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Non-Confidential Attachment C-1.1.2

CBSA Report Certain Carbon Steel Welded Pipe – Appendix 3 extract

Canada Border Services Agency | Agence des services frontaliers du Canada

exh 304 nc
SP-I-555

OTTAWA, August 5, 2008

4214-16
AD/1373
4218-24
CVD/123

STATEMENT OF REASONS

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

CERTAIN CARBON STEEL WELDED PIPE
ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA

DECISION

On July 21, 2008, 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 carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of ½ 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 the People's Republic of China.

Cet Énoncé des motifs est également disponible en français. Veuillez vous reporter à la section "Renseignements".
This Statement of Reasons is also available in French. Please refer to the "Information" section.

Canada

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APPENDIX 3 – SUMMARY OF FINDINGS – NAMED SUBSIDY PROGRAMS

ACTIONABLE SUBSIDY PROGRAMS THAT HAVE BEEN USED BY COOPERATIVE EXPORTERS

Program 1: Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones

General Information:

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 in Economic and Technical Development Zones (ETDZs) in open coastal cities and encourage some districts to take the lead in development. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, Foreign Invested Enterprises (FIEs) of a productive nature established in coastal economic open zones or in the old urban districts of cities where the SEZs or the ETDZs are located shall pay income tax at a reduced rate of 24%.

The program was in operation during the Subsidy POI. It was mentioned in the GOC's response that the *Income Tax Law of the People's Republic of China for Enterprises* (the "New Income Tax Law") has been adopted at the fifth session of the Tenth National People's Congress on March 16, 2007 and came into effect as of January 1, 2008. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax reduction for FIEs under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program can be found in the following articles of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Article 69 defines ETDZs as the economic and technological development zones in the coastal port cities established upon approval of the State Council.

FIEs established in ETDZs that are eligible for preferential tax treatment under this program are located in the following ETDZ areas: Changchun, Wuhan, Haerbin, Nanchang, Changsha, Zhengzhou, Taiyuan, Hefei, Wuhu, Xi'an, Chongqing, Chengdu, Hohhot, Kunming, Nanning, Yinchuan, Guiyang, Shihezi, Urumchi, Lanzhou, Xining, Tianjin, Kunshan, Suzhou Industrial Park, Guangzhou, Jinqiao, Beijing, Nanjing, Dalian, Caohejing, Qingdao, Hangzhou, Ningbo, Yantai, Shenyang, Haichang Xiamen, Rongqiao Fuqing, Minhang, Fuzhou, Nansha, Xiaoshan, Nantong, Qinghuangdao, Yingkou, Wenzhou, Lianyungang, Weihai, Daxie Ningbo, Zhanjiang, Dayawai Huizhou, Yangpu Hainan, Dongshan and Hongqiao.

Article 70 defines coastal economic open zones as "those cities, counties and districts established as coastal economic open zones upon approval of the State Council".

FIEs of a productive nature are defined in Article 72 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* as FIEs engaged in the following industries:

(a) Machine manufacturing and electronics industries;
(b) Energy resource industries (not including exploitation of oil and natural gas);
(c) Metallurgical, chemical and building material industries;
(d) Light industries, and textiles and packaging industries;
(e) Medical equipment and pharmaceutical industries;
(f) Agriculture, forestry, animal husbandry, fisheries and water conservation;
(g) Construction industries;
(h) Communications and transportation industries (not including passenger transport);
(i) Development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; and
(j) Other industries as specified by the tax authorities under the State Council.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential tax rates provided to FIEs located in the coastal economic open areas and the ETDZs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the

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Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the *Special Import Measures Regulations* (SIMR), any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 2: Preferential Tax Policies for Foreign Invested Enterprises

Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years

General Information:

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 the program is administered by local tax authorities.

Under this program, from the year an FIE begins to make a profit, they may apply for and receive an exemption from income tax in the first and second years and a 50% reduction in the third, fourth, and fifth years of profitable operation. Should an FIE cease operation following a period of less than 10 years, that enterprise will be responsible for repaying the amount of tax that has been reduced or exempted under this program.

If the FIE business license prescribes a scope that encompasses both business of a "productive" nature and of a "non-productive" nature, the FIE may only apply for and receive benefits under this program in the years where the income from productive business exceeds 50% of its total income. Should the scope of the FIE not include business of a "productive" nature in the scope prescribed by its business license, it may

not receive benefits under this program under any circumstance, regardless if it has productive business income that exceeds 50% of total income.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008. However, according to Article 57 of the New Income Tax Law and the *Notification of the State Council on Carrying out the Transitional Preferential Policies concerning Enterprise Income Tax, Guo Fa (2007), No. 39*, enterprises currently receiving the benefits under this program as of January 1, 2008 can continue to receive the relevant preferential treatments set forth in the previous tax laws and administrative regulations until the end of the fifth profitable year.

Legal Basis:

The income tax reduction and/or exemption for FIEs under this program are provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. The program is administered in accordance with the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

As noted above, FIEs of a "productive nature" are eligible for this program as long as they are scheduled to operate for a period not less than ten years. FIEs of a "productive nature" are defined in Article 72 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* as FIEs engaged in the following industries:

(a) Machine manufacturing and electronics industries;
(b) Energy resource industries (not including exploitation of oil and natural gas);
(c) Metallurgical, chemical and building material industries;
(d) Light industries, and textiles and packaging industries;
(e) Medical equipment and pharmaceutical industries;
(f) Agriculture, forestry, animal husbandry, fisheries and water conservation;
(g) Construction industries;
(h) Communications and transportation industries (not including passenger transport);
(i) Development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; and
(j) Other industries as specified by the tax authorities under the State Council.

