PUBLIC FILE Non-confidential attachment C-1.2.7

WORLD TRADE ORGANIZATION

G/SCM/N/123/CHN 13 April 2006

(06-1762)

Committee on Subsidies and Countervailing Measures

Original: English

SUBSIDIES

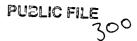
New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement

PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 11 April 2006, is being circulated at the request of the Delegation of the People's Republic of China.

The following notification constitutes the People's Republic of China's new and full notification of information on programmes granted or maintained at the central government level in China. In general, the period to which the following information applies is 2001 to 2004.

Insofar as the notification obligation is a transparency-orientated provision that, pursuant to Article 25.7 of the Agreement, carries no legal weight as to the actual identification or measurement of a subsidy, its action ability status, or its trade effects, China has included certain activities in this notification which arguably are not (or are not always) "specific subsidies" within the meaning of the Agreement.



I.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for foreign-invested enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment

4. Background and authority for the subsidy

Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM)

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the Tax Law):

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise;

State Council Circular Guo Fa No. 37 of 2000

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) Any enterprise with foreign investment of a production nature scheduled to operate for a period of not less than ten years shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a fifty per cent reduction in the third to fifth years ("two years of exemption and three years fifty per cent reduction"). (2) Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly into that enterprise by increasing its registered capital, or uses the profit as capital investment to establish other enterprises with foreign investment to operate for a period of not less than five years, may be refunded forty per cent of the income tax already paid on the reinvested amount. (3) For direct reinvestment in China by foreign investors for the organization and expansion of exportoriented enterprises or advanced technology enterprises, the entire portion of enterprises income tax that has been paid on the reinvested amount may be refunded. (4) Any foreign enterprise which has no establishment or place in China but derives profit, interest, rental, royalty and other income from sources in China, or though it has an establishment or a place in China, the said income is not effectively connected with such establishment or place, may, since January 1 2000, be levied at the

reduced income tax rate of ten per cent, but the income tax of the profit that the foreign investors made out of the foreign invested enterprises are exempted. (5) Income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communications and transportations industries, agricultural, forestry and animal husbandry production, and the development of important technologies may be levied at the reduced rate of ten per cent. Where the technology supplied is advanced or the terms are preferential, exemption from income tax may be allowed.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1991-present, while item (4) 2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

II.

Title of the subsidy programme

Preferential tax policies for foreign-invested export enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises;

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Export-oriented enterprises invested in and operated by foreign businesses for which in any year the output value of all export products amounts to seventy per cent or more of the output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Tax Law reduced by one half after the period of enterprise income tax exemption or reduction has expired in accordance with the provisions of the Tax Law. However, export-oriented enterprises in the special economic zones and economic and technological development zones and other such enterprises subject to enterprise income tax at the tax rate of fifteen per cent that qualify under the above-mentioned conditions shall pay enterprise income tax at the tax rate of ten per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

III.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into agriculture, forestry or animal husbandry, and into remote underdeveloped areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Any foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas may be allowed a fifteen to thirty per cent reduction of the amount of income tax payable for a period of another ten years following the expiration of the period for tax exemption or reduction.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1991-present

Statistical data permitting an assessment of the trade effects of a subsidy\$ Not available

IV.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for foreign-invested enterprises engaged in energy, transportation infrastructure projects

Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into infrastructure construction

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.

State Council Circular Guo Fa No.13 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of foreign-invested enterprises engaged in energy and transportation infrastructure projects such as harbour and wharf projects may be levied at the reduced rate of fifteen per cent. The implementing scope of the policy stipulated in Art.73.1.1.3 of Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises is enlarged to nationwide.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

v.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for Chinese-foreign equity joint ventures engaged in port and dock construction

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into infrastructure construction

Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Chinese-foreign equity joint ventures engaged in port and dock construction may be imposed of enterprise income tax at the reduced rate of fifteen per cent, and where the period of operations is 15 years or more may be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

VI.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive

Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, Ministry of Science and Technology (MOST)

5. Legislation under which it is granted

SAT Circular Guo Shui Fa No.139 of 1995, SAT Circular Guo Shui Fa No.135 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Enterprises with foreign investment which are technology-intensive and knowledge-intensive and whose major products are enlisted in the "Catalogue of High and New Technology Products of China" promulgated by MOST and the sales revenue of these products of that year accounts for over fifty per cent of the total annual sales revenue of the enterprise, may be imposed a reduced enterprises income tax rate of fifteen per cent.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

VII.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment in the border cities

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into border cities and expand the open-up policy and enhance the development of the border areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

SAT Circular Guo Shui Han Fa No.1412 of 1992

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The enterprise income tax of the foreign-invested enterprises of a production nature established in 12 border cities, counties or towns (note 1) may be levied at a reduced rate of twenty-four per cent.

Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1992-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

VIII.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones, and for advanced technology enterprises invested in and operated by foreign businesses

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, MOST

5. Legislation under which it is granted

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The enterprise income tax of the enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones may be levied at a reduced rate of fifteen per cent. The Chinese-foreign equity joint ventures recognized as high or new technology enterprises and established in the State high or new technology industrial development zones of which the operation period is ten years or more may be exempt from the enterprise income tax in the first and second years from the year beginning to make profit. Foreign-invested enterprises established in the high or new technology industrial development zones which are located in the special economic zones and the economic and technological development zones shall be governed by the preferential tax provisions of the special economic zones and the economic and technological development zones. (2) Advanced technology enterprises invested in and operated by foreign businesses which remain advanced technology enterprises after the period of enterprise income tax exemption or reduction has expired in accordance with the provisions of the Tax Law may continue to pay enterprise income tax for an additional three years at the tax rate specified in the Tax Law reduced by one half.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

IX.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress

4. Background and authority for the subsidy

MOF, SAT, MOST

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

- 7. To whom and how the subsidy is provided
- (1) The enterprise income tax of the enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones may be levied at a reduced rate of fifteen per cent, and may be exempt from the enterprises income tax in the first and second years from the year beginning production.
- Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

X.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area)

2. Period covered by the notification

2001-2004

Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises

6. Form of the subsidy

Preferential tax treatment

To whom and how the subsidy is provided

(1) The income tax on enterprises with foreign investment established in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan special economic zones and foreign enterprises which have establishments or places in these special economic zones engaged in production or business operations shall be levied at the reduced rate of fifteen per cent. (2) The income tax on enterprises with foreign investment of a production nature established in the old urban districts of cities where the above-mentioned zones are located shall be levied at the reduced rate of twenty-four per cent.

(3) The income tax on the production-oriented enterprises with foreign investment established in the old urban districts of cities where the above-mentioned zones are located and which are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, (b) projects with foreign investments of over US\$30 million and having long periods for return on investment, (c) energy resources, transportation and port construction projects, shall be levied at the reduced rate of fifteen per cent. (4) Enterprises with foreign investment established in the Hainan special economic zones and engaged in infrastructure projects such as airports, harbours, docks, highways, railways, power stations, coal mines and water conservation, and enterprises with foreign investment engaged in the development of and operations in agriculture where the period of operations is fifteen years or more, shall be exempt from enterprise income tax from the first year to the fifth years starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year. (5) The foreign investors who reinvest the profit made from the enterprises established in Hainan special economic zones into the infrastructure construction projects of, or agricultural development enterprises in, the Hainan special economic zones may be refunded the entire portion of the enterprise income tax that has been paid on the reinvested amount.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1984-present, while item (5) 1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XI.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for enterprises with foreign investment established in the costal economic open areas and in the economic and technological development zones

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

- (1) The income tax on enterprises with foreign investment of a production nature established in the economic and technological development zones shall be levied at the reduced rate of fifteen per cent. (2) The income tax on enterprises with foreign investment of a production nature established in the coastal economic open areas (note 2) and in the old urban districts of cities where the economic and technological development zones are located shall be levied at the reduced rate of twenty-four per cent. (3) The income tax on the enterprises with foreign investment of a production nature established in the coastal economic open areas and in the old urban districts of cities where the economic and technological development zones are located and which are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, (b) projects with foreign investments of over US\$30 million and having long periods for return on investment, (c) energy resource, transportation and port construction projects, shall be levied at the reduced rate of fifteen per cent.
- Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1984- present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

PUBLIC FILE

XII.

Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the area

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises:

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax on enterprises with foreign investment of a production nature established in Pudong area of Shanghai as well as enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations shall be levied at the reduced rate of fifteen per cent. Enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations where the period of operations is fifteen years or more may be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XIII.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No 034 of 1995

Form of the subsidy

Preferential tax treatment

- 7. To whom and how the subsidy is provided
- (1) The income tax on enterprises with foreign investment of a production nature established in the Three Gorges of Yangtze River Economic Zone (note 3) shall be levied at the reduced rate of twenty-four per cent. (2) The income tax on enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone which are engaged in energy resources, transportation, harbour and wharf projects or other projects encouraged by the State, shall be levied at the reduced rate of fifteen per cent. (3) The income tax on the enterprises with foreign investment of a production nature established in the old urban districts of the open cities along the Yangtze River such as Yichang, Wanxian and Fuling and etc., shall be levied at the reduced rate of twenty-four per cent. (4) Among the enterprises mentioned in item (3), those engaged in technology-intensive or

G/SCM/N/123/CHN Page 17

knowledge-intensive projects, or projects with foreign investments of over US\$30 million and having long periods for return on investment, or energy resources, transportation and port construction projects shall be levied at the reduced rate of fifteen per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1995-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XIV.

1. <u>Title of the subsidy programme</u>

Preferential tax policies in the western regions

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To accelerate the development of the western regions, expand the opening up, lessen the imbalance of economic development among different areas and accelerate the development of the regions

4. Background and authority for the subsidy

MOF, SAT, MOFCOM and other relevant authorities under the State Council.

5. Legislation under which it is granted

State Council Circular Guo Fa No. 33 of 2000; General Office of State Council Circular Guo Ban Fa No. 73 of 2001; MOF Circular Cai Shui No. 202 of 2001; SAT Circular Guo Shui Fa No. 172 of 1999.

6. Form of the subsidy

Preferential tax treatment

PUBLIC FILE

G/SCM/N/123/CHN Page 18

7. To whom and how the subsidy is provided

(1) The income tax on enterprises, domestic and foreign-invested, established in the western regions (note 4) which are engaged in industries encouraged by the State shall be levied at the reduced rate of fifteen per cent from the year 2001 to 2010. For domestic enterprises, industries encouraged by the State refer to those listed in the "Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State", and the enterprises must have the items included in the Catalogue as its major business which should account for over seventy per cent of total revenue. For foreign-invested enterprises, industries encouraged by the State refer to those listed as encouraged in the "Catalogue for the Guidance of the Foreign Investment Industries" and listed in the "Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment", and the enterprises must have the items as listed in the two Catalogues as its major business which should account for over seventy per cent of total revenue. (2) The enterprises, domestic and foreign-invested, which are newly established in the western regions and engaged in business such as transportation, electricity, water conservation and etc., of which the revenue accounts for over seventy per cent of total revenue, shall be, from the year beginning production or operation for domestic enterprises and from the year beginning to make profit for foreign-invested enterprises with the period of operations of ten years or more, exempt from the income tax for the first and second years and subject to enterprise income tax at a rate reduced by one half for the third year through the fifth year. (3) Income from production of agricultural specialty products which is a result of returning cultivated land to forests and returning grazing land to grassland for the sake of environmental protection shall be exempt from the agricultural specialty tax for 10 years from the year beginning to generate revenue. (4) The land taken to construct highways in western regions is exempt from the farmland occupation tax. (5) The domestic and the foreign-invested enterprises established in the western regions and engaged in the encouraged industries respectively as mentioned above in item 1) are exempt from the tariff and import VAT for the imported equipments for self uses within the total amount of the capital invested, except for those listed in "Catalogue for the imported products not subject to tax exemption in foreign invested projects" or in the "Catalogue for the imported products not subject to tax exemption in domestic invested projects". January 1 2000, the foreign-invested enterprises established in nineteen provinces, autonomous regions and municipalities directly under the Central Government in central and western regions, namely Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region, which are engaged in the industries encouraged by the State as enlisted in the "Catalogue for the Guidance of Foreign Investment Industries" as well as engaged in the advantageous industries and projects approved by the State Council, shall be imposed the income tax at a reduced rate of fifteen per cent for another three year following the expiration of the period for "two years exemption and three years of fifty per cent reduction".

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-2010

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XV.

1. Title of the subsidy programme

Preferential tax policies for enterprises established in the poverty stricken areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the alleviation of poverty and accelerate the economic development of the poverty stricken areas

4. Background and authority for the subsidy

MOF, SAT, Office of Poverty Alleviation under the State Council, and National Development and Reform Committee (NDRC)

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the enterprises newly established in the old revolution base areas during the revolution era, areas with ethnic groups residence, remote areas and poverty stricken areas may be exempt or reduced for three years.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XVI.

1. Title of the subsidy programme

Fiscal funds to alleviate poverty

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To improve the production and living conditions and increase the income of the poverty stricken population, and to enhance the economic and social development of the poverty stricken areas.

4. Background and authority for the subsidy

MOF, Office of Poverty Alleviation under the State Council, NDRC

5. Legislation under which it is granted

MOF Circular Cai Nong No.18 of 2000

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The funds are allocated by MOF to local governments according to the allocation programmes which are approved by the State Council Leading Group of Poverty Alleviation. The funds are used by local governments to provide subsidies to individuals and organizations for individual subsidization, infrastructure construction and training programmes in the poverty stricken areas.

PUZLIC FILE

G/SCM/N/123/CHN 28\

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002 .	2003	2004	Total
9,090	9,590	10,390	11,177	40,247

9. Duration of the subsidy and/or any other time-limits attached to it

1980-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XVII.

Title of the subsidy programme

Specific subsidy on agricultural production and construction in the poverty stricken areas of Hexi and Dingxi of Gansu Province and Xihaigu of Ningxia Hui Autonomous Region

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To accelerate economic and social development of the poverty stricken areas of Gansu Province and Ningxia Hui Autonomous Region

4. Background and authority for the subsidy

MOF, Office of Poverty Alleviation under the State Council, NDRC

5. Legislation under which it is granted

MOF Circular Cai Nong No.67 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The funds are allocated by MOF to the local governments of Gansu Province and Ningxia Hui Autonomous Region to provide subsidies to individuals and organizations for individual

subsidization, infrastructure construction, training programmes and transmigration and resettlement programmes in the poverty stricken areas. Prior to 2004, the two provincial governments would submit programmes applying for the subsidy first. The funds would be allocated after the programmes were jointly approved by MOF, Office of Poverty Alleviation under the State Council and NDRC. From 2004 on, funds are allocated first to the two provincial governments which are required to submit programme later for record only instead of for approval.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total	
200	200	200	200	800	コ

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1983-2008

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XVIII.

1. <u>Title of the subsidy programme</u>

Interests discount of poverty alleviation loans

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To improve the production and living conditions and increase the income of the poverty stricken population, and to enhance the economic and social development of the poverty stricken areas

4. Background and authority for the subsidy

MOF, Office of Poverty Alleviation under the State Council, People's Bank of China

5. Legislation under which it is granted

People's Bank of China Circular Yin Fa No.185 of 2001

6. Form of the subsidy

Interests discount

7. To whom and how the subsidy is provided

Agricultural Bank of China collects and submits the information on loans provided to individuals and organizations in the poverty stricken areas on programmes of infrastructure construction and development of planting, breeding and processing, etc. After local financial authorities and local Offices of Poverty Alleviation jointly review and approve the programmes, MOF settles the interests discount with the headquarter of Agricultural Bank of China. Since 2004, the funds of this interests discount are partially appropriated to the governments of the poverty stricken counties which will independently choose the financial institutions to provide poverty alleviation loans and negotiate on the terms of interests discount settlement.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
524.50	530	530	613.29	2197.79

9. Duration of the subsidy and/or any other time-limits attached to it

1986-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XIX.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for enterprises which utilize the waste materials

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To protect the environment and encourage the recycling of resources

4. Background and authority for the subsidy

Legislation under which it is granted	5.	Legislation	under	which	it	is	granted
---	----	-------------	-------	-------	----	----	---------

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the enterprises which use the waste materials such as waste water, waster residue and waste gas as major materials for production may be exempt or reduced within five years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XX.

1. Title of the subsidy programme

Preferential tax policies for enterprises suffering from natural disasters

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the losses due to natural disasters

4. Background and authority for the subsidy

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the enterprises suffering from natural disasters such as floods, fire or earthquakes etc. may be exempt or reduced for one year.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy
Not available

XXI.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for welfare enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage increase of job opportunities and help the employment of the disabled people

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

SAT Circular Guo Shui Fa No.155 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

- (1) The income tax paid by the enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 50% of total employees may be one hundred per cent refunded. (2) The income tax paid by the enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 35% but less than 50% of total employees, if at a loss, may be partially or totally refunded to the extent to compensate the loss.
- 8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXII.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for enterprises making little profits

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the burden of the enterprises making little profits to maintain job opportunities

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.009 of 1994

PUBLIC FILE

G/SCM/N/123/CHN Page 27

6. Form of the subsidy

Preferential tax treatment

- 7. To whom and how the subsidy is provided
- (1) The income tax enterprises whose annual taxable income is less than RMB 30,000 may be levied at a reduced rate of eighteen per cent. (2) The income tax of enterprises whose annual taxable income is less than RMB 100,000 but more than RMB 30,000 may be levied at a reduced rate of twenty-seven per cent.
- Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXIII.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for township enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the burden of township enterprises due to the imperfect social security system and to encourage the township enterprise to improve the living and working conditions of their employees.

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Ten per cent of the income tax payable by the township enterprise may be exempted to subsidize the social security expenses.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXIV.

Title of the subsidy programme

Preferential tax policies for enterprises which provide employment for unemployed people

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To increase and encourage employment

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

G/SCM/N/123/CHN Page 29

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

- (1) The income tax of the newly established urban enterprises which employ unemployed people over sixty per cent of total employees within the year may be exempted for three years. (2) The income tax of the above mentioned enterprises which newly employ unemployed people over thirty per cent of original total employees within the year may be reduced by one half for an additional two years after the three years period of income tax exemption has expired.
- Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXV.

1. Title of the subsidy programme

Preferential tax policies for scientific research institutions under transformation

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To push forward the scientific research institutions to reform under the conditions of market economy

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No.137 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the 242 scientific research institutions subordinate to the former 10 National Bureaus administrated by the former State Economic and Trade Commission (SETC) and the 134 scientific research institutions subordinate to 11 Ministries such as Ministry of Construction which transformed into enterprises or be integrated into enterprises, as well as the scientific research institutions subordinate to the organizations under the State Council which transformed into enterprises or be integrated into enterprises after reviewed and approved by MOST and MOF, shall be exempted for five years since the day of the transformation registration.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXVI.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for the research and development of enterprises

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To encourage the research and development of enterprises

4. Background and authority for the subsidy

MOF Circular Cai Shui No.244 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The actual expenses of domestic industrial enterprises, regardless of the ownership, on research and development of new products, new technologies and new crafts which has increased ten per cent or more from the previous year, may be offset by 150% from the taxable income of the year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXVII.

1. Title of the subsidy programme

Preferential tax policies for the research and development of foreign-invested enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the research and development of enterprises

4. Background and authority for the subsidy

SAT Circular Guo Shui Fa No.173 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The actual expenses of foreign-invested enterprises on research and development conducted in China, which has increased ten per cent or more from the previous year, may be offset by 150% from the taxable income of the year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXVIII.

1. Title of the subsidy programme

Preferential tax policies for enterprises transferring technology

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the transfers of technology

4. Background and authority for the subsidy

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of enterprises profiting from technology transfers as well as from providing technology consultation, technology services and technology training in the transfer, may be exempt where the annual net income of the enterprises is less than RMB 300,000, and where the annual net income is more than RMB 300,000, the exceeding part shall be levied at the regular rate.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXIX.

Title of the subsidy programme

Preferential tax policies for the key leading enterprises engaged in agricultural industrialization

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the agricultural industrialization

4. Background and authority for the subsidy

MOF, SAT, Ministry of Agriculture (MOA)

MOA Circular Nong Jing Fa No.8 of 2000; MOA Circular Nong Jing Fa No.10 of 2000; SAT Circular Guo Shui Fa No. 124 of 2001.

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income of the key leading enterprises, and of their holding subsidiary companies, obtained from planting, animal and fish farming, and preliminary processing of agricultural and forest products may be exempt from income tax.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXX.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for the enterprises engaged in forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the development of forestry

4. Background and authority for the subsidy

MOF, SAT, State Forestry Administration (SFA)

PUBLIC FILE

5. Legislation under which it is granted

MOF Circular Cai Shui No.171 of 2001, MOF Circular Cai Shui No.49 of 1997

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income of the enterprises and institutions obtained from production of forestry, forestry seeds as well as from preliminary processing of forestry products may be exempt from income tax since January 1 2001.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXI.

1. <u>Title of the subsidy programme</u>

Funds for supporting technological innovation for the technological small and medium-sized enterprises (SMEs)

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the SMEs in technology innovation and encourage the industrialization of the science and technology achievements

4. Background and authority for the subsidy

MOF, MOST

266

5. Legislation under which it is granted

General Office of State Council Circular Guo Ban Fa No. 47 of 1999

6. Form of the subsidy

Financial appropriations or loan interests discount

7. To whom and how the subsidy is provided

In the projects of financial appropriations, the SMEs of science and technology nature receive firstly seventy per cent of the total assisting amount approved to be granted to the enterprises. In the projects of interest discount, the SMEs of science and technology nature receive firstly eighty per cent of the assisting fund for interest discount in accordance with the interest settlement document provided by the enterprises. The rest of the grant or assisting fund for interest discount shall be paid after the projects being completed as well as checked and accepted. Each project shall receive no more than RMB 1 million and in particular cases no more than RMB 2 million.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
800	500	500	500	2300

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXII.

1. Title of the subsidy programme

Development funds for SMEs

2. Period covered by the notification

2004

3. Policy objective and/or purpose of the subsidy

To support the SMEs development

PUBLIC FILE

4. Background and authority for the subsidy

MOF, NDRC

5. Legislation under which it is granted

Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises

6. Form of the subsidy

Financial appropriations or loan interests discount

7. To whom and how the subsidy is provided

For the enterprises who invest into the project mainly with self-owned capital, the aid is given in the form of grant of no more than RMB 2 million or within the limit of the self-owned capital investment. For the enterprises who invest into the project mainly with loans, the aid is given in the form of interest discount with a rate decided by the amount of loans and the interest rate in the same term published by People's Bank of China. The period of each project enjoying the interest discount should be no more than two years and the total amount each project receives in the form of interest discount should be no more than RMB 1.5 million.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

Omit. minion ICVID	
2004	Total
100	100

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXIII.

Title of the subsidy programme

Fund for international market exploration by SMEs

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To assist SMEs to explore the international market

4. Background and authority for the subsidy

MOF, MOFCOM

Legislation under which it is granted

MOF Circular Cai Qi No.467 of 2000, MOFTEC (MOFCOM) Circular Ji Cai Fa No.270 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to SMEs or enterprises and organizations which provide services to SMEs for the purpose of: (1) holding or participating in overseas exhibitions, (2) accreditation fee for quality management system, environment management system or for the product, (3) promotion in the international market, (4) exploring a new market, (5) holding trainings and symposiums, (6) overseas bidding. The enterprises receive partial support to its international market exploration fees and the grant is allocated on the basis of the approved application for fund after market exploration activities are completed.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
560	480	400	1000	2440

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXIV.

1. <u>Title of the subsidy programme</u>

Special fund for establishment of service system for SMEs

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To assist entities to provide better services to SMEs

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises MOF Circular Cai Jian No.124 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided as grant to entities which provide services to SMEs. For those who provide training services to the SMEs, rent charges of training venue, payments to the lecturer and expenses on teaching materials may be fully subsidized by the fund, and accommodations incurred by the training services may be subsidized at a maximum of RMB 150 person/day. For those who provide credit services to the SMEs, the actual expenses may be subsidized as appropriate. For those who provide services for SMEs to start business, the actual expenses may be subsidized as appropriate. For those who provide management consulting services for SMEs, the actual expenses may be subsidized as appropriate.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2003	2004	Total
50	50	100

262

9. Duration of the subsidy and/or any other time-limits attached to it

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXV.

Title of the subsidy programme

Fund for subsidizing the training of the rural migrant labour force

2. Period covered by the notification

2004

3. Policy objective and/or purpose of the subsidy

To improve the quality and the employment capabilities of the rural migrant workers, to facilitate the migration of the rural labour force and increase rural incomes

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOF Circular Cai Nong No.38 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals, training institutions or other organizations chosen through bidding procedures to provide training services to farmers. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2004	total
250	250

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXVI.

1. <u>Title of the subsidy programme</u>

Outlay for training of youngster farmers on science and technology

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To assist the youngster farmers to obtain the knowledge on science and technology and to improve their management capacity

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOA Circular Nong Ke Jiao Fa No.8 of 1999

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to youngster farmers of rural areas. MOF and MOA jointly review the application for fund submitted by ocal governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
30	30	50	50	160

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXVII.

1. <u>Title of the subsidy programme</u>

Fund for specialized cooperatives of farmers

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To support and facilitate the development of specialized cooperatives of farmers

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

MOF Circular Cai Nong No.87 of 2004

PUDLIC FILE

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to qualified specialized cooperatives of farmers. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2003	2004	Total
20	50	70

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXVIII.

1. <u>Title of the subsidy programme</u>

Subsidy for popularization of agricultural technologies

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To popularize advanced and practical agricultural technologies

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

MOF Circular Cai Nong No.81 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to projects which embody geographic advantages and can serve as a model to other areas. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

	10:10			
2001	2002	2003	2004	Total
135	175	175	200	685

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

Statistical data permitting an assessment of the trade effects of a subsidy 10.

Not available

XXXIX.

Title of the subsidy programme

Subsidy for growing superior grain cultivars

2. Period covered by the notification

2002-2004

3. Policy objective and/or purpose of the subsidy

To accelerate the upgrade of grains and crops, increase the output of agricultural products, improve the quality of agricultural products and guarantee food security.

4. Background and authority for the subsidy

MOF, MOA

PUZLIC FILE

5. Legislation under which it is granted

MOF Circular Cai Nong No.16 and17 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to grain cultivars supply enterprises in major crop-producing provinces chosen through bidding procedures. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2002	2003	2004	Total
100	300	2852	3252

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2002-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XL.

1. <u>Title of the subsidy programme</u>

Subsidy for purchasing agricultural machinery and tools

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To enhance the contribution of agricultural science and technology, and push forward the development of agriculture and rural economies

4. <u>Background and authority for the subsidy</u>

MOA, MOF

5. <u>Legislation under which it is granted</u>

MOA Circular Nong Cai Fa No.6 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individual farmers or services providers on agricultural machinery and tools that purchase agricultural machinery and tools through bidding procedures. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
20	20	40	70	150

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XI.I.

1. <u>Title of the subsidy programme</u>

Subsidy for actualizing agricultural technology

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To accelerate the actualization of agricultural technological achievements in agriculture, forestry, water conservation and irrigation, and improve the capacity of agricultural innovation

4. Background and authority for the subsidy

MOF, MOST

5. Legislation under which it is granted

MOST Circular Guo Ke Ban Cai Zi No.417 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals or enterprises that are the right-holders for new agricultural technology. MOF and MOST jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
400	200	200	250	1050

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLII.

Title of the subsidy programme

Fund provided for agricultural industrialization

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To increase rural income, increase the scale and modernization of agricultural operation, and to improve the efficiency of agriculture in general

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

MOF Circular Cai Nong No.88 of 2004

6. Form of the subsidy

Financial appropriation

7. To whom and how the subsidy is provided

The fund is provided to qualified enterprises. The MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

C				
2001	2002	2003	2004	Total
70	100	100	100	370

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1998-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLIII.

1. <u>Title of the subsidy programme</u>

Fund for agricultural disaster relief

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To prevent and control agricultural disasters as well as provide disaster relief

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOF Circular Cai Nong No.232 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals or organizations that fight against disasters and resume production afterwards. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
942	635	735	905	3217

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLIV.

1. <u>Title of the subsidy programme</u>

Fund provided to exempt from or reduce agriculture tax on farmers suffering from poor harvest after disasters

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To relieve tax burden of farmers who suffered from disasters

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

Regulation of the People's Republic of China on Agricultural Tax, MOF Circular Cai Nong No.132 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to farmers who suffered from poor harvest due to natural disasters. MOF and SAT jointly review the application for fund submitted by local governments and grant the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

	Cart Initial Kind						
2001	2002	2003	2004	Total			
4,000	1,000	2,000	1,500	8,500			

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

Period when agriculture tax exists

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLV.

1. <u>Title of the subsidy programme</u>

Subsidy for major flood control and drought resistance

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To assist areas that suffer from major floods or drought, to prevent or fight against the disasters, and to assist the flood control of major rivers and lakes directly supervised by the central government.

4. Background and authority for the subsidy

MOF, Ministry of Water Resources (MOWR)

5. Legislation under which it is granted

MOF Circular Cai Nong No.30 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

PUBLIC FILE

G/SCM/N/123/CHN Page 52 PUBLIC FILT 250

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
950	1364	1342	931	4587

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1953-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLVI.

1. <u>Title of the subsidy programme</u>

Fund for construction of small irrigation facilities in rural areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the projects which are closely related to working and living conditions of rural population such as rural water supply, rural energy supply, small forestry, small projects on water and soil conservation and small irrigation facilities.

4. Background and authority for the subsidy

MOF, MOWR

5. Legislation under which it is granted

MOF Circular Cai Ban Nong No.74 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals, enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

	2001	2002	2003	2004	Total
Į	100	100	100	100	400

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLVII.

Title of the subsidy programme

Fund for construction of small ecological facilities in rural areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the projects which are closely related to working and living conditions of rural population such as rural water supply, rural energy supply, small forestry, small project on water and soil conservation and small irrigation facilities.

4. Background and authority for the subsidy

MOF, SFA

5. <u>Legislation under which it is granted</u>

MOF Circular Cai Ban Nong No.74 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to rural forestry areas. The MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
100	100	100	100	400

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLVIII.

1. <u>Title of the subsidy programme</u>

Fund for projects on collection, reservation and utilization of rainfall

2. Period covered by the notification

2004

3. Policy objective and/or purpose of the subsidy

To support construction of rural irrigation infrastructure, improve rural living conditions and rural productivity

4. Background and authority for the subsidy

MOF, MOWR

Legislation under which it is granted

MOF Circular Cai Nong No.138 of 2004

24

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals, enterprises or related organizations. MOF and the MOWR jointly review the application for fund submitted by the local governments. After approval of the application, fund is granted by the MOF.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Unit: million RMB

2004	Total
100	100

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLIX.

1. Title of the subsidy programme

Fund for interest discount of loans for the purpose of agricultural water-saving irrigation

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support water-saving irrigation technology and the construction of areas using water-saving irrigation

4. Background and authority for the subsidy

MOF, MOWR

PUBLIC FILE 246

5. Legislation under which it is granted

MOF Circular Cai Yu No.388 of 2001

6. Form of the subsidy

Interest discount

7. To whom and how the subsidy is provided

The fund is provided to individuals, enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
46.5	46.5	46.5	46.5	186

9. Duration of the subsidy and/or any other time-limits attached to it

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

L.

1. Title of the subsidy programme

Subsidies for national key construction projects on water and soil conservation

2 Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To assist small scale farmland irrigation and water and soil conservation projects in rural areas

PUBLIC FILT G/SCM/N/123/CHN Page 57 7 45

PUBLIC FILE

4. Background and authority for the subsidy

MOF, MOWR

5. Legislation under which it is granted

MOF Circular Cai Nong No.402 of 1987

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total	١		
50	50	50	50	200	l		

9. Duration of the subsidy and/or any other time-limits attached to it

1983-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LI.

1. <u>Title of the subsidy programme</u>

Special fund for projects on protection of natural forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To protect natural forestry resources and improve eco-environment

4. Background and authority for the subsidy

MOF, SFA

5. <u>Legislation under which it is granted</u>

MOF Circular Cai Nong No.151 of 2000

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to state owned forestry enterprises which are subject to timber production reduction or lumbering ban to transfer and settle down the laid-off workers. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Unit: million RMB

2001	2002	2003	2004	Total		
7146.95	7663.22	4966.52	4675.4	24452.09		

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1998-2010

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LII.

1. Title of the subsidy programme

Cash subsidy for returning cultivated land to forests

2. Period covered by the notification

2001-2004

PUBLIC FILE

G/SCM/N/123/CHN

Page 59 747

3. Policy objective and/or purpose of the subsidy

To improve the ecological environment, and to subsidize the farmers who return cultivated land to forests for their necessary expenses such as medical care, education and daily expenses.

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

State Council Circular Guo Fa No.10 of 2002

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to farmers who complete the returning of cultivated land to forests and are examined as qualified. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total		
361.82	1155.82	2165.82	2365.82	6049.28		

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LIII.

1. <u>Title of the subsidy programme</u>

Compensation fund for forestry ecological benefits

PUBLIC FILE

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To protect key forestry resources and ensure ecological security

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Nong No.7 of 2001 (abolished); MOF Circular Cai Nong No.169 of 2004

Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to entities that manage the key national commonweal forests. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

Clir. Illinioli Rivib							
	2001	2002	2003	2004	Total	١	
	1000	1000	1000	2000	5000	١	

9. Duration of the subsidy and/or any other time-limits attached to it

2001-2003 as pilot project 2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

PUDLIC FILE

G/SCM/N/123/CHN
PaPUDLIC FIL

LIV.

