enterprises refer to those engaged in industries which are not restricted or prohibited by the State and meeting the following conditions:

(a) industrial enterprises, whose annual taxable income does not exceed RMB 300,000, the number of employees does not exceed 100 persons, and the total amount of assets does not exceed RMB 30,000,000; and
(b) other enterprises, whose annual taxable income does not exceed RMB 300,000, the number of employees does not exceed 80 persons, and the total amount of assets does not exceed RMB 10,000,000.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

30.

1. Title of the subsidy program

Preferential tax policies for township enterprises.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To reduce the burden of township enterprises due to the imperfect social security system and to encourage the township enterprise to improve the living and working conditions of their employees.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

10 per cent of the enterprise income tax payable by township enterprises may be exempted to subsidize their social security expenses.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

31.

1. Title of the subsidy program

Preferential tax policies for enterprises that employ disabled people.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the increase of job opportunities and help the employment of the disabled people.

4. Background and authority for the subsidy

MOF, Ministry of Civil Affairs (MCA), SAT.

5. Legislation under which it is granted

SAT Circular Guo Shui Fa No.155 of 1994;
MOF Circular Cai Shui No.92 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The VAT paid by the enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 50 per cent of total employees may be 100 per cent refunded;
2) The VAT paid by the enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 35 per cent but less than 50 per cent of total employees and where the enterprises are at a loss, may be partially or totally refunded to the extent to compensate the loss.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of June 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

32.

1. Title of the subsidy program

Preferential tax policies for enterprises that employ disabled people.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the increase of job opportunities and help the employment of the disabled people.

4. Background and authority for the subsidy

MOF, MCA, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.92 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The VAT paid by the enterprises that employ disabled people may be refunded at the time when it is collected. The amount of VAT refunded depends on the number of disabled people the enterprises employ. With one disabled person, the enterprise may enjoy VAT refund equalling to six times the minimum wage set for a specific region annually with the maximum of RMB 35,000 per person per year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 2007 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

33.

1. Title of the subsidy program

Preferential tax policies for enterprises that employ disabled people.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the increase of job opportunities and help the employment of the disabled people.

4. Background and authority for the subsidy

MOF, MCA, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994;
MOF Circular Cai Shui No.92 of 2007.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The income tax paid by the social welfare enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 35 per cent of total employees shall be exempted. The income tax paid by the social welfare enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 10 per cent but less than 35 per cent of total employees shall be reduced by half.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of June 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

34.

1. Title of the subsidy program

Preferential tax policies for enterprises that employ disabled people.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the increase of job opportunities and help the employment of the disabled people.

4. Background and authority for the subsidy

MOF, MCA, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.92 of 2007;
Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
MOF Circular Cai Shui No.70 of 2009.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

If an enterprise provides jobs to persons with disabilities, a weighted deduction of 100 per cent of the wages paid to them shall be made in addition to the deduction of the actual wages paid to them when the taxable income of the enterprise is calculated.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 2007 to present, and 1 January 2008 to present for foreign invested enterprises.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

35.

1. Title of the subsidy program

Preferential tax treatment for imported products exclusively used by the disabled people.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To facilitate the recovery of the disabled people.

4. Background and authority for the subsidy

MOF, GAC.

5. Legislation under which it is granted

Provisional Regulations of the People's Republic of China on Value Added Tax (1994);
State Council Circular Guo Han No. 3 of 1997;
GAC Decree No. 61 of 1997.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The tariff, import VAT and excise tax on imported products exclusively used by the disabled people within the stipulated scope shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1997 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

36.

1. Title of the subsidy program

Preferential tax treatment for products for the disabled people.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To facilitate the recovery of the disabled people.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No. 60 of 1994.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The VAT on artificial limbs, wheelchairs, orthopaedic appliances including those for upper limbs, lower limbs and spinal bend and lean etc. shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

37.

1. Title of the subsidy program

Preferential tax treatment for enterprises producing products exclusively used by the disabled people.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To facilitate the recovery of the disabled people.

4. Background and authority for the subsidy

MOF, MCA, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.132 of 2004;
MOF Circular Cai Shui No.148 of 2006;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Enterprises producing or assembling products to be exclusively used by the disabled people shall be exempted from enterprise income tax.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Not available.

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2004 to the end of 2008.

10. <u>Statistical data permitting an assessment of the trade effects of a subsidy</u>

Not available.

38.

1. <u>Title of the subsidy program</u>

Preferential tax policies for enterprises which provide employment for unemployed people.

2. <u>Period covered by the notification</u>

2005-2008.

3. <u>Policy objective and/or purpose of the subsidy</u>

To increase and encourage employment.

4. <u>Background and authority for the subsidy</u>

MOF, SAT.

5. <u>Legislation under which it is granted</u>

MOF Circular Cai Shui Zi No.001 of 1994;
MOF Circular Cai Shui No.1 of 2008.

6. <u>Form of the subsidy</u>

Preferential tax treatment.

7. <u>To whom and how the subsidy is provided</u>

1) The income tax of newly established urban enterprises which employ unemployed people over 60 per cent of total employees within a year may be exempted for three years;
2) The income tax of the above-mentioned enterprises which newly employ unemployed people over 30 per cent of their original total employees within a year may be reduced by half for an additional two years after the three years period of income tax exemption has expired.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

39.

1. Title of the subsidy program

Preferential tax policies for scientific research institutions under transformation.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To push forward the scientific research institutions to reform under the conditions of market economy.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.137 of 2003;
MOF Circular Cai Shui No.14 of 2005;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The income tax of the 242 scientific research institutions subordinate to the former 10 National Bureaus administrated by the former State Economic and Trade Commission (SETC) and the 134 scientific research institutions subordinate to 11 former Ministries such

as Ministry of Construction which were transformed into enterprises or integrated into enterprises shall be exempted for five years since the day of the transformation registration. This preferential treatment will be extended for another two years after expiration.

2) The income tax of scientific research institutions subordinate to the organizations under the State Council which were transformed into enterprises or integrated into enterprises after the review and approval by MOST and MOF shall be exempted for five years since the day of the transformation registration.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 2003 to present, and terminated upon expiration;
2) 2003 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

40.