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Determination of Subsidy:

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.

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 3: Local Income Tax Exemption and/or Reduction

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which was promulgated on April 9, 1991, and came into force on July 1, 1991. This program was established to provide preferential tax treatment to FIEs to accelerate the development of local economies. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, any FIE that operates in an industry or undertakes a project encouraged by the State may receive an exemption or reduction in local income taxes.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The program is described under Article 9 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria can be found in Article 9 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

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Program 4: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

General Information:

The program was established in the *Notice of Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan", Zhong Fu (2005) No. 127*. The objective of the program is "promoting the strategy of industrial strong city and enterprise string city, promoting the transition of the structure of industrial enterprises towards higher level and moderate orientation to heavy industry, and elevating the industrial competitiveness and development level." The granting authority responsible for this program is the Municipal Economic and Trade Bureau of Zhongshan.

The benefit provided under this program is in the form of grants and is limited to enterprises in the equipment manufacturing industry located in Zhongshan City. The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The grant available to qualified enterprises is provided for in the *Notice of Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan". Zhong Fu (2005) No. 127.*

Eligibility Criteria:

The eligibility criteria can be found in Article 4 of the *Notice of Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan". Zhong Fu (2005) No. 127.*

Determination of Subsidy:

On the basis of available information, 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.

Determination of Specificity:

Grants provided to enterprises in the equipment manufacturing industry located in Zhongshan City, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Notice of Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan", Zhong Fu (2005) No. 127.*

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to paragraph 27(a) of the SIMR, the amount of subsidy was calculated by distributing the amount of the grant over the total quantity of subsidized goods to which the grant was attributable.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

√ **Program 5: Export Assistance Grant**

General Information:

This program was established in the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000*, which was promulgated and came into force on October 24, 2000. This program was established to support the development of Small and Medium-sized Enterprises (SMEs), to encourage SMEs to join in the competition of international markets, to reduce the business risks of the enterprises, and to promote the development of the national economy. The granting authority responsible for this program is the foreign trade and economic department and the program is administered at local levels.

The funds provided under this program are for the purpose of: (i) holding or participating in overseas exhibitions, (ii) accreditation fees for quality management system, environment management system or for the product, (iii) promotion in the international market, (iv) exploring a new market, (v) holding training seminars and symposiums, and (vi) overseas bidding.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The international market development fund available to qualified SMEs is provided for in the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000.*

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Eligibility Criteria:

The eligibility criteria can be found in Article 5 of the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000.*

Enterprises applying for the international market development funds must meet the following criteria:

- Qualification of enterprise as legal person according to law and having the power to manage the import and export businesses;
- Customs statistics of export value of the enterprise of last year is US $15 million or less and the enterprise has sound financial management system and good financial management records; and
- Having the employees who specialize in foreign trade and economic businesses and who possess the basic skills of foreign trade and economics and having definite work arrangements and market development plans.

Determination of Subsidy:

On the basis of available information, 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.

Determination of Specificity:

A grant provided under this program is an export subsidy pursuant to SIMA, as it is contingent, in whole or in part, on export performance. An export subsidy is a prohibited subsidy pursuant to SIMA.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to paragraph 27(a) of the SIMR, the amount of subsidy was calculated by distributing the amount of the grant over the total quantity of subsidized goods to which the grant was attributable.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 6: Research & Development (R&D) Assistance Grant of Wuxing District

General Information:

This program was established in the *Circular of the Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District*, which was promulgated and came into force on December 26, 2005. This program was established to encourage and support enterprises to develop new technologies and products, to promote energy savings, to enhance product quality, to improve export structure, and to cultivate and develop high-tech industry and new pillar industry. The granting authority responsible for the program is the People's Government of Wuxing District and the program is administered by the Science and Technology Bureau of Wuxing District.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The grant under this program is provided for in the *Circular of the Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District.*

Eligibility Criteria:

The eligibility criteria can be found in Article 2 of the *Circular of the Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District.*

According to the Circular, only major scientific research and technology enterprises listed by the Science & Technology Bureau of Wuxing District, technology innovative enterprises and agricultural science & technology enterprises listed by the science & technology departments at various levels, certain high-tech enterprises, etc. are eligible for the benefits provided under this program.

Determination of Subsidy:

On the basis of available information, 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.

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Determination of Specificity:

Grants provided to selected enterprises located in Wuxing District, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District.*

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to paragraph 27(a) of the SIMR, the amount of subsidy was calculated by distributing the amount of the grant over the total quantity of subsidized goods to which the grant was attributable.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 7: Innovative Experimental Enterprise Grant

General Information:

This program was established in the *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172*, which was promulgated and came into effect on July 20, 2007. This program was established to promote the technology development of Zhejiang province. The granting authority responsible for this program is the Science and Technology Department of Zhejiang Province.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The grants available to innovative experimental enterprises are provided for in the *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172.*

Eligibility Criteria:

The eligibility criteria can be found in Article 4 of the *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172.*

According to the Circular, only 150 enterprises were selected as "innovative experimental enterprises of Zhejiang province" (50 enterprises selected in 2007 and another 100 enterprises selected in 2008) and the selected enterprises were limited within the following six types of enterprises: high-tech enterprises at the provincial level, technical SMEs, agricultural technical enterprises, key enterprises, exemplary enterprises on patent, and enterprises which were transferred from research institutions.