1. <u>Title of the subsidy programme</u>

Interest discount for loans for the purpose of desertification prevention in forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage investment into the construction of forestry ecological environment, to facilitate the implementation of key forestry projects such as protection of natural forest resources, the returning cultivated land to forests etc.

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Nong No.137 of 2002

6. Form of the subsidy

Interest discount

7. To whom and how the subsidy is provided

The subsidy is provided to qualified forestry loans granted to individuals, enterprises and other organizations. MOF reviews the application for fund submitted by central and local authorities administering forestry and grants the fund after approving the application.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMR

O 11111 111111111111111111111111111111							
2001	2002	2003	2004	Total			
56	192.10	213.67	114.697	576.467			

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1986-2004

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LV.

1. Title of the subsidy programme

Subsidy for prevention from and control of pest and disease in forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To strengthen the disease, pest and rat prevention and control in forests, woods, seedling and bamboo forest.

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Nong No.69 of 2002

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individual, enterprises and organizations engaged in forestry for the purpose of hazardous creature control. An application for fund is submitted by local government. MOF and SFA jointly review the application and determine the amount of the subsidy. After approval of the application, the MOF grants the fund.

8. <u>Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy</u>

Unit: million RMB

[2001	2002	2003	2004	Total
	75	80	91	92	338

239

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1980-2004

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LVI.

1. <u>Title of the subsidy programme</u>

Subsidy for grass seed sowing by airplanes

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the airplane sowing of grass seed in major grassland areas

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOF Circular Cai Nong No.139 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to organizations which carry out airplane sowing of grass seeds. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
9	9	9	9	36

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1984-resent

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LVII.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for integrated circuit industry

2. Period covered by the notification

2001-2004

Policy objective and/or purpose of the subsidy

To encourage the development of integrated circuit industry

4. Background and authority for the subsidy

MOF, SAT

Legislation under which it is granted

MOF Circular Cai shui No.25 of 2000, MOF Circular Cai shui No.70 of 2002, MOF Circular Cai shui No.136 of 2002, MOF Circular Cai shui No.140 of 2002, MOF Circular Cai shui No.174 of 2004, MOF Circular Cai shui No.40 of 2004

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

- (1) Investor of integrated circuit producing or packaging enterprise who reinvests its share of profit obtained from the enterprise, after paying income tax, directly into that enterprise by increasing its registered capital, or uses the profit as capital investment to establish other integrated circuit producing or packaging enterprises to operate for a period of not less than five years, shall be refunded forty per cent of the income tax already paid on the reinvested amount.
- (2) Domestic or foreign economic organizations investing its share of profit obtained inside China, after paying the income tax, into integrated circuit producing or packaging enterprises located in the western regions as capital investment to operate for a period of not less than five years, shall be refunded eighty per cent of the income tax already paid on the reinvested amount.
- (3) Integrated circuit producing enterprises with investment more than RMB 8 billion or producing integrated circuit with a line width lesser than 0.25 um shall enjoy the same preferential tax treatment as to encourage the foreign investors who invest into energy and transportation sectors.
- (4) Accredited integrated circuit producing enterprises producing integrated circuit with a line width of 0.8 micron or less shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a fifty per cent reduction in the third to fifth years.
- (5) The VAT of enterprises as normal taxpayers selling independently designed integrated circuit products shall be refunded the portion over six per cent from June 2000 till the end of year 2001, and be refunded the portion over three per cent from year 2002. This policy ceased on April 1 2005.
- (6) The import VAT of domestically designed integrated circuit with self-owned intellectual property rights when processed overseas, shall be refunded the portion over six per cent from July 1 2000 till 1 October 2004.
- (7) The imported raw materials for self production and expendables of the integrated circuit producing enterprises established in China with investment more than RMB 8 billion or producing integrated circuit with a line width lesser than 0.25 um shall be exempted from tariff and import VAT.
- (8) The imported integrated circuit producing technology and whole set of producing equipment, and the separately imported special equipment and apparatus to produce integrated circuit by the accredited integrated circuit producing enterprises shall be exempt from tariff and import VAT. The above mentioned equipment and technologies shall excluded those listed in the "Catalogue for the imported products not subject to tax exemption in foreign invested projects" or in the "Catalogue for the imported products not subject to tax exemption in domestic invested projects".
- Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

PUBLIC FILE 236

9. Duration of the subsidy and/or any other time-limits attached to it

- (1) 2002-2010; (2) 2002-2010; (3) 1 July 2000-present; (4) 2002-present;
- (5) 24 June 2000-1 April 2005; (6) 1 July 2000-1 October 2004; (7) 1 July 2000-present;
- (8) 1 July 2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LVIII.

1. Title of the subsidy programme

Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipments.

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To attract foreign investment and support technology renovation.

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No.49 of 2000, SAT Circular Guo Shui Fa No.90 of 2000

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

For the investment projects listed as encouraged category in the "Catalogue for the Guidance of the Foreign Investment Industries" of foreign invested enterprises and foreign enterprises which have establishments or place in China engaged in production or business operations, forty per cent of the expenses on purchasing domestically produced equipments within the total investment of the project, or beyond the total investment of the project but for the purpose of upgrading the existing equipments and crafts, shall be deducted from the increment of income tax of that year compared to the previous year. Herein the "domestically produced equipments" do not include those imported directly by other enterprises or those produced by processing trade and compensatory trade. The

PUBLIC FILE G/SCM/N/123/CHN Page 67 235

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 forty per cent of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LIX.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for domestic enterprises purchasing domestically produced equipments for technology upgrading purpose

2. Period covered by the notification

2001-2004

Policy objective and/or purpose of the subsidy

To encourage domestic investment and support the technology upgrading of enterprises

Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No.290 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

For the technology upgrading projects which are consistent with the state industrial policies of the domestic enterprises, forty per cent of the expenses on purchasing domestically produced equipments shall be deducted from the increment of income tax of that year compared to the previous

year. In the case where the total increment of income tax is less than forty per cent of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LX.

1. <u>Title of the subsidy programme</u>

Exemption of tariff and import VAT for the imported technologies and equipments

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the investment cost of importing technologies or equipments, and to attract foreign investment and to encourage domestic investment

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, General Administration of Customs (GCA)

5. <u>Legislation under which it is granted</u>

State Council Circular Guo Fa No.37 of 1997

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

For the foreign invested projects listed as encouraged category in the "Catalogue for the Guidance of the Foreign Investment Industries", the equipments purchased for self-use within the total investment of the project, excluding those listed in the "Catalogue for the imported products not subject to tax exemption in foreign invested projects", shall be exempted from tariff and import VAT. For the domestic invested projects listed in the "Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State", the equipments purchased for self-use within the total investment of the project, and the technologies, accessories and spare parts imported with the equipments as provided in the contract, excluding those listed in the "Catalogue for the imported products not subject to tax exemption in domestic invested projects", shall be exempted from tariff and import VAT. For the projects using the loans provided by foreign governments or by international financial organizations, the equipments purchased for self-use within the total investment of the projects, excluding those listed in the "Catalogue for the imported products not subject to tax exemption in foreign invested projects", shall be exempted from tariff and import VAT.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy
Not available

LXI.

Title of the subsidy programme

Preferential tax policies for enterprises of grain or oil reserves

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To ensure food security

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.198 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The sales of grain and edible oil by the state-owned enterprises which carry reserves of grain and oils for food security purposes are exempted from VAT.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXII.

1. Title of the subsidy programme

Preferential tax policies for the imports of China Grain Reserves Corporation for the purpose of rotation of grain reserves

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To secure food safety

4. Background and authority for the subsidy

MOF, SAT, GCA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 13 of 2001, MOF Circular Cai Shui No. 74 of 2004

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The collected import VAT on imported grain and oils imported by China Grain Reserves Corporation for the purpose of alternation or rotation of reserves shall be fully refunded.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2001-2005

Statistical data permitting an assessment of the trade effects of a subsidy Not available

LXIII.

1. <u>Title of the subsidy programme</u>

Preferential tax policies for the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grass land, and the grain rations for the migrants from the reservoir areas.

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To ensure the functioning of special social responsibilities such as disasters relief and to realize social development objectives such as environmental protection

4. <u>Background and authority for the subsidy</u>

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 198 of 1999, SAT Circular Guo Shui Fa No. 131 of 2001

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

VAT on the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grassland, and the grain rations for the migrants from the reservoir areas operated by grain enterprises shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1999-present, and for compensation grain for returning cultivated land to forests and to grassland 2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXIV.

1. Title of the subsidy programme

Preferential tax treatment for tea sold in the border areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To ensure the supply to the border areas with minority ethnic groups residence.

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 60 of 1994, MOF Circular Cai Shui No. 71 of 2001

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The VAT on tea sold in the border areas produced by designated enterprises and distributed by designated distribution entities shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXV.

Title of the subsidy programme

Preferential tax treatment for imported products for the purpose of replacing the planting of poppies

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the replacement of the planting of poppies

4. Background and authority for the subsidy

MOF, SAT, GCA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 63 of 2000

Preferential tax treatment

7. To whom and how the subsidy is provided

Tariffs and import VAT on imported products within the approved scope for the purpose of replacing the planting of poppies in the border areas in Yunnan province shall be exempted.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXVI.

1. Title of the subsidy programme

Preferential tax policies on imports of seeds (seedlings), breeding stock (fowl), fish fries (breeds) and non profit-making wild animals and plants kept as breeds during the period of the "Tenth Five-Year Plan"

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To introduce and promote improved breeds, to strengthen the protection of species resources, and to develop high-quality, productive and efficient agriculture and forestry industries.

4. Background and authority for the subsidy

MOF, SAT, MOA, SFA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 130 of 2001

Preferential tax treatment

7. To whom and how the subsidy is provided

The import VAT for imported seeds (seedlings), breeding stock (fowl), fish fries (breeds) and non profit-making wild animals and plants kept as breeds which are listed in the approved list of tax-free items within the approved quantity shall be exempted.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2001-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXVII.

1. Title of the subsidy programme

Preferential tax treatment for specimens of endangered wild animals and plants returned by the government of Hong Kong, China to the Office of the Administration of Import and Export of Endangered Species.

2. Period covered by the notification

September 2000

3. Policy objective and/or purpose of the subsidy

To facilitate the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and to protect specimens of wild animals and plants.

4. Background and authority for the subsidy

MOF, GCA, SFA

PUBLIC FILE

5. Legislation under which it is granted

MOF Circular Cai Shui No. 120 of 2000

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Tariff and import VAT on specimens of endangered wild animals and plants of the approved species and approved quantity which are returned by the Agriculture, Fisheries and Conservation Department under the government of Hong Kong, China to Office of the Administration of Import and Export of Endangered Species under the SFA shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

September 2000

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXVIII.

1. <u>Title of the subsidy programme</u>

Preferential tax treatment for endangered wild animals and plants as well as their products returned by foreign governments, by the government of Hong Kong, China or the government of Macao, China to the Office of the Administration of Import and Export of Endangered Species

2. Period covered by the notification

2002-2004

3. Policy objective and/or purpose of the subsidy

To facilitate the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and to protect wild animals and plants as well as their products.

4. Background and authority for the subsidy

MOF, GCA, SFA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 8 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Tariff and import VAT on the endangered wild animals and plants as well as their products which are listed in the appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, returned by foreign governments, by the government of Hong Kong, China, or by the government of Macao, China to the Office of the Administration of Import and Export of Endangered Species under the SFA shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2002-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXIX.

1. <u>Title of the subsidy programme</u>

Preferential tax treatment for building material products produced with integrated utilization of resources

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the integrated utilization of resources and protect the environment

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 44 of 1995, MOF Circular Cai Shui Zi No. 20 of 1996

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The VAT on building material products made from waste residues shall be exempted.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1995-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXX.

1. Title of the subsidy programme

Preferential tax treatment for other products produced with integrated utilization of resources

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage integrated utilization of resources and protect the environment

4. Background and authority for the subsidy

MOF, SAT

PUBLIC FILE

G/SCM/N/123/CHN Page 79

223

5. Legislation under which it is granted

MOF Circular Cai Shui No. 198 of 2001, MOF Circular Cai Shui No. 25 of 2004

6. Form of the subsidy

Preferential tax treatment

- 7. To whom and how the subsidy is provided
- (1) The VAT on products produced with integrated utilization of resources such as electric power produced from urban waste shall be refunded. (2) The VAT on electric power produced with wind power and some of the new-type wall-building materials produced from coal gangue, slush, oil shall shall be levied at a rate reduced by one half.
- Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXI.

Title of the subsidy programme

Preferential tax treatment for imported products for scientific and educational purposes

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To promote the development of scientific research and educational causes

4. Background and authority for the subsidy

MOF, GCA

PUELIC FILE

5. Legislation under which it is granted

State Council Circular Guo Han No. 3 of 1997

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The tariff, import VAT and excise tax of products directly used in scientific research and education which are imported by scientific research institutions and schools for non profit-making purposes shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXII.

1. <u>Title of the subsidy programme</u>

Preferential tax treatment for imported products exclusively used by the disabled people

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To facilitate the recovery of the disabled people

4. Background and authority for the subsidy

MOF, GCA

PUBLIC FILE

G/SCM/N/123/CHN Page 81

221

5. Legislation under which it is granted

State Council Circular Guo Han No. 3 of 1997

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The tariff, import VAT and excise tax on imported products exclusively used by the disabled people within the stipulated scope shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXIII.

1. Title of the subsidy programme

Preferential tax treatment for products for the disabled people

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To facilitate the recovery of the disabled people

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 60 of 1994

Preferential tax treatment

7. To whom and how the subsidy is provided

The VAT on artificial limbs, wheelchairs, orthopaedic appliances including those for upper limbs, lower limbs and spinal bend and lean etc. shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXIV.

1. Title of the subsidy programme

Preferential tax treatment to anti-HIV-AIDS medicine

2. Period covered by the notification

2002/2003-2004

3. Policy objective and/or purpose of the subsidy

To push forward the prevention and cure of HIV-AIDS

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 181 of 2003, MOF Circular Cai Shui No. 160 of 2002

Preferential tax treatment

7. To whom and how the subsidy is provided

- (1) From 1 January 2002 to 31 December 2006, tariffs and import VAT and VAT in domestic circulation stages on imported anti-HIV-AIDS medicine shall be exempted. (2) From 1 July 2003 to 31 December 2006, VAT in production and circulation stages on domestically produced anti-HIV-AIDS medicine produced by designated domestic producers shall be exempted.
- Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2002/2003-2006

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXV.

1. <u>Title of the subsidy programme</u>

Refund of import VAT of raw copper materials

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To promote technology upgrading of enterprises

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 81 of 2003, MOF Circular Cai Guan Shui No. 12 of 2005

Preferential tax treatment

7. To whom and how the subsidy is provided

Thirty per cent of import VAT on copper concentrate, waste copper and unrefined copper imported within the approved quantitative scope by copper refineries with production or refining capacity of electrolytic copper over 30,000 tons and which meet the criteria of environmental protection shall be refunded after collection.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2003-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXVI.

1. <u>Title of the subsidy programme</u>

Preferential tax treatment for casting and forging products

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To encourage the technology upgrading of enterprises and the research and development of the casting and forging products

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 96 of 2003

Preferential tax treatment

7. To whom and how the subsidy is provided

From 1 January 2003 to 31 December 2005, the VAT on the casting and forging products which are used in producing machinery, manufactured and sold by the 284 specialized casting and forging enterprises listed in the annex to the *Circular* shall be collected according to stipulations at first, and then thirty-five per cent of the actually collected VAT shall be refunded.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2003-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXVII.

1. <u>Title of the subsidy programme</u>

Preferential tax treatment to dies products

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To encourage the technology upgrading of enterprises and research and development of dies products

 Background and authority for the subsidy MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 139 of 1998, MOF Circular Cai Shui No. 95 of 2003

Preferential tax treatment

7. To whom and how the subsidy is provided

From 1 January 2003 to 31 December 2005, the VAT on the dies products manufactured and sold by the 160 specialized dies manufacturing enterprises listed in the annex to the *Circular* shall be collected according to stipulations at first, and then seventy per cent of the actually collected VAT shall be refunded.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. <u>Duration of the subsidy and/or any other time-limits attached to it</u>

2003-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXVIII.

1. <u>Title of the subsidy programme</u>

Preferential tax treatment to numerically controlled machine tool products

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage enterprises to conduct research and development of numerically controlled machine tool products

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 47 of 2000, MOF Circular Cai Shui No. 119 of 2001, MOF Circular Cai Shui No. 97 of 2003

Preferential tax treatment

7. To whom and how the subsidy is provided

From 1 January 1999 to 31 December 2005, the VAT on numerically controlled machine tool products produced and sold by certain numerically controlled machine tool manufacturing enterprises shall be refunded after collection.

 Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1999-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

Note:

- The 12 border cities, counties or towns refer to Heihe, Suifenhe in Heilongjiang Province, Hunchun in Jilin Province, Manzhouli in Inner Mongolia Autonomous Region, Yining, Bole, Tacheng in Xinjiang Uygur Autonomous Region, Pingxiang, Dongxing in Guangxi Zhuang Autonomous Region, Wanting, Ruili and Hekou in Yunnan Province.
- 2. The costal economic open areas firstly refer to the 14 coastal open cities of Dalian, Qinhuangdao, Tianjin. Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, Beihai. In 1985 the Yangtze River Delta, the Pearl River Delta and the triangle area in south Fujian Province of Xiamen, Zhangzhou and Quanzhou were open to be included in the costal economic open areas. In 1988 the area was further expanded to the Liaodong Peninsula, Shandong Peninsular and etc. to include 153 cities and counties in Tianjin Municipality, Hebei Province, Liaoning Province, Jiangsu Province, Zhejiang Province, Fujian Province, Shandong Province and Guangxi Zhuang Autonomous Region. In 1990 the city of Jinan was open. In 1992 5 cities along the Yangtze river namely Chongqing, Yueyang, Wuhan, Jiujiang, Wuhu, 6 provincial capital cities in border and coastal provinces and autonomous regions namely Harbin, Changchun, Hohhot, Shijiazhuang, Nanning and Kunming and 11 provincial capital cities of inland provinces and autonomous regions namely Taiyuan, Hefei, Nanchang, Zhengzhou, Changsha, Chengdu, Guiyang, Xi'an, Lanzhou, Xining and Yinchuan began to implement the policies of the costal economic open areas. In 1993 the city of Huangshi along the Yangtze River also began to implement the policies of the costal economic open areas.
- 3. The Three Gorges of Yangtze River Economic Zone refers to Yichang County, Zigui County and Xingshan County under the Yichang City of the Hubei Province, Badong County of the Enshi Tujia and Miao Autonomous Prefecture of the Hubei Province, Wushan County, Wuxi County, Fengjie County, Yunyang

G/SCM/N/123/CHN Page 88

County. Kai County and Zhong County under the Wanxian City of Sichuan Province, Shizhu County under the Qianjiang Prefecture and Fengdu County, Wulong County under the Fuling Prefecture of the Sichuan Province, and Changshou County, Jiangbei County, Ba County and Jiangjin City under Chongqing Municipality.

4. The western regions refer to Chongqing Municipality, Sichuan Province, Guizhou Province, Yunan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region. Guangxi Zhuang Autonomous Region.

Anti-dumping and Countervailing Program

OTTAWA, March 03, 2009

4214-22 AD/1379 4218-26 CV/124

STATEMENT OF REASONS

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

CERTAIN ALUMINUM EXTRUSIONS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

On February 16,2009, pursuant to paragraph 41(1)(a) ofthe Special Import Measures Act, the President of the Canada Border Services Agency made final determinations of dumping and subsidizing respecting aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1,2,3,5,6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China.

For a PDF version of the Statement of Reasons, please click on the following link.

• Statement of Reasons (PDF, 9,74 MB) [help with PDF files]

Cet Énoncé des motifs est également disponible en français. Veuillez consulter la section "Information".

This Statement of Reasons is also available in French. Please refer to the "Information" section.

TABLE OF CONTENTS

- SUMMARY OF EVENTS
- PERIOD OF INVESTIGATION
- INTERESTED PARTIES
 - Complainants
 - Exporters
 - Importers
 - o Government of China

- Surrogate Countries
- PRODUCT DEFINITION
 - Additional Product Information
 - Production Process
 - Classification of Imports
- CANADIAN INDUSTRY
 - IMPORTS INTO CANADA
- INVESTIGATION PROCESS
- DUMPING INVESTIGATION
 - Section 20 Inquiry
 - o Normal Value
 - Export Price
 - o Results of Dumping Investigation
 - o Dumping Results by Exporter
 - Non-Cooperative Exporters Margin of Dumping
- SUMMARY OF RESULTS DUMPING
- REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION
- SUBSIDY INVESTIGATION
- SUMMARY OF RESULTS SUBSIDY
- REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION
- DECISION
- FUTURE_ACTION
- RETROACTIVE DUTY ON MASSIVE IMPORTATIONS
- PUBLICATION
- INFORMATION
- APPENDIX 1 SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY
- APPENDIX 2 SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS
- SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS
- SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS
- APPENDIX 3 SUMMARY OF FINDINGS SECTION 20
- APPENDIX 4 GOC POLICIES AFFECTING THE CHINESE ALUMINUM AND ALUMINUM EXTRUSIONS INDUSTRIES

SUMMARY OF EVENTS

1. On July 4, 2008, the Canada Border Services Agency (CBSA) received a complaint from Almag Aluminum Inc. of Brampton, Ontario, Apel Extrusions Limited of Calgary, Alberta, Can Art Aluminum Extrusion Inc. of Brampton, Ontario, Metra Aluminum Inc. of Laval, Quebec, Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.) of Richmond Hill, Ontario, Spectra Aluminum Products Ltd. of Bradford, Ontario and Spectra Anodizing Inc. of Woodbridge, Ontario (Complainants) alleging that imports of certain aluminum extrusions originating in or exported from the People's Republic of China (China) are being dumped and subsidized and causing injury to the Canadian industry.

- 2. On July 18, 2008, pursuant to subsection 32(1) of the Special Import Measures Act(SIMA), the CBSA informed the Complainants that the complaint was properly documented. The CBSA also notified the government of China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy complaint.
- 3. The Complainants provided evidence to support the allegations that aluminum extrusions from China have been dumped and subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing has caused injury or is threatening to cause injury to the Canadian industry producing these goods.
- 4. On August 13, 2008, the CBSA received written preliminary comments from the GOC concerning the evidence presented in the non-confidential version of the subsidy complaint and comments concerning the CBSA's practices in previous subsidy investigations involving China. The GOC claimed that the complaint lacks sufficient evidence to initiate a subsidy investigation on aluminum extrusions. The GOC also claimed that the complaint fails to provide supporting evidence to show that subsidies applied to the aluminum extrusions sector in China. The CBSA considered the representations made by the GOC in its analysis of whether there was sufficient evidence of subsidizing to warrant an investigation.
- 5. On August 14, 2008 consultations were held with the GOC pursuant to Article 13.1 of the Agreement on Subsidies and Countervailing Measures. During these consultations, the GOC made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint.
- 6. On August 18, 2008, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain aluminum extrusions from China. On the basis of the available information, the CBSA concluded that there was sufficient evidence to initiate a section 20 inquiry concurrently with the dumping and subsidy investigations to examine the degree of GOC involvement in the aluminum extrusions sector and the related impact on pricing.
- 7. Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) started a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain aluminum extrusions from China have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods. On October 17, 2008, the Tribunal determined that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain aluminum extrusions have caused injury.
- On November 17, 2008, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping and

PUBLIC FILE 710

Non-confidential attachment C-1.2.7

subsidizing with respect to certain aluminum extrusions originating in or exported from China.

- 9. The CBSA continued its investigations and, on the basis of the results, the President is satisfied that certain aluminum extrusions originating in or exported from China have been dumped and subsidized and that the margins of dumping and the amounts of subsidy are not insignificant. Consequently, on February 16, 2009, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.
- 10. The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duties will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal will issue its finding by March 17, 2009.

PERIOD OF INVESTIGATION

- The period of investigation, with respect to dumping (Dumping POI), covered all subject goods released into Canada from July 1, 2007 to June 30, 2008.
- 12. The period of investigation, with respect to subsidizing (Subsidy POI), covered all subject goods released into Canada from January 1, 2007 to June 30, 2008.

INTERESTED PARTIES

Complainants

13. The Complainants are major producers of aluminum extrusions in Canada, accounting for a major proportion of the domestic industry for like goods.

The name and address of the Complainants are:

Almag Aluminum Inc. 22 Finley Road Brampton, ON L6T 1A9

Apel Extrusions Limited 7929-30 Street S.E. Calgary, AB T4C 1R7

CanArt Aluminum Extrusion Inc. 85 Parkshore Drive Brampton, ON L6T 5M1

Metra Aluminum Inc. 2000 Fortin Boulevard Laval, QC R7S 1P3

Signature Aluminum Canada Inc. 500 Edward Avenue Richmond Hill, ON L4C4Y9

Spectra Aluminum Products Ltd. 95 Reagens Industrial Parkway Bradford, ON L3Z2A4

Spectra Anodizing Inc. 201 Hanlan Rd Woodbridge, ON L4L 3R7

14. Three other producers of the like goods, Extrudex Aluminum, Daymond Aluminum and Kaiser Aluminum Canada Ltd. provided letters supporting the complaint.

Exporters

- 15. At the initiation of the investigations, the CBSA had identified 261 potential exporters of subject goods from customs import documentation and from the complaint.
- 16. The CBSA sent a Dumping Request for Information (RFI) and Subsidy RFI to each of the identified potential exporters of the goods
- 17. As part of the CBSA's section 20 inquiry, the CBSA also sent section 20 RFIs to each of the identified potential exporters and producers of the goods located in China.
- 18. While many of the export sales from China appear to involve international vendors and trading companies, in most instances the goods are shipped directly to Canada from China and the Chinese manufacturer is considered to be the exporter of the goods. However, some goods originating from China may be shipped to an intermediary country, such as the United States of America (USA) and subsequently exported to Canada. In these situations, the exporter of the goods is generally located in the intermediary country.
- 19. Complete and timely responses to the CBSA's dumping RFI were received from seven exporters, including six exporters located in China as well as one exporter located in the USA which is exporting goods originating from China to Canada. The six exporters located in China also provided complete and timely responses to the section 20 inquiry RFI and the subsidy RFI.

- 20. After the dumping and subsidy preliminary determinations on November 17, 2008, the CBSA conducted on-site verifications at the end of November and early December 2008 with these six exporters, as follows:
 - . Kam Kiu Aluminum Extrusion Co., Ltd.
 - · Press Metal International Ltd. (China)
 - · Panasia Aluminum (China) Limited
 - · Pingguo Asia Aluminum Co., Ltd.
 - · Guangdong Weiye Aluminum Factory Co Ltd.
 - Guangdong Jianmei Aluminum Profile Factory Co., Ltd.
- 21. During the course of the on-site verification with one of the Chinese exporters, Pingguo Asia Aluminum Co., Ltd. (Pingguo), there were issues with respect to the accuracy and reliability of their information. As a result, this exporter was considered non-cooperative for purposes of the final determinations.
- 22. Another Chinese exporter, Press Metal International Ltd. (China) (PMI), cooperated in the dumping verification but failed to provide requested information and documentation relating to the subsidy verification. For purposes of the subsidy final determination, this exporter was considered noncooperative.
- 23. The other four Chinese exporters fully cooperated during the on-site dumping and subsidy verifications.
- 24. In addition, during the course of the investigation, desk audits were performed by the CBSA on a number of exporter RFI submissions, including late exporter submissions received after the deadline date. Three Chinese exporters provided complete dumping and subsidy RFI responses and fully cooperated during these desk audits for purposes of the final determinations. A desk audit was also performed by the CBSA on one exporter located in the USA, which was exporting goods originating from China to Canada through two subsidiaries. This exporter also provided complete dumping RFI responses and fully cooperated for purposes of the investigation. These additional cooperating exporters are:
 - · China Square Industrial Limited (China)
 - Guangya Group Foshan Guangcheng Aluminum Co. Ltd. (China)
 - Guangya Group Guang Ya Aluminum Industries Co. Ltd. (China)
 - . Hunter Douglas Designer Shades (USA)
 - Hunter Douglas Window Fashions (USA)
- 25. Several other exporters and trading companies provided incomplete responses to the CBSA's dumping, subsidy, or section 20 RFIs, and their information will not be taken into consideration for purposes of the investigations.

Importers

- 26. At the initiation of the investigations, the CBSA identified 535 potential importers of subject goods based on a review of customs import documentation and information provided in the complaint.
- 27. The CBSA sent an RFI to all potential importers of the goods. Responses to the CBSA's importer RFI were received from 43 importers.
- 28. There may be instances where the importer in Canada for SIMA purposes may be a different party than the importer of record. For certain transactions involving non-resident importers, the CBSA examined available information concerning the importations for purposes of identifying the importer in Canada.

Government of China

- 29. For the purposes of these investigations "Government of China" refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.
- 30. At the initiation of the investigations, the CBSA sent a subsidy and a section 20 RFI to the GOC. While the GOC provided a substantially complete response to the section 20 RFI, the GOC's subsidy response was found to be incomplete and was not used for the preliminary determination.
- 31. During the final stage of the investigation, after being advised by the CBSA that its original subsidy RFI response was incomplete, the GOC provided additional subsidy information. However, this additional information was filed very late in the investigation, which left the CBSA insufficient time to analyze and verify the information before the legislated final determination date. The GOC was advised that the information was not submitted in a timely fashion and that its subsidy information would not be used for purposes of the investigation. Additional details on this matter are provided subsequently in this report under "Subsidy Investigation".

Surrogate Countries

32. As part of the CBSA's section 20 inquiry, an RFI was also sent to producers in India, Malaysia, Mexico and Chinese Taipei, which are not subject to the present dumping investigation. No responses to these RFIs were received.

PRODUCT DEFINITION

33. For the purpose of these investigations, the subject goods are defined as:

"Aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China."

Additional Product Information 1

- 34. Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the subject goods do not include goods made by the process of impact extrusion or cold extrusion. Impact (or cold) extrusion is commonly used to make collapsible tubes such as toothpaste tubes or cans usually using soft materials such as aluminum, lead and tin. Usually a small shot of solid material is placed in the die and is impacted by a ram, which causes cold flow in the material. Impact (or cold) extrusion is not performed by the same machinery or using the same inputs as the extrusion operations of the Complainants.
- 35. Alloys are metals composed of more than one metallic element. Alloys used in aluminum extrusions contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc which enable characteristics such as corrosion resistance, increased strength or improved formability to be imparted to the major metallic element, aluminum. Aluminum alloys are produced to specifications in "International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys" published by *The Aluminum Association*. These specifications have equivalent designations issued by other certifying bodies such as the International Standards Organization (ISO).
- 36. All aluminum extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customized shapes.
- 37. In addition to 'as extruded' or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an

electro-chemical process that forms a durable, porous oxide film on the surface of the aluminum. Also, they can be finished with liquid or powder paint coatings utilizing an electrostatic application process.

- 38. The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment. The Complainants cannot produce extrusions having a wall thickness less than 0.5 mm or a weight greater than 22 kg per meter or a crosssection larger than would be enclosed within a 254 mm diameter circle.
- 39. Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. These can include precision cutting, machining, punching and drilling.
- 40. Aluminum extrusions are widely used in many end-use applications that span numerous market sectors. The main end-use sectors for aluminum extrusions are building and construction, transportation, and engineered products. Uses for aluminum extrusions in the building and construction industry cover a wide range of products, including windows, doors, railings, bridges, light poles, high-rise curtainwalls, framing members, and other various structures. Uses for aluminum extrusions in the transportation industry include parts for automobiles, buses, trucks, trailers, rail cars, mass transit vehicles, recreational vehicles, aircraft, and aerospace. Aluminum extrusions are also used in many consumer and commercial products, including, air conditioners, appliances, furniture, lighting, sports equipment, electrical power units, heat sinks, machinery and equipment, food displays, refrigeration, medical equipment, and laboratory equipment.²

Production Process 3

- While details may vary from producer to producer, the process by which extrusions are produced is essentially the same for all.
- 42. The intended use of the product in which the aluminum extrusion will be applied determines the specifications for the extrusion. Machinability, finish and environment of use will determine the alloy to be extruded. The function of the profile will determine its design and that of the die that shapes it.
- 43. The extrusion process begins with an aluminum billet. The billet must be softened by heat prior to extrusion. The heated billet is placed into the extrusion press, a powerful hydraulic device wherein a ram pushes a dummy block that forces the softened metal through a precision opening known as a die, to produce the desired shape. This simplified description of the process is known as direct extrusion, which is the most common method in use today. Indirect extrusion is a similar process. In the direct extrusion process, the die is stationary and the ram forces the alloy through the opening in the die. In

- the indirect process, the die is contained within the hollow ram, which moves into the stationary billet from one end, forcing the metal to flow into the ram, acquiring the shape of the die as it does so.
- 44. The aluminum billet may be a solid or hollow form, commonly cylindrical, and is the length charged into the extrusion press container. It is usually a cast product but may be a wrought product or powder compact. Often it is cut from a longer length of alloyed aluminum known as a log.
- 45. The billet and extrusion tools are preheated (softened) in a heating furnace. The melting point of aluminum varies with the purity of the metal but is approximately 1,220 Fahrenheit (660° Centigrade). Extrusion operations typically take place with billet heated to temperatures in excess of 700° F (375° C), and depending upon the alloy being extruded, as high as 930°F (500° C).
- 46. The actual extrusion process begins when the ram starts applying pressure to the billet within the container. Various hydraulic press designs are capable of exerting anywhere from 100 tons to 15,000 tons of pressure. This pressure capacity of a press determines how large an extrusion it can produce. The extrusion size is measured by its largest cross-sectional dimension, sometimes referred to as its fit within a circumscribing circle diameter.
- 47. As pressure is first applied, the billet is crushed against the die, becoming shorter and wider until its expansion is restricted by full contact with the container walls. Then, as the pressure increases, the soft (but still solid) metal has no place else to go and begins to squeeze through the shaped orifice of the die to emerge on the other side as a fully formed extrusion or profile.
- 48. About 10 percent of the billet, including its outer skin, is left behind in the container. The completed extrusion is cut off at the die and the remainder of the metal is removed to be recycled. After it leaves the die, the still-hot extrusion may be quenched, mechanically treated and aged.