1. Title of the subsidy program

Preferential tax policies for the research and development of enterprises.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the research and development of enterprises.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.244 of 2003;
MOF Circular Cai Shui No.88 of 2006;
MOF Decree No.48.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The actual expenses of domestic industrial enterprises, regardless of the ownership, on research and development of new products, new technologies and new crafts which have increased 10 per cent (included) or more from the previous year shall be deducted by 150 per cent from the taxable income of the year of the enterprises.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2003 to the end of 2005.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

41.

1. Title of the subsidy program

Preferential tax policies for the research and development of enterprises.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the research and development of enterprises.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.88 of 2006;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Research and development expenses that are incurred in the current year during the development of new technologies, new products or new production techniques, including the expenses for design, trial-production of materials, semi-finished products or new products shall be deducted by 150 per cent from the taxable income of the year of the enterprises. Any amount that is not offset in the said year may be carried forward and offset in the following five years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2006 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

42.

1. Title of the subsidy program

Preferential tax policies for the research and development of enterprises.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the research and development of enterprises.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);

Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);

SAT Circular Guo Shui Fa No.116 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Where the research and development expenses incurred by an enterprise for the development of new technologies, new products and new techniques are included in the current profits or losses before they become intangible assets, a weighted deduction of 50 per cent of the research and development expenses shall be made in addition to the deduction of actual expenses when the taxable income is calculated; where they become intangible assets, the expenses shall be amortised at 150 per cent of the cost of the intangible assets with the amortization period of not less than 10 years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

43.

1. Title of the subsidy program

Preferential tax policies for enterprises transferring technology.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the transfers of technology.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The income tax of enterprises profiting from technology transfers as well as from providing technology consultation, technology services and technology training in the transfer may be exempted where the annual net income of the enterprises is less than RMB 300,000; where the annual net income of the enterprise is more than RMB 300,000, the exceeding part shall be levied at the regular rate.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

44.

1. Title of the subsidy program

Preferential tax policies for enterprises transferring technology.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the transfers of technology.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
SAT Circular Guo Shui Han No.212 of 2009.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Enterprise income tax on income up to RMB 5 million earned by a resident enterprise from any transfer of technologies in a tax year shall be exempted. In the case of any excess of such income over RMB 5 million, there shall be a 50 per cent enterprise income tax reduction.

8 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

45.

1. Title of the subsidy program

Research and development fund for industrial technologies.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support important technological research and development projects of commonweal or public interest.

4. <u>Background and authority for the subsidy</u>

MOF, National Development and Reform Commission (NDRC).

5. <u>Legislation under which it is granted</u>

MOF Circular Cai Jian No.30 of 2002.

6. <u>Form of the subsidy</u>

Financial appropriations.

7. <u>To whom and how the subsidy is provided</u>

The fund is provided to enterprises engaged in approved research and development projects of industrial technologies after review of applications or bidding procedures.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Unit: million RMB

2005	**2006**	**2007**	**2008**
1,650	2,000	2,480	2,940

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2002 to present.

10. <u>Statistical data permitting an assessment of the trade effects of a subsidy</u>

Not available.

46.

1. <u>Title of the subsidy programme</u>

Fund for supporting technological innovation of the technological small and medium-sized enterprises (SMEs).

2. <u>Period covered by the notification</u>

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support SMEs in technology innovation and encourage the industrialization of the science and technology achievements.

4. Background and authority for the subsidy

MOF, MOST.

5. Legislation under which it is granted

Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises;
General Office of State Council Circular Guo Ban Fa No. 47 of 1999;
MOF Circular Cai Qi No.22 of 2005.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The financial support for SMEs in technology innovation includes government grants, interest discount and capital investment.

Government grants of no more than RMB 1 million (2 million for few exceptional cases) may be provided for the industrialization of science and technology achievements and research and development (R&D) of SMEs on the condition that the enterprises must contribute self-owned capital of more than the same amount.

Interest discount may be provided for innovative projects already having certain scale and economic returns. 50 per cent to 100 per cent of the annual interests of the commercial loans for these innovative projects may be subsidized. The total amount of the interest discount provided is generally no more than RMB 1 million and in few exceptional cases no more than RMB 2 million.

Capital investment is provided for projects with high starting point, great innovation potential and probable large market demand after the projects are turned into production. The total amount shall not exceed 20 per cent of the registered capital of the enterprises.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
600	750	1,100	1,400

9. Duration of the subsidy and/or any other time-limits attached to it

1999 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

47.

1. Title of the subsidy programme

Development fund for SMEs.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the SMEs development and to improve the development environment of SMEs.

4. Background and authority for the subsidy

MOF, Ministry of Industry and Information Technology (MIIT).

5. Legislation under which it is granted

Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises;
MOF Circular Cai qi No.185 of 2004;
MOF Circular Cai qi No.226 of 2006;
MOF Circular Cai qi No.179 of 2008.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

For projects in which the enterprises invest mainly with self-owned capital, the support is usually given in the form of grant of no more than RMB 2 million (RMB 3 million from September 2008 on) or within the limit of the self-owned capital investment. For projects in which the enterprises invest mainly with commercial loans, the support is usually given in the form of interest discount to compensate the interests based on the amount of loans and the benchmark interest rate published by People's Bank of China. The period for each project to enjoy the interest discount should be no more than 2 years and the total amount that each project may receive in the form of interest discount should be no more than RMB 2 million (RMB 3 million from September 2008 on).

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
200	250	400	500

9. Duration of the subsidy and/or any other time-limits attached to it

2004 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

48.

1. Title of the subsidy programme

Special fund for establishment of service system for SMEs.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To assist entities to provide better services to SMEs.

4. Background and authority for the subsidy

MOF, NDRC, MIIT.