Determination of Subsidy:

On the basis of available information, 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.

Determination of Specificity:

Grants provided to 150 enterprises located in Zhejiang province, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172.*

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to paragraph 27(a) of the SIMR, the amount of subsidy was calculated by distributing the amount of the grant over the total quantity of subsidized goods to which the grant was attributable.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

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./ **Program 8: Superstar Enterprise Grant** –

General Information:

Under this program, enterprises located in Huzhou City and selected as "Superstar Enterprises" may receive grants from the local government. In order to qualify for a "Superstar Enterprise", total annual sales of the superstar enterprise have to reach a threshold. The granting authority responsible for this program is the People's Government of Huzhou City.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Eligibility Criteria:

In order for an enterprise to receive the grants under this program, the enterprise must be a "Superstar Enterprise" located in Huzhou City and must exceed the relevant sales threshold.

Determination of Subsidy:

On the basis of available information, 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.

Determination of Specificity:

Grants provided to superstar enterprises located in Huzhou City, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to paragraph 27(a) of the SIMR, the amount of subsidy was calculated by distributing the amount of the grant over the total quantity of subsidized goods to which the grant was attributable.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 9: Hot-Rolled Steel Provided by Government at Less than Fair Market Value

General Information:

At the preliminary determination, the CBSA stated that information was still being reviewed to determine whether CSWP producers had purchased goods or services from state-owned enterprises (SOEs) at prices below fair market value. Pursuant to this review, the CBSA examined the information provided by the four cooperative exporters in respect of hot-rolled steel purchases during the Subsidy POI.

The information submitted by the cooperative exporters provided a detailed breakdown of hot-rolled steel purchases (both strip and coil) including the names and addresses of suppliers as well as the ownership structure of the suppliers when known. The cooperative exporters indicated that hot-rolled steel was purchased from SOEs, domestic-invested enterprises, and private trading companies during the Subsidy POI. The hot-rolled steel purchased by CSWP producers from the private trading companies is, itself, provided to the private trading companies by producers that are either SOEs or domestic-invested enterprises. However, only one cooperative exporter was able to identify the producers of origin for hot-rolled steel that was purchased from the private trading companies. Upon examination of this information, the CBSA determined that approximately 79% of the hot-rolled steel purchased by the cooperative exporter from private trading companies was produced by SOEs. On the basis of the information available, the CBSA will presume that 79% of the hot-rolled steel purchased from private trading companies is attributable to SOEs. Thus, SOEs provide hot-rolled steel directly to CSWP producers or indirectly to CSWP producers through private trading companies.

Determination of Subsidy:

Based on the available information, hot-rolled steel that is provided directly by SOEs constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, i.e. the government provides goods other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods in China and the price at which the goods were provided by the government.

In addition, hot-rolled steel that is provided indirectly by SOEs through private trading companies constitutes a financial contribution pursuant to paragraph 2(1.6)(c), i.e. the government provides goods other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods in China and the price at which the goods were provided by the government.

Where hot-rolled steel was provided indirectly by SOEs through private trading companies, the CBSA compared the selling prices of hot-rolled steel from the private trading companies with those of the SOEs when selling hot-rolled steel directly to CSWP producers. The difference in price was not significant and, therefore, the CBSA

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determined that a benefit is conferred to CSWP producers when hot-rolled steel is provided indirectly by SOEs through private trading companies.

A state-owned enterprise refers to any corporation that is acting for, on behalf of, or under the authority of the government. This would include any corporation, which is effectively controlled by the GOC through laws, regulations, orders, directives, or through any other similar mechanism or, alternatively, whose shares are majority or wholly owned by the GOC. Such corporations are considered "government" for purposes of a subsidy investigation conducted pursuant to SIMA.

Determination of Specificity:

The provision of hot-rolled steel by SOEs is specific pursuant to paragraph 2(7.3)(a) of SIMA because the government is providing this product to a limited number of enterprises, i.e. enterprises that use hot-rolled steel.

Calculation of Amount of Subsidy:

Where a subsidy relates to the provision of goods by government, the CBSA determines whether there is a difference between the fair market value of the goods in the territory of the government providing the subsidy, and the price at which the goods were provided by that government. However, the CBSA's most recent re-investigation in respect of *Certain Hot-Rolled Steel Sheet* determined that section 20 conditions continue to exist for this particular steel sector in China.[144] As a result, the domestic selling prices for hot-rolled steel in China are not appropriate for purposes of determining the fair market value of these goods.

To establish the fair market value of hot-rolled steel in China, the CBSA reviewed the information available. The CBSA found that one cooperative exporter had imported hot-rolled steel from a supplier located outside of China during the Subsidy POI. The CBSA subsequently compared the import price of the hot-rolled steel with the average monthly SteelBenchmarker.com price for hot-rolled steel in three regions (excluding China).[145] The import price paid by the CSWP producer in China was not significantly different than the monthly average world prices listed in SteelBenchmarker.com during the Subsidy POI. Accordingly, the import price paid by a CSWP producer in China is appropriate for purposes of establishing the fair market value of hot-rolled steel in China.

Where hot-rolled steel was provided directly by SOEs, the CBSA compared the average monthly price paid by each cooperative exporter with the import price paid for hot-rolled steel in China. Where hot-rolled steel was provided indirectly by SOEs through private trading companies, the CBSA compared the average monthly price paid by each cooperative exporter with the import price paid for hot-rolled steel in China.