Classification of Imports

- 49. The aluminum extrusions subject to this complaint are normally imported into Canada under the following 34 Harmonized System (HS) classification numbers:
- 7604.10.11.10
- 7604.10.11.90
- 7604.10.12.11
- 7604.10.12.19
- 7604.10.12.21
- 7604.10.12.22
- 7604.10.12.23
- 7604.10.12.24
- 7604.10.12.29

PUBLIC FILE 203

Non-confidential attachment C-1.2.7

- 7604.10.20.11
- 7604.10.20.19
- 7604.10.20.21
 - 7604.10.20.29
 - 7604.10.20.30
 - 7604.21.00.10

 - 7604.21.00.20
 - 7604.29.11.10
 - 7604.29.11.90
 - 7604.29.12.11
 - 7604.29.12.19
 - 7604.29.12.21
 - 7604.29.12.22
 - 7604.29.12.23
 - 7604.29.12.24

 - 7604.29.12.29
 - 7604.29.20.11 • 7604.29.20.19
 - 7604.29.20.21
 - 7604.29.20.29
 - 7604.29.20.30
 - 7608.10.00.10
 - 7608.10.00.90
 - 7608.20.00.10
 - 7608.20.00.90
 - 50. This listing of HS codes is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

CANADIAN INDUSTRY

51. The Canadian industry for aluminum extrusions is comprised of the following companies:

Almag Aluminum Inc. of Brampton, Ontario, Apel Extrusions Limited of Calgary, Alberta, Can Art Aluminum Extrusion Inc. of Brampton, Ontario, Daymond Aluminum of Chatham, Ontario, Extrudex Aluminum of Woodbridge, Ontario, Indalex Aluminum Solutions Group of Mississauga, Ontario. Kaiser Aluminum Canada Ltd of London, Ontario, Kawneer Company Canada Ltd of Scarborough, Ontario, Kromet International Inc. of Cambridge, Ontario, Metra Aluminum Inc. of Laval, Quebec, Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.)

PUBLIC FILE

Non-confidential attachment C-1.2.7

of Richmond Hill, Ontario, Spectra Aluminum Products Ltd. of Bradford, Ontario, Spectra Anodizing Inc. of Woodbridge, Ontario.

IMPORTS INTO CANADA

- 52. During the final phase of the investigations, the CBSA refined the estimated volume of imports based on information from its internal Customs Commercial Systems, Customs import entry documentation and other information received from exporters, importers and other parties.
- 53. The following table presents the CBSA's estimates of imports of certain aluminum extrusions for purposes of the final determinations:

Imports of Certain Aluminum Extrusions (July 1, 2007 - June 30, 2008)

Imports into Canad	a% of Total Imports
China	44%
U.S.A.	48%
All Other Countries	8%
Total Imports	100%

INVESTIGATION PROCESS

- 54. Regarding the dumping investigation, information was requested from known and possible exporters, vendors and importers, concerning shipments of certain aluminum extrusions released into Canada during the Dumping POI of July 1, 2007 to June 30, 2008. Information related to potential actionable subsidies was requested from known and possible exporters and the GOC concerning financial contributions made to producers or exporters of aluminum extrusions of Chinese origin released into Canada during the Subsidy POI of Janúary 1, 2007 to June 30, 2008.
- 55. In addition, known and possible exporters and producers of the goods along with the GOC were requested to respond to the section 20 RFI for the purposes of the section 20 inquiry. Aside from the aforementioned exporters which provided complete information and fully cooperated for purposes of the final determinations, several exporters and trading companies provided incomplete or deficient RFI replies. Information from these companies has not been taken into consideration for purposes of the final determinations.
- 56. The GOC provided a substantially complete response to the section 20 RFI by the extended due date. As explained previously, after being advised by the CBSA that its original

- subsidy response was incomplete and would not be used for purposes of the preliminary determination, the GOC provided additional supplementary subsidy information. However, this additional information was filed very late in the investigation, which left the CBSA insufficient time to analyze and verify the information before the legislated final determination date.
- 57. The GOC was advised that the information was not submitted in a timely fashion and that its subsidy information would not be used for purposes of the investigation. Notwithstanding that the GOC's subsidy information was not used, the CBSA has established individual amounts of subsidy for the cooperative Chinese exporters under a ministerial specification.
- 58. In summary, 56 potential subsidy programs were investigated and the CBSA determined that 15 of the potential subsidy programs were conferring benefits to the seven cooperative Chinese exporters during the Subsidy POI.
- 59. As part of the final stage of the investigations, case briefs and reply submissions were provided by the legal representatives of the GOC, the Complainants, three Chinese exporters and one U.S. exporter of Chinese origin goods.

DUMPING INVESTIGATION

Section 20 Inquiry

- 60. Section 20 of SIMA may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA⁴, it is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Where section 20 is applicable, the normal value of goods is not determined based on domestic prices or costs in that country.
- 61. For purposes of a dumping investigation, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation unless there is evidence to suggest otherwise. The President may form an opinion where there is sufficient information that the conditions set forth in paragraph 20(1)(a) of SIMA exist in the sector under investigation.
- 62. The mere existence of substantial domestic price determination by the government would be insufficient to apply section 20 of SIMA. The CBSA is also required to examine the price effect resulting from substantial government determination of domestic prices and whether there is sufficient information on the record for the President to have a reason to believe that the resulting domestic prices are not substantially the same as they would be in a competitive market.

PUBLIC FILE 700

Non-confidential attachment C-1.2.7

- 63. The Complainants requested that section 20 be applied in the determination of normal values due to the alleged existence of the conditions set forth in paragraph 20(1)(a) of SIMA. The Complainants provided information to support these allegations concerning the aluminum extrusions sector in China.
- 64. At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the Complainants, and from its own research, to support the initiation of a section 20 inquiry. The information indicated that the prices of aluminum extrusions in China have been substantially determined, indirectly, by various GOC industrial policies regarding the aluminum and aluminum extrusions industries and by export restrictions and tax changes for aluminum and aluminum extrusions.
- 65. Accordingly, the CBSA, at the initiation of the dumping investigation, sent section 20 RFIs to 160 known exporters of aluminum extrusions in China, as well as to the GOC requesting detailed information related to the aluminum extrusions sector. In response to the section 20 inquiry and the relevant questionnaires, the CBSA received substantially complete and verifiable responses from eight Chinese exporters and from the GOC.
- 66. The eight cooperative exporters represent approximately 41% of the total exports to Canada of subject goods, by volume during the Dumping POI. These companies represent a far smaller proportion of the Chinese domestic aluminum extrusions industry, which the GOC has indicated is comprised of over 460 producers⁵. A section 20 inquiry assesses the domestic industry sector as a whole. As such, the review of the aluminum extrusions sector is not limited to an examination of the information provided by the cooperative exporters.
- 67. In addition, the CBSA has obtained information from other sources such as previous CBSA reports, market intelligence reports, public industry reports, newspaper and internet articles as well as other government documents.
- 68. For purposes of the preliminary determination, the President considered the cumulative effect that the GOC's measures have exerted on the aluminum extrusions sector in China. The information indicated that the wide range and material nature of the GOC measures have resulted in significant influences on the aluminum industry, including the aluminum extrusions sector, through means other than competitive market forces.
- 69. Accordingly, the President formed the opinion that domestic prices in the aluminum extrusions sector in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.
- 70. The CBSA continued with the section 20 inquiry during the final stage of the investigation.
- 71. Taking together all the information obtained during the course of the section 20 inquiry, the President has affirmed the opinion made at the preliminary determination that domestic prices in the aluminum extrusions sector in China are

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

72. **Appendix 3** provides a summary of the findings considered by the President in affirming this section 20 opinion.

Normal Value

- 73. Normal values are generally based on the domestic selling prices of the goods in the country of export, or on the full cost of the goods including administrative, selling and all other costs plus a reasonable amount for profit.
- 74. For purposes of the final determination, the CBSA has concluded that normal values could not be determined on the basis of domestic selling prices in China or on the full cost of goods plus profit, as the CBSA has affirmed the opinion made at the preliminary determination that the conditions of section 20 exist in the aluminum extrusions sector in China.
- 75. Where section 20 conditions exist, the CBSA will establish whether normal values can be determined using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)(c) of SIMA. However, no surrogate country producers provided the information necessary to determine normal values in accordance with this provision.
- 76. Alternatively, normal values may be determined on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the President, pursuant to paragraph 20(1)(d) of SIMA. However, sufficient information was not submitted by importers in response to the importer RFI to allow for the application of paragraph 20(1)(d).
- 77. Accordingly, the CBSA has used an alternate method to determine normal values for cooperative exporters for purposes of the final determination, pursuant to a ministerial specification under subsection 29(1) of SIMA.
- 78. In the complaint, the Complainants submitted that India is an appropriate surrogate country to be used for the calculation of normal values, since it is a major producer of aluminum extrusions and has comparable wage rates. Additionally, the cost of the aluminum raw material input to extruders in India should reflect international, market economy prices.
- 79. The CBSA finds that the Complainants' selection of India for purposes of establishing costs for use in determining normal values is reasonable since both India and China are developing countries and the President has designated India as the surrogate country for China previously.
- 80. As the cost of aluminum accounts for such a significant portion of the costs of producing aluminum extrusions, the CBSA's starting point for determining normal values is based on the monthly average settlement price of aluminum as reported on

the London Metal Exchange (LME). The LME is the largest futures and contract market for various metals including aluminum and is a global reference pricing source for purchases and sales of such goods.

- 81. Amounts have been added to the LME prices for the cost to convert the aluminum into a finished aluminum extrusion product, using information provided by the Complainants, adjusted to reflect costs in India as a surrogate. Separate conversion costs have been established to account for cost differences relating to product that is "mill finished" and product that undergoes additional finishing, such as anodizing or painting. An amount for administrative, selling and all other costs has also been added using information provided by the Complainants, again adjusted to reflect costs in India.
- 82. Lastly, an amount for profit has been added to these costs based on the profit earned by the Complainants on domestic and export sales of the like goods for the 2007 calendar year in order to determine normal values for the cooperative exporters.

Export Price

- 83. The export price of goods sold to importers in Canada is generally calculated pursuant to section 24 of SIMA based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(ii) of SIMA.
- 84. In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices.
- 85. For purposes of the final determination, export prices for the cooperative exporters were determined using reported export pricing data provided by the exporters and importers of the goods. For non-cooperative exporters, the export price was determined based on the import pricing data available from customs' information.

Export sales to Canada involving third parties (i.e. intermediaries) which are related to the exporter

86. For goods shipped directly to Canada from China, the exporter for SIMA purposes is usually the Chinese producer of the goods (i.e. it is usually the producer which knowingly releases the goods for direct shipment to Canada). However, there are situations where the Chinese producer has a related trading company/sales office (i.e., an intermediary) located elsewhere in China or in other jurisdictions which is involved in the export

- sale of goods to Canada. While the goods are shipped directly to Canada from the producer's facilities, frequently, there is an internal sale/transfer price between the Chinese producer and the related intermediary.
- 87. Under section 24 of SIMA, export price is generally based on the lesser of the exporter's selling price and the importer's purchase price. For certain cooperating exporters, the sale/transfer price between the producer and the related intermediary was used for purposes of estimating export price at the time of the preliminary determination.
- 88. This issue was reconsidered as part of the final stage of the investigation. This included an examination of the relationship between the producer and related intermediary and the manner in which the sales to Canada were made during the POI. The investigation revealed that the producer and intermediary are part of the same corporate group and meet the definition of "associated persons" in SIMA. It was found that the intermediary and producer did not deal with each other at arm's length, and in fact were operating as a single business entity on sales of subject goods to Canada during the POI. That is, the related intermediary was acting to facilitate the producer's sale of goods to the Canadian market and was not acting in its own commercial interest or assuming the commercial risk associated with such sales.
- 89. Therefore, for purposes of the final determination, where the cooperating Chinese producers were selling to Canada through a related intermediary and the above-noted conditions were met, the sale/transfer price between the producer and related intermediary was not taken into consideration. Rather, the selling price from the related intermediary to the importer in Canada was used as the exporter's selling price under section 24 of SIMA.

Results of Dumping Investigation

- 90. The CBSA determined margins of dumping for each of the cooperative exporters by comparing normal values with the export prices. When the export price is less than the normal value, the difference is the margin of dumping.
- 91. For the exporters that did not respond to the RFI, or provided an incomplete or deficient submission, the normal values were determined under a ministerial specification pursuant to section 29 of SIMA based on the export price as determined under section 24, 25 or 29 of SIMA, plus an amount equal to 101% of that export price, which represents the highest margin of dumping found for a cooperative exporter during the investigation, excluding anomalies.
- 92. The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter has been determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e. 100%) is

- considered dumped. Similarly, where a given exporter's net aggregate dumping results are zero, then the total quantity of exports deemed to be dumped by that exporter is zero.
- 93. In calculating the weighted average margin of dumping, the overall margins of dumping found in respect of each exporter were weighted according to each exporter's volume of certain aluminum extrusions exported to Canada during the Dumping POI.
- 94. Based on the preceding, 99.8% of the subject aluminum extrusions from China were dumped by a weighted average margin of dumping of 72.6%, as a percentage of export price.
- 95. Under Article 15 of the World Trade Organization (WTO) Antidumping Agreement, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying antidumping duty where they would affect the essential interests of developing country members. As China is listed on the Development Assistance Committee (DAC) List of Official Development Assistance(ODA) Aid Recipients 6 maintained by the Organization for Economic Co-operation and Development (OECD), the President recognizes China as a developing country for purposes of actions taken pursuant to SIMA.
- 96. Accordingly, the obligation under Article 15 of the WTO Antidumping Agreementwas met by providing the opportunity for exporters to submit price undertakings. In this particular investigation, the CBSA did not receive any proposals for undertakings from any of the identified exporters.

Dumping Results by Exporter

97. Specific margin of dumping details relating to each of the exporters that cooperated in the CBSA's dumping investigation are as follows:

Taishan City Kam Kiu Aluminum Extrusion Co., Ltd. (China)

- 98. Taishan City Kam Kiu Aluminum Extrusion Co., Ltd. (Kam Kiu) is a 100% foreign owned, limited liability company incorporated in Hong Kong. Kam Kiu uses primary aluminum to cast its own billets and the special tooled precision dies are made by Kam Kiu to produce aluminum extrusions according to customer requirements. The CBSA conducted on-site verification of Kam Kiu's RFI responses from December 4 to December 12, 2008.
- 99. Exports to Canada are sold via Kam Kiu's related trader and are shipped from China to customers in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, on the basis of the exporter's selling price from Kam Kiu's related trader, adjusted to take into account all costs, charges and expenses incurred in preparing the

goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

100. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Kam Kiu were dumped by a weighted average margin of dumping of 27.8%, expressed as a percentage of export price.

Press Metal International Ltd. (China)

- 101. Press Metal International Ltd. (PMI) is a 100% foreign owned company with the parent company located in Malaysia. PMI is an aluminum extruder and has a related raw material supplier of aluminum ingots. The CBSA conducted on-site verification of PMI's RFI responses, from November 24 to November 28, 2008, and its related raw material supplier's responses from December 8 to December 9, 2008.
- 102. Exports to Canada are sold and shipped directly to several unrelated importers in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

103. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by PMI were dumped by a weighted average margin of dumping of 35.2%, expressed as a percentage of export price.

PanAsia Aluminum (China) Limited

- 104. PanAsia Aluminum (China) Limited (PanAsia) is a Foreign-Invested Enterprise (FIE) and manufacturer of the subject goods exported to Canada. It produces aluminum extrusions for the domestic and various export markets at its production facility located in Zengcheng City in the Chinese province of Guangdong. The CBSA conducted on-site verification of PanAsia's RFI responses from November 24 to November 28, 2008.
- 105. Exports to Canada are sold through an affiliated trading company located in Macau and are shipped directly from China to related subsidiaries and unrelated companies in Canada.

- 106. In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices. The results of the reliability test for sales made by PanAsia's affiliated trading company to a related subsidiary in Canada revealed that the section 24 export prices to this related subsidiary were unreliable for SIMA purposes. As a result, for all sales to this related subsidiary, the export prices were determined in accordance with section 25 of SIMA, based on the importer's resale prices in Canada less all costs incurred in importing and selling the goods, and an amount for profit based on the profit earned by vendors of like goods in Canada.
- 107. Export prices for all other sales to Canada were determined pursuant to section 24 of SIMA, on the basis of the exporter's selling price from PanAsia's affiliated trading company, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

108. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by PanAsia were dumped by a weighted average margin of dumping of 31.4%, expressed as a percentage of export price.

Guangdong Weiye Aluminum Factory Co., Ltd. (China)

- 109. Guangdong Weiye Aluminum Factory Co., Ltd. (Weiye) is a privately owned company and is a manufacturer of aluminum extrusions and stainless steel products. Weiye develops and manufactures a wide range of aluminum extrusions for various industries (such as construction, electronic, IT, sporting goods). The company purchases 100% of its raw materials from several domestic suppliers. The CBSA conducted on-site verification of Weiye's RFI responses from December 1 to December 5, 2008.
- 110. Exports to Canada are sold and shipped directly to multiple unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

111. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Weiye were dumped by a weighted average margin of dumping of 42.4%, expressed as a percentage of export price.

Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (China)

- 112. Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (Jianmei) is a privately-owned limited liability company. Jianmei has two production plants that produce different types of aluminum profiles, including thermal break series, curtain wall series, doors and windows series and other profiles. Jianmei purchases aluminum ingots and melts them into aluminum billets. The CBSA conducted on-site verification of Jianmei's RFI responses from December 1 to December 5, 2008.
- 113. Exports to Canada are sold by JMA (Hong Kong) Company Limited (JMA(HK)), an associated trading company, and are shipped directly from China to multiple unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price from Jianmei's associated trading company, JMA (HK), adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

114. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Jianmei were dumped by a weighted average margin of dumping of 28.5%, expressed as a percentage of export price.

China Square Industrial Limited (China)

- 115. China Square Industrial Limited (China Square) is a limited liability company, and includes a Hong Kong based parent company responsible for export sales, and production facilities in China (Zhaoqing). The company produces a range of aluminum extrusion products.
- 116. Exports to Canada of subject goods are shipped directly from China to two unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

117. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. The subject goods exported by China Square were dumped by a weighted average margin of dumping of 1.7%, expressed as a percentage of export price.

Guangya Group (China)

- 118. The CBSA received dumping and subsidy RFI responses from the Guangya Group, which is comprised of Guangya Aluminum Industries Co., Ltd. (Guangya), Foshan Guangcheng Aluminum Co., Ltd. (Guangcheng), Guangya Aluminum Industries (Hong Kong) Ltd. (Guangya HK) and Guangcheng Aluminum Industries (U.S.A.) Inc. (Guangcheng US). The Group produces and sells a wide range of aluminum products for architecture and industrial markets in China as well as for export.
- 119. During the POI, exports to Canada were produced and shipped from China by Guangya and Guangcheng, and sold through one of the four Guangya Group companies (i.e. Guangya, Guangcheng, Guangya HK, or Guangcheng US) to multiple unrelated companies in Canada.
- 120. As such, for the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

121. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the dumping POI, separately for Guangcheng and Guangya. The results reveal that the subject goods exported to Canada by Guangcheng were dumped by a weighted average margin of dumping of 33.8%, expressed as a percentage of export price. The subject goods exported to Canada by Guangya were dumped by a weighted average margin of dumping of 40.4%, expressed as a percentage of export price.

Hunter Douglas (United States)

- 122. The Hunter Douglas group of companies is privately owned, and part of a wider corporate group, Hunter Douglas NV, located in the Netherlands.
- 123. The Hunter Douglas group includes three USA subsidiaries, two of which are distributors and exporters of

Chinese origin aluminum extrusions to Canada - Hunter Douglas Window Fashions (HDWF) and Hunter Douglas Designer Shades (HDDS).

- 124. Hunter Douglas Window Coverings Inc (HDWC), the third party in this Hunter Douglas group, sources subject goods from Chinese manufacturers and paints them. Both HDWF and HDDS then purchase the painted subject goods from HDWC and sell them to USA and Canadian fabricators. The fabricators then use the subject goods in the manufacture of window shades and treatments based on the specifications of their dealer customers.
- 125. Both HDDS and HDWF make export sales directly from the USA to two related Canadian importers.
- 126. In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices. The results of the reliability test for such sales made by HDDS and HDWF indicate that the section 24 export price was reliable.
- 127. Accordingly, for the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

128. The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. The subject goods exported by HDDS were found not to be dumped. The subject goods exported by HDWF were dumped by a weighted average margin of dumping of 2.9%, expressed as a percentage of export price.

Non-Cooperative Exporters - Margin of Dumping

129. For non-cooperative exporters, import pricing information available from the CBSA's internal Customs Commercial Systems was used for purposes of determining export price. The normal value was determined under a ministerial specification pursuant to section 29 of SIMA, based on the export price as determined under section 24, 25 or 29 of SIMA, plus an amount equal to 101% of that export price, which represents the highest margin of dumping found for a cooperative exporter during the investigation, excluding anomalies.

SUMMARY OF RESULTS - DUMPING

Period of Investigation - July 1, 2007 to June 30, 2008

	Dumped Goods as Percentage of Country Imports	Weighted Average Margin of Dumping	Country Imports as Percentage of Total Imports	Dumped Goods as Percentage of Total Imports
China	99.8%	72.6%	43%	43%

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

130. Listed below are details of representations made to the CBSA with respect to the dumping investigation, including case arguments and reply submissions, from exporters, importers, the GOC and the Complainants. Following the representations on each issue is a response explaining the position of the CBSA. Since there were a number of common positions from multiple parties, the CBSA may make specific reference to only one or two parties when documenting the issue raised.

1. Grounds for Initiation and Burden of Proof

- 131. The GOC submitted that the complaint fell short of establishing a "reasonable indication" of sufficient evidence of dumping or any causal link to any injury as required under Article 5.2 of the WTO Anti-Dumping Agreement.²
- 132. Furthermore, the GOC submitted that the relevant provisions of SIMA must be construed strictly and that their application should be limited to the terms of the applicable provisions. As such, the GOC argued that the CBSA must interpret and apply the provisions in section 20 of SIMA in a strict manner, as this section provides an exceptional method for determining normal values.
- Chinese exporter PanAsia claimed that the CBSA's interpretation of section 20 was inconsistent with SIMA.
- 134. Another Chinese exporter, Kam Kiu, also submitted that the use of section 20 or invocation of Article 15 of China's WTO Accession Protocol does not eliminate the need for a fair comparison, and the CBSA has failed to properly interpret and apply Article 15. The company stated that since section 20 is an exception to the general rules, the burden of proof for invoking the exception is on those parties requesting that section 20 be applied and that the evidence provided in the complaint was not sufficient to meet this burden of proof.
- 135. Chinese exporter Pingguo submitted that under section 20, the CBSA is required to adhere to a two-fold test: first, that domestic prices are substantially determined by the government of that country and second, that there is sufficient reason to believe that domestic prices are not substantially the

same as they would be if they were determined in a competitive market. 12

- 136. Furthermore, Pingguo stated that at the preliminary determination, the CBSA conclusions referred to indirect price effects by GOC industrial policies and export restrictions, whereas Pingguo proposed that more substantive analysis is necessary.
- 137. The GOC submitted that in order to demonstrate that domestic prices are substantially determined by the GOC, the evidence on the record must establish that the GOC has actively taken steps to determine prices. Consequently, the CBSA's list of indirect factors that are considered as methods a government may determine prices, cannot justify a section 20 finding. The GOC asserted that while certain measures may influence or affect prices, this is not sufficient to meet the "determine" threshold of section 20 of SIMA. ¹²
- 138. Kam Kiu added that the CBSA cannot properly determine that SIMA section 20 conditions exist on the basis of indirect factors and general government policies.¹⁴
- 139. The GOC argued that the ordinary meaning of the words "substantially" and "determine" provide that the CBSA must establish that the GOC "determines or decides to a large extent or to a large degree" the domestic prices of aluminum extrusions in China to meet this threshold under section 20.15
- 140. The GOC also submitted that, in assessing whether or not the domestic prices are not substantially the same as they would be if they were determined in a competitive market, that the CBSA must assess all of the factors that determine prices and "net out" other causal factors that may be driving prices. The GOC submitted that the CBSA did not conduct such an analysis at the preliminary determination and simply noted that prices in China appeared lower than prevailing world prices. 15
- 141. The GOC further argued that the CBSA is bound by the fundamental principles of interpretation applicable to taxation laws in Canada to the effect that "any reasonable uncertainty or factual ambiguity resulting from a lack of explicitness in the statute should be resolved in favour of the taxpayer". The GOC submitted that in the event that there is any ambiguity in section 20 of SIMA, that the interpretation that favours the GOC and the exporters should be adopted. 12
- 142. The Complainants contended that section 20 of SIMA is applicable on the facts of the present investigation, indicating that the GOC policies exert sufficient influence on the aluminum extrusion industry, in China, so as to substantially determine prices of like goods and prices are not the same as they would be in a competitive market. ¹⁸ The Complainants contended that:
 - The GOC manipulates aluminum billet cost, the largest material cost in the production of like goods, by providing access to low cost billets:
 - The GOC manipulates domestic prices by changing export taxes and rebates; and

- The GOC controls production inputs and finished like goods through its laws, guidelines and through the influence of industry groups controlled by the GOC.¹⁹
- 143. Furthermore, the Complainants responded to the issue of the various interpretations of section 20 of SIMA and cited illustrations of why the Chinese aluminum extrusion industry is not a competitive market.²⁰
- 144. In response to definitions proposed by the GOC for section 20 terms such as "substantially" and "determines", the Complainants contended that the GOC's own definition of these words, "support the interpretation of section 20 which contemplates that indirect government actions can substantially determine (non-market) pricing".²¹
- 145. Regarding the GOC's suggestion that the CBSA's interpretation of SIMA relies on presumptions that "favour the taxpayer", the Complainants argued that such interpretations are based on a false premise and that SIMA's purpose is to protect the domestic industry. ²² The Complainants asserted that SIMA is "economic legislation" aimed to protect Canadian industry and is thus, not a taxation statute.

- 146. Absent sufficient information to the contrary, the CBSA proceeds in an anti-dumping investigation on the presumption that section 20 of SIMA does not apply to the sector under investigation. This approach follows the CBSA's section 20 policy.
- 147. The information before the CBSA at the initiation of the investigation included information contained in the complaint from Canadian industry as well as information obtained through the CBSA's own research. The CBSA's analysis of this evidence and justification for initiating a section 20 inquiry is contained in the Complaint Analysis, which was placed on the CBSA's listing of exhibits for this investigation.²³
 - 48. At the time of initiation, all known exporters, producers and the GOC were informed of the section 20 inquiry, requested to respond to a Request for Information and invited to provide any relevant information, evidence and arguments.
- 149. Once a section 20 inquiry is undertaken, the President may, having regard to the information obtained from the complainant, the government of the country of export, producers, exporters or any other sources of relevant information, form an opinion on the basis of fact and positive evidence that the conditions described under section 20 exist in the sector under investigation.
- 150. Regarding the sufficiency of information in the complaint to meet the threshold to initiate a section 20 inquiry, the CBSA notes that its policy with respect to the application of section 20 requires complainants to provide sufficient evidence that the conditions of section 20 exist in the relevant industry

sector if they wish to base their price and cost estimates on third country information. In their complaint, the Complainants provided evidence that the section 20 conditions were met. The Complainants further provided normal values estimated on surrogate country costs and estimated costs in China.

151. In short, the arguments regarding the alleged insufficiency of evidence to initiate a section 20 inquiry do not specifically address or refute any of the CBSA evidence or analysis contained in its Complaint Analysis.

152. As in previous section 20 inquiries, the CBSA references a list of direct and indirect factors that governments may use to substantially determine prices. The CBSA's use of indirect factors is well established and the CBSA is of the opinion that such factors can result in a government's substantial determination of prices. The CBSA considered the cumulative effect that the GOC's regulatory, tax and other measures have exerted on the Chinese aluminum extrusions sector.

153. The information on the record discloses both the scope and nature of the GOC measures in the aluminum extrusion sector and the related impact of these measures on pricing. The CBSA is satisfied that the evidence on the administrative record for this investigation is reliable and credible. The evidence is sufficient for the President to form the opinion that the GOC is substantially determining domestic prices of aluminum extrusions in China and that there is sufficient reason to believe that these prices are not the same as they would be if they were determined in a competitive market.

2. Prices for Aluminum Extrusions

154. The GOC submitted that the CBSA failed to accord proper weight to the "ferociously competitive and fragmented nature of the Chinese aluminum extrusions industry and instead misdirected its analysis mainly to the state of the upstream aluminum industry in general." The GOC submitted that the primary focus of the section 20 inquiry must be specific to the aluminum extrusions industry, not generalized to the raw material production industry.²⁴

155. PanAsia also submitted that the CBSA should restrict its sector review to the manufacture, production and sale of "like products." PanAsia further contended that the process used to determine whether Chinese industry sectors are non-market violates the procedure for determining market economy status agreed upon among WTO members in China's WTO Accession Protocol. ²⁵ PanAsia claimed that by relying on this flawed application, the Government of Canada is acting in violation of its WTO obligation. ²⁶

156. The GOC submitted that the CBSA failed to conduct a "pass-through" analysis in assessing whether or not the alleged price effects on aluminum have indeed passed-through to any downstream users of the raw materials.

- 157. The GOC argued that the same fundamental principles for determining whether or not an upstream subsidy is passed-through must be applied. In this regard, the GOC noted that the CBSA has failed to conduct any analysis to show that any benefit from any program in China relating to aluminum has contributed to or benefited producers of aluminum extrusions or had a material impact on aluminum prices paid by aluminum extrusions producers.²²
- 158. The GOC further stated that the CBSA completely failed to note that approximately half of the aluminum consumed by the aluminum extrusions sector is imported and not produced in China and that imports of aluminum into China rose during the POI, which would not be possible if market prices were artificially suppressed by government interference.²⁸

- 159. Given that the cost of raw aluminum constitutes a high percentage of the cost of aluminum extrusions, the CBSA's section 20 analysis appropriately considered the impact of the GOC's involvement in the upstream industry. The evidence on the record and the CBSA's analysis demonstrates that GOC actions led to the price of aluminum in China being substantially lower than the prices found in the rest of the world during the POI, for what is essentially a commodity product. In both the preliminary and final determinations, the CBSA has demonstrated that the prices paid by cooperative exporters for aluminum (i.e. downstream users) are consistent with this conclusion.
- 160. Regarding the GOC's assertion that "half of the aluminum consumed by the aluminum extrusions sector is imported and not produced in China," the CBSA notes that amongst the eight cooperative Chinese exporters, only one exporter imported marginal amounts of aluminum during the entire dumping POI; the rest relied entirely upon domestically produced aluminum. The CBSA further notes that the GOC's support for their assertion refers to the fact that aluminum producers in China import half of their aluminum requirements, not that aluminum extruders.
 - their **alumina** requirements, not that aluminum extruders import half of their aluminum.
- 161. However, evidence on the record regarding alumina in China indicates that imports of alumina have been decreasing and amounted to approximately 20% of Chinese consumption in 2007.²² The CBSA did not analyze the impact GOC measures would have on the price of alumina in China since alumina is not a direct raw material for aluminum extrusions and, to the extent that the price of alumina is affected by GOC policies, this effect would be reflected in the price of aluminum in China which was already included in the analysis.
- 162. Furthermore, the CBSA does not disagree with the GOC's statement that extensive import penetration and rising import penetration for aluminum would not be possible in the

POI if the Chinese market prices were artificially suppressed by government influence. Indeed, the evidence on the record demonstrates that imports of aluminum shrank over 60% from 2006 to 2007, and further demonstrates that imports of aluminum comprised less than 1% of China's domestic consumption of primary aluminum in 2007. ²⁰ These facts demonstrate that aluminum import penetration was not possible, and was even significantly eroding during the POI, given the artificially suppressed government price of aluminum in China. These facts also support the analysis that the low price of aluminum in China has "passed through" to aluminum extruders in that virtually no imported aluminum was available in China during the POI.