5. Legislation under which it is granted

Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises; MOF Circular Cai Jian No.124 of 2004.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided as grant to entities which provide services to SMEs. For those who provide training services to the SMEs, rent charges of training venue, payments to the lecturers and expenses on teaching materials may be fully subsidized by the fund, and accommodations incurred by the training services may be subsidized at a maximum of RMB 150 person/day. For those who provide credit services to SMEs, the actual expenses may be subsidized as appropriate. For those who provide services for SMEs to start business, the actual expenses may be subsidized as appropriate. For those who provide management consulting services for SMEs, the actual expenses may be subsidized as appropriate.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
50	50	50	50

9. Duration of the subsidy and/or any other time-limits attached to it

2003 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

49.

1. Title of the subsidy programme

Fund for international market exploration by SMEs.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To assist SMEs to explore international market.

4. Background and authority for the subsidy

MOF, MOFCOM.

5. Legislation under which it is granted

MOFTEC (MOFCOM) Circular Ji Cai Fa No.270 of 2001.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to SMEs or enterprises and organizations which provide services to SMEs for the purpose of: (a) holding or participating in overseas exhibitions, (b) accreditation fee for quality management system, environment management system or for the product, (c) promotion in the international market, (d) exploring a new market, (e) holding trainings and symposiums, (f) overseas bidding. The enterprises receive partial support to its international market exploration fees and the grant is allocated on the basis of the approved application for fund after market exploration activities are completed.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
1600	1390	890	1080

9. Duration of the subsidy and/or any other time-limits attached to it

2001 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

50.

1. Title of the subsidy programme

Fund for optimizing the import and export structure of mechanical and electrical products as well as high-tech products.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the optimization of the import and export structure of mechanical and electrical products as well as high-tech products.

4. Background and authority for the subsidy

MOF, MOFCOM.

5. Legislation under which it is granted

MOFCOM Circular Shang Cai Fa No.291 of 2007.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided for enterprises or industrial associations engaged in projects of technology research and development, public information service and personnel training etc. The amount of support shall not exceed 50 per cent of the total real investment in the project. Support to a single enterprise shall not exceed RMB 3 million and that for intermediary organizations shall not exceed RMB 10 million.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
-	-	238	294

9. Duration of the subsidy and/or any other time-limits attached to it

2007 to 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

51.

1. Title of the subsidy programme

Fund for promoting the trade of agricultural, light industry and textile products.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To improve the quality and safety of agricultural, light industry and textiles products.

4. Background and authority for the subsidy

MOF, MOFCOM.

5. Legislation under which it is granted

MOFCOM Circular Shang Gui Fa No.507 of 2005.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided for projects promoting the development of quality system certification, registration of marks of origin and the training and exchange of new technology, new design and new marketing concepts.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
none	none	500	100

9. Duration of the subsidy and/or any other time-limits attached to it

2005 to 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

52.

1. Title of the subsidy programme

Fund for promotion of coordinated development of foreign trade and economic relations among regions.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the economic and trade development of undeveloped area.

4. Background and authority for the subsidy

MOF, MOFCOM.

5. Legislation under which it is granted

MOF Circular Cai Qi No.118 of 2008.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

This fund is provided for projects aiming at exploration of international market, scientific innovation and information system construction in the central, western and north-eastern areas of China.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
1,150	1,000	1,200	1,500

9. Duration of the subsidy and/or any other time-limits attached to it

2000 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

53.

1. Title of the subsidy programme

Preferential tax policies for key leading enterprises engaged in agricultural industrialization.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the agricultural industrialization.

4. Background and authority for the subsidy

MOF, SAT, Ministry of Agriculture (MOA).

5. Legislation under which it is granted

MOA Circular Nong Jing Fa No.8 of 2000;
SAT Circular Guo Shui Fa No. 124 of 2001;
MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The income of the key leading enterprises and of their holding subsidiary companies, obtained from planting, animal and fish farming, and preliminary processing of agricultural and forest products may be exempt from enterprise income tax.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2001 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

54.

1. Title of the subsidy programme

Preferential tax policies for enterprises engaged in projects of preliminary processing of agricultural, forest, animal and fishery products.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the development of agriculture.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

Law of the People's Republic of China on Enterprise Income Tax (2007);
Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007);
MOF Circular Cai Shui No.149 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Enterprise income tax on the income derived by an enterprise from stipulated projects of preliminary processing related to farming, forestry, animal husbandry and fisheries may be exempted or reduced.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2008 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

55.

1. Title of the subsidy programme

Fund for specialized economic cooperatives of farmers.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support and facilitate the development of specialized cooperatives of farmers.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

MOF Circular Cai Nong No.87 of 2004.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to qualified specialized cooperatives of farmers. MOF provides fund to the local governments. Local governments review applications to allocate the fund and then report to MOF for record.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
80	80	200	300

9. Duration of the subsidy and/or any other time-limits attached to it

2003 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

56.

1. Title of the subsidy programme

Fund for subsidizing the training of rural migrant labour force.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To improve the quality and the employment capabilities of the rural migrant workers, to facilitate the migration of the rural labour force and increase rural incomes.

4. Background and authority for the subsidy

MOF, MOA.

5. Legislation under which it is granted

MOF Circular Cai Nong No.18 of 2005.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to individuals, training institutions or other organizations chosen through bidding procedures to provide training services to farmers. MOF and MOA jointly review applications for fund submitted by local governments. After approval of the applications, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
400	600	900	1,100

9. Duration of the subsidy and/or any other time-limits attached to it

2004 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

57.

1. Title of the subsidy programme

Fund for training of youngster farmers on science and technology.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To assist farmers to obtain the knowledge on science and technology and to improve their business management capacity.

4. Background and authority for the subsidy

MOF, MOA.

5. Legislation under which it is granted

MOF Circular Cai Nong No.349 of 2006.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to organizations or institutions that provide training to farmers in rural areas. MOF and MOA jointly review applications for fund submitted by local governments. After approval of the applications, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
50	100	200	500

9. Duration of the subsidy and/or any other time-limits attached to it

1999 to 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

58.