[144] Exhibit 213 – CBSA Customs Notice 07-020 Certain Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip (concluded June 27, 2007) at paras. 6-8.
[145] SteelBenchmarker.com is a recognized source for price information on steel products and the data contained therein is considered authoritative and reliable.

As previously stated, the CBSA, on the basis of the information available, presumed that 79% of the hot-rolled steel purchased from private trading companies is attributable to SOEs. In addition, all purchases of hot-rolled steel from domestic-invested enterprises (non-SOEs) were excluded for purposes of determining an amount of subsidy.

As a result, the CBSA has determined that all four cooperative exporters have received benefits under this program during the Subsidy POI. Pursuant to section 36 of the SIMR, the amount of subsidy was calculated by distributing the difference between the fair market value of hot-rolled steel in China and the price at which the hot-rolled steel was provided by the government over the estimated total quantity of subsidized goods to which this subsidy was attributable.

The GOC has not provided information regarding the use of this subsidy by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount under ministerial specification.

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ACTIONABLE SUBSIDY PROGRAMS THAT HAVE NOT BEEN USED BY COOPERATIVE EXPORTERS

I. Special Economic Zone (SEZ) Incentives and Other Designated Areas

Program 10: Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong Area)

General Information:

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 absorb foreign investment, expand the "open-up policy" and enhance development in Special Economic Zones (SEZs). The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, non-wholly foreign owned FIEs established in SEZs and Foreign Enterprises (wholly foreign owned FIEs), established in SEZs engaging in production or business operations shall pay income tax at a reduced rate of 15%.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax reduction for FIEs under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article 69 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Article 69 defines SEZs as the SEZs of Shenzhen, Zhuhai, Shantou and Xiamen and the Hainan SEZ established by law or established upon approval of the State Council.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential tax rates provided to FIEs located in the SEZs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the abovementioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 11: Preferential Tax Policies for Enterprises with Foreign Investment Established in the Pudong Area of Shanghai

General Information:

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 in the Pudong Area of Shanghai. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, FIEs, Foreign Enterprises, joint-venture Domestically Invested Enterprises (DIEs) and single-investor DIEs established in the Pudong New Area of Shanghai shall pay income tax at a reduced rate of 15%.

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The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax rate reduction for FIEs and Foreign Enterprises under this program is specifically provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. The income tax rate reduction for joint-venture DIEs and single-investor DIEs under this program can be found in the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*. These legal documents also clearly indicate that the reduced income tax rate of 15% is to apply to all enterprises, including FIEs, located in the aforementioned SEZs.

Eligibility Criteria:

The eligibility criteria relating to FIEs for this program can be found in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which specifically identifies productive oriented FIEs established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15%.

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 DIEs established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15%.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential income tax rates provided to enterprises located in the Pudong Area of Shanghai were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 12: Preferential Tax Policies in the Western Regions

General Information:

This program was established for DIEs and FIEs in the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*, which was promulgated on December 30, 2001, and came into effect as of January 1, 2002. This program was established in order to encourage investment in the western region of China. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, DIEs in industries classified in the encouraged category in the Guiding Catalogue for Industrial Structure Regulation (2005 Version) and FIEs classified in the encouraged category in the Guideline Catalogue for Foreign Investment Industries and the Guideline Catalogue of the Advantageous Industries in Central and Western Regions for Foreign Investment, and who are located in the western region and other specified locations are eligible for a preferential income tax rate of 15%.

The program was in operation during the Subsidy POI and is scheduled to expire in 2010.

Legal Basis:

The income tax rate reduction is specifically provided for in Article 1 of the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

Eligibility Criteria:

The eligibility criteria relating to this program can be found in Article 1 of the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

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The eligibility criteria states that enterprises located in the western region and in industries classified as encouraged in the Guiding Catalogue for Industrial Structure Regulation (2005 Version) or in the Guideline Catalogue for Foreign Investment Industries and the Guideline Catalogue of the Advantageous Industries in Central and Western Regions for Foreign Investment, are eligible for the preferential income tax rate of 15% provided they are major businesses and their income from major businesses accounts for more than 70% of total income.

The western region for the purposes of this program is defined as: Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region and Guangxi Zhuang Autonomous Region.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential income tax rates provided to enterprises located in the western region and other specified locations were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 13: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas

General Information:

This program was established in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which was promulgated on June 30, 1991, and came into effect on July 1, 1991. The program was established to absorb investment in SEZs and designated areas to take the lead in their economic development. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, all eligible enterprises may receive a reduced corporate income tax rate of 15%.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax reduction for FIEs under this program is provided for in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. This program is available to FIEs recognized as new and high-tech enterprises and established in the new and high-tech industrial development zones designated by the State Council.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this

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case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 14: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, enterprises located in SEZs and other designated areas may receive exemption and/or reduction of land tax and land use fees. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

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.

Determination of Specificity:

The reduction/exemption of land tax and land use fees is specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises located in SEZs.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 15: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment

General Information:

This program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. The program was established to absorb investment in SEZs and encourage districts to take the lead in development. The granting authority responsible for this program is the General Administration of Customs and this program is administered by local customs authorities.

Under this program, machinery and equipment, spare parts, raw and semi-processed materials, means of transportation and other capital goods necessary for production that are imported by enterprises in SEZs shall be exempted from import duties.

The program was in operation during the Subsidy POI.