163. The CBSA's policy regarding the application of section 20 provides that the President may, having regards to the evidence on the record, form an opinion that the conditions described under section 20 exist in the sector under investigation and reflects Canada's implementation of its rights and obligations under the WTO.

3. Assessment of GOC Policies

- 164. The GOC submitted that the CBSA has misconstrued the nature of the GOC "policies" it has examined, and reiterated its position that the Industrial Development Policy for the Aluminum Industry and the Special development Plan for Aluminum Industry Development have not been formally promulgated by the State Council and are not in effect.
- 165. The GOC further argued that, even if these policies had been formally adopted, they are at most "aspirational expressions of the GOC's hopes for an industry". ³¹The GOC further argued that the CBSA failed to properly consider the stated objective and intent of these industrial policies, in that they are directed towards concerns such as the environmental impact of inefficient aluminum smelters in China.
- 166. In response to the GOC, the Complainants contended that China remains a country where the central government is an authority whose mere "aspirations" have more effect than actively enforced laws in other countries.
- 167. The GOC also contested the CBSA's listed restrictions, minimum standards and thresholds for the aluminum industry, which the CBSA noted as being derived from GOC laws and policies. The GOC argued that these standards are not legally mandated and enforceable, and further noted that they all relate to the aluminum smelting industry and that the CBSA has not shown any causal link to any measurable price effects in the aluminum extrusions industry.
- 168. The GOC further argued that policies that restrict investment and new production capacities should serve to limit supply and have a price increasing effect, if any. The GOC also noted that their industrial policies are "market neutral" (i.e. they will not have any impact on market prices)¹² and that

they had "allowed increases in costs in the aluminum industry. The intended effect was to slow down overproduction". They further noted that these measures would result in higher costs of production, which would counterbalance the effect of restricting exports.³³

- 169. In making its preliminary determination, the CBSA presented the facts surrounding its request for the Industrial Development Policy for the Aluminum Industry and the Special Development Plan for Aluminum Industry Development. The CBSA also presented the GOC's explanations for refusing to provide these two documents. At that time, the CBSA explained that it believed the documents existed and further explained why the documents were requested. The CBSA did not attempt to speculate as to the contents of these two documents that were never provided, nor did the CBSA ever infer that such documents resulted in enforceable measures.³⁴
- 170. For the purposes of the preliminary determination, the CBSA did rely upon numerous GOC circulars, regulations and other measures, provided by the GOC in its section 20 RFI responses, that demonstrate the restrictions, minimum standards and thresholds for the aluminum and aluminum extrusions industries. However, those items did not include the Industrial Development Policy for the Aluminum Industry and the Special Development Plan for Aluminum Industry Development. ¹⁵
- 171. Regarding the GOC's statement that its industrial policies are "at most aspirational expressions of the GOC's hopes for an industry", the CBSA notes that many of the GOC documents obtained by the CBSA contain very strict wording, including harsh penalties for companies that fail to conform to the written objectives.
- 172. For example, in the Emergent Circular on Curbing Rebound Investment in the Aluminum Industry, which respects aluminum enterprises that have been using "backward production technology" or are considered "illegal" production facilities according to the industry policy and related regulations, it states rather directly that the government will get the companies "out of the market through stopping supplying power and water." ¹⁶ The CBSA is of the opinion that this type of language clearly establishes that the GOC's industrial policies and regulations are much more than aspirational expressions of hope for an industry.
- 173. Regarding the market neutrality of GOC industrial policies, the GOC themselves noted that: "macro-economic adjustment policies have also had some influence on the general level of prices" ³². As previously noted, they further stated that they have "allowed" cost increases within the industry and, without providing any analysis, stated that these cost increases would fully offset the effect of export

restrictions. The GOC, in their own statements and arguments, are therefore acknowledging the effects that their industrial policies and export restrictions can have on determining prices.

174. The CBSA has considered the cumulative effect that the GOC's measures have exerted on the aluminum extrusions sector in China as part of its "Summary of Findings - Section 20" analysis in **Appendix** 3 to this Statement of Reasons.

4. Prices of Aluminum in China and on the London Metal Exchange (LME)

- 175. The GOC noted that in its preliminary section 20 determination, the CBSA has assumed a 75% aluminum raw material cost on the overall cost of producing aluminum extrusions. The GOC contended this is a "significant overstatement" of the actual proportion, which the GOC understands is closer to 67%. The GOC noted that certain responding producers will be making detailed arguments in this regard and that the CBSA must fully consider this evidence and related arguments in making its final determination. ³⁸
- 176. The GOC submitted that the CBSA's section 20 determination based on the factual assumption that prevailing aluminum prices in China are consistently lower than LME prices is wrong and not supported by the evidence on the record. The GOC states that a comparison between the historical data for the monthly prices of aluminum on the Shanghai Nonferrous Metals Market and the LME during 2007 and the first half of 2008 shows that there is an insignificant price divergence of 3.67% on average. The same comparison with historical spot price information from the Ling Tong Metal (LTM) shows an average price divergence of 2.6%. The GOC argued that these figures demonstrate that the spot prices for aluminum in the Chinese markets closely follow LME and world prices. ³²
- 177. The GOC argued that, in comparing the LME and Shanghai Futures Exchange (SHFE) prices of aluminum, the CBSA only took into account the alleged price differences without considering the similarities in fluctuations, the influence of the LME over the SHFE, and the difference in the size of both markets. These factors should have been examined and considered before concluding that there is a substantial price difference between aluminum in the "world market" and the SHFE. 40
- 178. Pingguo stated that it does not purchase aluminum ingots but molten aluminum, and that the SHFE price for aluminum is sometimes higher than the LME. Pingguo further added that it quotes the LTM price, which is a regional metal market exchange and is generally higher than the Shanghai Futures Exchange price. 41

- 179. Pingguo contended that China's pricing in the aluminum sector is a function of supply and demand forces and China's aluminum ingot market prices were actually higher than the LME for half of the POI. Pingguo also submitted that global competition necessarily entails there be variations from one market to the other.
- 180. The GOC further submitted that the CBSA failed to consider any local premiums for delivery, or the effects of long term supply contracts for aluminum extrusion producers, both of which the CBSA has information on the record to consider. 42
- 181. The GOC argued that even if prices in China were materially lower, that the CBSA cannot simply assume that it is a result of government intervention. The GOC noted that the CBSA must take into consideration all relevant factors that may drive prices in the Chinese market, but the preliminary determination does not disclose "even a perfunctory attempt at such rigour." ⁴³
- 182. In its reply submissions, PanAsia stated that there is absolutely no evidence of GOC involvement in any raw material pricing in the aluminum sector. Furthermore, PanAsia, like many other Chinese extruders, does not buy billets but ingots, which it melts into billets. PanAsia also submitted that the CBSA should acknowledge the difference in the methods of production to establish a fair comparison.
- 183. With respect to the Complainants' arguments that there is manipulation of prices through taxation policies, Pingguo submitted that this was no different than from taxation policies in Canada. ¹⁴ Pingguo submitted that the reasoning in support of the President opinion established at the preliminary determination is weak.
- 184. As for difference betweens prices on the LME, the SHFE and the LTM, the Complainants reiterated that the central fact is that the GOC substantially determined pricing of aluminum extrusions in the POI. To this end, the largest part of the reference price (the SHFE price of the ingot), is not the same as in a competitive market (i.e. the LME).
- 185. The Complainants alleged that purchasing on the exchange where materials are artificially cheaper, due to the GOC's residency constraints on the SHFE, which is enjoyed exclusively by Chinese producers, allows them to sell goods at below fair market prices. The Complainants indicated that this very fact proves that the SHFE prices are artificially and substantially determined by the GOC and are not the same as in a competitive market. 45

CBSA Response

186. In response to the GOC's representation, the CBSA did not assume a 75% raw material cost of aluminum in making its preliminary determination. As stated in the preliminary determination Statement of Reasons, this number is based on

the CBSA's review of the cooperative exporters' cost of production information for the dumping POI provided in their responses to the dumping RFI. The CBSA adjusted this analysis for the final determination to reflect cost revisions submitted during the investigation. The CBSA notes that no exporter provided representations stating that the CBSA's figure used at the preliminary determination was incorrect.

- 187. The CBSA further notes the GOC assertion that the CBSA overstated the cost of aluminum by 8% (75% of cost versus 67% of cost). The GOC characterized this 8% difference as a "significant overstatement". In this regard, the CBSA would note that the President's opinion that section 20 conditions exist in the Chinese aluminum extrusions sector is based on evidence that clearly shows that the domestic prices of aluminum extrusions in China were lower than in other competitive markets by 16% to 28% during the dumping POI.
- 188. The GOC argued that the prices for aluminum on various market exchanges in China closely tracked the LME (world price). However, the Chinese aluminum prices in these Chinese market exchanges are reported inclusive of the 17% Chinese VAT, whereas the LME prices do not include VAT. The GOC did not remove the 17% Chinese VAT included in the Chinese aluminum prices in its comparative analysis. The CBSA's comparison removed this Chinese tax to bring the quoted Chinese aluminum prices to an appropriate comparative basis with the LME quoted prices. With this adjustment, it became clear that the Chinese quoted prices were lower that the LME quoted prices.
- 189. The CBSA believes its analysis of LME aluminum prices and prices in China, as evidenced through the SHFE, appropriately considers differences between the two markets. Given the alleged similarities in fluctuations, the CBSA finds the divergence of SHFE prices from LME prices in response to GOC tax changes to be compelling evidence of the GOC's determination of prices through tax changes.
- 190. In regards to making proper price comparisons, it should be noted that companies purchasing aluminum from aluminum producers quoting LME prices would also pay local premiums on their purchases. This is evidenced by information contained in both the complaint and in information from a Chinese extruder with a supply agreement for importations of aluminum from an international supplier.
- 191. The CBSA's analysis of the prevailing price of aluminum in China for the preliminary and final determinations demonstrates that the comparably low price of aluminum in China results from GOC actions. Again, the GOC has not indicated what evidence on the record disputes this analysis.
- 192. The CBSA is satisfied that, based on the information collected during the course of the investigation including that obtained and verified during the final stage of the dumping investigation, the GOC is exerting significant influence on the aluminum extrusion sector and related pricing practices,

resulting in substantially different domestic prices than would otherwise exist were it a competitive market.

193. Regarding arguments concerning the interpretation of the section 20 provisions of SIMA and the evidentiary threshold, the CBSA believes that there is evidence on the record that is reliable and credible, has been properly interpreted, and is sufficient to form an opinion that section 20 conditions apply in the aluminum extrusion sector in China. The information on the record discloses both the scope and nature of the GOC measures in the aluminum extrusion sector and the related impact of these measures on pricing. See **Appendix 3** "Summary of Findings - Section 20" for details and analysis.

194. The CBSA maintains that the information on the record supports the position that the GOC has exerted significant influence on the Chinese aluminum extrusions sector.

5. Normal Value and Surrogate Methodology

195. PanAsia and Kam Kiu submitted that the CBSA had not been transparent in its analysis and conclusions regarding the application of section 20(1)(c) and 20(1)(d)of SIMA. PanAsia further contended that the CBSA incorrectly chose not to use its privileges of extending the preliminary phase of the investigation by an additional 45 days.

196. PanAsia claimed that CBSA investigations continue to rely on methodologies that do not result in surrogate values and are thus not in good faith in adhering to the international agreements. Kam Kiu and Pingguo offered similar comments on this issue.

197. Kam Kiu also indicated that the surrogate methodology employed by the CBSA at the preliminary determination was unfair and inaccurate. Kam Kiu alleged that the CBSA did not have a sound basis for ignoring the alternative methodology in 20(1)(d).

198. Pingguo referred to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 - Annex II, where a hierarchy of information to be used in the course of an anti-dumping investigation is listed. Pingguo referenced that the preferred information is that which is actually provided by the producers and exporters of the subject goods, along with that of the government in the country of examination.

199. Pingguo argued that such submitted information cannot be rejected or disregarded without a thorough explanation by the investigating authority before information from a secondary source is used. Pingguo argued that the information from a secondary source could only be used in circumstances where the interested party has failed to cooperate. ⁴⁶ Pingguo also submitted that the CBSA failed to make adjustments to ensure a fair comparison between export price and normal value. ⁴²

- 200. PanAsia further contended that section 20 refers to prices and costs in countries other than Canada. The company asserted that there is no reference in section 20 to using Canadian costs even if adjusted per the suggestion of the Complainants.
- 201. PanAsia submitted that a determination of normal values under Section 29 of SIMA, which is based on the facts available, would allow the CBSA to use Chinese processing costs and General, Selling and Administrative (GSA) expenses.
- 202. PanAsia and Kam Kiu also submitted that the use of the section 20 methodology does not preclude the use of each cooperative exporter's own processing costs and GSA expenses in calculating normal values. Kam Kiu submitted that the CBSA rejected this data in favour of an alternative methodology, based on the self-serving and unverified filings of petitioners, which by its nature, is arbitrary and by definition punitive. 48
- 203. With respect to the section 20 normal values, Kam Kiu submitted that their normal values are far closer to and in fact above Canadian prices and have no relationship to prices in India, the purported surrogate information base. Kam Kiu alleged that the CBSA did not reveal its precise methodology with respect to normal value calculations in any reliable way. ⁴⁹
- 204. Pingguo further submitted that the cost of production portion of the normal value must be reduced for further finished aluminum extrusions. Pingguo submitted that it purchases molten aluminum not aluminum ingots and deductions to the normal value are necessary to account for these differences. So
- 205. Pingguo also claimed that the CBSA established normal values based on only the alloy and surface finish of the aluminum extrusions and as a result, ignored the fact that there are standard shapes of aluminum extrusions and also very complex aluminum extrusions. Pingguo argued that this flaw has led to a significant overstatement of the normal values calculated by the CBSA and high margins of dumping.
- 206. The GOC further concluded that the CBSA must assign an "all others" rate to all other exporters based on the weighted average margin of dumping found for the responding exporters. 51

CBSA Response

207. The CBSA requested, but did not receive sufficient information to estimate or determine normal values pursuant to paragraphs 20(1)(c) and 20(1)(d) of SIMA. All of the information provided to the CBSA was placed on the administrative record and the public listing of exhibits. This information was accessible to all interested parties who have disclosure privileges at any time during the proceedings. The Statement of Reasons issued at the preliminary determination

explained that sufficient information had not been received to apply paragraph 20(1)(c), and explained how normal values were estimated for purposes of the preliminary determination. This Statement of Reasons explains that sufficient information was not received to apply either paragraph 20(1)(c) or paragraph 20(1)(d), and explains how normal values were determined for purposes of the final determination. It is evident from the information on the record that the CBSA did not have available sufficient pricing, costing or import data relating to a surrogate country to possibly apply the said provisions of section 20. In the absence of surrogate country information, normal values were determined on the basis of the best information available.

- 208. The CBSA has fully met its investigative obligations under section 20 by contacting producers in various surrogate countries and also in requesting information from known importers on their purchases of like goods from countries other than China.
- 209. PanAsia contended that the CBSA incorrectly chose not to extend the preliminary phase of the investigation by up to 45 days. The CBSA notes that subsection 39(1) of SIMA permits the President to extend the preliminary investigation under certain circumstances which make it unusually difficult for the decision to be made within the prescribed timeframes. In this investigation and in accordance with the provisions in SIMA, the President was not of the opinion that an extension was warranted.
- 210. The President has rendered the opinion that domestic prices in the aluminum extrusion sector are substantially determined by the GOC and that there is sufficient reason to believe that Chinese domestic prices of aluminum extrusions are not substantially the same as they would be in a competitive market. This opinion precludes the CBSA from using sales and associated costing data from the respective cooperating exporters.
- 211. For the purposes of the final determination, in the absence of surrogate country information, normal values were determined under a ministerial specification under section 29 of SIMA, based on the best information available to the CBSA, to approximate surrogate normal values. Given this determination, the arguments submitted, which do not favour this approach, fail to provide an acceptable alternative to establish normal values.
- 212. In respect of considerations for 'standard' versus 'custom' shapes, while the CBSA did not establish separate normal values for these two groups, the CBSA did provide information to the Tribunal relating to the margins of dumping for the cooperative exporters for standard shapes and custom shapes as per the definitions provided by the Tribunal on December 18, 2008.
- 213. Lastly, the CBSA notes that the GOC did not provide any arguments regarding why the CBSA should use a weighted average margin of dumping for the "all others" rate. The

177

Non-confidential attachment C-1.2.7

CBSA's treatment of non-cooperative exporters in this dumping investigation is consistent with its past practices in this regard. The GOC has not explained why the CBSA should deviate from this established practice.

6. Import Duties, VAT Rebates and Export Taxes

- 214. The GOC submitted that there is no evidence to support the CBSA's assertion that the domestic prices of aluminum extrusions in China are substantially determined by the manipulation of VAT rebates. The GOC argued that the CBSA's reasoning in arriving at these conclusions is "riddled with unsubstantiated assumptions," and that the CBSA has failed to demonstrate that movements in domestic prices were not caused by other normal market factors. 52
- 215. The GOC also asserted that a section 20 determination must be premised on active price determination by a government, and that it is not sufficient to rely upon the fact that a government may have implemented general measures that have some permanent or temporary price suppressive or increasing effect.
- 216. The GOC argued that the CBSA has confused the two distinct concepts of "influence" and "determine", and that the simple "effects" of government regulations aimed at environmental or other legitimate areas of government regulation cannot be interpreted to meet the high thresholds required by the wording of section 20 of SIMA ("substantially" and "determine"). They concluded that the CBSA has erred in equating influence or effect with price determination, contrary to the letter and spirit of section 20 of SIMA. ⁵³
- 217. The GOC further submitted that if the CBSA insists on assessing such indirect factors that it must consider the net effect of all such measures, not just those the CBSA assumes may have driven prices down in China. The GOC noted that the preliminary determination disclosed no such analysis. ⁵⁴

- 218. The CBSA analyzed information on the record concerning export volumes of goods affected by the removal of VAT rebates and export taxes. This evidence demonstrates that, immediately following the GOC's tax changes to restrict exports, export volumes of the affected goods plunged dramatically.
- 219. The CBSA's analysis at the preliminary determination also demonstrated that the reduction of VAT rebates and imposition of export taxes on aluminum coincided with a significant divergence in SHFE and LME prices. The CBSA is satisfied that this presents reasonable evidence that the reduction of VAT rebates and imposition of export taxes resulted in a reduction in export volumes and corresponding reduction in domestic prices as domestic supply increased.

220. The CBSA notes that the GOC has failed to identify information on the record that would provide an alternative explanation as to how the prices of aluminum, a world wide traded commodity product, could be significantly lower in China than the rest of the world. Instead, the GOC supplied other spot price information and conducted its own comparison to show that prevailing prices of aluminum in China are only about 3% below prices on the LME. However, the GOC's analysis did not remove the 17% VAT that is included in the reported spot price data. To make the data comparable to LME quoted prices, the 17% Chinese VAT should be removed.

7. Onsite Verification Meetings

221. Pingguo submitted that variations do occur between the exporter's official invoices and the commercial invoices issued to customers. Pingguo submitted that while invoices are generally identical in terms of amount and value, certain variations could arise. ⁵⁵ Pingguo submitted that variations do not diminish the reliability and accuracy of the information provided to the CBSA in respect of export sales to Canada for the purposes of cooperating in this investigation. ⁵⁶

- 222. Issues with respect to the reliability and accuracy of information submitted to the CBSA by Pingguo arose in the course of the verification. For example, Pingguo stated that it was not in a position to reconcile its domestic sales database provided to the CBSA with its financial information. ⁵²
- 223. The reconciliation of domestic and export sales to an enterprise's financial data is a key component of the CBSA's verification and is material to the CBSA's decision whether or not normal values and export prices can be established based on the exporter's information.
- 224. As indicated on the CBSA's administrative record, including the assembled verification exhibits, ⁵⁸ there were several attempts by Pingguo to provide revised export sales to Canada.
- On December 2, 2008, during the company's last attempt to reconcile the data and provide explanations, Pingguo terminated the verification with the CBSA.
- 226. On December 24, 2008, Pingguo provided additional information concerning the relevant regulatory provisions under Chinese law concerning export invoices, tax rebate exemptions and enterprise accounting. 59
- 227. However, while Pingguo provided the legislation to the CBSA, it did not make further submissions or provide complete details of its own information concerning these variances, and all other variances, along with the necessary explanations and supporting documentation. As a result, Pingguo's information

was deemed to be deficient and could not be used for the purposes of the final determinations.

8. Measures by Investigating Authorities of a Country Other Than Canada

228. In its representations, Jianmei stated that in South Africa's 2007 anti-dumping investigation on aluminum bars, rods and profiles originating in or exported from China, Jianmei participated and was assessed a dumping rate of zero at the final determination. ⁶⁰

CBSA Response

229. The CBSA's dumping investigation on certain aluminum extrusions is independent of the investigation initiated by South Africa. The determination in that investigation is not relevant to this process.

9. Other Factors

230. The GOC submitted that the CBSA failed to take into account or to give appropriate weight to other important factors that confirm that the aluminum extrusions industry in China is highly competitive and market driven.

231. The GOC noted that the CBSA merely mentioned the low market concentration of the aluminum extrusions industry in China (460 above-scale producers), but did not provide reasons why it did not consider this any further in its analysis. The GOC further noted that the CBSA mentions the low levels of state-ownership amongst aluminum extrusions producers in China but ignored this evidence in its analysis. 41

 Pingguo submitted that there is a basic flaw in the product definition in that the CBSA's subject goods definition describes a process and not a product. 62

233. Pingguo also submitted that the multiple exchange rate calculations from US currency to the Chinese Renminbi to Canadian currency in the calculation of export prices has erroneously decreased the export price resulting in an inflated margin of dumping. 63

234. PanAsia and Kam Kiu submitted that, as has been accepted in previous CBSA investigations, the proper point in the transaction chain to determine export prices pursuant to section 24 of SIMA is the sales between the company's trading arm and the customers in Canada. PanAsia and Kam Kiu objected to a determination based on the transfer price between the manufacturer in China and trader located in another country (i.e. Macau, Hong Kong).

235. The Complainants also replied to issues raised in regards to the differences between the LME versus SHFE and LTM prices, the pass-through analysis, the nature of the GOC

policies and guidelines as well as on state-owned aluminum companies. $^{\rm fd}$ The Complainants concluded that the evidence supported the appropriateness of a section 20 determination.

CBSA Response

- 236. The CBSA notes that the information concerning the Chinese aluminum extrusions industry make-up, in terms of low market concentration and low state-ownership, was included, analysed and given appropriate weight in its analysis for both the preliminary and final determinations.
- 237. Pingquo's allegation that the CBSA's product definition is flawed on the basis that it defines a process and not a product is unfounded. The CBSA's product definition clearly defines the parameters of the goods under investigation. Any description of the extrusion process that coincides with or follows that definition, as with other product information, is meant to help clarify the nature of the product, so as to best ensure that all interested parties are well informed as to the parameters of the investigation.
- 238. With respect to the exchange rates, the nature of export trade is that there are sales made in different currencies. The exchange rates applied by the CBSA were the daily exchange rates as posted by the Bank at Canada on the date of sale of the goods as per subsection 44(1) of the Special Import Measures Regulations.
- 239. The CBSA recognizes that PanAsia China and PanAsia Macau, although they are set up as two distinct companies, are owned by the same conglomerate and operate as one business entity for the purposes of exporting the subject aluminum extrusions to Canada. As a result, the CBSA recognized the transaction price between PanAsia Macau and the customers in Canada in establishing export prices under section 24 of SIMA for purposes of the final determinations.

SUBSIDY INVESTIGATION

- 240. In accordance with SIMA, a subsidy exists if there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement, that confers a benefit.
- 241: Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada where:
 - a. practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;

- amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
- the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
- d. the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.
- 242. Where subsidies exist, they may be subject to countervailing measures if they are specific in nature. A subsidy is considered to be specific when it is limited, in law, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy. An "enterprise" is defined under SIMA as also including a group of enterprises, an industry and a group of industries. A "prohibited subsidy" includes a subsidy which is contingent, in whole or in part, on export performance or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.
- 243. Notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific having regard as to whether:
 - a. there is exclusive use of the subsidy by a limited number of enterprises;
 - there is predominant use of the subsidy by a particular enterprise;
 - disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and
 - d. the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.
- 244. For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an "actionable subsidy," meaning that it is subject to countervailing measures if the persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, export or import of goods under investigation have benefited from the subsidy.

Investigation process

245. Prior to the initiation of the investigation, the Complainants submitted documents alleging that the

producers and exporters of aluminum extrusions in China benefited from actionable subsidies provided by the GOC.

- 246. Financial contributions provided by state-owned enterprises operating under the direct or indirect control or influence of the GOC may also be considered to be provided by the GOC for purposes of this investigation.
- 247. At initiation, the CBSA identified 54 potential subsidy programs in the following eight categories:
 - Special Economic Zones (SEZ) and other Designated Areas Incentives;
 - 2. Grants;
 - 3. Equity Infusions/Debt-to-Equity Swaps;
 - 4. Preferential Loans:
 - Preferential Income Tax Programs;
 - Relief from Duties and Taxes on Materials and Machinery;
 - 7. Reduction in Land Use Fees; and
 - Purchase of Goods/Services from State-owned Enterprises.
- 248. Details regarding these potential subsidies were provided in the Statement of Reasons issued for the initiation of this investigation. This document is available through the CBSA website at the following address: http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-de-eng.pdf
- 249. In conducting its investigation, the CBSA sent subsidy RFIs to identified potential exporters located in China and to the GOC. Under SIMA, the amount of subsidy is based on the benefits conferred by all levels of a foreign government, to any party engaged in the production, manufacture, growth, processing, purchase, distribution, transportation sale, export or import of the goods. Similarly, the determination of the amount of subsidy normally requires complete information from both the exporters of the subject goods and the government of the country of export. Although some of the exporters involved in this investigation provided the subsidy information that was requested from them, the GOC did not.
- 250. Specifically, four of the six Chinese exporters that were verified on-site fully cooperated with the CBSA during the subsidy verifications. In addition, three other Chinese exporters, which submitted late subsidy responses, were verified by desk audit during the final stage of the investigation and their subsidy information is also considered complete for purposes of the final determination.
- 251. Regarding the GOC, its original subsidy information was determined to be incomplete. The GOC was contacted prior to the preliminary determination and advised that its subsidy submission had been reviewed, was found to be incomplete and would not be used for purposes of the subsidy investigation. At the same time, the GOC was informed that if it subsequently submitted a complete response to the RFI, the CBSA would endeavour to use this information for the investigation provided that it was provided in sufficient time

for the CBSA to analyze and verify before the closing of the record on December 31, 2008.

- 252. On November 28, 2008, the GOC provided additional information relating to its subsidy submission. On December 31, 2008, after careful consideration of many factors, the CBSA notified the GOC that their information was not submitted within a reasonable amount of time, and consequently would not be used by the CBSA for purposes of the investigation.
- 253. The following considerations, amongst others, were salient in considering whether the supplemental information from the GOC was submitted within a reasonable period of time:
 - the CBSA made efforts to ensure that the GOC received the RFI as soon as possible, by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated, August 18, 2008;
 - the fact that a one week extension had already been provided to the GOC for purposes of providing a response to the RFI, extending the original deadline of September 24, 2008, to October 1, 2008;
 - the length of time by which the GOC missed the original deadline date for providing its subsidy RFI response.
 The supplemental information was filed on November 28, 2008, a full eight weeks past the October 1 deadline;
 - there was insufficient time for the CBSA to verify the large quantity and complex nature of information submitted, given that the additional subsidy information was filed so late in the investigation;
 - the late subsidy filing precluded the CBSA from planning and scheduling an on-site verification with the GOC, particularly considering that on-site verifications were already scheduled and underway with Chinese exporters at the time the supplemental information was submitted to the CBSA;
 - the CBSA is bound by tight legislative and administrative timeframes to conduct its investigations, and to reach the final determination; and
 - that using the information would likely compromise the orderly conduct of the investigation and prejudice the interests of other parties to the investigation.

In addition, the CBSA's review of the supplemental information submitted by the GOC still revealed deficiencies in the subsidy response.

254. As a result, the information submitted by the GOC in response to the subsidy RFI was not used for purposes of the final determination. Notwithstanding that the GOC's subsidy information was not used, the CBSA, in recognition of the

amount of cooperation and the volume of information that has been provided by the cooperative exporters, has determined individual amounts of subsidy under ministerial specification for the seven cooperative Chinese exporters.

Results of the Subsidy Investigation

- 255. For the purposes of the final determination, the CBSA determined specific amounts of subsidy for each of the seven cooperative exporters on the basis of the program(s) that the exporter had utilized during the Subsidy POI.
- 256. In summary, 56 potential subsidy programs were investigated and 15 of the potential subsidy programs were determined to have conferred benefits to the cooperative exporters. The information received from the cooperative exporters indicates that they received benefits under one or more of the following programs:
 - Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in Economic and Technological Development Zones
 - Research & Development (R&D) Assistance Grant
 - Superstar Enterprise Grant
 - Matching Funds for International Market Development for SMEs
 - One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
 - Export Brand Development Fund
 - Preferential Tax Policies for Foreign Invested Enterprises
 Reduced Tax Rate for Productive FIEs Scheduled to
 Operate for a Period not less than 10 Years
 - Preferential Tax Policies for Foreign-Invested Export Enterprises
 - · Local Income Tax Exemption and/or Reduction
 - Exemption of Tariff and Import VAT for Imported Technologies and Equipment
 - Patent Award of Guangdong Province 65
 - Training Program for Rural Surplus Labor Force Transfer Employment⁶⁶
 - · Reduction in Land Use Fees
 - · Provincial Scientific Development Plan Fund
 - Primary aluminum Provided by Government at Less than Fair Market Value
- 257. A summary of the findings for the named subsidy programs can be found in Appendix 2.
- 258. For purposes of the final determination, the amounts of subsidy for the seven cooperative Chinese exporters range from 2.59 Renminbi per kilogram to 3.88 Renminbi per kilogram, or from 8% to 16% expressed as a percentage of

export price. The resultant amounts of subsidy for each of the cooperative exporters are provided in **Appendix 1**.

- 259. For the non-cooperative exporters, the amount of subsidy has been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:
 - 1) the highest amount of subsidy (Renminbi per kilogram) found for each of the 15 subsidy programs for the seven cooperative exporters located in China; plus
 - 2) the simple average of these highest amounts in 1) applied to each of the remaining 41 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.
- 260. As a result, the total amount of subsidy for the non-cooperative exporters is 15.84 Renminbi per kilogram, or 60% as a percentage of export price.

SUMMARY OF RESULTS - SUBSIDY

Period of Investigation - January 1, 2007 to June 30, 2008

Country	Subsidized Goods as Percentage of Country Imports	Weighted Average Margin of Subsidy*	Country Imports as Percentage of Total Imports	Subsidized Goods as Percentage of Total Imports
China	100%	47%	43%	43%

^{*}As percentage of the export price

- 261. The final results indicate that 100% of the subject goods imported into Canada during the Subsidy POI were subsidized. The overall weighted average amount of subsidy is equal to 47% of the export price.
- 262. In making a final determination of subsidizing under subsection 41(1) of SIMA, the President must be satisfied that the subject goods have been subsidized and that the amount of subsidy on the goods of a country is not insignificant. According to subsection 2(1) of SIMA, an amount of subsidy that is less than 1% of the export price of the goods is considered insignificant.
- 263. However, section 41.2 of SIMA directs the President to take into account the provisions of Article 27 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) when conducting subsidy investigations. These provisions stipulate that any investigation involving a developing country must be terminated as soon as the President determines that the total amount of subsidy for a developing country does not exceed 2% of the export price of the goods.
- 264. The CBSA normally makes reference to the DAC List of Official Development Assistance Aid Recipients, maintained by the Organization for Economic Co-operation and Development,

PUBLIC FILL

Non-confidential attachment C-1.2.7

to determine eligibility for the differential amounts for developing countries in subsidy investigations. As China is a developing country according to this list, the 2% threshold for insignificance would apply. As the table above illustrates, the amount of subsidy found during this investigation is not insignificant.

265. For purposes of the preliminary determination of subsidizing, the President has responsibility for determining whether the actual or potential volume of subsidized goods is negligible. After a preliminary determination of subsidizing, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its inquiry in respect of any goods if the Tribunal determines that the volume of subsidized goods from a country is negligible.

REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION

266. Listed below are details of representations made to the CBSA with respect to the subsidy investigation, including case arguments and reply submissions, from exporters, the GOC and the Complainants. Following the representations on each issue is a response explaining the position of the CBSA.

1. Grounds for Initiation

267. The GOC argued that the CBSA did not have sufficient grounds to initiate the subsidy investigation. ⁶² They contended that the Complainants and the CBSA have failed to provide prima facie evidence that any of the exporters benefited from the majority of the alleged programs identified.

268. The GOC asserted that the Complainants failed to provide a reasonable indication of subsidization as is required by section 31 of SIMA and that the CBSA failed to provide the basis for its decision to initiate in relation to materials submitted by the Complainants.

269. The GOC also argued that the initiation of the investigation was inconsistent with respect to Articles 11.2 and 11.3 of the ASCM and submitted that there was not sufficient evidence with respect to:

- The existence or nature of the subsidies contained within the complaint;
- Proof that these alleged subsidies applied to the industry sector concerned; or
- That the alleged subsidies were used by the aluminum extruders in China relevant to this investigation.