1. Title of the subsidy programme

Fund for popularization of agricultural technologies.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To popularize advanced and practical agricultural technologies.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

MOF Circular Cai Nong No.81 of 2004.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to projects which embody geographic advantages and can serve as a model or demonstration to other areas. MOF reviews applications for fund submitted by local governments and grants the fund after approval of the applications.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
300	300	500	700

9. Duration of the subsidy and/or any other time-limits attached to it

1999 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

59.

1. Title of the subsidy programme

Fund for subsidizing transformation of agricultural technology.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To accelerate the transformation of technological achievements in agriculture, forestry, water conservation and irrigation, and to improve the capacity of agricultural innovation.

4. Background and authority for the subsidy

MOF, MOST.

5. Legislation under which it is granted

MOST Circular Guo Ke Ban Cai Zi No.417 of 2001.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to enterprises, scientific research institutions and colleges that are the right-holders of new agricultural technology. MOF and MOST jointly review applications for fund submitted by local governments. After approval of the applications, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
300	300	300	300

9. Duration of the subsidy and/or any other time-limits attached to it

2001 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

60.

1. Title of the subsidy programme

Subsidy for promoting superior strains and seeds.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To accelerate the upgrading of strains and seeds, increase the output of agricultural products, improve the quality of agricultural products and guarantee food security.

4. Background and authority for the subsidy

MOF, MOA.

5. Legislation under which it is granted

MOF Circulars Cai Nong No.16 and No.17 of 2004.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The subsidy is provided to farmers purchasing superior strains and seeds. MOF and MOA jointly review applications for fund submitted by local governments. After approval of the applications, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
3,800	4,100	6,600	12,300

9. Duration of the subsidy and/or any other time-limits attached to it

2002 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

61.

1. Title of the subsidy programme

Subsidy for purchasing agricultural machinery and tools.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To enhance agricultural mechanization, and push forward the development of agriculture and rural economy.

4. Background and authority for the subsidy

MOA, MOF.

5. Legislation under which it is granted

MOF Circular Cai Nong No.11 of 2005.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The subsidy is provided to individual farmers or services providers of agricultural machinery and tools that purchase agricultural machinery and tools. MOA and MOF jointly review applications for fund submitted by local governments. After approval of the applications, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
300	600	2,000	4,000

9. Duration of the subsidy and/or any other time-limits attached to it

1999 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

62.

1. Title of the subsidy programme

Comprehensive subsidies for agricultural inputs.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To compensate farmers' loss caused by the price hikes of agricultural inputs, and improve farmers' income.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

General Office of the State Council Circular Guo Ban Fa No.16 of 2006.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund for the subsidy is allocated to provincial governments, which are responsible for the formulation of detailed implementation plans and provision of the subsidy to farmers.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
-	12,000	27,600	71,600

9. Duration of the subsidy and/or any other time-limits attached to it

2006 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

63.

1. Title of the subsidy programme

Direct subsidy to farmers.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To maintain the stability and development of agricultural production, improve the overall agricultural production capacity and farmers' income.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

State Council Circular Guo Fa No.17 of 2004.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

Provincial governments are responsible for the detailed implementation plan. Subsidies will be provided according to the taxable area of the farmland.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
13,200	14,200	15,100	15,100

9. Duration of the subsidy and/or any other time-limits attached to it

2004 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

64.

1. Title of the subsidy programme

Fund for agricultural comprehensive development.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To improve the infrastructure construction and ecological construction, enhance the agricultural comprehensive production capacity, optimize the agricultural and rural economic structure and improve farmers' income.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

MOF Decree No.60.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to agricultural comprehensive development projects, which will be subsidized after approval of the applications.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
7,600	7,800	8,400	103,000

9. Duration of the subsidy and/or any other time-limits attached to it

1988 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

65.

1. Title of the subsidy programme

Fund subsidizing agricultural industrialization and agricultural products processing.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To increase rural income, increase the scale and modernization of agricultural operation, and to improve the efficiency of agriculture in general.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

MOF Circular Cai Nong No. 88 of 2004.

6. Form of the subsidy

Financial appropriation.

7. To whom and how the subsidy is provided

The fund is provided to qualified enterprises and production bases. The MOF reviews the applications for fund submitted by local governments and grants the fund after approval of the applications.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
100	150	300	400

9. Duration of the subsidy and/or any other time-limits attached to it

1998 to 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

66.

1. Title of the subsidy programme

Fund for interest discount of loans for the purpose of agricultural water-saving irrigation.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support water-saving irrigation technology and the construction of areas using water-saving irrigation.

4. Background and authority for the subsidy

MOF, Ministry of Water Resources (MWR).

5. Legislation under which it is granted

MOF Circular Cai Nong No. 279 of 2005.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to individuals, enterprises or related organizations. MOF and MWR jointly review the applications for fund submitted by local governments. After approval of the applications, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
46.5	49.9	49.9	49.9

9. Duration of the subsidy and/or any other time-limits attached to it

1997 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

67.

1. Title of the subsidy programme

Subsidy for national key construction projects on water and soil conservation.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To assist small scale farmland irrigation and water and soil conservation projects in rural areas.

4. Background and authority for the subsidy

MOF, MWR.

5. Legislation under which it is granted

MOF Circular Cai Nong Zi No. 402 of 1987.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to enterprises or related organizations. MOF and MWR jointly review the applications for fund submitted by local governments. After approval of the applications, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
50	50	80	80

9. Duration of the subsidy and/or any other time-limits attached to it

1983 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

68.

1. Title of the subsidy programme

Preferential tax policies for the enterprises engaged in forestry.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the development of forestry.

4. Background and authority for the subsidy

MOF, SAT, State Forestry Administration (SFA).

5. Legislation under which it is granted

MOF Circular Cai Shui No.171 of 2001;

MOF Circular Cai Shui No.1 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The income of enterprises and institutions derived from production of forestry, forestry seeds as well as from preliminary processing of forestry products may be exempted from enterprise income tax from 2001 to the end of 2007.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2001 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

69.

1. Title of the subsidy programme

Subsidy for prevention from and control of pest and disease in forestry

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To strengthen the disease, pest and rat prevention and control in forests, woods, seedling and bamboo forests.