Legal Basis:

The import duty exemption is detailed in Article 13 of the *Regulations on Special Economic Zones in Guangdong Province*.

Eligibility Criteria:

The eligibility criteria are stated in Article 13 of the *Regulations on Special Economic Zones in Guangdong Province*.

Any enterprise located in the special zones may receive the import duty exemption.

Determination of Subsidy:

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

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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.

Determination of Specificity:

Import duty exemptions provided to enterprises in the SEZs of Guangdong province were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Regulations on Special Economic Zones in Guangdong Province*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 16: Income Tax Refund where Profits Re-invested

General Information:

This program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. This program was established to encourage the reinvestment of profits into businesses located in the SEZs of Guangdong province. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, businesses that reinvest profits derived in the SEZs of Guangdong province for a period of five years or longer are eligible to receive a refund of the income tax already paid on the profit that was reinvested.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax refund for the reinvestment of profits in the SEZs of Guangdong province is provided for in Article 16 of the *Regulations on Special Economic Zones in Guangdong Province*.

Eligibility Criteria:

This program is available to businesses that reinvest profits in the SEZs for a period of five years or longer, according to Article 16 of the *Regulations on SpecialEconomic Zones In Guangdong Province*.

Determination of Subsidy:

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.

Determination of Specificity:

Income tax refund provided to enterprises located in the SEZs of Guangdong province were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Regulations on Special Economic Zones in Guangdong Province*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 17: Goods and Services Provided by Government at Less Than Fair Market Value to Enterprises Located in SEZs and Other Designated Areas

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. There is information that the GOC may be providing goods and/or services other than general infrastructure to CSWP producers located in SEZs and other designated areas. These goods and/or services other than general infrastructure may be provided directly by the GOC or indirectly by state-owned enterprises.

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Based on the information provided by the complainant, the GOC may be providing favourable rates such as utility and energy to CSWP producers located in SEZs and other designated areas. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. The GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, i.e., the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in China and the price at which the goods or services were provided by the government.

Determination of Specificity:

Goods and services provided by government to CSWP producers located in SEZs and other designated areas are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises located in SEZs.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

II. GRANTS

Program 18: The State Key Technology Renovation Projects

General Information:

This program was established in the *Administrative Measures on the State Key Technological Renovation Projects* and the *Administrative Measures on Special Fund Generated by Treasure Bonds for the State Key Technological Renovation Projects, Guo Jing Mao Tou Zi (1999) No. 886*, which came into effect as of September 10, 1999. Relevant provisions of the 1999 No. 886 Circular were further amended and published in the *Circular Guo Jing Mao Tou Zi (2000) No. 822*. The purposes for this program

include technological renovation in key industries, enterprises and products, facilitation of technology upgrades, improvement of product structure, improvement of quality, promotion of domestic production, increase of supply, expansion of domestic demand, and promotion of continuous and healthy development of the state economy.

The granting authority responsible for this program is the State Economic & Trade Commission (SETC). The GOC stated that the SETC was discontinued during the institutional reform of state agencies in 2003. As a result, no administrative office overseeing the program exists and, as a practical matter, the program ceased to function in 2003.

Legal Basis:

The grants provided under the State Key Technology Renovation Projects are provided for in Article 4 of the *Administrative Measures on the State Key Technological Renovation Projects*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article 4 of the *Administrative Measures on the State Key Technological Renovation Projects*, which stipulates that enterprises were selected based on their performance. Emphasis was placed on selecting from 512 key enterprises, 120 experimental enterprise groups and leading enterprises in their respective industries, including those larger state-owned or state enterprises and enterprises with controlling state shares that have strong management teams, sound management and high credit rating.

Determination of Subsidy:

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.

Determination of Specificity:

The grant provided to the 512 key enterprises, the 120 experimental enterprise groups and the leading enterprises in their respective industries were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Administrative Measures on the State Key Technological Renovation Projects*.

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Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. If relevant information were available, the amount of subsidy would be calculated by distributing the amount of the grant over the total quantity of subsidized goods for the production, purchase, distribution, sale, export or import of which was carried out by the exporter during the weighted average useful life, not exceeding 10 years, of fixed assets used by the industry of the exporter, pursuant to paragraph 27(c) of the SIMR. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 19: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, CSWP producers located in Guangdong and Zhejiang provinces may receive reimbursement of anti-dumping and/or countervailing legal fees. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

On the basis of available information, 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 legal expenses reimbursed.

Determination of Specificity:

Reimbursements of legal expenses incurred by enterprises in responding to anti-dumping and/or countervailing proceedings is specific pursuant to paragraph 2(7.3)(a) of SIMA, because the subsidy is provided to a limited number of enterprises, i.e. enterprises that have legal expenses related to anti-dumping and/or countervailing investigations.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

III. Equity Infusions/Debt-to-Equity Swaps

Program 20: Debt-to-Equity Swaps

General Information:

The debt-to-equity swap is one of the most significant measures used in the financial restructuring of China's SOEs and state-owned banks. Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on November 20, 2000), the State Council established four asset management companies (AMCs) that were directed to purchase certain non-performing loans from state-owned banks including the Bank of China (BOC), the Industrial and Commercial Bank of China (ICBC), the China Construction Bank (CCB) and the Agricultural Bank of China (ABC). According to the *Regulations of Asset Management Companies*, the AMCs are supervised and managed by the People's Bank of China, China's Ministry of Finance, and the China Securities Regulatory Commission. The four AMCs are China Orient AMC (paired with the BOC), China Huarong AMC (paired with the ICBC), China Xinda AMC (paired with the CCB) and China Great Wall AMC (paired with the ABC).