- 270. At the time of the initiation of the subsidy investigation, based on the information provided in the complaint, other available information, and the CBSA's internal data on imports, there was evidence that aluminum extrusions originating in or exported from China had been subsidized, and a reasonable indication that such subsidizing had caused or was threatening to cause injury to the Complainants.
- 271. The Statement of Reasons issued at the initiation of this investigation publicly outlined the reasons for initiating the investigation and the evidence considered in making that determination. This document can be accessed at: http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-de-eng.html

2. Level of Cooperation by the GOC and Use of the Facts Available

- 272. In their case arguments, the Complainants asserted that the GOC had not fully cooperated in the subsidy investigation. They contended that since the GOC had chosen to answer with specific information relating to only 12 exporters, that such a selective response cannot reflect any amounts of subsidy benefiting exporters not selected by the GOC. They stated that the GOC has been non-cooperative and has "designed, intentionally, a response based on information regarding certain selected exporters." ⁶⁸
- 273. Furthermore, the Complainants stated that this type of non-cooperation, if not properly addressed by the CBSA, could easily be used to manipulate results. Accordingly, they argued that amounts of subsidy from selected exporters should not subsequently be applied to calculate countervailing duties for non-cooperative or new exporters. 69
- 274. The Complainants also submitted that, it is unreasonable to assume that subsidies given to non-cooperative exporters are reflected in any cooperative exporter's RFI response. The Complainants submitted that the non-cooperative exporters should accordingly be assessed the highest possible amount of subsidy. Consequently, the Complainants contended that the CBSA should exercise its discretion in its approach to assessing duties to protect the Complainants from imports of the subsidized goods. ²⁰
- 275. Lastly, the Complainants stated that CBSA policies should not contemplate or encourage partial cooperation by foreign governments in a subsidy investigation. They further asserted that the GOC has not cooperated with the subsidy investigation and provided an incomplete response even in respect of the selected exporters, which includes the cooperative exporters. Accordingly, the Complainants argued that all exporters of the subject goods from China should be deemed non-cooperative and have countervailing duty rates determined for them under a ministerial specification. ²¹

- 276. The GOC argued that their ability to provide a complete response to the RFI was significantly hampered because the CBSA did not provide the GOC with requested particulars. ⁷²
- 277. Specifically, the GOC alleged that the CBSA did not provide clarification and information to allow the GOC to confirm the existence of programs and identify the level of government involved, nor did the CBSA supply a detailed list of deficiencies found in their original RFI response.
- 278. Furthermore, the GOC argued that the CBSA should not use the "facts available" clause under Article 12.7 of the ASCM in its treatment of the GOC.²³ The GOC argued that this Article only applies where a country "refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation." The GOC asserted that its participation in the subsidy investigation does not meet this standard.
- 279. In response to the Complainants' arguments, Kam Kiu submitted that WTO rules and procedural fairness require that actual verifiable information is to be preferred to information from unreliable sources.²⁴

- 280. The GOC failed to provide a complete and timely response to the CBSA's subsidy RFI and as a result, the CBSA was unable to use their information for the purposes of the investigation. The information requested by the CBSA, which the GOC failed to provide, would have enabled the CBSA to conduct a proper analysis for each of the alleged programs and determine amounts of subsidy in the manner prescribed by SIMA.
- 281. Therefore, in accordance with SIMA subsection 30.4(2), where, in the opinion of the President, sufficient information was not provided or was otherwise not available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy was determined under a ministerial specification.²⁵
- 282. Notwithstanding the incomplete GOC response, the CBSA is satisfied that the information on the CBSA's subsidy administrative record, where provided in a timely fashion by the cooperative exporters from China, is complete and verified. Therefore, for the final determination, the CBSA determined amounts of subsidy for these cooperative exporters, under a ministerial specification pursuant to subsection 30.4(2) of SIMA, using information provided by those respective parties.
- 283. In respect of the concerns raised by the GOC regarding the quality of the CBSA's notification of deficiencies, the CBSA did notify the GOC, in a letter dated October 15, 2008, that their original response to the subsidy RFI was not sufficiently complete to be used for the investigation. In that letter, the CBSA explained the most significant aspects of the submission that were found to be deficient, including the following:

- The GOC limited its response to account for only 12 "responding companies" it identified instead of taking into account all 160 of the exporters identified by the CBSA.
- In many instances, the GOC did not answer the question posed by the CBSA and simply stated that none of the "responding companies" received benefits under the identified programs.
- In cases where "responding companies" received benefits under a program, the GOC failed to answer all of the CBSA's questions, failed to provide the amount of benefits given to the "responding companies", did not provide information concerning the number of industries and enterprises that received, applied for, or were denied benefits.
- The GOC failed to provide copies of 33 government documents specifically requested for various reasons, most notably, because the GOC believed the majority of the documents were irrelevant to "responding companies" and the GOC simply refused to submit them.
- The GOC failed to provide all of the provincial five-year plans, limiting their response to provinces where "responding exporters" were located.
- The GOC failed to provide the China Non-Ferrous Metals Yearbook and other statistical publications requested.
- The GOC provided only partial information on 1 of 27 newly identified grant programs and claimed to have no knowledge of the remaining 26 programs.
- 284. In addition to identifying the major areas of deficiency through this correspondence, the CBSA attempted to assist the GOC in its response concerning the grant programs by indicating that the reference material used by the CBSA to identify these programs could be found on the CBSA's Exhibit Listing for this investigation as Exhibits S38, S43, and S48.
- 285. In a further effort to assist the GOC, the CBSA also noted through this correspondence that some of the cooperative exporters indicated they had received benefits under some of the newly identified grant programs for which the GOC stated they had no knowledge.
- 286. As with the reference material, the submissions received from cooperative exporters were also placed on the CBSA's administrative record and were available to the GOC and their counsel.

3. Rejection of Other GOC Filings

287. The GOC further argued that the CBSA should consider information the GOC submitted on November 28, 2008, for purposes of the investigation. ⁷⁶ The GOC indicated that the reasons provided by the CBSA for not accepting the

information have no merit and that the WTO Appellate body has shown that a submission cannot simply be rejected for being untimely.

- 288. The GOC alleged that the CBSA failed to provide a detailed list of deficiencies relating to their original October 1, 2008 submission and that the CBSA did not provide a deadline to submit additional information.
- 289. The GOC asserted that this information was submitted within a reasonable amount of time before the closing of the record date of December 31, 2008, and that the CBSA would have been able to verify the information.
- 290. The GOC also argued that the CBSA is not limited to considering only verified information, that the administrative deadlines are artificial and could have been changed, and that the CBSA could have extended the date for the preliminary determination.

- 291. As previously stated, the CBSA's letter dated October 15, 2008, notified the GOC that their original response to the subsidy RFI was not sufficiently complete to be used in this investigation. In that letter, the CBSA also indicated that if the GOC were to submit a complete response to the RFI, that the CBSA would endeavour to use such information for the purposes of the investigation, provided the information was submitted in sufficient time for the CBSA to analyze and verify it before the closing of the record on December 31, 2008.
- 292. In a letter dated October 30, 2008, the GOC indicated that additional information in respect of the subsidy investigation would be submitted shortly. On the same date, the CBSA acknowledged this letter with its own correspondence and reminded the GOC that any such information submitted would be used if it were provided in sufficient time for the CBSA to analyze and verify it before the closing of the record.
- On November 28, 2008, the GOC submitted additional information to the CBSA in respect of the subsidy investigation, in excess of 1,100 pages.
- 294. On December 29, 2008, counsel for the GOC requested confirmation that the information submitted would be considered to be a complete response from the GOC and would be used as part of the subsidy investigation final determination.
- 295. On December 31, 2008, the CBSA responded in a letter to the GOC indicating that the information would not be used, as it was not submitted within a reasonable period of time. ²² In considering whether the additional information was submitted within a reasonable period of time, the CBSA considered a number of factors including:
 - the CBSA made efforts to ensure that the GOC received the RFI as soon as possible, by providing an electronic

- copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated, August 18, 2008;
- the fact that a one week extension had already been provided to the GOC for purposes of providing a response to the RFI, extending the original deadline of September 24, 2008, to October 1, 2008;
- the length of time by which the GOC missed the original deadline date for providing its subsidy RFI response.
 The supplemental information was filed on November 28, 2008, a full eight weeks past the October 1 deadline:
- there was insufficient time for the CBSA to verify the large quantity and complex nature of information submitted, given that the additional subsidy information was filed so late in the investigation;
- the late subsidy filing precluded the CBSA from planning and scheduling an on-site verification with the GOC, particularly considering that on-site verifications were already scheduled and underway with Chinese exporters at the time the supplemental information was submitted to the CBSA:
- the CBSA is bound by tight legislative and administrative timeframes to conduct its investigations, and to reach the final determination; and
- that using the information would likely compromise the orderly conduct of the investigation and prejudice the interests of other parties to the investigation.
- 296. While the information submitted by the GOC on November 28, 2008 was not submitted within sufficient time for the CBSA to analyze and verify, the CBSA did conduct a review of the submission for general content and completeness. As a result of that review, it was noted that significant aspects of the submission were still deficient. In brief, some of the deficiencies included:
 - The GOC's response remained limited to the 12
 "responding companies" that they had previously
 identified, ignoring the CBSA's request for the GOC to
 consider all 160 exporters identified by the CBSA;
 - Where the GOC acknowledged that exporters may have received benefits under a particular program, the GOC does not name that company, referring to them only as "responding companies";
 - Similarly, in cases where "responding companies" received benefits under a program, the GOC failed to answer all of the CBSA's questions, failed to provide the amount of benefits given to the "responding companies", and did not provide information concerning the number of industries and companies that received, applied for, or were denied benefits;
 - The GOC failed to provide information for a number of programs, noting the information with respect to the

programs are unclear, broad, and difficult to identify, while noting in the same response that "responding companies" have advised them that they have not benefited from the programs;

- For programs administered in many different provinces, the GOC limited the information submitted to the provinces and areas where the GOC's list of "responding companies" are located;
- A complete and accurate list of SOE Primary Aluminum producers, though previously requested, was still not provided;
- The more than 30 government documents requested by the CBSA in the RFI, which the GOC refused to provide, were still absent from the submission; and
- The requested statistical publications and industry association yearbooks were omitted.
- 297. This list above is not an exhaustive list of the deficiencies or a complete analysis of the submission, which was not undertaken for reasons noted earlier. However, it demonstrates that the information submitted by the GOC on November 28, 2008, was still incomplete and would have required additional information and clarification on numerous issues prior to any formal verification and consideration of the information for purposes of the final phase of the investigation.

298. This also further substantiates the fact that the submission was not submitted within a reasonable period of time given the amount of time that would have been required by the CBSA to properly address these issues.

4. Extension of RFI Filing Deadline for GOC

- 299. The GOC claimed that the refusal to grant a reasonable extension to their deadline for filing the subsidy RFI response breached the GOC's procedural rights in this investigation. ⁷⁸ The GOC argued that this refusal by the CBSA is inconsistent with ASCM Articles 11.11 and 12.1.1, as the CBSA failed to give due consideration to the request given the special circumstances.
- 300. The GOC referenced previous investigations where the CBSA gave extensions and submitted that their two-week extension request should have been granted considering the complexity of the case. The GOC argued that had their extension request been granted, the initial response to the subsidy RFI may have contained additional information which may have allowed its response to be deemed substantially complete.

- 301. In terms of consistency with Article 12.1.1 of the ASCM, the CBSA also addressed this issue in a letter addressed to the GOC on September 23, 2008. The CBSA noted that, while Article 12.1.1 states that authorities should consider and grant extensions where practicable, Article 12.12 qualifies this directive in stating that other provisions of Article 12 are not intended to prevent the investigating authorities from proceeding expeditiously with their investigations.
- 302. As a result of the due consideration given to Article 12 of the ASCM, the CBSA granted a one-week extension to the GOC instead of the two-week extension requested. This decision was meant to represent a balance between the rights of the GOC to defend their interests with the CBSA's own right to proceed expeditiously with this investigation.
- 303. It should also be noted that in addition to granting a one-week extension to the GOC, the CBSA made efforts to ensure the GOC received the RFI as soon as possible by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated (August 18, 2008). The result of the extension and provision of the RFI on the day of the initiation, in effect, afforded the GOC 44 days to respond to the RFI on the deadline of October 1, 2008.

5. Developing Country Status

- 304. In a position paper submitted to the CBSA, the GOC argued that Canada and other WTO members must take into consideration China's developing country status and the importance of permitting developing country Members to use special measures in order to promote their trade and development. 29
- 305. The GOC asserted that Canada's international obligations mandate that developed Members refrain from introducing or increasing trade barriers against products of particular export interest to developing countries, particularly primary products in raw or processed form. BD
- 306. The GOC submitted that the significant demand for aluminum extrusions from North America demonstrates that this product is of particular interest to developing countries and thus falls squarely within this provision.

- 307. The CBSA is aware of China's developing country status and takes this, and Canada's WTO obligations, into consideration when conducting a subsidy investigation.
- 308. In making a final determination under section 41.2 of SIMA, the President must take into account the provisions of paragraphs 10 and 11 of Article 27 of the ASCM. These provisions set higher negligibility and insignificance thresholds for amounts of subsidy determined in respect of developing

countries, and have accordingly been addressed in the current investigation.

309. In this subsidy investigation, the overall level of subsidies found on the subject goods exceeded 2 per cent of its value calculated on a per unit basis and the volume of subsidized imports represented more than 4 per cent of the total imports of subject goods imported into Canada during the period of investigation. ⁸¹ As noted previously, it is recognized that in accordance with subsection 42(4.1) of SIMA, the Tribunal now has the responsibility for determining if the actual or potential volume of subsidized goods is negligible.

6. Scope of the Investigation

- 310. The GOC submitted that the CBSA unilaterally expanded the scope of the subsidy investigation far beyond the scope of the complaint by including programs identified through CBSA research. 82 The GOC alleged that the CBSA's research does not identify the factual and legal basis for these programs and does not provide a basis for considering them actionable.
- 311. The GOC further argued that Article 11 of the ASCM sets out a process based on the sufficiency of information within the complaint filed by the domestic industry and that Article 13 of the ASCM reinforces this obligation by providing the ability for WTO Members, whose products are under investigation, to formally consult with the investigating authority.
- 312. The GOC argued that the CBSA must adopt the process set out in Article 11 of the ASCM. Furthermore, the GOC alleged that even if the CBSA were to have "self initiated" the subsidy investigation, as per the stipulation in paragraph 6 of Article 11 of the ASCM, that the CBSA did not satisfy the conditions of that provision to permissibly do so.
- 313. The GOC also asserted that the CBSA failed to consult the GOC regarding programs not specifically identified in the complaint during pre-initiation consultations. In this regard, the GOC contended that the CBSA denied the GOC its right under Article 13 of the ASCM to pre-initiation consultation with respect to targeted programs.

- 314. Upon receiving a formal complaint, the CBSA conducts its own research concerning alleged subsidy programs in order to analyze and validate the information submitted by the Complainants in order to determine whether there is enough evidence to proceed with the initiation of an investigation.
- 315. In some instances, during the course of this research, the CBSA may identify new programs that were not included in the complaint. While the Complainants are required to provide evidence that is reasonably available to them, this does not preclude the CBSA from including additional evidence found through its own research for purposes of the investigation. Any

evidence found to support the identification of newly identified programs is placed on the CBSA's administrative record, which is also listed publicly as a 'Listing of Exhibits' on the CBSA's website. This supporting evidence was made available to interested parties upon request during the course of the investigation.

- 316. In conducting a subsidy investigation, the scope of the CBSA's investigation includes all potential programs that the CBSA has identified at initiation or identifies during the course of the investigation, including programs identified in the complaint, in previous subsidy investigations, in information submitted by governments or exporters, and those found as a result of CBSA research.
- 317. In addition, RFIs issued by the CBSA to the GOC included a section which directed the GOC to identify if any of the items listed as potential subsidy programs, which were not specifically identified by the CBSA at initiation, may have provided benefits to exporters in the industry under investigation. By including these potential programs the CBSA identifies through its own research, the CBSA aimed to assist the GOC in identifying such previously unidentified programs.
- 318. It should be noted that, based on information submitted by cooperative exporters in this investigation, a number of new programs identified through CBSA research were found to have benefited those exporters. These programs had not been previously identified by either cooperative exporters or the GOC in previous subsidy investigations involving China.

7. Analysis of Actionable and Specific Nature of Subsidies

- 319. The GOC argued that the CBSA analysis respecting the actionable and specific nature of subsidies was deficient. ⁸¹ In making this argument, the GOC provided a list of programs, which they stated had been repealed and could thus not have possibly been received by any of the exporters being investigated.
- 320. The GOC also listed a number of programs they identified as being non-existent, as they could not locate relevant documents to support their existence. Consequently, the GOC claimed there was no legal or factual basis for which the CBSA is investigating those programs.
- 321. The GOC characterized the CBSA as being unfair and abusive for requiring them to respond to questions on these programs, noting that the CBSA failed to provide particulars that might have assisted them in locating information on such programs.
- 322. In addition to the programs the GOC listed as being repealed or non-existent, the GOC listed two programs for which they argued the CBSA must have confused with programs previously investigated, as the CBSA failed to include the province's name in the title of the program. The GOC noted that while they could not obtain details on these

programs, they were able to confirm that none of the cooperative exporters received benefits under the programs. As such, the GOC argued that there is no basis for the CBSA to assume non responding exporters received benefits under these programs.

- 323. For the remaining programs not included in the list referenced above, the GOC asserted that their responses to the initial RFI combined with their November 28, 2008 submission are adequate. The GOC contended that this information must be considered by the CBSA as it provides clear and compelling confirmation that these remaining programs are not specific and thus not actionable under SIMA.
- 324. In addition, Pingguo, a Chinese exporter in this investigation, submitted that the CBSA has countervailed programs that are generally accessible and do not meet the specificity threshold. Pingguo argued that as part of the preliminary determination, the CBSA made no specificity finding and that none of the factors statutorily identified in Section 2 of SIMA were examined. ⁸⁴ Pingguo submitted that the absence of rigor in the examination and application of countervailing measures is prejudicial to trade and export companies in China.
- 325. Pingguo also submitted that the subsidy calculated for Pingguo was 0.92%, which was a de minimis amount, and that the CBSA's methodology for calculating the amount of the subsidy for non-cooperative exporters was unreasonable and unfairly countervailed presumptive non-existent subsidies. 65

- 326. As previously stated, the CBSA did not receive a complete and timely response to the subsidy RFI from the GOC. The reasons for not using the GOC subsidy response are addressed in the responses to other arguments made by the GOC and will not be further addressed in this response.
- 327. Regarding the argument that the CBSA's analysis of the subsidy programs identified in this subsidy investigation was deficient, the CBSA notes that the GOC failed to provide the requested and necessary information required by the CBSA. This required information would have enabled the CBSA to conduct a proper *de jure* and *de facto* specificity analysis for each of the programs identified, which in turn would have enabled the CBSA to properly determine whether these programs were in fact specific and constituted actionable subsidies.
- 328. In the absence of this information, the CBSA was unable to conduct an appropriate and meaningful analysis of the subsidy programs identified based solely on its own research, the information submitted by the Complainants, and the information submitted by exporters. In many cases, only the GOC is in a position to provide the legal and government policy documents requested, as well as application and usage

- statistics for each of the programs. Without this information, the CBSA cannot undertake a thorough analysis of the programs to determine whether they are specific and actionable.
- 329. As a result of the absence of this information at the preliminary determination, the CBSA, in the Statement of Reasons, was only able to provide a description of the programs that the cooperative exporters in China are known to have used.
- 330. For the purposes of the final determination, the CBSA determined amounts of subsidy for both cooperative and non-cooperative exporters using a methodology under a ministerial specification. The determination of the amount of subsidy was made in accordance with SIMA subsection 30.4(2), where, in the opinion of the President, sufficient information has not been provided or is otherwise not available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy shall be determined in such manner as the Minister specifies.
- 331. In respect of the argument that the CBSA has countervailed programs that are generally accessible and do not meet the specificity threshold, the CBSA notes that in the absence of a complete response from the GOC, the CBSA was unable to conduct specificity analyses, and instead determined amounts of subsidy for the cooperative exporters under ministerial specification on the basis of the information provided by those exporters.

8. Subsidy Calculations without use of Sampling

- 332. The GOC submitted that it is inappropriate for the CBSA to calculate amounts of subsidy without sampling exporters. ⁸⁶ The GOC argued that requiring 261 exporters to respond to RFIs is unreasonable, is a departure from the CBSA's normal approach, and does not follow the CBSA's own Statement of Administrative Practices. In choosing not to sample for this investigation, the GOC accused the CBSA of setting up the investigation process to ensure the imposition of punitive (i.e. non-cooperative) subsidy rates on the majority of exporters.
- 333. The GOC argued that a weighted-average subsidy rate based on the amounts of subsidy found for the responding exporters should be used to assess non-respondents for the CBSA's final determination.

CBSA Response

334. The CBSA is legislatively required to calculate amounts of subsidy for all exporters identified in a subsidy investigation. SIMA does not contain provisions for amounts of subsidy based on sampling. It should be noted that sampling in an investigation is only provided for in SIMA for purposes of

- determining a margin of dumping as prescribed by section 30.3. In addition, there are no provisions for sampling in a subsidy investigation contained in the ASCM.
- 335. It should also be noted that the CBSA has never used sampling in any of its previous subsidy investigations involving China. In previous cases involving China where both subsidy and dumping investigations were conducted and the CBSA sampled for the dumping investigation, ⁸² the CBSA did not sample for purposes of the subsidy investigation.
- 336. In those cases, a dumping margin was calculated for cooperative exporters and non-cooperative exporters while an average dumping margin was calculated for non-sampled exporters. However, for the subsidy investigations involving those products, amounts of subsidy were calculated for only two categories cooperative and non-cooperative exporters as the CBSA does not use sampling in subsidy investigations.
- 337. As such, the CBSA followed its own administrative practices and acted in accordance with the provisions of SIMA in conducting its subsidy investigation.

Upstream Subsidy Concerning Press Metal International Ltd. (PMI)

- 338. Subsequent to the onsite verification with the company, PMI made two separate representations on December 15 and 31, 2008 respectively. ⁸⁸ The company argued that PMI should not be treated as a non-cooperative exporter as a result of the verification conducted at Hubei Press Metal Huasheng Aluminum-Electric Co. Ltd. (PMH), an associated aluminum raw material supplier of PMI.
- 339. In their representations, PMI argued that the documentation requested by the CBSA regarding the acquisition of state-owned assets by PMI's Malaysian parent company is outside the scope of the subsidy investigation and that such documentation was not listed in the verification outline provided to PMH.
- 340. In addition, PMI argued that the requested documentation was in the possession of its parent company and it thus could not provide the documents without permission of the parent company. PMI further contended that the parent company was not obligated to participate in this investigation according to the original and supplemental subsidy RFIs.

CBSA Response

341. Pursuant to subsection 2(1) of SIMA, "subsidized goods" refers to goods in which "a subsidy has been or will be paid, granted, authorized or otherwise provided, directly or indirectly, by the government of a country other than

Canada". The CBSA considers that an indirect subsidy includes an "upstream subsidy".

- 342. In other words, a producer of the goods under investigation can receive a subsidy through the acquisition of goods and services where the producer or supplier of those goods and services has received a subsidy. BD
- 343. In determining whether an upstream subsidy has been passed-through to the producer of the goods under investigation, the CBSA considers whether the upstream recipient and the downstream purchaser are associated persons as defined in SIMA. If so, the amount of the subsidy that is deemed to have been received by the downstream purchaser is the total amount of the subsidy that is attributable to the upstream product.
- 344. In this case, PMI, PMH and the parent company are associated persons pursuant to subsection 2(2) of SIMA. During the subsidy POI, PMI purchased significant amounts of aluminum raw material from its associated supplier, PMH. As a result, any subsidy received by PMH (i.e. upstream subsidy) during the subsidy POI should be included in the total amount of the subsidy determined for PMI.
- 345. In its responses to the subsidy RFIs, PMI failed to provide a full disclosure of the history of PMH. During the verification at PMH, CBSA officers were informed that prior to its establishment as 'PMH', the company was a state-owned enterprise (SOE) and that PMI's parent company purchased most of the state-owned assets of the operation in 2006.
- 346. The requested documentation was necessary for the CBSA to determine whether any subsidy had been received by PMH under one of the subsidy programs identified in the subsidy RFI, (i.e. Purchases of Goods and Services from State-Owned Enterprises). The CBSA did not receive any of the requested documentation from PMI by the closing of the record date. As a result, the CBSA considered PMI to be non-cooperative in the subsidy investigation.

10. Concurrent use of Countervailing Remedy with Section 20 Conditions

347. Pingguo submitted that in the absence of a competitive market economy, which forms the basis of a CBSA section 20 determination, it is impossible to measure specificity and the "financial contribution" made by a government to a recipient, which is required in order to countervail a subsidy. ⁹⁰

CBSA Response

348. The CBSA maintains that it has adhered to the provisions of both SIMA and the relevant international rules governing anti-dumping and countervailing investigations.

- 349. Neither the WTO Anti-Dumping Agreement, the ASCM, nor SIMA preclude the imposition of countervailing duties in respect of goods that are also subject to anti-dumping duties, where normal values have been determined pursuant to a surrogate country methodology (i.e. section 20 determination).
- 350. More specifically, SIMA does not restrict or limit the applicability of the subsidizing provisions set forth in the Act when, in the opinion of the President, section 20 conditions exist in the industry sector under investigation, which requires that normal values be determined in a manner other than those set forth in sections 15 or 19 of SIMA.
- 351. With respect to concurrent dumping and subsidy investigations, section 10 of SIMA does direct that antidumping duties levied, collected and paid in respect of goods will only reflect the margin of dumping that is not, in the opinion of the President, attributable to the export subsidy. ²¹
- Accordingly, the CBSA will, where necessary, offset the amount of anti-dumping duty levied or collected on goods imported into Canada by an amount that is attributable to an export subsidy.
- 353. In short, the CBSA treats dumping and subsidy investigations as separate processes. In so doing, the CBSA is in no way prohibited in law or in practise, from conducting concurrent dumping and subsidy investigations where the conditions of section 20 are found to exist in the industry sector under investigation. In effect, neither investigation impedes nor restricts the process of the other and thus, it is well within the scope of the CBSA to conduct both concurrently.

11. Aluminum pricing on all Chinese exchanges reflect the forces of supply and demand

 Chinese exporter Kam Kiu submitted that the CBSA should not determine that differences in Chinese and LME prices constitute a subsidy.

CBSA Response

- 355. The CBSA has not determined that primary aluminum purchased in China at prices different than LME solely constitute a subsidy on that basis.
- 356. However, in cases where the CBSA found that goods were provided by the government through State-Owned Enterprises (SOEs) at prices below fair market value, the difference between the purchase price and the fair market value of the goods was determined to be a financial contribution that benefitted an exporter. Purchases of primary aluminum from private enterprises and, where applicable, manufacturers that are in fact not SOEs would not constitute a

subsidy regardless of the price at which the transactions took place.

357. Regarding the determination and method of calculation of subsidy amounts in respect of the subsidy program Primary Aluminum Provided By Government at Less Than Fair Market Value, the details are addressed in **Appendix** 2 as Program 15.

DECISIONS

- 358. The CBSA is satisfied that certain aluminum extrusions originating in or exported from the People's Republic of China, have been dumped and that the margins of dumping are not insignificant. Consequently, on February 16, 2009, the CBSA made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.
- 359. Similarly, the CBSA is satisfied that certain aluminum extrusions originating in or exported from China have been subsidized and that the amounts of subsidy are not insignificant. As a result, the CBSA also made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA on this same date.
- 360. Appendix 1 contains a summary of the margins of dumping and amounts of subsidy relating to the final determinations.

FUTURE ACTION

- 361. The provisional period began on November 17, 2008, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by March 17, 2009. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the Statement of Reasons issued for the preliminary determinations, which is available on the CBSA web site at: http://www.cbsa-asfc.qc.ca/sima-lmsi/menu-eng.html
- 362. If the Tribunal finds that the dumped and subsidized goods have not caused injury and do not threaten to cause injury, all proceedings relating to these investigations will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.
- 363. If the Tribunal finds that the dumped and subsidized goods have caused injury, the anti dumping and/or countervailing duties payable on subject goods released from customs during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released from customs after the date of the Tribunal's finding will be subject to antidumping duty equal to the margin of dumping and countervailing duty equal to the amount of subsidy.

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

365. Normal values and amounts of subsidy have been provided to the cooperating exporters for future shipments to Canada in the event of an injury finding by the Tribunal. These normal values and amounts of subsidy will come into effect the day after the date of the injury finding, if there is one.

366. Exporters that were non-cooperative in the dumping investigation will have normal values established by advancing the export price by 101% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters that were non-cooperative in the subsidy investigation will be subject to a countervailing duty amount of 15.84 Renminbi per kilogram, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

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

368. However, in respect of importations of subsidized goods that have caused injury, this provision is only applicable where the President has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy.

PUBLICATION

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

INFORMATION

370. This Statement of Reasons has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's website at the address below. For further information, please contact the officers identified as follows:

Mail	SIMA Registry and Disclosure Unit Anti-dumping and Countervailing Program Trade Programs Directorate Canada Border Services Agency 100 Metcalfe Street, 11th Floor Ottawa, Ontario K1A OL8 CANADA	
Telephone	Rob Wright 613-954-1643 Matt Lerette 613-954-7398	
Fax	613-948-4844	
E-mail	simaregistry-depotImsi@cbsa-asfc.gc.ca	
Website	www.cbsa-asfc.gc.ca/sima-lmsi	

M.R.Jordan Director General Trade Programs Directorate

APPENDIX 1 - SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY

Exporter(Country)	Margin of Dumping*	Amount of Subsidy (Renminbi per kilogram)	
Kam Kiu Aluminium Extrusion Co., Ltd. (China)	27.8%		
Press Metal International Ltd. (China)	35.2%	15.84	
Panasia Aluminium (China) Limited (China)	31.4%	3.51	
Guangdong Weiye Aluminium Factory Co., Ltd., (China)	42.4%	3.65	
Guangdong Jianmei Aluminum	28.5%	2.59	

Profile Factory Co., Ltd. (China)		
China Square Industrial Limited (China)	1.7%	2.82
Foshan Guangcheng Aluminum Co., Ltd., (China)	33.8%	2.95
Guang Ya Aluminum Industries Co., Ltd., (China)	40.4%	3.07
Hunter Douglas Designer Shades (USA)	0.0%	N/A**
Hunter Douglas Window Fashions (USA)	2.9%	N/A**
All other exporters	101.0%	15.84

^{*} As percentage of the export price.

APPENDIX 2 - SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As addressed earlier, the original information submitted by the GOC was reviewed by the CBSA, was considered to be incomplete, and was not used for the purposes of the preliminary determination. The additional information submitted by the GOC was not received within a reasonable period of time to allow the CBSA to analyze and verify the information prior to the closing of the record. As a result, none of the information submitted by the GOC was used for the purposes of the final determination. Sufficient information was not provided to the CBSA to enable a proper analysis of the programs or to demonstrate whether or not programs used by the cooperative exporters were specific and would therefore constitute actionable subsidies. The absence of such information would normally prevent the CBSA from determining amounts of subsidy for the cooperative exporters and would result in the CBSA resorting to the use of facts available. However, in recognition of the amount of cooperation and the volume of information that has been provided by the cooperative exporters, the CBSA has determined an amount of subsidy for each cooperative exporter under ministerial specification pursuant to subsection 30.4(2) of SIMA. The ministerial specification provides the authority to determine amounts of subsidy for the cooperative exporters based on the available information, absent the information needed from the GOC.

This appendix consists of descriptions of the 15 subsidy programs used by cooperative exporters in the current investigation, followed by a listing of the other subsidy programs investigated by the CBSA that were not found to have been used by cooperative exporters.

SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS

Without a complete response to the subsidy RFI from the GOC, the CBSA has used the best information available to describe the subsidy programs used by the cooperative exporters in the current investigation. This includes using information obtained from CBSA research on

^{**}No amount of subsidy was found for this U.S. exporter. However, countervailing duties are applicable to this exporter, based on the amount of subsidy found for the Chinese supplier of the goods that the U.S. exporter sold to Canada.

potential subsidy programs in China, information provided by the cooperative exporters and descriptions of programs that the CBSA has previously publicly published in recent Statements of Reasons relating to subsidy investigations involving China.

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%.

Calculation of Amount of Subsidy:

The CBSA has determined that three of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 2: Research & Development (R&D) Assistance Grant

General Information:

This program appears to be established by governments at the local level and 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 for this investigation is the government of Jiangmen City, in accordance with the Administrative Measures of Science & Technology Three Kinds of Funds of Jiangmen City. ⁹²

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 3: Superstar Enterprise Grant

General Information:

Under this program, enterprises located in certain cities 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 appears to be the local municipal government.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 4: Matching Funds for International Market Development for SMEs

General Information:

This program appears to be established by governments at the local level. According to a document obtained through CBSA research, entitled *Investing in China: Incentives Offered by Local Governments*²³, the municipality of Zhengzhou will provide one-to-one matching funds for the international market development funds of small and medium-sized export enterprises that are supervised at the provincial level.