4. Background and authority for the subsidy

MOF, SFA.

5. Legislation under which it is granted

MOF Circular Cai Nong No. 44 of 2005.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to individual, enterprises and organizations engaged in forestry for the purpose of hazardous creature control. Applications for the fund are submitted by local governments. MOF and SFA jointly review the applications and determine the amount of the subsidy. After approval of the applications, the MOF grants the fund.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
200	200	200	270

9. Duration of the subsidy and/or any other time-limits attached to it

1980 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

70.

1. Title of the subsidy programme

Subsidy for grass seed sowing by airplanes.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the airplane sowing of grass seed in major grassland areas.

4. Background and authority for the subsidy

MOF, MOA.

5. Legislation under which it is granted

MOF Circular Cai Nong No.139 of 2004.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The fund is provided to organizations which carry out airplane sowing of grass seeds. MOF reviews the applications for fund submitted by local governments and grants the fund after approval of the applications.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
9	9	9	9

9. Duration of the subsidy and/or any other time-limits attached to it

1984 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

71.

1. Title of the subsidy programme

Preferential tax policies for enterprises of grain or oil reserves.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To ensure food security.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.198 of 1999.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The sales of grain and edible oil by the state-owned enterprises which carry reserves of grain and oils for food security purposes are exempted from VAT.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1999 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

72.

1. Title of the subsidy programme

Preferential tax policies for the imports of China Grain Reserves Corporation for the purpose of rotation of grain reserves.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To secure food safety.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.74 of 2004;
MOF Circular Cai Shui No.105 of 2006.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The collected import VAT on imported grain and oils imported by China Grain Reserves Corporation for the purpose of alternation or rotation of reserves shall be fully refunded.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2001 to the end of 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

73.

1. Title of the subsidy programme

Preferential tax policies for the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grassland, and the grain rations for the migrants from the reservoir areas.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To ensure the functioning of special social responsibilities such as disasters relief and to realize social development objectives such as environmental protection.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.198 of 1999;
SAT Circular Guo Shui Fa No.131 of 2001.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

VAT on the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grassland, and the grain rations for the migrants from the reservoir areas operated by grain enterprises shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

August 1999 to present, and 2001 to present for compensation grain for returning cultivated land to forests and to grassland.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

74.

1. Title of the subsidy programme

Preferential tax treatment for poultry industry.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To control the spread of the deadly avian flu virus.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.166 of 2005;
MOF Circular Cai Shui No.113 of 2006.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) The enterprise income tax of poultry farming and processing enterprises and of frozen food firms on income derived from poultry farming, poultry processing and sales of frozen poultry products shall be exempted from 2005 to 2006.
2) The VAT on poultry products processed and sold by poultry processing firms and frozen food firms shall be refunded upon collection from 1 November 2005 to 31 December 2006.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 2005-2006;
2) 1 November 2005 to 31 December 2006.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

75.

1. Title of the subsidy programme

Interest discount for poultry industry.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To control the spread of deadly avian flu virus.

4. Background and authority for the subsidy

MOF, MOA.

5. Legislation under which it is granted

MOF Circular Cai Jin No. 30 of 2004;
MOF Circular Cai Jin No. 134 of 2005;
MOF Circular Cai Jin No. 65 of 2006.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

The interest rate on current funds loans of poultry farming, processing and vaccine production enterprises may be subsided as appropriate on the condition that the enterprises meet stipulated requirements.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

For poultry farming and processing enterprises, 31 January 2004 to 31 July 2004, 1 November 2005 to 30 June 2006 and from 1 July 2006 to 31 December of 2006. For vaccine production enterprises, from 1 November 2005 to 30 June 2006 and from 1 July 2006 to 31 December of 2006.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

76.

1. Title of the subsidy programme

Preferential tax treatment for tea sold in the border areas.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To ensure the supply to the border areas with minority ethnic groups residence.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No. 71 of 2001;
MOF Circular Cai Shui No. 103 of 2006;
MOF Circular Cai Shui No. 141 of 2009.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The VAT on tea sold in the border areas produced by designated enterprises and distributed by designated distribution entities shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1994 to the end of 2010.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

77.

1. Title of the subsidy programme

Preferential tax treatment for imported products for the purpose of replacing the planting of poppies.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the replacement of the planting of poppies.

4. Background and authority for the subsidy

MOF, SAT, General Administration of Customs (GAC).

5. Legislation under which it is granted

MOF Circular Cai Shui No.63 of 2000.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Tariffs and import VAT on imported products within the approved scope for the purpose of replacing the planting of poppies in the border areas in Yunnan province shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2000 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

78.

1. Title of the subsidy programme

Preferential tax policies on imports of seeds (seedlings), breeding stock (fowl), fish fries (breeds) and non-profit-making wild animals and plants kept as breeds during the period of the "Tenth Five-Year Plan".

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To introduce and promote improved breeds, to strengthen the protection of species resources, and to develop high-quality, productive and efficient agriculture and forestry industries.

4. Background and authority for the subsidy

MOF, SAT, MOA, SFA.

5. Legislation under which it is granted

MOF Circular Cai Shui No.130 of 2001.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The import VAT for imported seeds (seedlings), breeding stock (fowl), fish fries (breeds) and non-profit-making wild animals and plants kept as breeds which are within the approved quantity and scope shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2001 to 2005.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

79.

1. Title of the subsidy programme

Preferential tax policies on imports of seeds (seedlings), breeding stock (fowl), fish fries (breeds) and wild animals and plants kept as breeds during the period of the "Eleventh Five-Year Plan".

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To introduce and promote improved breeds, to strengthen the protection of species resources, and to develop high-quality, productive and efficient agriculture and forestry industries.

4. Background and authority for the subsidy

MOF, SAT, MOA, SFA.

5. Legislation under which it is granted

MOF Circular Cai Guan Shui No.3 of 2006;
MOF Circular Cai Guan Shui No.38 of 2006;
MOF Circular Cai Guan Shui No.50 of 2009.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

The import VAT for imported seeds (seedlings), breeding stock (fowl), fish fries (breeds) and wild animals and plants kept as breeds which are within the approved quantity and scope shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2006-2010.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

80.