One of the authorized business activities available for the management of non-performing loans purchased by the AMCs is the debt-to-equity swap. A debt-to-equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company. The *Regulations of Asset Management Companies* (2000) set forth that the State Economic and Trade Commission (SETC) would recommend companies to the AMCs for debt-to-equity swap consideration and that, ultimately, any plans or agreements related to a specific debt-to-equity swap required final approval from the State Council.

Based on the information provided by the complainant, it appears that only SOEs including state-owned CSWP producers, for example, Baosteel were involved in debt-to-equity swaps with AMCs. In addition, the CBSA requested a listing from the GOC of the specific companies that were involved in government approved debt-to-equity swaps. However, the GOC explained that the SETC was discontinued

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during the institutional reform of state agencies in 2003 and that, consequently, the listing was not available.

Determination of Subsidy:

An equity infusion by a government AMC in the form of a debt-to-equity swap constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA in that it involves the direct transfer of funds or liabilities and pursuant to paragraph 2(1.6)(b) in that amounts owing and due to the government are forgiven or not collected. A benefit to the recipient is conferred to the extent that the equity infusion is inconsistent with the usual investment practice of private investors in the territory of the country that is subject to the subsidy investigation.

To this end, the CBSA will first determine whether there was a fair market value for the shares immediately before the government's decision to acquire the shares became public. The price paid by private investors for the same class of shares acquired by the government would represent fair market value if the acquisition of the shares by private investors occurred before the debt-to-equity swap became public.

Where there is no fair market value for the shares acquired by the government, the CBSA will determine whether the government acted in a manner that is consistent with the usual investment practice of private investors in respect of the decision to provide an equity infusion. The usual investment practices of private investors would include, amongst others, a financial risk assessment before the investment decision is made in addition to considerations related to the future financial prospects of the company under consideration for the equity infusion.

Determination of Specificity:

Based on the information available, equity infusions by government AMCs in the form of debt-to-equity swaps have been provided predominantly, if not exclusively, to a limited number of SOEs.

In addition, the *Accession of the People's Republic of China to the WTO* specifically sets forth that "subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies".

As a result, debt-to-equity swaps are specific pursuant to subsection 2(7.3) of SIMA.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

IV. Preferential Loans

Program 21: Preferential Loans Provided Under the Northeast Revitalization Program

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, enterprises located in the northeast region of China may receive preferential loans in the form of interest subsidy under the Northeast Revitalization program. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

On the basis of available information, a preferential loan provided under 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 difference between the interest payable on a commercial loan and the interest payable on the preferential loan provided by the government.

Determination of Specificity:

The provision of preferential loans under this program is specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to a limited number of enterprises located in the northeast region.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy

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amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

V. Preferential Income Tax Programs

Program 22: Preferential Tax Policies for Foreign Invested Export Enterprises

General Information:

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 to expand foreign economic cooperation. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, export oriented enterprises invested in and operated by foreign businesses may pay a reduced income tax rate of 15% if their annual output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year. Export oriented enterprises in the SEZs and ETDZs and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the abovementioned conditions, shall pay enterprise income tax at the tax rate of 10%.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax reduction for foreign invested export enterprises under this program is provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Article 75.7 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.*

Eligibility Criteria:

To obtain this preferential tax treatment, 70% of the sales of the foreign business must be for export.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential tax rates provided to foreign invested export enterprises under this program are an export subsidy pursuant to SIMA, as such subsidies are contingent, in whole or in part, on export performance. An export subsidy is a prohibited subsidy pursuant to SIMA.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 23: Preferential Tax Policies for Enterprises with Foreign Investment which are Technology Intensive and Knowledge Intensive

General Information:

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 to further utilize foreign capital, introduce foreign advanced technology and equipment and accelerate industry structural adjustment. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, production oriented enterprises with foreign investment established in the coastal economic open zones, SEZs, and in the old urban districts of municipalities where ETDZs are located and which are engaged in technology intensive and knowledge intensive projects, may receive a reduced income tax rate of 15%.

The program was in operation during the Subsidy POI.

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Legal Basis:

The income tax reduction for production oriented enterprises with foreign investment under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Article 73(1)(a) of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

This program is limited to production oriented enterprises with foreign investment established in the coastal economic open zones, SEZs, and in the old urban districts of municipalities where ETDZs are located and which are engaged in technology intensive and knowledge intensive projects.

According to the *Circular of the State Administration of Taxation Concerning the Tax Preferential Policy Applicable to Enterprises with Foreign Investment with Regard to Technology Intensive and Knowledge Intensive Projects Guo Shui Fa [2003] No. 135*, technology intensive and knowledge intensive projects are those involving leading products listed in the China Catalogue of High and New Technological Products (promulgated in 2000), promulgated by the Ministry of Science and Technology (formerly known as Commission of Science and Technology). The income from the sales of the leading products for the year must be more than 50% of the total income from sales of all products of the enterprise for the same year.

Determination of Subsidy:

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.

Determination of Specificity:

Preferential tax rates provided to production oriented enterprises with foreign investment were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 24: Preferential Tax Policies for Research and Development by FIEs

General Information:

This program was established in the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*, which was promulgated on September 17, 1999, and came into effect on January 1, 2000. This program was established to encourage research and development by FIEs. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, certain foreign investment enterprises may offset their taxable income by 150% of their R&D expenses for the same year, not to exceed the taxable income for the year.