This program does not appear to be limited to the municipality of Zhengzhou as, in the current investigation, a cooperative exporter located in a different municipality received funding under this program.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the noncooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 5: One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

General Information:

This program appears to be established by the State level government and administered by both the provincial and local authorities. According to a document obtained through CBSA research, entitled *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy* ⁹⁴, published by the Yunnan provincial government, the provincial government shall grant a one-time award to NSOEs whose products are qualified as "Well-known Trademarks of China" or "Famous Brands of China", or are listed among the most famous export commodities identified by the state trading authority. In addition, should an enterprise qualify as a well-known trademark or famous brand of the province, one-time awards will be granted by local authorities.

This program does not appear to be limited to the province of Yunnan as, in the current investigation, one of the cooperative exporters located in a different province received awards under this program.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 6: Export Brand Development Fund

General Information:

This program appears to be established by the State government and administered by the provincial authorities. According to a document obtained through CBSA research, entitledNotice on Issuing the Directive on Supporting the Development of Name Brands for Export ⁹⁵, within its Foreign Trade Development fund, the state shall arrange a special item under the heading "export brand development fund" to support enterprises in building up their independent brands and nurture and develop name brand exports.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 7: 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.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 8: 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%.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 9: 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.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 10: 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 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.

Calculation of Amount of Subsidy:

The CBSA has determined that two of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under

PUBLIC FILE 143

Non-confidential attachment C-1.2.7

ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 11: Patent Award of Guangdong Province

General Information:

This program appears to be administered by municipal authorities. According to information submitted by one of the cooperative exporters ⁹⁶, the program is provided for in the *Administrative Measures of Patent Award of Guangdong Province* and is administered by the Intellectual Property Office of Guangdong Province and the Bureau of Personnel of Guangdong Province. The program was established to support improvement in technology innovation and to promote intellectual property. The grant is provided in the form of a one-time award or bonus and the enterprise is also issued a certificate.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 12: Training Program for Rural Surplus Labor Force Transfer Employment

General Information:

This program appears to be administered by municipal authorities. According to information submitted by one of the cooperative exporters \$^{92}\$, the program is provided for in the Implemental Scheme of Training Program for Rural Surplus Labor Force Transfer Employment of Taishan City from the year of 2005 to 2009 and is administered by the Labour and Social Security Bureau of Taishan City. Enterprises meeting the qualification are entitled to receive funds from the local government for providing training to the rural surplus labor force which is aimed at supporting agriculture and villagers.

Calculation of Amount of Subsidy:

PUBLIC FILE 142

Non-confidential attachment C-1.2.7

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 13: 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.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 14: Provincial Scientific Development Plan Fund

General Information:

This program appears to be established and administered by the Provincial level governments. According to a document obtained through CBSA research, entitled *Nations Concerning Accelerating The Growth of the Non-State-Owend Economy* ⁹⁸, published by the Yunnan provincial government. According to this document, projects launched by NSOEs,

which boast intellectual properties and good marketing prospects, can be included in the projects that enjoy the support of the province's special funding such as the Provincial Scientific Development Plan Fund.

This program does not appear to be limited to the province of Yunnan as, in the current investigation, a cooperative exporter located in a different province received awards under this program.

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. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 15: Primary Aluminum 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 aluminum extrusion producers had purchased goods or services from state-owned enterprises (SOEs), including major manufacturing inputs, at prices below fair market value. Pursuant to this review, the CBSA examined the information provided by the cooperative exporters in respect of primary aluminum purchases during the Subsidy POI.

The information submitted by the cooperative exporters provided a detailed breakdown of primary aluminum purchases, such as billets and ingots. The information also included the names and addresses of suppliers and the raw material manufacturers as well as the ownership structure of these parties, when known. The cooperative exporters indicated that primary aluminum was purchased from SOEs, private trading companies, and other manufacturers during the Subsidy POI. The primary aluminum purchased by aluminum extrusion producers from private trading companies is provided to the private trading companies by producers that have been identified as SOEs or Non-SOEs by the cooperative exporters, where known. However, only one of the cooperative exporters was able to reliably and accurately identify purchases in which the supplier, trading company and/or manufacturer, was not an SOE. These purchases were imported by the cooperating exporter and were priced according to a pricing agreement that was in effect during the entire Subsidy POI.

Calculation of Amount of Subsidy:

In many instances, the CBSA was unable to identify whether primary aluminum was being provided indirectly by SOEs through private trading companies. For a large number of such

PUBLIC FILE 140

Non-confidential attachment C-1.2.7

purchases, exporters were unable to identify the manufacturer of the primary aluminum. Also, in many cases where they did identify the manufacturer, they could not indicate whether the manufacturer was in fact an SOE and, in some cases, the exporter identified known SOE suppliers and manufacturers as being Non-SOEs.

As a complete submission was not received from the GOC, which was to include a complete a list of all primary aluminum manufacturers for which the GOC retains partial or complete ownership, the CBSA was unable to verify the SOE/Non-SOE designations made by exporters for accuracy. As a result, where the CBSA found that an exporter identified one or more known SOE suppliers as being Non-SOEs, the designations were determined to be unreliable and all purchases designated as Non-SOE were treated as SOE purchases.

In cases where the exporter was unable to designate a supplier (either trader or manufacturer) as being either an SOE or Non-SOE, or where they could not identify the name of a manufacturer for purchases made from a trading company, such purchases were also treated as SOE purchases.

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. For the purposes of determining a fair market value benchmark for primary aluminum in China, the CBSA considered using the Shanghai Metals Market (SMM) or the Shanghai Futures Exchange (SHFE) pricing. A summary of this analysis follows.

Based on research conducted by the CBSA in combination with information provided by exporters during the course of the investigation, the CBSA was able to identify more than 30 state-owned primary aluminum producers and trading companies. However, without a complete subsidy submission from the GOC, it is unclear whether these companies would form the majority of primary aluminum sold by SOEs. Further, without information from the GOC, the CBSA was unable to accurately determine the production and sales figures for the SOEs which it identified.

While the CBSA cannot accurately determine what percentage of primary aluminum is in fact produced and sold by all SOEs in China, the CBSA did obtain the 2007 Annual Report²⁰ for Aluminum Corporation of China Limited (Chalco) that was filed with the United States Securities and Exchange Commission. The report states that Chalco's largest shareholder and parent company is the Aluminum Corporation of China (Chinalco), a state-owned company. In addition, the CBSA noted that Chalco is also listed as one of the 150 "Central SOEs" on the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) website ¹⁰⁰.

According to Chalco's annual report ¹⁰¹, it produced 2.8 million metric tonnes of primary aluminum in 2007, accounting for approximately 22% of China's total primary aluminum production for 2007. This percentage appears to be correct as the International Aluminum Institute ¹⁰² reported that 12.6 million metric tonnes of primary aluminum was produced in China in 2007. It should be noted that the total production figure reported by Chalco does not include an amount of production for Baotou Aluminum, an SOE acquired by Chalco at the end of 2007, which has annual capacity of 307,000 metric tonnes ¹⁰¹/₂. Based on this information pertaining to only one SOE, at a minimum, SOEs account for almost a quarter of the total production of primary aluminum in China.

In addition to a significant amount of SOE produced primary aluminum being sold in the Chinese domestic metal markets, the analysis conducted as part of the Section 20 inquiry also noted that a number of GOC export and VAT tax policies as well as trade restrictive industrial policies may also have a material impact on the prevailing price of primary aluminum in China.

Based on the above, the domestic selling prices of primary aluminum on the SHFE or SMM markets in China are not appropriate for purposes of determining the fair market value of primary aluminum for comparing to the prices paid by exporters on purchases of primary aluminum from SOEs.

To establish the fair market value of primary aluminum in China, the CBSA reviewed the information available. As noted above, the CBSA found that one cooperative exporter had imported primary aluminum from a supplier located outside of China during the Subsidy POI and that the exporter also had a contract in place through the POI establishing the price for such purchases.

The CBSA is unable to use the actual pricing of those specific transactions that took place between the cooperative exporter and its Non-SOE supplier as disclosing the confidential information may be hamful to that entity as the premium portion of the price is negotiated by the exporter. Therefore, in order to determine a fair market value price to compare with all cooperative exporters' purchases of primary aluminum from SOEs, the CBSA based the fair market value price on the non-confidential terms found in the pricing agreement. The pricing agreement between the cooperative exporter and the Non-SOE supplier was based on the monthly average LME price plus a negotiated premium. In order to protect the confidentiality of the negotiated portion of the contract, the CBSA used the official LME monthly average cash settlement price for primary aluminum (US\$/Tonne) for purposes of establishing the fair market value of primary aluminum in China. As non-confidential information relating to premiums paid on primary aluminum imported into China is not available, a premium amount will not be included in establishing the fair market value.

As a result, the CBSA has determined that all seven of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS

The following programs were included in the current investigation. Questions concerning these programs were included in the RFIs sent to the GOC and to all known exporters of subject goods in China. None of the cooperative exporters reported using these programs during the subsidy POI. Without complete responses to the Subsidy RFI from the GOC and all known exporters, the CBSA does not have detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not

constitute actionable subsidy programs. In other words, the CBSA does not have sufficient information to determine that any of these programs should be removed from the investigation for the purposes of the final determination.

Special Economic Zone (SEZ) Incentives and Other Designated Areas

Program 16.

Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.

Program 17.

Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area).

Program 18.

Preferential tax policies in the Western Regions.

Program 19.

Local Income Tax Exemption and/or Reduction for SEZs and Designated Areas.

Program 20.

Exemption/reduction of special land tax and land use fee.

Program 21.

Tariff and Value-added Tax (VAT) exemptions on imported materials and equipments.

Program 22.

Income Tax Refund where Profits Re-Invested.

Program 23.

Preferential costs of services or goods provided by government bodies or state-owned enterprises.

Program 24.

Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas.

Grants

Program 25.

Grant for Key Enterprises in Equipment Manufacturing Industry. Program 28. Export Assistance Grant. Program 29. Innovative Experimental Enterprise Grant. Program 30. Inward Remittance of Export Earnings. Program 31. Interest Subsidies for Loans Secured by Tax Refund Accounts. Program 32. Special Support Fund for Non-State-Owned Enterprises (NSOEs). Program 33. State Fund for R&D Technology Projects. Program 34. Innovation Fund for Medium and Small Business. Program 35. Technical Renovation Loan Interest Discount Fund. Program 36. Special Project Support Fund. Program 37.

The State Key Technology Renovation Projects.

Reimbursement of Antidumping and/or Countervailing Legal Expenses by the Local

Program 26.

Governments.

Program 27.

Special Funds for Foreign Economic and Technical Cooperation. Program 38. Special Fund for Brand Development. Program 39. Key Export Enterprise Assistance Fund. Program 40. Support Fund for Key Commercial and Industrial Enterprises. Program 41. Venture Investment Fund of Hi-Tech Industry. Program 42. National Innovation Fund for Technology Based Firms. Program 43. Guangdong - Hong Kong Technology Cooperation Funding Scheme. Program 44. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment. Program 45. State Fund with Interest Discount. Equity Infusions/Debt-to-Equity Swaps Program 46. Debt-to Equity Swaps.

Preferential Loans

Program 47.

Loans and Interest Subsidies provided under the Northeast Revitalization Program.

Program 48.

Loan Guarantee Fund for Small and Medium Enterprises.

Program 49.

Interest-Free Loans to High and New Technology Projects.

Preferential Income Tax Programs

Program 50.

Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive.

Program 51.

Preferential tax policies for the research and development of foreign-invested enterprises.

Program 52.

Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipment.

Program 53.

Preferential tax policies for domestic enterprises purchasing domestically produced equipment for technology upgrading purpose.

Program 54.

Income Tax Refund for Re-investment of FIE Profits by Foreign Investors.

Program 55.

VAT and Income Tax Exemption/Reduction for Enterprises adopting Debt-to-Equity Swaps.

Relief from Duties and Taxes on Materials and Machinery

Program 56.

Relief from Duties and Taxes on Imported Materials and Other Manufacturing Inputs.

APPENDIX 3 - SUMMARY OF FINDINGS - SECTION 20

INTRODUCTION

Section 20 is a provision under the *Special Import Measures Act* (SIMA) that may be applied to determine the normal value of goods in an anti-dumping investigation where certain "non competitive" conditions prevail in the domestic market of the exporting country. In the case

of a prescribed country under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the President, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

EVIDENCE OF SECTION 20 CONDITIONS

The following are guidelines that the CBSA considers when examining factors that suggest domestic prices may be substantially determined by the government of an exporting country under investigation.

These are factors which would suggest that the government directly determines pricing:

- the government or a government body sets minimum and/or maximum (floor or ceiling) price levels in respect of certain goods which permits prices to be established no lower or no higher than the minimum or maximum price levels;
- the government or a government body sets absolute pricing levels for certain goods;
- the government or a government body sets recommended or guidance pricing at which it is expected that sellers will adhere to within a certain range above and/or below that value;
- there are government or regulatory bodies which are responsible for establishing the price levels and for regulating and enforcing these price levels; and
- there are government-owned or controlled enterprises that set the price of their goods in consultation with the government or as a result of government-mandated pricing policies and, because of their market share or dominance, become priceleaders in the domestic market.

Governments can also indirectly determine domestic prices through a variety of mechanisms that can involve the supply or price of the inputs (goods and services) used in the production of the subject goods or by influencing the supply of the subject goods in order to affect their price. For example:

- governments can control import and export levels through licensing, quotas, duties or taxes to maintain domestic prices at a certain level;
- governments can subsidize producers by providing direct financial subsidies or low-priced inputs in order to maintain the selling price of the product at a certain level;
- governments can purchase goods in sufficient quantities to raise the domestic price of the goods or they can sell stockpiled goods to put downward pressure on prices;
- through taxation or other policies, governments can regulate the level of profits that a company can earn which will affect selling prices; and
- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.

BACKGROUND

Recent China Section 20 Inquiries

Since June 2005, the CBSA has conducted two investigations and three normal value re investigations involving section 20 inquiries on steel products from China. The investigations covered carbon or alloy steel oil and gas well casing (oil country tubular goods or OCTG) products and carbon steel welded pipe, while the three re-investigations involved hot-rolled steel sheet and hot-rolled steel plate products. In all instances, information available to the CBSA indicated that there was reason to believe that section 20 conditions exist in the steel sector in China. Accordingly, the President was of the opinion that the conditions of section 20 were present in the Chinese domestic steel industry.

This investigation is Canada's first dumping and subsidy investigation involving an aluminum product from China. Accordingly, while there are some similar characteristics shared between the Chinese steel and aluminum industries, a separate, detailed analysis of the aluminum extrusions sector must be conducted to determine if the conditions of section 20 exist.

Investigation Process

At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the Complainants, and from its own research, to support the initiation of a section 20 inquiry. The information indicated that the prices of aluminum extrusions in China have been substantially determined, indirectly, by various GOC industrial policies regarding the aluminum industry and by export restrictions and tax changes for aluminum and aluminum extrusions.

Accordingly, the CBSA, at the initiation of the dumping investigation, sent section 20 Requests For Information (RFIs) to all 160 known exporters of aluminum extrusions in China, as well as to the GOC requesting detailed information related to the aluminum extrusions sector. In response to the section 20 inquiry and the relevant RFIs, the CBSA received substantially complete and verifiable responses that are usable for the section 20 inquiry from eight Chinese exporters and from the GOC.

In addition, the CBSA has obtained information from secondary sources such as previous CBSA reports, market intelligence reports, public industry reports, newspaper and internet articles as well as other government documents.

The eight cooperative exporters represent approximately 41% of the total exports to Canada of subject goods, by volume during the Dumping Period of Investigation (Dumping POI). These companies represent a far smaller proportion of the Chinese domestic aluminum extrusions industry, which the GOC has indicated is comprised of over 460 producers. 104 A section 20 inquiry assesses the domestic industry sector as a whole. As such, the review of the aluminum extrusions sector is not limited to an examination of the information provided by the cooperative exporters.

For the purposes of the preliminary determination, the President formed the opinion that domestic prices in the aluminum extrusions sector in China were substantially determined by the GOC and there were sufficient reasons to believe that the domestic prices were not substantially the same as they would be if they were determined in a competitive market. In

arriving at this opinion, the President considered the cumulative effect that the GOC's measures exerted on the Chinese aluminum extrusions sector in China. The information indicated that the wide range of GOC influence and measures have a material impact nature on the aluminum and aluminum extrusions industries through means other than market forces.

CBSA ANALYSIS FOR FINAL DETERMINATION

China As An Economy In Transition

The GOC started to move from a "planned economy" to "socialist market economy" in the early 1990's. China's current economic structure reflects the legacy of central planning and the elements of a modern and increasingly market based competitive system. 105

There are differences between a socialist market economy and a market economy. The main difference rests with the government involvement in various industrial sectors deemed to be important to the Government. For example, the GOC has identified two industry groups where the GOC must maintain a degree of control. The two groups are "strategic industries" ¹⁰⁶ and "fundamental and pillar industries", with the non-ferrous metals industry listed as a pillar industry. ¹⁰² As reported in the United States International Trade Commission (USITC) Report of December 2007, the State-owned Assets Supervision and Administration Commission (SASAC) noted that for "strategic industries" the government must maintain absolute control, which is a minimum of 50% government equity stake in every company in the industry group. For "fundamental and pillar industries" the government should maintain relatively strong control over the principal companies, which is a minimum of 50% government equity in the principal enterprises in the industry group. ¹⁰⁸ It appears that the GOC considers the non-ferrous metals industry, including the aluminum industry, to be a "fundamental and pillar industry".

An annual report (Form 20-F) filed with the United States Securities and Exchange Commission (SEC) by the Aluminum Corporation of China Limited (Chalco) provides some insight into the oversight role of the GOC in the economy and aluminum industry in general. Chalco is a subsidiary of the Aluminum Corporation of China Limited (Chinalco), which is listed as one of the state-owned enterprises directly under the SASAC. ¹⁰⁹ In their Form 20-F filing, they stated the following regarding the status of the economy in China and their own risks related to conducting business in China:

A significant portion of our business, assets and operations are located in China. The economy of China differs from the economies of most developed countries in many respects. The economy of China has been transitioning from a planned economy to a market-oriented economy. Although in recent years the PRC government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets and the establishment of sound corporate governance in business enterprises, a substantial portion of productive assets in China are still owned by the PRC government. In addition, the PRC government continues to play a significant role in regulating industry by imposing industrial policies. It also exercises significant control over China's economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. Some of these measures benefit the overall economy of China, but may have a materially adverse impact on us. **Lill**

China's National Five-Year Plans

Five-Year Plans for National Economic and Social Development (Five-Year Plans) are established by the GOC and arrange national key construction projects, manage the distribution of productive asset and economic development, map the direction of future regional development and establish social and economic targets. The first Five Year Plan was issued in 1953 and since that time, the GOC has issued Five-Year Plans on a consistent basis.

China's current plan is known as "Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development 2006-2010" (Eleventh Five-Year Plan)¹¹¹ and was compiled according to the suggestions of the Central Committee of the Communist Party of China.

The Eleventh Five-Year Plan specifically sets out a framework for adjusting raw material industrial structure and distribution in Chapter 13, section 1 entitled "Optimize the Development of Metallurgical Industry", which notes that the GOC intends to:

Control the total quantity of electrolytic¹¹² aluminium, moderately develop alumina, encourage the development of deep aluminium processing and new type alloy material and enhance the comprehensive utilization level of aluminium industrial resources. ¹¹³

The inclusion of a specific reference to the aluminum industry in a broad national-level planning document signifies the importance of the aluminum industry to the Chinese economy and highlights the extent of GOC attention the industry receives. Despite being a general planning document, that the GOC notes is a non-binding blueprint for economic and social development ¹¹⁴, there is very clear and specific wording that the GOC will "control the total quantity of electrolytic aluminum". It is also worth noting that the design and production of aluminum extrusions would fall under the realm of the "development of deep aluminum processing and new type alloy material" that the GOC is broadly noting should be encouraged during the 11th five-year planning period.

Flowing from the Eleventh Five-Year Plan, the provinces/municipalities develop their own specific Five-Year plans which reflect the GOC's objectives, as detailed below.

China's Provincial Five-Year Plans

Similar to the central Government's Eleventh Five-Year Plan explained above, Chinese provinces/municipalities have their own corresponding five-year development plans. The Provincial Five-Year Plans reflect the Central Government's overall objectives and incorporate the specific National objectives for that province.

The CBSA requested that the GOC provide fully translated copies of the Provincial 10th and 11th Five-year Plans for all of the provinces and cities in which the known exporters were located. The GOC initially only provided provincial five-years plans for the two provinces where they believed all of the responding exporters were located. In the GOC's supplemental section 20 response they provided partial translations of the provincial plans for an additional five provinces in China. The GOC noted in their supplemental RFI response that these seven provinces contained aluminum extruders that account for over 80% of the production volume for aluminum extrusions in China in 2007.

Some of the provincial plans reference aluminum only in a general way. For instance, the provincial five-year plans for Guangdong province only mentions that the province will "restrict the exported products which take lots of resources with high energy consumption and pollution" 116, which would presumably include exports of aluminum. Shandong province also only has general comments about the aluminum industry, including "take joint management of aluminum industry with power supply industry, accelerate the development of electrolytic aluminum, form the aluminum industrial system integrated with aluminum plate, strip, foil and shaped aluminum" 117. The five-year plans themselves contain no additional details on how the provinces plan on implementing these initiatives. However, with respect to Shandong province the CBSA has requested and received a copy of Shandong Government Opinion on Speeding-up Adjustment in Structure of Aluminum Industry in the Area of Shandong, which does contain additional details regarding their intentions towards the aluminum industry in their province. Details on the contents of this plan can be found in **Appendix 4**.

Other provinces' five-year plans contained much clearer plans for the aluminum industry. For instance, Henan province had the following in their 11th five-year plan:

To further strengthen aluminum centralized non-ferrous industry. To rationally allocate bauxite resources and to develop alumina intensively ¹¹⁸. To build 3 alumina bases in Zhengahou, Jiaozuo and Yuxi. To promote the reorganization of electrolytic aluminum enterprises and to increase the concentration of electrolytic aluminum industry. To vigorously develop the deep processing of aluminum, with an emphasis on high-precision foil strip, die castings and industrial profiles, decorative building material in order to guide gathering of aluminum processing enterprises in aluminum industrial park.¹¹⁹

Like the national five-year plans, the provincial-level plans' inclusion of specific references to the aluminum industry, plans for the aluminum industry, and even specific company names, signifies the importance of the aluminum industry and its major companies to these provincial economies and highlights the extent of GOC attention the industry receives overall.

Industry Structure and State-Owned Enterprise Involvement

Aluminum is the primary raw material input for aluminum extrusions and comprises a large percentage of the cost of aluminum extrusions. A review of the information submitted by the cooperating exporters shows that aluminum constitutes an average of approximately 81% of total cost of the aluminum extrusions they produce. ¹²⁰ Given the importance of aluminum as a raw material input and cost component for aluminum extrusions, it is important to examine the GOC's involvement and influence over the Chinese aluminum industry, and any corresponding impact that would have an affect on the price of aluminum extrusions in China.

China is, by far, the world's largest producer of aluminum. In 2007, China produced 12.6 million metric tonnes (mt) of primary aluminum. La This accounted for over one third of the world's 37.4 million mt of primary aluminum production in 2007. La To provide for the production of aluminum, China produced 19.5 million mt of alumina in 2007. La As it takes approximately 2 mt of alumina to produce 1 mt of aluminum, China is, and will remain, a large importer of alumina.

Chinalco and it various subsidiaries, including Chalco, dominate the Chinese aluminum sector. Chinalco is listed as one of the state-owned enterprises directly under SASAC. Chinalco produced 10 million mt of alumina in 2007, or 46% of Chinese alumina production (down from 73% in 2006). ¹²⁴ Aluminum production information for Chinalco for 2007 is not available, but their subsidiary Chalco produced 2.8 million mt of aluminum, accounting for 22% of Chinese production in 2007. ¹²⁵ Chalco is the major, but not the only, aluminum producing subsidiary of Chinalco. Chalco is a publicly traded company, of which Chinalco currently owns 40% of the outstanding shares.

Apart from a small amount of export sales, Chalco sells all of their aluminum production domestically in China. There are approximately 100 aluminum smelting companies operating in China, which, like Chalco, sell substantially all of their products in China. In 2007, only 14 aluminum-smelting companies had production capacities in excess of 300,000 mt, with the rest having relatively smaller capacities. ¹²⁶

China's Aluminum Extrusion Production

While the Chinese primary aluminum industry is dominated by state-owned enterprises (SOE), particularly by Chinalco, the same situation is not prevalent in the aluminum extrusions sector. The downstream producers of aluminum extrusion products appear to have little direct state ownership and the industry is very fragmented. The GOC's RFI response indicated there are 460 aluminum extruders in China that each produce and sell at least 5 million RMB annually. Of these 460 companies, the GOC indicated that only 12 are wholly or partially state-owned. In their supplemental section 20 RFI response, the GOC provided the production volume of aluminum extrusions for these 12 companies. Only one of the 12 companies is a large producer of aluminum extrusions, producing over 75,000 mt in 2007. Canada customs information shows that these 12 companies accounted for only 3.4% of the imports of aluminum extrusions from China during the POI.

Government Industrial Policies

Like steel, aluminum has been identified by the GOC as an industry with "production capacity redundancy" that requires GOC mandated structural adjustment. The government industrial policies include several broader documents that discuss policies and approaches to multiple industries (such as steel, cement, non-ferrous metals, etc.). The GOC's industrial policies also include several documents that are specifically authored regarding the aluminum industry, including the mining of bauxite, production of alumina, production of primary aluminum, and the further processing of aluminum (including aluminum extrusions).

In past section 20 inquiries regarding steel products, the CBSA analyzed the GOC's China Iron and Steel Industry Development Policy as the main authoritative document outlining the GOC's policies and plans that are specific to the steel industry. The CBSA, through its own research, is aware of three documents that were authored around the same time as the China Iron and Steel Industry Development Policy that may contain similar GOC policies and plans related to the aluminum industry. These documents are The Industrial Development Policy for the Aluminum Industry (Industrial Development Policy), The Special Development Plan for the Aluminum Industry Development (Special Development Plan), and China's Aluminum Industry Layout and Restructuring Proposal (Layout and Restructuring Proposal).

The CBSA requested all three of these documents in the section 20 RFI to the GOC. In response, the GOC noted that the Industrial Development Policy and the Special Development Plan had been "formulated in 2005" but that they had not "come into effect" and had not "been circulated to the local governments for implementation". However, the GOC provided a document authored in 2006 entitled Guidelines for Accelerating the Restructuring of the Aluminum Industry which contained the following measure:

(1) strengthen the direction to the industrial policy and industrial layout and plan

"It is important to complement the *Industrial Development Policy of Aluminum Industry* approved by the State Council, to stipulate the detailed measures for the implementation, and to accelerate the structural adjustment of the industry. According to the *Special Development Plan for the Aluminum Industry Development*, the aluminum industry will be designed well and developed orderly". ¹²²

Additionally, in another document provided by the GOC entitled *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*, promulgated in April 2007, the Industrial Development Policy is again referenced:

"The local governments should implement the Decision of Publishing and Implementing the Interim Measures of Accelerating Adjustment of Industrial Structure' by the State Council, the Development Policy of Aluminum Industry, and the Notice Concerning Guiding Opinion of Accelerating Adjustment of Aluminum Industrial Structure to advance the process of adjustment of industrial structure." 128

In both of the above referenced quotes, the Industrial Development Policy is referenced by its official title in italics (or in brackets in the manner of noting official documents in the original Chinese version), in the same manner as the title of other documents the GOC provided as officially approved documents. Additionally, the first quote above specifically notes that the Industrial Development Policy is "approved by State Council" and the second quote instructs the local governments to implement the noted policies.

In its second supplemental RFI response the GOC also provided the CBSA with articles published in the China Non-ferrous Metals Monthly. This publication is under the administration and management of China Minmetals Corporation, an SOE under SASAC control. ¹²³ In an article entitled "The Major Events of China's Aluminum Industry in 2005", this state-owned publication noted the following:

In October 2005, the Project on the aluminium Industry Development and the Policies on the Aluminium Industry Development were passed at a conference held by the State Council. This project and the policies presented the principles for China's aluminium industry development in the future including total output control, improved industry structure and rational distribution, lower energy cost, etc. 120

Regarding the Layout and Restructuring Proposal, the GOC noted that this document was merely a proposal drafted by the Industry Department of the NDRC in 2005 and listed on its website. They further noted that it had not been submitted to State Council for examination and approval, and it had never come into effect. ¹³¹ The CBSA does not have any information indicating that this proposal has been adopted, however, the "proposal" was still publicly listed on the NDRC's website three years later. ¹³² This Layout and Restructuring Proposal also made reference to the other two industrial policies:

In order to optimize the layout of the structure of China's aluminum industry, the state has drawn up a special aluminum industry development planning and industrial development policies, to be made public after the approval of the State Council. In order to further strengthen the aluminum industry to adjust industrial layout and structure of the guide. All localities should strictly enforce the aluminum industry development policy, approved the project strictly to prevent redundant construction. ¹³³

In a supplemental section 20 RFI, the CBSA reiterated its request to the GOC to provide the Industrial Development Policy, the Special Development Plan and the Layout and Restructuring Proposal. In their response the GOC noted that for these documents "the required legislative procedure has never been completed and, therefore, they are not in force". Legislative procedure has never been completed and, therefore, they are not in force. The GOC also provided a statement by the NDRC noting that the policies were not in force. The GOC, therefore, again refused to provide the documents to the CBSA. The CBSA requested these documents again in its second supplemental section 20 RFI, and also requested the minutes of the State Council Executive meeting where the policies were discussed. The CBSA requested the meeting minutes to ascertain what direction the State Council had given in either approving the policies or limiting the policies to draft status. The GOC again refused to provide documents, noting that they "are not in force and are internal documents. The GOC did not provide these policies since its disclosure would mislead the domestic and/or international community." Legislative meeting minutes.

The GOC has requested that the CBSA give due consideration to its statement that the documents are not in effect and are non-legal drafts only. In its case briefs the GOC argued that the CBSA has placed an undue emphasis on these draft policies. Given the GOC refusal to provide these documents, the CBSA is wholly unaware of the contents of these policies, and therefore, cannot place an undue emphasis on their importance. The analysis of the GOC's industrial policies contained in the rest of this report analyzes the impact of GOC policies and regulations that have been provided by the GOC in its responses as being in force.

However, the CBSA notes the GOC's unwillingness to provide these policies and their failure to provide the minutes of the State Council Executive meeting that would have showed the context in which these policies were discussed and the direction the State Council provided regarding their implementation (or lack thereof). Even if the documents are "internal" as the GOC asserts, the fact that they are subsequently referenced in other official GOC policy documents at least demonstrates that these policies direct or guide, internally within the GOC, government officials in their overall policies objectives and treatment of the aluminum and aluminum processing industries. The CBSA therefore maintains that the documents are highly relevant to this investigation and takes note of the GOC's refusal to provide the documents after repeated requests. A report by the People's Daily on the policies' planned "launch" noted that they would "curb China's aluminum exports and call on domestic producers to mainly target the home market". "J32As discussed later in this report, the GOC has adopted measures that are in line with the apparent contents of these unofficial plans.

GOC Industrial Policies Summary

The GOC did provide numerous documents that cover their general industrial policies and investment guidance, as well as several documents more specific to the production of alumina, aluminum and aluminum products. The CBSA has extensive information on the record regarding numerous GOC industrial polices in general and polices that are specific to

the aluminum industry. This information demonstrates a substantial amount of GOC involvement directed specifically towards the aluminum industry in China. **Appendix** 4details, in chronological order, the information that has been obtained regarding various GOC laws, circulars and policy measures affecting the Chinese aluminum and aluminum extrusions industry from 2002 until present.

To summarize, the GOC has laws and policies relating to the aluminum industry that dictate:

- the type of aluminum smelting processing technology that is permitted and bans on certain types of technology used in aluminum production; restricting foreign investment in the primary aluminum industry;
- minimum annual production capacity for new primary aluminum producers;
- minimum capital investment requirements for new aluminum projects;
- minimum efficiency standards for new and existing aluminum projects (in terms of electricity and coal usage per MT produced); and
- minimum amounts of raw materials the alumina or aluminum producer is required to have access to in order to be granted project approval.

Furthermore, the GOC has laws and policies relating specifically to the aluminum extrusions sector that dictate:

- minimum annual production capacity for new aluminum fabricators (including a minimum 50,000 MT capacity for new aluminum extruders); and
- minimum efficiency standards for new and existing aluminum extrusion facilities (in terms of electricity usage and raw material consumption per output).

The policies show that over time the GOC's restrictions in the aluminum industry in China have progressed further downstream. Earlier policies sought to restrict additional aluminum production, but encouraged the further processing of aluminum products, including aluminum extrusions. However, the most recent GOC policies now also place restrictions directed towards aluminum processors, including aluminum extrusions producers.