1. Title of the subsidy programme

Preferential tax treatment for endangered wild animals and plants as well as their products returned by foreign governments, by the government of Hong Kong, China or the government of Macao, China to China.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To facilitate the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and to protect wild animals and plants.

4. Background and authority for the subsidy

MOF, GAC, SFA.

5. Legislation under which it is granted

MOF Circular Cai Shui No.8 of 2003.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

Tariff and import VAT on the endangered wild animals and plants as well as their products which are listed in the appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, returned by foreign governments, by the government of Hong Kong, China, or by the government of Macao, China to the Office of the Administration of Import and Export of Endangered Species under the SFA shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 2002 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

81.

1. Title of the subsidy programme

Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipment.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To attract foreign investment and support technology renovation.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.49 of 2000;
SAT Circular Guo Shui Fa No.90 of 2000;
MOF Circular Cai Shui No.1 of 2008;
SAT Circular Guo Shui Fa No.52 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

For the investment projects listed as encouraged category in the "Catalogue for the Guidance of the Foreign Investment Industries" of foreign invested enterprises and foreign enterprises which have establishments or place in China engaged in production or business operations, 40 per cent of the expenses on purchasing domestically produced equipments within the total investment of the project, or beyond the total investment of the project but for the purpose of upgrading the existing equipments and crafts, shall be deducted from the increment of income tax of that year compared to the previous year. Herein the "domestically produced equipment" do not include those imported directly by other enterprises, or those produced by processing trade and compensatory trade, or those listed in the "Catalogue for the Imported Products not subject to Tax Exemption in Foreign Investment Projects" as stipulated in State Council Circular Guo Fa No.37 of 1997. The deducted portion shall not exceed that year's total increment of income tax, and in the case where the total increment of income tax is less than 40 per cent of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than 5 years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 1999 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

82.

1. Title of the subsidy programme

Preferential tax policies for domestic enterprises purchasing domestically produced equipments for technology upgrading purpose.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage domestic investment and support the technology upgrading of enterprises.

4. Background and authority for the subsidy

MOF, SAT, NDRC.

5. Legislation under which it is granted

MOF Circular Cai Shui No.290 of 1999;
MOF Circular Cai Shui No.1 of 2008;
SAT Circular Guo Shui Fa No.52 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

For technology upgrading projects of domestic enterprises consistent with the state industrial policies, 40 per cent of the expenses on purchasing domestically produced equipments shall be deducted from the increment of income tax of that year compared to the previous year. In the case where the total increment of income tax is less than 40 per cent of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than 5 years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 1999 to the end of 2007.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

83.

1. Title of the subsidy programme

Exemption of tariff and import VAT for the imported technologies and equipments.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To attract foreign investment, to encourage domestic investment and to stimulate structural adjustment and industrial upgrading.

4. Background and authority for the subsidy

MOF, SAT, NDRC, MOFCOM, GAC.

5. Legislation under which it is granted

State Council Circular Guo Fa No.37 of 1997;
MOF Circular Cai Guan Shui No.11 of 2007;
MOF Circular Cai Shui No.170 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

For foreign-invested projects listed as encouraged category in the "Catalogue for the Guidance of the Foreign Investment Industries", the equipment purchased for self-use within the total investment of the project, excluding those listed in the "Catalogue for the Imported Products not subject to Tax Exemption in Foreign Investment Projects", shall be exempted from tariff and import VAT. For the projects using the loans provided by foreign governments or by international financial organizations, the equipment purchased for self-use within the total investment of the projects, excluding those listed in the "Catalogue for the Imported Products not subject to Tax Exemption in Foreign Investment Projects", shall be exempted from tariff and import VAT. For the domestic invested projects listed in the "Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State", the equipment purchased for self-use within the total investment of the project, and the technologies, accessories and spare parts imported with the equipment as provided in the contract, excluding those listed in the "Catalogue for the Imported Products not subject to Tax Exemption in Domestic investment Projects", shall be exempted from tariff and import VAT.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1998 to the end of 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

84.

1. Title of the subsidy programme

Subsidy for scrapping old vehicles.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage people to replace their old vehicles.

4. Background and authority for the subsidy

MOF, MOFCOM.

5. Legislation under which it is granted

MOF Circular Cai Jian No.742 of 2002.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

Consumers meeting certain requirements will be subsidized when scrapping their old vehicles. The amount of subsidy will be publicized annually.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
250	140	122	260

9. Duration of the subsidy and/or any other time-limits attached to it

2002 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

85.

1. Title of the subsidy programme

Preferential tax policies for integrated circuit industry.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the development of integrated circuit industry.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

State Council Circular Guo Fa No.18 of 2000;
MOF Circular Cai Shui No.25 of 2000;
MOF Circular Cai Shui No.70 of 2002;
MOF Circular Cai Shui No.174 of 2004;
MOF Circular Cai Shui No.136 of 2002;
MOF Circular Cai Shui No.152 of 2002;
MOF Circular Cai Guan Shui No.45 of 2004;
Law of the People's Republic of China on Enterprise Income Tax (2007);
MOF Circular Cai Shui No.1 of 2008;
MOF GAC SAT Announcement No.43 of 2008.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) From 1 January 2002 to the end of 2010, investor of integrated circuit producing or packaging enterprise who reinvests its share of profit obtained from the enterprise, after paying income tax, directly into that enterprise in order to increase its registered capital, or uses the profit as capital investment to establish other integrated circuit producing or packaging enterprises with the operating period of not less than 5 years, shall be refunded 40 per cent of the enterprise income tax already paid on the reinvested amount.

2) From 1 January 2002 to the end of 2010, domestic or foreign economic entities investing its share of profit obtained inside China, after paying the income tax, into integrated circuit producing or packaging enterprises located in the western regions with the operating period of not less than 5 years, shall be refunded 80 per cent of the enterprise income tax already paid on the reinvested amount.