The program was in operation during the Subsidy POI.

Legal Basis:

The taxable income reduction for certain FIEs is provided for in Article 1 of the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*.

Eligibility Criteria:

This program is limited to FIEs that have increased their R&D expenses by 10% or greater from the previous year. The applicable R&D expenses are as follows:

- New products designing fee for R&D of new production, new skills and new technologies;
- Technology process formulation fee;
- Equipment test adjustment fee;

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- Trial production fee for raw materials and semi-products;
- Technology books and material fee;
- Intermediate experiment fee not enlisted to the State plan;
- Staff members' wages of the research institutions;
- Depreciation fee for research equipment; and
- Other fees related with trial production of new products and technology research.

Exclusions include the following:

- Purchase fee or using fee for technology purchased from other units by the enterprise or technology using rights transferred to the enterprises; and
- Fees for operational costs and expenses paid by the "enterprises engaged".

Determination of Subsidy:

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.

Determination of Specificity:

The reduction of taxable income provided to FIEs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 25: 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

General Information:

This program was established in the *Circular of the Ministry of Finance and State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises (Cai Shui Zi [2000] No. 49)*, which came into force on July 1, 1999. This program was established to attract foreign investment and support technology renovation. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, 40% of the expenses incurred by certain FIEs and foreign enterprises on purchasing domestically produced equipment are deducted from the increment of income tax of that year compared to the previous year. 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% 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 five years.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax refund for certain FIEs and foreign enterprises is provided for in Article 1 of the *Circular of the Ministry of Finance and State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises (Cai Shui Zi [2000] No. 49)*.

Eligibility Criteria:

This program is limited to FIEs and foreign enterprises that fall under the Encouraged Category and Restricted B Category listed in the Directive Category of the Industries of Enterprises with Foreign Investment stipulated in the *Circular of the State Council concerning the Adjustment of Taxation Policies for Import Equipment (Guo Fa [1997] No. 37)*.

Determination of Subsidy:

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

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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.

Determination of Specificity:

The income tax refund for purchasing domestically made equipment is a prohibited subsidy pursuant to SIMA, as it is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

In addition, the income tax refund provided to FIEs and Foreign Enterprises was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the Ministry of Finance and State Administration of Taxation Concerning the Issue of Tax Credit for Business Income tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises (Cai Shui Zi [2000] No. 49)*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 26: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose

General Information:

This program was established in the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*, which came into force on July 1, 1999. This program was established to encourage domestic investment and support the technology upgrading of enterprises. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, all enterprises with investment on the technological transformation projects conforming to the State Industrial policy in the nation, 40% 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% 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 five years.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax refund for domestic enterprises is provided for in Article 2 of the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*.

Eligibility Criteria:

The eligibility criteria can be found in Articles 2 and 11 of the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*.

This program is available to all DIEs with investment on the technological transformation projects conforming to the State industrial policy in the nation.

Determination of Subsidy:

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.

Determination of Specificity:

The income tax refund for purchasing domestically made equipment is a prohibited subsidy pursuant to SIMA, as it is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy

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amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 27: Income Tax Refund for Re-Investment of FIE Profits

General Information:

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 the reinvestment of profits into FIEs in China. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, FIEs who reinvest profits into that FIE by increasing its registered capital, or use FIE derived profit to establish another FIE which is planned to operate for a period not less than five years, are eligible to receive a refund of the income tax already paid on the profit that was reinvested.

Article 10 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* clearly identifies that any FIEs who directly reinvest after tax profit into the organization from which they received the profit from, or use the profits to establish a new foreign enterprise, will be refunded 40% of the tax paid on the profit amount directly reinvested. Further, if the direct reinvestment is in a new foreign enterprise and the FIE withdraws the investment before five years have passed, the tax refunded must be repaid. It also states that should the State Council pass regulations relating to the provision of this preferential treatment, the provisions of those regulations will be applied.

Article 80 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* refers to "direct reinvestment" as using the profits referred to above, prior to their receipt, to increase registered capital in the FIE who provided the profits, or, following receipt of those profits, establishing another FIE.

Article 81 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* addresses the preferential provisions passed by the State Council, as referred to above. It states that where an FIE directly reinvests profits to establish or expand export oriented enterprises or advanced technology enterprises, 100% of the income tax paid on the reinvested profit will be refunded.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax refund for FIEs under this program is provided for in Article 10 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Articles 80, 81 and 82 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

In order for an FIE to obtain this preferential tax treatment, 100% of the shares of the FIE must be foreign-owned and located outside China. Therefore, foreign funded enterprises inside China that act as investors in other enterprises will not be considered foreign investors for the purposes of preferential treatment under this program.

Determination of Subsidy:

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.

Determination of Specificity:

The income tax refund provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

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Program 28: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps

General Information:

This program was established in the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*, which came into effect as of January 1, 2004. This program was established in order to exert further efforts for the debt-to-equity work and support the reform of enterprises. The granting authority responsible for this program is the State Administration of Taxation.

Under this program, enterprises adopting debt-to-equity swaps, pursuant to the debt-to-equity swap agreement signed between the enterprise and a financial asset management company, are exempted from paying value-added tax and/or consumption tax.

This program was in operation during the Subsidy POI and is scheduled to expire on December 31, 2008.