Another important aspect is that the earliest policies sought to restrict or outright ban inefficient technology for producing aluminum, but in the years following these restrictions aluminum smelting capacity actually increased substantially. ¹³⁸ Analysis on the record from Metal Bulletin Research attributes much of the growth in China's aluminum capacity to the GOC's industrial policies. The report notes the following with respect to the elimination of older smelting technology:

The government repeatedly stated its intention to close all inefficient and polluting smelting capacity. Around 1.4m tpy of Chinese smelting capacity was based on Söderberg ¹³⁹ pot technology during 2001/2002. The authorities announced in early 2003 a plan to phase out all this capacity during 2003, although it took until early 2005 for the vast majority of this capacity to be closed. Many smelters decided the best approach to dealing with the threat of

closure was to firstly expand capacity by building prebake potlines and then subsequently close old Söderberg technology. However, in many cases, the capacity of the newly installed potlines far exceeded the scale of the Söderberg pots and hence resulted in increased capacity. 49

In response to the GOC's move to ban a form of production technology, Chinese aluminum producers eventually complied but, overall, they first increased their production capacity with GOC approved technology. This response, combined with increasing domestic consumption, and preferential government treatment in the form of low electricity tariff rates and government grants for expansion, led to a surge in aluminum production in China. As is reflected in the specific policies summarized in Appendix 4, the GOC's policy emphasis during the subsequent years (2003 and 2004) focussed on closing Söderberg technology to reduce capacity. While Chinese smelters still found this production method to be profitable they resisted attempts to be closed down. As As a result, Chinese aluminum production capacity continued to increase, partly fuelled by the GOC's mandate to shift into modern manufacturing methods. Having their attempts at restraining aluminum production capacity by closing Söderberg method production prove ineffective, or less effective than desired, the GOC was forced to pursue other measures, such as tax regime changes, to restrain production (see the import and export restrictions section of this report).

It should be noted that none of the GOC policies or regulations obtained by the CBSA in this investigation demonstrate any degree of direct price setting within the aluminum or aluminum extrusions industries. However, these policies and regulations do demonstrate the degree of control the GOC has over the industry in general. Overall, the extent of GOC oversight and control within the industry via their various policies and regulations is quite significant. The GOC's involvement is extensive enough to significantly affect companies within the industry. As Chalco notes in their 2007 SEC filing:

The central and local PRC governments continue to exercise a substantial degree of control and influence over the aluminum industry in China and shape the structure and characteristics of the industry by means of policies in respect of major project approvals, preferential treatments such as tax incentives and safety, environmental and quality control. If the PRC government changes its current policies or the interpretation of those policies that are currently beneficial to us, we may face pressure on profit margins and significant constraints on our ability to expand our business operations or to maximize our profitability. ¹²¹ (emphasis added)

Clearly, in Chalco's opinion, the GOC's extent of regulatory control is substantial and could significantly constrain their profitability and business operations. This wording, by a state owned company, clearly reflects the strength and impact of GOC industrial policies and defies the GOC's assertions that they are "aspirational expressions of the GOC's hopes for an industry". 144

GOC Preferential Treatment and Subsidies

At the same time they were banning older technology, the GOC was providing preferential treatment to large aluminum smelters. In their 2005 SEC filing Chalco provided an explanation of their competition in the domestic market and the preferential treatment they were receiving from the GOC:

It is the PRC government's industrial policy to consolidate the Chinese primary aluminum industry into one consisting of larger, less polluting and more efficient producers. Accordingly, the larger smelters are being granted favorable treatment, including priority in the allocation of raw materials and electricity supplies and prices. These preferential treatments, especially discounts in electricity prices, represent stronger competitive advantage large domestic smelters have over small domestic smelters. In addition, since January 1, 2005, the PRC government prohibits domestic aluminum smelters whose annual production capacity lower than 100,000 tonnes from directly importing alumina to China. We are among a few companies in the PRC that are currently qualified to directly import alumina for our primary aluminum production. As imported alumina will usually be cost effective, we believe our competitiveness is enhanced as a result. ...

PRC governmental policies directed at fostering the growth of larger domestic smelters are likely to be retained after China enters the WTO, such as tax benefits, preferential electricity tariffs, and subsidies for research and development.¹³⁵

Further, in 2005 Chalco noted that their domestic competition mostly came from sizable smelters and that there were only nine smelters with annual production capacity in excess of 200,000 mt. By their 2007 SEC filing, Chalco noted that there were fourteen Chinese smelters with annual capacity of at least 300,000 mt. Chalco notes that "Effective September 1, 1999, the former State Economic and Trade Commission, has prohibited construction of any new smelter with less than 100,000 tonnes in annual primary aluminum production capacity". Therefore, while the GOC was moving to ban older production technology they were providing strong incentives and encouragement to larger smelters to expand, and they were setting a minimum annual capacity, forcing such encouraged expansions to be large ones. As a result, Chinese aluminum smelting output increased from 5.5 million mt in 2003 to 7.8 million mt in 2005. Lace China also became a net exporter of aluminum in 2005.

Perhaps the most significant aspect of the GOC's preferential treatment of aluminum smelters is the preferential electricity rates charged to Chinese aluminum producers. The smelting of aluminum employs an electrolytic reduction process that requires a large and continuous supply of electricity. Electricity comprises a significant percentage of the cost of production for aluminum. For Chalco, the cost of electricity represents 30% of their cost of production for aluminum. For Chalco, the cost of electricity represents 30% of their cost of production for aluminum. For Chalco, the cost of electricity represents along preferential electricity rates to large producers of aluminum. Reports indicate that the preferential power tariffs were in excess of RMB 0.10/kwh, and that the elimination of the preferential power rates is to be phased in by RMB 0.05/kwh annual increments. ¹⁵⁰ In 2006, Chalco reported that their average cost of electricity was RMB 0.348 per kwh. ¹⁵⁰ Therefore, the average preferential electricity concession of RMB 0.02 to greater than RMB 0.10 per kwh could represent substantial savings on the cost of electricity. However, in their 2007 annual SEC filing, Chalco notes that their preferential electricity rates were cancelled at the end of 2007 pursuant to a GOC circular ending the preferential electricity rates program. ¹⁵¹

In their RFI response, the GOC provided the notice implementing the cancellation of preferential electricity rates. This notice provides for a phased in approach whereby a benefit of 5 cents per kwh was to be eliminated by December 2007; a benefit of between 5 and 10 cents would be reduced by 5 cents in December 2007 with the remainder eliminated in July 2008; and where the benefit was more than 10 cents, for 5 cents to be eliminated in December 2007, 5 cents eliminated in July 2008, and the remainder eliminated in January 2009. The GOC was therefore still providing preferential electricity rates for the

production of aluminum during the POI and, prior to the POI, was in some cases providing preferential electricity rates in excess of 10 cents per kwh.

Regarding preferential treatment for aluminum extruders themselves, it should be noted that the CBSA is also conducting a countervailing investigation with respect to benefits provided by the GOC to aluminum extruders in China. The final results of that investigation will show an amount of subsidy for each of the cooperative exporters that were investigated. The amount of benefits received ranges between 8% and 16% of the export prices of aluminum extrusions sold to Canada.

As noted by the World Bank in their China Quarterly Update - February 2008, provided by the GOC in the second supplemental RFI response:

Fiscal measures such as direct subsidies and taxes can sometimes substitute for administrative measures and have a different economic impact. Overall, they tend to keep incentives closer to being market determined and thus to be less distortive. A producer subsidy increases the incentive to supply and leaves demand market determined. We would normally expect a producer subsidy to result in a (somewhat) lower market price, and higher supply and demand. ¹⁵³

Therefore, the GOC's preferential treatment and subsidies available to aluminum and aluminum extrusions producers in China would have served to artificially increase the supply of the products in China. As previously noted, Chinese aluminum smelting production was 5.5 million mt in 2003. China's aluminum capacity rapidly expanded during the next few years and production reached 12.6 million mt in 2007. Similarly, China's aluminum extrusion output rose from 2.62 million mt in 2003 to 5.5 million mt in 2007.

Import and Export Restrictions

An important tool the GOC uses in implementing their industrial policy objectives is their tax regime regarding import tariffs, value-added tax rebate rates and export taxes. In general terms, China's value-added tax (VAT) system is similar to a consumption tax, with the ultimate burden bome by the consumer. A manufacturer in China pays 17% VAT on its purchases of raw materials, processes the goods, and then sells the end-products, collecting 17% VAT in the process. The manufacturer then remits the difference between the VAT collected and the VAT paid on the purchases of the raw materials. In this manner, a manufacturer does not incur any VAT related costs on his production materials. However, VAT on export sales is treated differently.

With exports, the exporter still pays the same 17% VAT on their purchases of raw materials, however, when they export the goods, they only receive a VAT tax refund (tax refund) of a fixed percentage, which is established by the GOC. In addition, the tax refund cannot exceed the VAT paid on raw materials. Consequently, the tax refund on exports would offset the VAT paid on the raw materials.

Over the previous three years, the GOC has made substantial changes to the import tariffs, VAT rebates for exports, and export duties on aluminum raw materials, aluminum, and finished aluminum products. These changes are summarized in the table below. 156

January 2004	Lowered VAT rebate on aluminum from 15% to 8%
	Lowered VAT rebate on aluminum from 15% to 8%

January 2005	Fully removed VAT rebate and imposed a 5% export tax on aluminum
September 2006	Lowered VAT rebates on various aluminum products from 13% to 5-11% (11% for aluminum extrusions, except aluminum pipe and tube which remains at 13%)
November 2006	Increased the export tax on aluminum to 15%
July 2007	Fully removed VAT rebates on alloy and non-alloy aluminum bar, wire and profiles
August 2007	Removed 5% import tariff on aluminum Imposed a 15% export tax on non-alloy aluminum rod and bar
January 2008	- Removed 3% import tariff on alumina - Imposed 15% export tax on alloy aluminum rod, bar and some solid aluminum profiles

When considering the above VAT rebate changes, it is also very important to note the GOC's treatment of export sales for which the VAT rebate has been fully removed. When VAT rebates are fully removed the GOC deems an export sale to be a domestic sale for VAT purposes. ¹⁵² What this means is that the exporter's FOB Port selling price is effectively treated by Chinese authorities as being a VAT-inclusive price, and the exporter is assessed a VAT liability equal to 14.53% (1-(1/1.17)). Therefore, when the VAT rebates on aluminum extrusions were reduced to zero, aluminum extrusion exporters went from a position of receiving an 11% refund on their FOB selling price to their FOB selling price being deemed VAT inclusive and effectively being reduced by 14.53%. This change in tax treatment is quite significant.

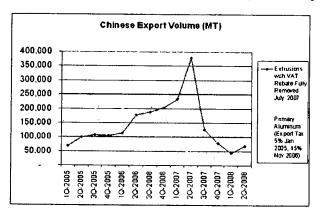
Another important aspect affecting imports and exports is the restrictions placed on processing trade. Processing (or tolling) trade involves importing goods duty and VAT free provided the finished good is then exported. In October 2004, the GOC banned processing trade for alumina (importing alumina VAT and duty free if aluminum is exported) for all but the largest smelters that were in conformity with their industrial policies. The GOC fully banned processing trade for alumina in August 2005. LSB

The removal of VAT rebates, export taxes and restrictions on processing trade, were enacted in accordance with an official GOC plan directed at reducing exports of certain products. In July 2005, the GOC issued a circular explaining the need for export controls of certain products and its plan to control export levels within certain products. The stated government goal for these measures was to curb the export of energy-intensive, highly polluting and resource-wasting products, encourage energy conservation and raw material imports. ¹⁵² The specific products that were identified in the plan are steel billets and ingots, electrolytic aluminum, and other non-ferrous metals. Recent reports also suggest that the government is not satisfied with the results of the export taxes and may increase the export taxes on aluminum to divert more primary aluminum output towards domestic demand. ¹⁶⁰

An effect of these tax changes is that it increases the cost of exports and reduces their profitability, which in turn reduces the volume of material that is exported and leaves additional capacity to serve the domestic market. While the GOC has stated that many of these policies are intended to address environmental and resource efficiency issues, these measures are dramatically changing the demand and supply balance in the domestic market and materially affecting the domestic prices of aluminum and aluminum extrusion products.

As noted by China Non-ferrous Metals Industry Association in the China non-ferrous Metals Yearbook, "The adjustment for provisional export tax rate will increase the cost of enterprises which may affect the export of enterprises. The intent of the structural adjustment [to VAT rebates] is obvious. This is for the purpose of guiding resources and energy enterprises to domestic markets and optimizing exported products structure when carrying out macro control". [61]

The GOC provided information regarding the export volume of the aluminum and aluminum extrusions products that are affected by these tax changes. This information is summarized in the following chart, which shows the quarterly export volume of primary aluminum affected by VAT rebate removal and export taxes, and aluminum extrusions covered by the VAT rebate removal. ¹⁶² The chart shows the information, as provided by the GOC, only for the Chinese commodity tax codes that were affected by the tax changes.



Regarding aluminum exports, this chart shows the significant impact that the VAT rebate cancellation, export taxes and banning of processing trade had on Chinese exports. The volume of exports of aluminum decreased significantly during 2005, as the cancellation of VAT rebates, imposition of a 5% export tax and banning of processing trade of alumina took effect. Chinese export volume remained steady for several quarters until the GOC raised the export tax to 15% in November 2006, again causing a significant decrease in export volume, from 200,000 mt per quarter to 50,000 mt or less per quarter.

Regarding exports of aluminum extrusions, the above chart shows the significant growth in export volume during 2006 and the first half of 2007. Export volumes peaked at a high of 372,000 mt in the second quarter of 2007, and then plunged to 43,000 mt by the first quarter of 2008, which precisely coincides with the cancellation of VAT rebates and imposition of export taxes on some extrusions. Again, the effect of the GOC's tax changes is clear and results in a significant reduction in export volumes for the affected products.

The information available to the CBSA shows a strong level of GOC involvement in the aluminum industry through import tariffs, VAT rebate levels and export taxes. The use of such measures by the GOC is shown to severely restrict the export volume of the affected

products. Arguments submitted by the GOC noted that there was no information on the record that demonstrates that reduced export volumes resulted in increased domestic supply (versus a reduction in production) or resulted in suppressed domestic prices. The next two sections of this report deal with the impact on domestic supply and prices that GOC policies have had on aluminum and aluminum extrusions.

Impact of GOC Policies on Domestic Chinese Supply and Price of Aluminum

In its first supplemental request to the GOC, the CBSA requested domestic sales volume and value statistics for aluminum and aluminum extrusions. The GOC noted that "neither the GOC nor the CNMIA maintain statistical data on domestic sales". ¹⁶³ The CBSA therefore relied upon other information on the record to demonstrate the increasing volume of domestic supply.

The following information summarizes the domestic market situation of Chinese aluminum in 2006 and 2007: 164

Units in Tons	2006	2007
Production	9,350,000	12,256,000
Imports	289,855	111,363
Exports	838,286	160,793
Net Exports	548,431	49,430
Stock Change in SHFE	-34,983	69,716

The above information demonstrates that domestic production increased in 2007 over 2006. At the same time, export volumes were significantly lower (as previously noted). Also, import volumes were significantly reduced, lowering 61% between 2006 and 2007. The stock change in the SHFE also increased significantly, by over 100,000 mt. While Chinese consumption also grew during this period, it is clear that export volumes were diverted to the domestic market in China, causing increased availability of product, as evidenced through increasing SHFE stocks, and reduced import penetration due to domestic oversupply.

Regarding the first imposition of the 5% export tax on primary aluminum in January 2005, Chalco noted in their 2005 annual SEC filing that:

The abolishment of export tax refund and the imposition of export tax affected the allocation of domestic and export sales by aluminum producers in China and resulted in an increase in domestic sales. The increase in domestic sales further intensified the competition in domestic primary aluminum market, where we conduct most of our primary aluminum business. Intensified domestic competition could have a material adverse effect on the price and margins of our products and market share. 1655

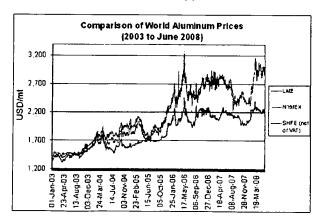
One indicator of the domestic price of aluminum in China is the price of aluminum futures traded on the Shanghai Futures Exchange (SHFE). Trading on the SHFE is only open to corporations organized and registered in China. 166 In addition, companies that wish to trade in overseas futures markets have to be approved by the China Securities Regulatory

Commission. Only 31 Chinese companies in any industry in the entire country are currently allowed to conduct overseas futures transactions. 162

It is important to note that SHFE prices are quoted Chinese VAT inclusive. LES As previously explained, Chinese aluminum extruders would be eligible to be reimbursed for the amount of VAT they pay on raw materials. The quoted SHFE prices are therefore 17% higher than the effective cost that SHFE aluminum would represent to Chinese aluminum extruders.

Market Spot Prices	2003	2004	2005	2006	2007	1H 2008
SHFE spot price RMB/mt ¹⁶⁹ , ¹⁷⁰	14,595	16,242	16,744	19,000	19580	
SHFE spot price converted to US\$/mt 171	\$ 1,763	\$ 1,962	\$ 2,046	\$ 2,388	\$ 2,583	\$ 2,677
SHFE spot price US\$/mt (net of VAT)	\$ 1,464	\$ 1,629	\$ 1,698	\$ 1,982	\$ 2,144	\$ 2,222
LME spot price US\$/mt ¹⁷² , ¹⁷³	\$ 1,437	\$ 1,722	\$ 1,901	\$ 2,568	\$ 2,661	\$ 2,868

As can be seen from this comparison of London Metal Exchange (LME) and SHFE aluminum contract pricing, the price of aluminum in China is not always reflective of the international price. Prices of aluminum on the SHFE (excluding VAT) were reflective of international prices until 2004. Since then, prices on SHFE have not moved in sync with LME prices, and have often been substantially lower. This divergence of prices is also evident in the chart below. L24 In addition to showing both the LME and SHFE (net of VAT) prices for aluminum, the chart includes aluminum prices as traded on the New York Mercantile Exchange (NYMEX). While there may be some temporary differences, the LME and NYMEX prices for aluminum closely track each other, or are exactly equivalent, for the entire period from 2003 to June 2008. This reflects the commodity nature of aluminum and establishes that there is a world price for this commodity product.

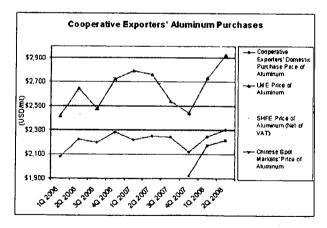


Again, it is evident that the SHFE price of aluminum traded at the world price of aluminum in 2003, but began to diverge from the world price in 2004, coinciding with the timing of the GOC first adjusting the VAT rebates available for primary aluminum. This divergence in pricing continued to increase during 2005 and 2006, which coincides with the timing of the GOC's full removal of VAT rebates (January 2005) and imposition of export taxes (5% in January 2005, and 15% in November 2006) on primary aluminum and primary aluminum products. As the WTO Trade Policy Review Body notes:

Removal of the VAT rebate together with the imposition of the export tax tends to reduce exports of primary aluminum and thus increase its domestic supply. As a result, the domestic price of primary aluminum tends to be lower than would otherwise be the case. 125

There is also information on the record that shows that SHFE prices generally reflect the prices of aluminum bought and sold in China (between two parties and not through the commodities exchange). In their 2007 SEC filing, Chalco notes "Like most primary aluminum producers in China, we price our primary aluminum products by reference to the Shanghai Futures Exchange spot prices". ¹²⁶ Chalco further notes the average SHFE 3-month contract price during 2007 was RMB19,580 per mt (or RMB16,251 excluding VAT) and that their own average selling price during 2007 was at a comparable level of RMB16,914 per tonne (excluding VAT). ¹²²

Additionally, the CBSA has information on the record regarding the actual purchases of aluminum by the cooperating exporters and information provided by the GOC for two spot markets in China. The following chart shows that the cooperating exporters' actual transaction prices of domestically sourced aluminum in China were at prices marginally higher than aluminum traded on the SHFE, but still substantially below the world price established on the LME. ¹²⁸



When the cooperative Chinese aluminum extruders imported aluminum, they did so at a price that was generally comparable to the LME. The cooperative exporters' aluminum purchase data also confirms that the low level of aluminum import penetration in the

Chinese market applies to aluminum extruders' purchases. In 2006, the cooperative extruders sourced 22% of their purchased aluminum from imports. In 2007 the cooperative extruders sourced only 3% of their aluminum from imports, and there were virtually no imports of aluminum by the cooperative extruders during the Dumping POI.⁸⁰

The chart also demonstrates that different spot markets in China also sell at or below the SHFE futures price of aluminum. The GOC provided average spot price information for two spot markets in China, one in Guangdong and one for the Yangtze River area. ^{IBI} The CBSA averaged these two spot markets prices together and removed VAT included in the price. IBI for comparing to LME prices.

The cost of aluminum, as a raw material input, is the largest cost component of producing aluminum extrusions. A review of the cooperative exporters' cost of production information for the period of investigation reveals that, on average, the raw material cost of aluminum constitutes over 81% of their total cost of production for aluminum extrusions. ¹⁸³ (Note: Many Chinese extruders purchase aluminum ingots, which they then melt, add alloying elements, and cast their own billets. Billets are the aluminum input placed in extrusion presses. This differs from the Canadian industry where producers purchase billets directly, at a premium over the price of aluminum ingots). Given this high cost proportion, the availability of low priced aluminum in China would clearly impact the domestic prices of aluminum extrusions in China.

The above information demonstrates that the GOC's trade restrictions and preferential policies have had a material impact on the prevailing price of aluminum in China. The GOC has been substantially affecting the Chinese aluminum extrusions industry through its above-noted policies and SOE involvement in the primary aluminum industry.

Impact of GOC Policies on Domestic Chinese Supply and Price of Aluminum Extrusions

As previously noted, the GOC explained that they do not collect or maintain information regarding domestic sales. The information on the record concerning Chinese domestic sales of aluminum extrusions is from the domestic sales of the cooperative exporters and from the China Minmetals' China Nonferrous Metals Monthly. This limited information does show an increasing amount of aluminum extrusions production serving the domestic market.

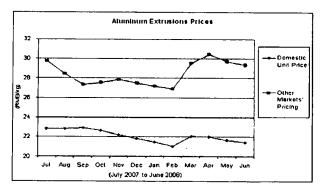
As previously noted, overall Chinese output for aluminum extrusions was reported to have increased from 2.6 million mt in 2003 to 5.5 million mt in 2007, an increase of 112% in four years. ¹⁸⁴ At the same time, apparent Chinese consumption grew from 2.5 million mt to 4.6 million mt, an increase of 84%. As a result, China's export volume of aluminum extrusions increased over the same period, from only 169 thousand mt in 2003 to nearly 1 million mt in 2007. ¹⁸⁵ However, in mid-2007 the GOC moved to restrict exports of some aluminum extrusions through their VAT rebate removals and export taxes on aluminum bar and rod. The impact of these tax changes on the export volume of extrusions has already been discussed and, given that exports still represented approximately 18% of the sales of Chinese production in 2007, the GOC's restrictions on exporting this volume of production would force an oversupply situation in the domestic market for aluminum extrusions.

Amongst the cooperative exporters, the first half 2008 domestic sales of aluminum extrusions were nearly double the amount during 2006 (approximately 160,000 mt annualized in the 1st half of 2008 versus 89,000 mt in 2006). LEG During the same years, the

cooperative exporters reported export sales of aluminum extrusions increased from 100,000 mt in 2006 to 121,000 mt in the 1st half of 2008 (annualized), an increase of 21%. 182 This information demonstrates the increasing amount of aluminum extrusions that were being sold in the domestic market as the GOC moved to restrict export sales on some aluminum extrusions.

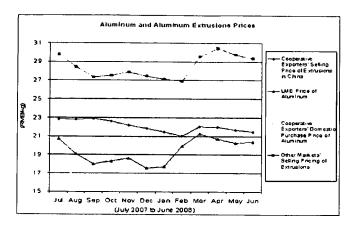
The CBSA's understanding of pricing practices in the aluminum extrusions industry is that extrusions are priced by producers based on the current price of aluminum plus a conversion factor. The Chinese aluminum extrusions industry follows this pricing practice. Many of the cooperating exporters explained that they base their domestic prices on the SHFE or published local spot market rate, plus their own conversion factor. All Therefore, the below world market price of aluminum available to aluminum extruders in China must impact their domestic selling prices for aluminum extrusions, which can be shown to be lower than other markets in the world.

The CBSA has information that substantiates this difference based on aluminum extrusions pricing information in some European and North American markets from a Metal Bulletin Research publication for aluminum extrusions. This pricing information shows that prices for aluminum extrusion in other countries are higher than the average domestic prices of aluminum extrusions sold in China by the cooperative exporters during the POI. ¹⁸⁹



The chart above clearly demonstrates that the prices of aluminum extrusions in China are substantially lower than in other markets in the world. During the dumping POI, prices in China ranged from 16 to 28% lower than the published prices shown in the Metal Bulletin Research (MBR) publication. It is also worth noting that while the prices in the MBR publication are for more developed markets, they are "regional prices for standard extruded shapes", which should represent a very conservative comparison to the full product mix, including some higher value-added products, that the cooperative exporters sold in the domestic market during the dumping POI.

The above selling price comparison chart becomes even more insightful when LME price of aluminum and the cooperative exporters' actual purchase prices of aluminum are added to the chart. 190



From the chart above, it is apparent that there is a strong correlation between the underlying cost of aluminum and the fluctuation in aluminum extrusions prices. The MBR published prices respond to fluctuations in the world price of aluminum (as represented by the LME), whereas the cooperative exporters' domestic selling prices show less volatility and appear strongly correlated to their own actual purchase prices of aluminum domestically.

It is also very revealing to compare the cooperative exporters' domestic selling prices with the LME price of aluminum in the chart above. In early 2008, the world price of aluminum was almost equivalent to the cooperative exporters' domestic selling prices for aluminum extrusions in China. Clearly, if the cooperative exporters had purchased aluminum at the world price during this period, their domestic selling prices would have had to be significantly higher to even recover their costs of production.

SUMMARY

Based on the evidence on the record, it is clear that the GOC exerts a substantial degree of influence over the aluminum industry in China through its industrial policy measures. As noted under the government policy section, newer GOC aluminum industry documents also include policy measures specifically applicable to the aluminum extrusion industry. These policies impose minimum capacity size for new facilities, and minimum energy and production efficiency levels. The GOC has also been shown to provide preferential treatment and subsidies to aluminum producers and to aluminum extruders in China which would increase the ability of Chinese producers to supply the products to the Chinese market. The GOC also has measures in place that restrict the exports of aluminum and aluminum extrusions, also affecting the supply situation in the domestic market.

While the GOC does not directly set or control the prices of aluminum extrusions in China, the information currently available to the CBSA indicates that prices of aluminum extrusions in China are being substantially determined by GOC industrial policies and export restrictions. The cost of aluminum in China appears to be well below the world price of aluminum during the dumping POI. Since aluminum comprises a large percentage of the

cost of aluminum extrusions and directly impacts the price of aluminum extrusions due to the 'aluminum cost plus' selling practises of the industry, the low cost of aluminum in China clearly impacts the prices of aluminum extrusions in China.

The CBSA has assessed the cumulative effect that the GOC industrial policy measures; regulations controlling technology and production levels; GOC preferential treatment and subsidies; and the control of import and export levels through tax changes have had on both aluminum and aluminum extrusions. The CBSA is satisfied that there is sufficient evidence on the record demonstrating that the domestic prices of aluminum extrusions in China are being substantially determined by the GOC and that there is sufficient reason to believe that these prices are substantially different than if they were determined in a competitive market.

Based on the preceding considerations, the President of the CBSA has formed the opinion, for purposes of the final determination, that Section 20 conditions exist in the aluminum extrusions sector in China.

APPENDIX 4 - GOC POLICIES AFFECTING THE CHINESE ALUMINUM AND ALUMINUM EXTRUSIONS INDUSTRIES

The following represents a chronological listing, from 2002 to present, of excerpts from the various policies that are relevant to the GOC's involvement in the aluminum and aluminum extrusions industries.

2002

In 2002, the State Economic and Trade Commission published the Guidance of Recent Development in the Industrial Sector. This notice was formed to carry-out the framework established in the Outline of the Tenth Five-year Plan for National Economic and Social Development" and aimed to "strengthen the macro-control, guide the direction of the investments with the fixed assets in the whole country, optimize the allocation of resources, reduce the repeated construction, and promote the healthy and stable development in all industries". ¹⁹¹ Regarding the aluminum industry, this document noted:

We should accelerate the pre-baked transformation of aluminum electrolysis, and must combine newly built and transformed pre-baked aluminum cells with the elimination of Söderberg electrolytic cells, and try to eliminate Söderberg aluminum cells in 2003. We should accelerate the construction of high-level hot tandem rolled aluminum plates and belts production lines, develop high-precision aluminum plates and belts, electronic aluminum foils, large industrial section bars and other varieties. We should stop the repeated construction of electrolytic aluminum, and any newly built electrolytic aluminum project must be strictly subject to the approval formalities in accordance with the relevant provisions. [92] [emphasis added]

2003

In late 2003, the State Council published a document entitled Several Opinions on Curbing Illegal Construction and Irrational Investment in the Electrolytic Aluminum Industry. This document begins by noting that:

Electrolytic aluminum industry is an important industry producing basic raw materials and also an industry with high requirements for input, high energy and resource consumption, which may significantly affect the environment. In recent years, pushed by demand growth of domestic market, stipulated by price collapse of alumina and price rise of electrolytic aluminum in international market, driven by economic interest, some areas and enterprises illegally construct and irrational invest in electrolytic aluminum projects without following stipulated procedures.

we should readjust the aluminum industrial development structure and industrial policy according to the need for a new approach to industrialization in order to make the development of aluminum industry and area distribution clear, to make the industrial access system strictly, to guide the orderly development of industry.

Electrolytic aluminum and alumina projects which do not conform to industrial policy and development plan shall not be approved by government department. 193

It is interesting to note that, in the first paragraph of the above caption, the GOC acknowledges that the aluminum industry has been growing in response to demand growth and price factors in the industry, particularly in response to a high international price for aluminum. While this growth is in response to the industry's own economic interests, the GOC decided it was "irrational" investment because it did not conform to their industrial policy and development plans for the aluminum industry as stipulated by the GOC.

Also during 2003, the GOC issued the Catalogue of Encouraged Hi-tech Products for Foreign Investment (2003). ¹²⁴ This catalogue established products that governments at various levels were to "actively conduct work in encouraging foreign investment and create favourable conditions for the quickening development of high-tech industry". This catalogue listed the following items of relevance under the section for new materials: ¹²⁵

- 1. Large-scale aluminum alloy bar section of special type
- 2. Precise die forging of aluminum alloy
- 3. High-intensity aluminum alloy material
- Pre-stretching thick plate of aluminum alloy and enveloped plate of aluminum alloy
- 5. PS aluminum alloy plate
- 6. Aluminum plate for beverage can
- 7. Compound aluminum foil for radiator

This demonstrates that while the GOC was working to restrict investment in the production of primary aluminum, they were encouraging investment in products that further processed aluminum, including in aluminum extrusions.

2004

During 2004, investment in the aluminum industry continued to be heavily restricted. In a circular from the State Council on *Liquidating Fixed Asset Investment Projects*, the GOC noted that "a new project of steel, electrolytic aluminum and cement shall in principle not be launched in this year". 196

In the same year, the GOC issued the *Notice Regarding the Further Enhancement of the Environmental Regulation of the Electrolytic Aluminum Industry*. ¹⁹⁷ This notice called for the

strengthening of the supervision and regulation on aluminum producers by the departments of environmental protection at various levels of government. The document focussed on implementing the desired move away from Söderberg cell aluminum production technology to the pre-baked cell method.

Another GOC circular in 2004 increased the capital requirements for new aluminum projects. A circular from the State Council On Adjusting the Proportions of Registered Capital in Fixed asset Investment Projects of Some Industries, ordered that "the proportion of registered capital of projects of cement, electrolytic aluminum and real estate development... shall be raised from 20% or more to 35% or more". ¹⁹⁸

2005

In 2005, the State Council promulgated the *Interim Provisions on Promoting Industrial Structure Adjustment*. The provisions were formulated for "the purpose of ensuring the all-round implementation of the scientific view of development, strengthening and improving the macro-control policy, guiding social investments, and promoting industrial structure optimization and upgrading". ¹⁹²

The Interim Provisions noted above, led to the issuance of the Guiding Catalogue for Industry Restructuring, which was issued by the NDRC on December 2, 2005. ²⁰⁰ The decision of the State Council notes:

The "Catalogue for the Guidance of Industrial Structure Adjustment" is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc. ²⁰¹

The Catalogue is divided into three groups;

- Catalogue of Encouraged Investment Industries.
- II. Catalogue of Restricted Investment Industries, and
- III. Catalogue of Eliminated Investment Industries

The following lists are the references under each above noted catalogue that may be applicable to aluminum or aluminum fabrication products of note:

Guiding Catalogue for Industrial Restructuring (2005)²⁰²

Encouraged:

- Construction of medium-sized copper, aluminum, lead, zinc and nickel mines
- Production of high-performance, high-precision rigid alloy, deep processing products and ceramic materials
- Manufacturing of the high-performance metal materials used for rail traffic
- Manufacturing of light autos and environmentally-friendly new materials
- Development and manufacturing of new-type of materials for aviation and aerospace

 Manufacturing of high-performance external encircling structural materials and parts for residence

Restricted:

- Electrolytic aluminum projects (except self-baked cell production capacity replacement and environmental protection reconstruction project)
- Secondary aluminum reverberatory furnace project of below 4 tons
- Reverberatory furnace project directly burning coals in renewable non-ferrous metal production
- · Wet method fluoride salt in the production of aluminum
- Project of independent carbonaceous materials used in the production of aluminum of below 100,000 tons/year

Eliminated:

- · Aluminum self-baking electrobath
- Recycled aluminum alloy and recycled lead melting technology with crucible furnace (2005)

This catalogue contains the government regulations that are used to "guide" investment into or out of a number of targeted industries and activities in accordance with the GOC's industrial policies. Such guidance includes, for example, instructions to financial institutions not to provide credit for investment in certain sectors, as well as to the authorities in charge of approving such investments to no longer accept proposals for such investment. Other measures that can be taken include land and tax policies, pricing policies (regarding electricity specifically) as well as trade restrictions.