3) From 1 July 2000 to present, integrated circuit producing enterprises with investment of more than RMB 8 billion or producing integrated circuit with a line width lesser than 0.25 um shall enjoy the same preferential tax treatment as that to encourage the foreign investment in energy and transportation sectors before 2008, which is that enterprise income tax is collected at the reduced rate of 15 per cent. Enterprises with the operating period of more than 15 years shall be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit, and subject to enterprise income tax at a rate reduced by half from the sixth year to the tenth year.

4) From 1 July 2000 to present, the imported raw materials for self production and expendables listed in the Circular of integrated circuit producing enterprises with investment of more than RMB 8 billion or producing integrated circuit with a line width lesser than 0.25 um shall be exempt from tariff and import VAT.

From 1 January 2001 to present, the imported specialized building material and integrated circuit components listed in the Circular of integrated circuit producing enterprises with investment of more than RMB 8 billion or producing integrated circuit with a line width lesser than 0.25 um shall be exempt from tariff and import VAT.

5) From 2002 to present, the accredited integrated circuit producing enterprises producing integrated circuit with a line width of 0.8 um or less shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a 50 per cent reduction in the third to the fifth years.
6) From 1 October 2004 to present, the imported raw materials for self production and expendables listed in the Circular of integrated circuit producing enterprises producing integrated circuit with a line width of 0.8 um or less shall be exempt from tariff and import VAT.
7) From 2002 to 31 March 2005, VAT taxpayers selling independently-developed integrated circuit products shall be refunded upon collection the portion of the VAT paid which exceeds 3 per cent.
8) From 1 July 2000 to present, imported technology and whole set of equipment for production of integrated circuit products, and separately imported special equipment and apparatus to produce integrated circuit products by accredited integrated circuit producing enterprises shall be exempt from tariff.

From 1 July 2000 to 31 December 2008, imported technology and whole set of equipment for production of integrated circuit products, and separately imported special equipment and apparatus to produce integrated circuit products by accredited integrated circuit producing enterprises shall be exempt from import VAT.

The above mentioned technology and equipment shall exclude those listed in the "Catalogue for the Imported Products not subject to Tax Exemption in Foreign Investment Projects" or in the "Catalogue for the Imported Products not subject to Tax Exemption in Domestic investment Projects".

9) From 1 July 2000 to present, the depreciation period for manufacturing equipment of integrated circuit producing enterprises may be shortened as appropriate, with the minimum of 3 years.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Not available.

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1) and 2) 1 January 2002 to the end of 2010;
3) 1 July 2000 to present;
4) 1 July 2000 to present, or 1 January 2001 to present;
5) 2002 to present;
6) 1 October 2004 to present;
7) 2002 to 31 March 2005;
8) 1 July 2000 to present, or 1 July 2000 to 31 December 2008;
9) 1 July 2000 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

86.

1. Title of the subsidy programme

Fund for research and development of integrated circuit industry.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the research and development of integrated circuit industry.

4. Background and authority for the subsidy

MOF, NDRC, MIIT.

5. Legislation under which it is granted

MOF Circular Cai Jian No.132 of 2005.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

Government aid is provided to projects meeting certain requirement of an enterprise which is an independent legal person engaged in design, manufacturing, packaging or test of integrated circuits and registered within the territory of the People's Republic of China (excluding Hong Kong, China; Macao, China and Chinese Taipei). The amount of aid to a single research and development project shall not exceed 50 per cent of the cost of such an activity.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	**2006**	**2007**	**2008**
150	250	300	400

9. Duration of the subsidy and/or any other time-limits attached to it

June 2005 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

87.

1. Title of the subsidy programme

Fund for development of electrical information industry.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support research and development activities of the electrical information industry.

4. Background and authority for the subsidy

MOF, MIIT.

5. Legislation under which it is granted

MOF Circular Cai Jian No.425 of 2001;
MOF Circular Cai Jian No.866 of 2007.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

This fund is provided in the form of government grant, interest discount or venture investment to enterprises with projects approved after application or bidding procedures.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
550	600	600	800

9. Duration of the subsidy and/or any other time-limits attached to it

1986 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

88.

1. Title of the subsidy programme

Fund for high technology R&D for packaging industry.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To support the research and development activities of packaging industry, to promote the development of recycling economy and green packaging.

4. Background and authority for the subsidy

MOF.

5. Legislation under which it is granted

MOF Circular Cai Qi No.107 of 2005;
MOF Circular Cai Qi No.154 of 2008.

6. Form of the subsidy

Financial appropriations.

7. To whom and how the subsidy is provided

This fund is provided in the form of government grant and interest discount to enterprises with projects approved after application and reviewed by experts. The amount of government grant shall not exceed RMB 5 million or the capital invested by the enterprises themselves. The period of each project to enjoy interest discount shall be no more than 2 years and the total amount that each project receives in the form of interest discount shall be no more than RMB 5 million.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2005	2006	2007	2008
30	30	30	30

9. Duration of the subsidy and/or any other time-limits attached to it

2005 to present.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

89.

1. Title of the subsidy programme

Preferential tax treatment for raw copper materials.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To promote technology upgrading of enterprises.

4. Background and authority for the subsidy

MOF, SAT, GAC.

5. Legislation under which it is granted

MOF Circular Cai Shui No. 81 of 2003;
MOF Circular Cai Shui No.10 of 2004;
MOF Circular Cai Guan Shui No. 12 of 2005;
MOF Decree No.48.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

30 per cent of import VAT on copper concentrate, waste copper and unrefined copper imported within the approved quantity by copper refineries with production or refining capacity of electrolytic copper over 30,000 tons which meet the criteria of environmental protection shall be refunded after collection.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

2003 to 2005.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

90.

1. Title of the subsidy programme

Preferential tax treatment for casting and forging products.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the technology upgrading of enterprises and the research and development activities of the casting and forging products.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No. 96 of 2003;
MOF Circular Cai Shui No.150 of 2006;
MOF Circular Cai Shui No.151 of 2006;
MOF Decree No.48.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

From 1 January 1998 to 31 December 2008, the VAT on the casting and forging products which are used in producing machinery, manufactured and sold by the specialized casting and forging enterprises listed in the annex to the Circular shall be collected according to stipulations at first, and then 35 per cent of the actually collected VAT shall be refunded.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1 January 1998 to 31 December 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

91.