Legal Basis:

The tax exemption under this program is provided for in Article I of the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article I of the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*, which states that:

If, pursuant to the debt-to-equity swap agreement signed between a swap enterprise and a financial asset management company, the old swap enterprise offers assets in the form of goods to the new swap enterprise as investments, an exemption of values-added taxes thereon shall be granted; and

If, pursuant to the debt-to-equity swap agreement signed between a swap enterprise and a financial asset management company, the old swap enterprise offers taxable consumer goods to the new swap enterprise as investments, an exemption of consumption taxes thereon shall be granted.

Determination of Subsidy:

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.

Determination of Specificity:

The tax exemptions provided to enterprises adopting debt-to-equity swaps were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

VI. Relief from Duties and Taxes on Materials and Machinery

Program 29: Exemption of Tariff and Import VAT for Imported Technologies and Equipment ✓

General Information:

The exemptions of tariffs and import linked VAT is provided for and administered in accordance with 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 to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement and to maintain the sustained, rapid and healthy development of the national economy.

The granting authorities responsible for this program are the Ministry of Finance and the General Administration of Customs and the program is administered by 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 appropriate authority, and subsequently that approval documentation is submitted to the

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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 was in operation during the Subsidy POI.

Legal Basis:

The VAT exemption provided under this program is administered in accordance with the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment.*

Eligibility Criteria:

The eligibility criteria related to this program also take into consideration the following documents:

- The Current Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State (2000);
- Catalogue for the Guidance of Foreign Investment Industries;
- Guiding Catalogue of the Industrial Restructuring (2005);
- The Directory of Imported Commodities of Non-Tax Exemption to be Used in Domestic Invested Projects (2000); and
- The Directory of Imported Commodities of Non-Tax Exemption to be used in Foreign Invested Projects.

In accordance with the Circular noted above, in order for a domestic invested enterprise to be eligible for tariff and VAT exemptions on imported equipment, the domestic investment project that the equipment relates to must be listed in the Current Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State (2000). In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the domestic project. Finally, any type of equipment that is imported and listed in the Directory of Imported Commodities of Non-Tax Exemption to be Used in Domestic Invested Projects is not eligible for the exemptions under this program.

In order for an FIE to be eligible for tariff and VAT exemptions on imported equipment, the foreign investment project that the equipment relates to must be listed in the Guideline Catalogue for Foreign Investment Industries under the encouragement category or the restricted B category. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the foreign project. Finally, any type of equipment that is imported and listed in the Directory of Imported Commodities of Non-Tax Exemption to be Used in Foreign Invested Projects is not eligible for the exemptions under this program.

Determination of Subsidy:

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.

Determination of Specificity:

On the basis of available information[146], duty and tax exemptions under this program are specific pursuant to paragraph 2(7.3)(c) of SIMA because disproportionately large amounts of the subsidy are granted to a limited number of enterprises, i.e. SOEs. The GOC did not submit any information regarding the recipients of tax and duty reductions and/or exemptions that would indicate that such benefits were generally available.

In addition, the *Accession of the People's Republic of China to the WTO* specifically sets forth that "subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies".

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 30: Relief from Duties and Taxes on Imported Materials and Other Manufacturing Inputs

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information available, CSWP producers importing materials and other manufacturing inputs such as raw materials may be exempted from paying import duties and taxes. As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix 1 of the subsidy RFI concerning the legislation, administration and availability of this program. The GOC did not provide any of the

[146] See Exhibit 215 – Seamless Carbon or Alloy Steel Oil and Gas Well Casing, CBSA Statement of Reasons – final determination – February 22, 2008, page 53.

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requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

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.

Determination of Specificity:

The exemption of import duties and taxes provided to CSWP producers was found to be limited to a particular enterprise, pursuant to of SIMA.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

VII. Reduction in Land Use Fees

Program 31: Reduction in Land Use Fees

General Information:

This program is administered in accordance with the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*, which was established on August 20, 1999. This program was established to attract foreign investors by providing a land use fee exemption to those enterprises with foreign investment that have acquired their lands from the GOC and have paid the transferring fee. The granting authority responsible for this program is the Administrative Office of the State Council.

At present, every Chinese enterprise is required to pay a land transfer fee when land use rights are acquired through the bidding system. Effective January 1, 2007, all FIEs were required to pay land use tax which is administrated by the State Administration of Taxation and local tax authorities.

Legal Basis:

The land use fee exemption provided under this program is administered in accordance with Article 4.5 of the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*.

Eligibility Criteria:

This program is limited to FIEs that have purchased land use rights from the GOC and have paid the relevant transfer fee.

Determination of Subsidy:

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.

Determination of Specificity:

The land use fee exemption provided to FIEs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in Article 4.5 of the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

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NON-ACTIONABLE SUBSIDY PROGRAMS

Program 32: Income Tax Reduction for Township Enterprises Regarding Local Social Expenses

This program was established under the *Circular of the Ministry of Finance and the State Administration of Taxation on Matters Concerning Preferential Policies for Enterprise Income Tax, Cai Shui Zi [1994] No.1*. The objective was to cover social expenses of township enterprises via preferential tax treatment. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities. The GOC has stated that the program was terminated on December 31, 2007.

The eligibility criteria for this program can be found in Article 1, Clause 10 of the *Circular of the Ministry of Finance and the State Administration of Taxation on Matters Concerning Preferential Policies for Enterprise Income Tax, Cai Shui Zi [1994] No.1.* On the basis of available information, this program was not found to be specific pursuant to SIMA.