1. Title of the subsidy programme

Preferential tax treatment to dies products.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage the technology upgrading of enterprises and research and development of dies products.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No. 95 of 2003;
MOF Circular Cai Shui No.152 of 2006;

MOF Decree No.48.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) From 1 January 2003 to 31 December 2005, the VAT on the dies products manufactured and sold by the specialized dies manufacturing enterprises listed in the annex to the Circular shall be collected according to stipulations at first, and then 70 per cent of the actually collected VAT shall be refunded.
2) From 1 January 2006 to 31 December 2008, the VAT on the dies products manufactured and sold by the specialized dies manufacturing enterprises listed in the annex to the Circular shall be collected according to stipulations at first, and then 50 per cent of the actually collected VAT shall be refunded.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 1 January 2003 to 31 December 2005;
2) 1 January 2006 to 31 December 2008.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

92.

1. Title of the subsidy programme

Preferential tax treatment to numerically controlled machine tool products.

2. Period covered by the notification

2005-2008.

3. Policy objective and/or purpose of the subsidy

To encourage enterprises to conduct research and development of numerically controlled machine tool products.

4. <u>Background and authority for the subsidy</u>

MOF, SAT.

5. <u>Legislation under which it is granted</u>

MOF Circular Cai Shui No. 97 of 2003;
MOF Circular Cai Shui No.149 of 2006;
MOF Decree No.48.

6. <u>Form of the subsidy</u>

Preferential tax treatment.

7. <u>To whom and how the subsidy is provided</u>

1) From 1 January 2003 to 31 December 2005, the VAT on numerically controlled machine tool products produced and sold by certain numerically controlled machine tool manufacturing enterprises shall be refunded after collection.
2) From 1 January 2006 to 31 December 2008, the VAT on numerically controlled machine tool products produced and sold by certain numerically controlled machine tool manufacturing enterprises shall be collected according to stipulations at first, and then 50 per cent of the actually collected VAT shall be refunded.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Not available.

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1) 1 January 2003 to 31 December 2005;
2) 1 January 2006 to 31 December 2008.

10. <u>Statistical data permitting an assessment of the trade effects of a subsidy</u>

Not available.

93.

1. <u>Title of the subsidy programme</u>

Preferential tax treatment to anti-HIV-AIDS medicine.

2. <u>Period covered by the notification</u>

2005-2008.

3. Policy objective and/or purpose of the subsidy

To push forward the prevention and cure of HIV-AIDS.

4. Background and authority for the subsidy

MOF, SAT.

5. Legislation under which it is granted

MOF Circular Cai Shui No.160 of 2002;
MOF Circular Cai Shui No.181 of 2003;
MOF Circular Cai Shui No.1 of 2007;
MOF Circular Cai Shui No.49 of 2007;
MOF Decree No.48.

6. Form of the subsidy

Preferential tax treatment.

7. To whom and how the subsidy is provided

1) From 1 January 2002 to the end of 2010, tariffs and import VAT and VAT in domestic circulation stages on imported anti-HIV-AIDS medicine shall be exempted.
2) From 1 July 2003 to the end of 2010, VAT in production and circulation stages on domestically produced anti-HIV-AIDS medicine by designated domestic producers shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available.

9. Duration of the subsidy and/or any other time-limits attached to it

1) 1 January 2002 to the end of 2010.
2) 1 July 2003 to the end of 2010.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

Note:

1. The 12 border cities, counties or towns refer to Heihe, Suifenhe in Heilongjiang Province, Hunchun in Jilin Province, Manzhouli in Inner Mongolia Autonomous Region, Yining, Bole, Tacheng in Xinjiang Uygur Autonomous Region, Pingxiang, Dongxing in Guangxi Zhuang Autonomous Region, Wanting, Ruili and Hekou in Yunnan Province.

2. The costal economic open areas firstly referred to the 14 coastal open cities of Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, Beihai. In 1985 the Yangtze River Delta, the Pearl River Delta and the triangle area in Fujian Province of Xiamen, Zhangzhou and Quanzhou cities were open to be included in the costal economic open areas. In 1988 the area was further expanded to the Liaodong Peninsula, Shandong Peninsular and etc. to include 153 cities and counties in Tianjin Municipality, Hebei Province, Liaoning Province, Jiangsu Province, Zhejiang Province, Fujian Province, Shandong Province and Guangxi Zhuang Autonomous Region. In 1990 the city of Jinan was open. In 1992 5 cities along the Yangtze river namely Chongqing, Yueyang, Wuhan, Jiujiang, Wuhu, 6 provincial capital cities in border and coastal provinces and autonomous regions namely Harbin, Changchun, Hohhot, Shijiazhuang, Nanning and Kunming and 11 provincial capital cities of inland provinces and autonomous regions namely Taiyuan, Hefei, Nanchang, Zhengzhou, Changsha, Chengdu, Guiyang, Xi'an, Lanzhou, Xining and Yinchuan began to implement the policies of the costal economic open areas. In 1993 the city of Huangshi along the Yangtze River also began to implement the policies of the costal economic open areas.

3. The Three Gorges of Yangtze River Economic Zone refers to Yichang County, Zigui County and Xingshan County under the Yichang City of the Hubei Province, Badong County of the Enshi Tujia and Miao Autonomous Prefecture of Hubei Province, Wushan County, Wuxi County, Fengjie County, Yunyang County, Kai County and Zhong County under the Wanxian City of Sichuan Province, Shizhu County under the Qianjiang Prefecture and Fengdu County, Wulong County under the Fuling Prefecture of Sichuan Province, and Changshou County, Jiangbei County, Ba County and Jiangjin City under Chongqing City. Here the administrative division was that before the establishment of the Chongqing Municipality directly under the Central Government.

4. The western regions refer to Chongqing Municipality, Sichuan Province, Guizhou Province, Yunan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region.