This catalogue again demonstrates that while the GOC was working to restrict investment in the production of primary aluminum, they were encouraging investment in products that further processed aluminum, including in product areas that would use aluminum extrusions. The extent of the restriction on investment in primary aluminum was confirmed in a recent report, which quoted an official from the State Administration for Industry and Commerce (SAFIC) that "No foreign investment projects in the steel, cement or electrolysed aluminum sectors have been approved since 2005".²⁰³

The CBSA has several reports on the impact of the measures taken from 2003 to 2005, indicating that during these years 28 aluminum smelters that used the Soderberg method were closed (with a total capacity 300,000 mt), and a total of 43 smelters were closed by the end of 2005. "These smelters were forced to close because of a shortage of alumina or electricity, or both". ²⁰⁴ Under GOC trade policy at the time, only Chalco, China Minmetals Nonferrous Metals Co (Minmetals) and several large smelters were allowed to import alumina directly. The government of the PRC prohibited domestic aluminum smelters with annual production capacity lower than 100,000 mt from directly importing alumina into China. ²⁰⁵ The remaining Chinese smelters had to purchase alumina from Chalco or Minmetals. "Owing to environmental concerns, Chalco and Minmetals preferred to supply alumina to larger and pre-baked smelters". ²⁰⁶ Other reports further indicated that smelters suspended construction or expansion plans to a significant degree.

In September 2005, the *China Daily* reported that the National Development and Reform Commission (NDRC) was releasing a national policy to reorganize the aluminum sector. The policy would encourage domestic aluminum producers to form bigger groups through mergers and acquisitions. The policy further required capital investment in all new aluminum projects to account for at least 35% of the total investment. The policy would curb aluminum exports and call on aluminum producers to focus on the domestic market. The report noted that in September 2005, the GOC had already banned tolling and processing trade of alumina. The restrictions on exports (processing trade ban and export taxes) came as most (65%) of the aluminum producers in China made losses on the year due to high prices of alumina and electricity. Forty small aluminum plants had already shut down on the year due to heavy losses. ²⁰² As previously noted, the GOC has denied that the *Industrial Development Policy for the Aluminum Industry* and the *Special Development Plan for the Aluminum Industry* are in force, and have therefore not provided the CBSA with copies of these documents.

2006

In March 2006, the GOC issued a circular entitled *Accelerating the Structure Adjustment of the Industries with Production Capacity Redundancy*. This circular covered the general approach and macro-economic control measures the GOC would take to curb further investment in the iron and steel, electrolytic aluminum, calcium carbide, ferroalloy, coke and automobile industries. The macro-economic measures that were noted as being useful to curb investment in these industries was for the GOC to strictly control access to land, financing, environmental protection approval and construction permits. The GOC would encourage mergers and acquisitions within these industries and eliminate inferior producers through bankruptcy. This circular also noted:

We should, based on the market orientation, utilize the restrictions on the market and resources to intensify the reversed transmission of the pressure for easing monetary condition so as to promote the gross balance and structural optimism. We should adjust and rationalize the prices of resource products so as to better exert the function of the price leverage in adjustment and thus to promote enterprises' independent innovation and structural adjustment.²⁰⁸

We should intensify the guidance for industrial policies, support credit policies, adjustment by the policies for finance and taxes so as to promote industrial restructuring. We should evaluate and strictly implement the relevant standards for market access regarding environmental protection, security, techniques, land and investment. We should improve and strictly implement the relevant laws and regulations and regulate the acts of both enterprises and the government.²⁰⁹

As to the relevant development planning of as well as industrial policies for such industries as iron & steel, electrolytic aluminum and automobiles, we should intensify the implementation of these policies.²¹⁰

Of particular note is that in the first paragraph referenced above, the GOC appears to be specifically noting that they intend to actively have an effect on the pricing of resource products such that it will achieve their structural adjustment objectives.

In order to achieve the objectives for industrial restructuring in the aluminum industry, in 2006 the GOC also published the Guidelines for Accelerating the Restructuring of the Aluminum Industry (the Guidelines). This document first noted the importance of the

aluminum industry as a "fundamental raw material for the development of the national economy", and then defined the aluminum industry in China as "comprised of three sectors, alumina, electrolytic aluminum and aluminum processing".²¹¹

The Guidelines also notes the accomplishments that have been met in restricting the aluminum industry since 2003, as follows:

Pursuant to the requirements of the state macro-control, the electrolytic aluminum sector has made a significant achievement by carrying out a file Guo Ban Fa [2003] NO. 103 enacted by the executive office of the State Council. 23 illegal electrolytic aluminum projects have been terminated, which involve investments valuing 1,730 million RMB. The total production capacity terminated or postponed projects will be 2,470,000 tons... Some electrolytic aluminum enterprises, which adopt backward techniques or which production cost is high, have been terminated. The terminated production capacity would be approximately 1,200,000 tons. ²¹²

The 2003 document referenced in the above quotation is Several Opinions On Curbing Illegal Construction and Irrational Investment in the Electrolytic Aluminum Industry, which was previously discussed in this report. This quotation demonstrates that the GOC's industrial policies are being followed and implemented, and are having a measurable impact on the aluminum industry in China.

The Guidelines next note the problems that have yet to be resolved within the Chinese aluminum industry. These problems include: 213

- A deficient level of government management and supervision over bauxite mining in China:
- The number of planned alumina projects that have not met all of their legal approvals or confirmed their required level of bauxite resources;
- Additional aluminum projects under construction despite industry capacity utilization at approximately 75%;
- Aluminum smelting capacity in excess of alumina supply in the domestic market, resulting in high cost of alumina and a high production cost for aluminum. The export volume of aluminum is too high; and
- Industrial concentration in aluminum processing is too low.
 Equipment, technology and techniques have fallen behind, and the variety of high-value added products is insufficient

The Guidelines then note the guiding principles and main objectives of the document as follows:

The guiding principles are comprised of focusing on transference of the growth pattern of aluminum industry, centering the structural adjustment, optimizing the industrial structure, innovating production technology and techniques, designing and planning in scientific way, considering situation as a whole as undertaking adjustment, reducing the production consumption, and protecting the environment. These principles should be exercised as a guide for macro-control.

It is necessary to keep the balance of electrolytic aluminum between supply and demand. It is important to support the good enterprises and eliminate the inferior through the market,

and to encourage the good enterprises to increase their production up to 75% out of entire production for the whole industry.²¹⁴

The Guidelines then note and describe eight specific policy measures to accelerate structural adjustment within the aluminum industry. Each of these eight measures are described in detail in the document. The eight policy measures are: ²¹⁵

- 1. Strengthen the direction to the industrial policy and industrial layout and plan
- 2. Enhance the concentration of the industry, and encourage to comprehensively use and save resources
- 3. Strengthen the coordination between credit policy and industrial policy, build upon exit mechanism under the legal system
- 4. Strengthen environmental law enforcement, and eliminate backward production capacity
- Rectify the bauxite exploitation order, and exploit the domestic resources reasonably
- 6. Encourage to exploit overseas resources, and widen the channels of using overseas alumina resources
- 7. Strictly control the export of electrolytic aluminum, improve the mechanisms of power price formation and power supply
- 8. Develop the aluminum smelting orderly, and develop highlyadded value aluminum process products

2007

In 2007, the GOC updated its catalogue guiding the direction of foreign investment in China. The Catalogue for the Guidance of Foreign Investment Industries (amended in 2007), contains the following updated provisions applicable to the aluminum and aluminum extrusions industries.²¹⁶

Encouraged:

- Production of high tech non-ferrous metallurgical materials:... special kind of large aluminum alloy materials, aluminum alloy precise model forge product...
- Production of lightened car, automobile and environment protecting new materials (bodywork aluminum board, aluminum magnesium alloy materials, automobile aluminum alloy frame and so on)
- Design, manufacturing and maintaining of metal product moulds (such as extrusion moulds of pipe, stick and shape of copper, aluminum, titanium, and zirconium)

Restricted:

 Non-ferrous metal refining of electrolytic aluminum, copper, lead, zinc and other non-ferrous metal

In early 2007, as electricity shortages eased and aluminum prices rose, investment in China in the aluminum smelting sector surged 124% in January and February compared with the

previous year. In April 2007, the NDRC issued a circular entitled: *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*. This circular noted the importance of GOC control over the aluminum industry and called on local governments to maintain their efforts at restraining the aluminum industry:

At present the adjustment of the industry structure is at the key stage of the adjustment reform. The government should deepen and strengthen the macro-control and adjustment on the industrial structure, avoid unhealthy growth of blindly investment and exploitation capacity. All governmental departments at various levels must carry-out strictly the measures for the macro-control and adjustment of industry structure on a long view of scientific development. ²¹²

The circular called on GOC officials at all levels to:

- regulate investing activities according to the industrial policy and the administrative measure on investment projects;
- strengthen the coordination between industry policy and policy of land utilization, policy of the environmental protection, and financing policy, and reinforce the market monitoring
- accelerate abolishing the backward production techniques and producing device, and preventing backward production projects from reappearing;
- strengthen environmental protection and avoid environmental pollution;
- regulate the system of exploitation and smelting of ore resource;
- 6. strengthen the monitoring and examination of safe production;
- 7. facilitate energy saving and consumption reduction, and accelerate the adjustment of industry structure; and
- 8. check up on current projects and future projects. 218

The circular further noted that the GOC would prevent self-baked cell facilities from resuming production. Companies attempting to operate such facilities would have their power and water supply forcefully disconnected.

On October 29, 2007, the NDRC promulgated the *Requirements of Entry Into the Aluminum Industry* (the Requirements), placing further restrictions on the aluminum industry in China and introducing new requirements for minimum capacity, location and energy consumption. These requirements are to be used by all GOC departments when conducting reviews for approving investment proposals within the industry in terms of verifying adequate investment, land supply, business registrations, environmental impact assessments, safety permits and credit financings. ²¹⁹ This notice contained the following specific provisions: ²²⁰

- New alumina projects using domestically produced bauxite must have an initial annual capacity in excess of 800,000 tons.
- Alumina projects that rely on imported bauxite must possess a minimum of 5-years worth of bauxite supply through a joint venture company, and this must be able to meet 60% of the bauxite required to meet production needs. These projects must be capable of producing 600,000 tons of alumina per annum.

- Any new electrolytic aluminum project must be approved by NDRC and that only environmental renovation projects, or projects replacing outdated production techniques, will be approved in accordance with the GOC's plan for the industry.
- New bauxite mining projects must have a minimum capacity output of 300,000 tons per annum, and a lifespan of at least 15 years.
- Proposed secondary aluminum projects require a minimum annual capacity of 50,000 tons, while existing projects must exceed 20,000 tons or face decommissioning. Approval of reconstruction or expansion projects must exceed 30,000 tons per annum.
- Aluminum processing projects must have a minimum annual capacity of 100,000 tons per annum (processing is defined as covering plate, strip, foil, and extrusions). Further, a singleproduct project must have a capacity of 50,000 tons for plate and strip, 30,000 tons for foil, and 50,000 tons for extrusions. [emphasis added]
- A minimum of 35% of the total investment in all mining, smelting and recycling projects must be made in cash.
- New Bayer-method alumina projects must limit energy consumption to less than 500 kgs of coal per tonne of alumina produced, all other alumina projects must consume no more than 800 kgs coal/ tonne of alumina.
- New or upgraded electrolytic aluminum projects are restricted to a maximum of 14,300 kilowatt hours for every tonne of aluminum produced.

Regarding the minimum annual capacity requirements for new extrusions facilities of 50,000 mt per year, it is important to put the magnitude this capacity requirement into perspective by considering that the estimated size of the Canadian market for aluminum extrusions was 200,000 mt in 2007.

The Requirements further note very specific energy consumption and raw material utilization amounts for bauxite mining, alumina production, aluminum production and aluminum processing. These provisions apply to both new and existing facilities. The following is a summary of the type of detail the Requirements contain with respect to aluminum processing projects:

Comprehensive energy consumption for new aluminum processing projects should be lower than 350 kg of coal/ton; comprehensive electrical consumption should be lower than 1150 kwh/ton of aluminum products produced. Existing facilities must adhere to energy consumption limits of 410 kg of coal/ton and comprehensive electrical consumption lower than 1250 kwh/ton of aluminum products produced. New facilities' consumption of metal must be lower than 1025kg/ton of aluminum products produced, including lower than 1015 kg/MT for aluminum extrusions; overall rate of finished products must be higher than 75% for new facilities and 72% for existing facilities; metal consumption for existing facilities must be lower than 1035 kg/ton of aluminum product produced, including 1020 kg/ton for aluminum extrusions production.²²¹ [emphasis added]

- This section is based on the complaint. CBSA Dumping Exhibit#
 non-confidential version of the complaint, pages 6-8.
- 2. Aluminum Extruders Council (www.aec.org).
- This section is based on the complaint. CBSA Dumping Exhibit# 2, non-confidential version of the complaint, pages 9-11.
- China is a prescribed country under Special Import Measures Regulation Section 17.1.
- CBSA Dumping Exhibit# 266. GOC Response to the Government's Request for Information (section 20).
- OECD, Development Assistance Committee List of Aid Recipients - As at 1 January 2006, online: http://www.oecd.org/dataoecd/23/34/37954893.pdf
- 7. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 169, page 40.
- 8. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 47, page 7.
- Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 47, page 9.
- Exhibit 567 (NC) Kam Kiu Case arguments, paragraph 8, page 3.
- Exhibit 567 (NC) Kam Kiu Case arguments paragraph 35, page 10.
- 12. Exhibit 572 (NC) Pingguo Case arguments paragraphs 11 to 22
- Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy) - paragraph 60, page 11.
- 14. Exhibit 566- Kam Kiu Case arguments paragraph 81.
- 15. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy) paragraph 54, page 10.
- 16. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy) paragraph 64, page 12.
- 17. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 39, page 7.
- Exhibit 564 (NC) Complainants Case Arguments, paragraphs 2-3, page 1.
- 19. Exhibit 564 (NC) Complainants Case Arguments, paragraph 3, page 1.
- 20. Exhibit 579 (NC) Complainants Reply Submissions (Dumping and Subsidy), paragraph 3, page 1.
- 21. Exhibit 579 (NC) Complainants Reply Submissions (Dumping and Subsidy, Paragraph 5, page 1.
- 22. Exhibit 579 (NC) Complainants Reply Submissions (Dumping and Subsidy), Paragraph 4, page 1.
- 23. Exhibit 42 (PRO) CBSA Complaint Analysis, August 13, 2008.
- 24. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraphs 79 80, pages 15 16.
- 25. Exhibit 569 (NC) Pan Asia Case Arguments, paragraph 25, page 8.
- 26. Exhibit 569 (NC) PanAsia Case Arguments, paragraph 25, page 8.
- Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 92, page 19.

- 28. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 136D, page 31
- 29. Exhibit 475 (NC) GOC Response to Supplemental Section 20 RFI #2, page 347.
- 30. Exhibit 475 (NC) GOC Response to Supplemental Section 20 RFI #2, page 351.
- 31. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 98, page 20
- 32. Exhibit 332 (NC) GOC Response to Supplemental Section 20 RFI #1, page 4.
- 33. Exhibit 475 (NC) GOC Response to Supplemental Section 20 RFI #2, page 3.
- Exhibit 444 (PRO) Memorandum to file: Section 20 Inquiry of the aluminum extrusions sector in China - Preliminary Determination.
- Exhibit 444 (PRO) Memorandum to file: Section 20 Inquiry of the aluminum extrusions sector in China - Preliminary Determination.
- 36. Exhibit 266 (NC) GOC Response to the Government's RFI (Section 20), page 836.
- Exhibit 475 (NC) GOC Response to Supplemental Section 20 RFI #2, page 6.
- Exhibit 565(NC) GOC Case Arguments (Dumping and Subsidy), paragraph 135, page 30.
- Exhibit 565(NC) GOC Case Arguments (Dumping and Subsidy), paragraphs 129 - 134, pages 28 - 29.
- Exhibit 565(NC) GOC Case Arguments (Dumping and Subsidy), paragraph 136C, page 31.
- Exhibit 578 (NC) Pingguo Reply Submissions, paragraphs 6 -8, page 2.
- 42. Exhibit 565(NC) GOC Case Arguments (Dumping and Subsidy), paragraphs 132 133, page 29.
- 43. Exhibit 565(NC) GOC Case Arguments (Dumping and Subsidy), paragraph 134, page 29.
- 44. Exhibit 578 (NC) Pingguo Reply Submissions paragraphs 3 -15, pages 1 - 4.
- 45. Exhibit 579 (NC) Complainants Reply Submissions, paragraph 13, page 6.
- Exhibit 572 (NC) Pingguo Case arguments, paragraph 29, page 10.
- 47. Exhibit 572 (NC) Pingguo Case arguments, paragraph 37, page 12.
- 48. Exhibit 567 (NC) Kam Kiu Case arguments by Kam Kiu, paragraph 179, page 49.
- Exhibit 567 (NC) Kam Kiu Case Arguments, paragraph 45, page 13.
- Exhibit 572 (NC) Pingguo Case Arguments, paragraph 39, page 13.
- 51. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 239, page 59.
- 52. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 114, pages 24 and 25.

- Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 123, page 27.
- 54. Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 126, page 28.
- 55. Exhibit 572 (NC) Pingguo Case Arguments, paragraph 51, page 18.
- Exhibit 572 (NC) Pingguo Case Arguments, paragraph 53, page 18.
- Exhibit 498 (NC) Pingguo Verification Exhibit 32,
 "Representations from PAA Regarding Domestic Sales".
- 58. Exhibit 498 (NC) Pingguo Verification Exhibit 32,
 "Representations from PAA Regarding Domestic Sales"
- "Representations from PAA Regarding Domestic Sales". 59. Exhibit 510 (NC) - Supplemental Information from Pingguo,
- December 24, 2008.
- Exhibit 188 (NC) Response to RFI by Jianmei, question A12, page 7.
- Exhibit 565 (NC) GOC Case Arguments (Dumping and Subsidy), paragraph 136A, page 30.
- 62. Exhibit 572 (NC) Case arguments from Pingguo, paragraphs 4 10, pages 1 3.
- Exhibit 572 (NC) Case arguments by Pingguo paragraph 42, page 14.
- 64. Exhibit 579 (NC) Reply Submissions (Dumping and Subsidy) from Complainants, paragraphs 8-21, pages 4 8.
- 65. This program was not identified at initiation but was found to have been used following the analysis of the cooperative exporter responses to the Subsidy RFI.
- 66. This program was not identified at initiation but was found to have been used following the analysis of the cooperative exporter responses to the Subsidy RFI.
- 67. Exhibit S478 Case Arguments (Dumping and Subsidy) Government of China, pages 39-45.
- 68. Exhibit S492 Reply Submissions (Dumping and Subsidy) -Canadian Complainants, paragraph 23.
- Exhibit s477 Case Arguments (Subsidy) Canadian Complainants, paragraphs, 2-3 and 15.
- Exhibit s477 Case Arguments (Subsidy) Canadian Complainants, paragraphs 7-8.
- 71. Exhibit s477 Case Arguments (Subsidy) Canadian Complainants, paragraphs 10-11, 13.
- 72. Exhibit S478 Case Arguments (Dumping and Subsidy) Government of China, pages 56-58.
- Exhibit S478 Case Arguments (Dumping and Subsidy) -Government of China, pages 37-38.
- 74. Exhibit 580 Reply arguments by Kam Kiu, paragraph 45.
- 75. Though technically all exporters had their amounts of subsidy calculated under a ministerial specification pursuant to subsection 30.4(2), exporters that were deemed 'cooperative' were treated differently than non-cooperative exporters under the methodology of the ministerial specification.
- 76. Exhibit S478 Case Arguments (Dumping and Subsidy) -Government of China, pages 51-56.
- 77. Exhibit S463 (NC).

- Exhibit S478 Case Arguments (Dumping and Subsidy) -Government of China, pages 48-51.
- Exhibit S476 Government of China consultations (Talking Points) with CBSA, pages 13-14.
- 80. Article XXXVI: 4 of the GATT 1947 and 1994.
- 81. ASCM Article 27, paragraphs 10(a) and (b) respectively.
- 82. Exhibit S478 Case Arguments (Dumping and Subsidy) Government of China, pages 33, 40, 42-43.
- 83. Exhibit S478 Case Arguments (Dumping and Subsidy) -Government of China, pages 39-45.
- 84. Exhibit S485 Case Arguments (Dumping and Subsidy) -Pingguo Asia Aluminum Co., Ltd., paragraph 63.
- Exhibit S485 Case Arguments (Dumping and Subsidy) -Pingguo Asia Aluminum Co., Ltd., paragraphs 58 to 60.
- 86. Exhibit S478 Case Arguments (Dumping and Subsidy) -Government of China, pages 58-60.
- 87. For example: Certain Copper Pipe Fittings and Carbon Steel and Stainless Steel Fasteners.
- 88. CBSA Subsidy Exhibits S474 and S449.
- 89. The subsidy is thus 'passed through' to the producer of the goods under investigation.
- 90. Exhibit 572 Case arguments by Pingguo, paragraphs 56 & 57.
- This is consistent with Article VI, paragraph 5 of the General Agreement on Tariffs and Trade 1994. Note that an error in the original wording of this footnote was corrected on April 15, 2009.
- CBSA Subsidy Exhibit# 206, Non-confidential Response to the Exporter's Subsidy RFI for Taishan City Kam Kui Afuminium Extrusions Co., Ltd., page 25.
- 93. Exhibit S43: Tab 4 Information on Zhengzhou, Investing in China: Incentives Offered By Local Governments.
- 94. Exhibit S43: Tab 5 Information on Yunnan, Notions
 Concerning Accelerating The Growth of the Non-State-Owend
 Economy, Yunnan Province, Article 6 paragraph 19.
- 95. Exhibit S48: Tab 6 Information on Brand Names in China, Notice on Issuing the Directive on Supporting the Development of Name Brands for Export, Section III.
- 96. Exhibit S206 Response to the Exporter's Request for Information (Subsidy) TaiShan City Kam Kiu Aluminium Extrusion Co., Ltd. (Non-Confidential).
- 97. Exhibit S206 Response to the Exporter's Request for Information (Subsidy) TaiShan City Kam Kiu Aluminium Extrusion Co., Ltd. (Non-Confidential).
- 98. Exhibit S43: Tab 5 Information on Yunnan, Notions
 Concerning Accelerating The Growth of the Non-State-Owend
 Economy, Yunnan Province, Article 6 paragraph 18.
- Exhibit s402 NC SEC Form 20-F Aluminum Corporation of China Limited (December 31, 2007).
- 100. SASAC Website:
- http://www.sasac.gov.cn/n2963340/n2963393/2965120.html.
- Exhibit s402 NC SEC Form 20-F Aluminum.
 Corporation of China Limited (December 31, 2007).

- 102. Exhibit s407 NC International Aluminum Institute Statistics for China's Primary Aluminum Production.
- Exhibit s402 NC SEC Form 20-F Aluminum Corporation of China Limited (December 31, 2007).
- 104. CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 24.
- CBSA Dumping Exhibit #364. China: Description of Selected Government Practices and Policies Affecting the Decision-Making in the Economy, USITC December 2007 [page xiv].
- Ibid, page 18. Strategic industries include armaments, power generation and distribution, petroleum and petrochemicals, telecommunication, coal, civil aviation and shipping.
- Ibid, page 18. Pillar industries include machinery and equipment, automobiles, information technology, construction, iron and steel, nonferrous metals, chemicals, mining resources exploration, and science and technology.
- 108. Ibid, pages 18 and 27.
- CBSA Dumping Exhibit #372. SASAC website, "Name List of Central SOEs", available at: http://www.sasac.gov.cn/n2963340/n2971121/n4956567/495 6583.html.
- CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2007. United States Securities and Exchange Commission, commission file number: 001 15264, page 38. ["Chalco SEC filing 2007"].
- CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 971.
- 112. The term electrolytic refers to the electrolysis process used to produce aluminum. Electrolytic aluminum is synonymous with the term primary aluminum.
- 113. Ibid, page 986.
- 114. CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, pages 2 and 3.
- 115. CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 6.
- CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 1166.
- CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 130.
- 118. Aluminum originates as an oxide called alumina. Deposits of bauxite ore are mined and refined into alumina one of the feedstocks for aluminum metal. Then alumina and electricity are combined in a cell with molten electrolyte called cryolite. Direct-current electricity is passed from a consumable carbon anode into the cryolite, splitting the aluminum oxide into molten aluminum metal and carbon-dioxide. (The Aluminum Association, www.aluminum.org).
- 119. Ibid, page 371.
- CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

- 121. CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Primary Aluminium Production", April 21, 2008. Online at: http://stats.worl-
- aluminum.org.iai/stats_new/formServer.asp?form=11.
- 122. CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "Consolidated IAI Primary Aluminium Production", April 21, 2008. Online at: http://stats.worl-
- aluminum.org.iai/stats_new/formServer.asp?form=16.
- 123. CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008. Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=13.
- 124. CBSA Dumping Exhibit #372. Xinhua. "China's Top Alumina Maker Reports 24% Rise In 2007 Revenue", January 14, 2008. Online at: http://english/mofcom.gov.cn.
- CBSA Dumping Exhibit #363. Aluminum Corporation of China, "Announcement of 2007 Annual Results", March 17, 2008.
- 126. Chalco SEC filing 2007, supra note 7, page 38.
- 127. CBSA Dumping Exhibit #266. GOC Response to the Government's RFI (Section 20), page 495.
- 128. Ibid, page 834.
- 129. CBSA Dumping Exhibit #372. SASAC website, "Name List of Central SOEs", available at: http://www.sasac.gov.cn/n2963340/n2971121/n4956567/495 6583.html.
- CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 222.
- 131. Ibid, page 30.
- 132. CBSA Dumping Exhibit #375.
- 133. Ibid.
- 134. CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 4.
- 135. CBSA Dumping Exhibit #475, GOC Response to Supplemental Section 20 RFI #2, page 1.
- 136. *Ibid*, page 8.
- CBSA Dumping Exhibit #372. People's Daily Online --http://english.people.com.cn.China to Reveal Aluminium
 Reforms, September 22, 2005.
- 138. CBSA Dumping Exhibit #552, Information submitted by Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, An Analysis of the Global Market for Extruded Aluminium, February 2006.
- 139. There are two main types of aluminium smelting technology Söderberg (or self-baked) and Pre-baked. The principal difference between the two is the type of anode used. Söderberg technology uses a continuous anode which is delivered to the cell (pot) in the form of a paste, and which bakes in the cell itself. Pre-bake technology uses multiple

anodes in each cell, which are pre-baked in a separate facility and attached to rods that suspend the anodes in the cell. The Pre-baked technology is newer, and is much more efficient in terms of energy use. Over 80% of the world's aluminum smelters employ the Pre-baked technology.

- 140. CBSA Dumping Exhibit #552, Information submitted by - Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, An Analysis of the Global Market for Extruded Aluminium, February 2006.
- CBSA Dumping Exhibit #372. Robin Bhar, Base Metals Analyst at Standard Bank London Itd. Commodities Now: "Aluminum - The China Syndrome", June 2003.
- 142. Ibid
- 143. Chalco SEC filing 2007, supra note 7, page 13.
- CBSA Dumping Exhibit #565. GOC case arguments, page 20.
- 145. CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2005. United States Securities and Exchange Commission, commission file number: 001 15264, pages 29 and 30. ["Chalco SEC filing 2005"].
- 146. CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008. Online at: http://stats.worl-
- aluminum.org.iai/stats_new/formServer.asp?form=13.
 147. CBSA Dumping Exhibit #475, GOC Response to
- Supplemental Section 20 RFI #2, page 249.
- 148. Ibid page 28.
- 149. CBSA Dumping Exhibit #62. China Strategies LLC, "China Renewable Energy and Sustainable Development Report", January 2008: Volume 1, page 8.
- 150. CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2006. United States Securities and Exchange Commission, commission file number: 001 15264, page 30. ["Chalco SEC filing 2006"].
- 151. Chalco SEC filing 2007, supra note 7, page 11.
- 152. CBSA Dumping Exhibit #266, GOC Response to the Section 20 RFI, page 817.
- 153. CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, page 420.
- 154. CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008. Online at: http://stats.worl
 - aluminum.org.iai/stats_new/formServer.asp?form=13.
- CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, page 354.
- CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, pages 47, 48, and 577.

- WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 160.
- CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 2007.
- 169. CBSA Dumping Exhibit #363. Aluminium Holdings Limited. Global Offering on Hong Kong Exchange, March 17, 2008, page 67. Note their source for the information is The 2006 Yearbook of Non-ferrous Metals Industry of China of CNIA.
- 170. Chalco SEC filing 2007, supra note 7, page 51.
- 171. Converted at the average yearly exchange rate.
- CBSA Dumping Exhibit #1. Aluminum Extrusions Complaint. Confidential attachment 6, page 149.
- 173. Chalco SEC filing 2007, supra note 7, page 51.
- 174. Source information for the chart is CBSA Dumping Exhibit #365, aluminum prices on different commodity exchanges.
- WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 75.
- 176. CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2006. United States Securities and Exchange Commission, commission file number: 001 15264, page 51. ["Chalco SEC filing 2006"].
- 177. Chalco SEC filing 2007, supra note 7, pages 52 and 53.
- CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
- CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
- CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
- CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, pages 987 to 1002.
- 182. CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 11.
- 183. CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
- 184. CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 354.
- 185. Ibid.
- CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
- 187. Ibid.
- 188. CBSA Dumping Exhibit #188, page 24.
 - CBSA Dumping Exhibit #209, page 17.
 - CBSA Dumping Exhibit #220, page 21.
 - CBSA Dumping Exhibit #236, page 24.
- 189. CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
- CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

```
CBSA Dumping Exhibit #266. GOC Response to Section
    20 RFI, page 737.
 192.
          Ibid, page 752.
 193.
          CBSA Dumping Exhibit #266. GOC Response to Section
    20 RFI, page 576-577.
194.
          CBSA Dumping Exhibit #372. Document of the Ministry
    of Science and Technology and the Ministry of Commerce.
    "Catalogue of Encouraged Hi-tech Products for Foreign
    Investment (2003)", Guo Ke Fa Ji Zi [2003] No. 179, June 2,
    2003. Online at:
    http://www.fdi.org.cn/pub/FDI_EN/Laws/InvestmentDirection/
    IndustrialGuidance/
    t20060620_51273.jsp.
195.
         Ibid.
196.
         Dumping Exhibit #266. GOC Response to Section 20
    RFI, page 567.
197.
         Ibid, page 585.
         CBSA Dumping Exhibit #266. GOC Response to Section
198.
    20 RFI, page734.
199.
         Ibid, page 525.
200.
         Ibid, page 531.
201.
         Ibid.
202.
         CBSA Dumping Exhibit #266. GOC Response to Section
   20 RFI. National Development and Reform Commission.
    "Directory Catalogue on Readjustment of Industrial Structure
   (Version 2005)", NDRC decree No. 40, December 2, 2005.
203.
         CBSA Dumping Exhibit #372. China Daily. "Foreign
   Investment Hits $2.11 trn in 30 Years", March 13, 2008,
   Online at:
   http://english.mofcom.gov.cn/aarticle/counselorsreport/europ
   ereport
   /200803/20080305427267.html.
204.
         CBSA Dumping Exhibit #61. Pui-Kwan Tse. "U.S.
   Geological Survey Minerals Yearbook - 2004, The Mineral
   Industry of China", page 8.3.
         Chalco SEC filing 2005, supra note 41, page 38.
205.
206.
         Chalco SEC filing 2005, supra note 41, page 32.
207.
         CBAS Dumping Exhibit #372. China Daily, "China to
   Reveal Aluminium Reforms", September 22, 2005. Online at:
   http://english.peopledaily.com.cn/200509/22/print20050922
   210123.html.
208.
         CBSA Dumping Exhibit #266. GOC Response to Section
   20 RFI, page 550.
209.
         Ibid.
210.
         Ibid, page 553.
211.
         Ibid, page 489.
212.
         Ibid, page 491.
213.
         Ibid, pages 491-493.
214.
         Ibid, pages 493-494.
215.
         Ibid, pages 495-500.
         CBSA Dumping Exhibit #444, page 31.
216.
         CBSA Dumping Exhibit #266. GOC Response to Section
217.
   20 RFI, page 834.
```

PUBLIC FILE

PUBLIC FILE

Non-confidential attachment C-1.2.7

218. Ibid, pages 834-838.

219. *Ibid*, page 73.

220. Ibid, pages 74-81.

221. CBSA Dumping Exhibit #62. China Strategies LLC, "China Renewable Energy and Sustainable Development Report", January 2008: Volume 1, page 11.

PUBLIC FILE

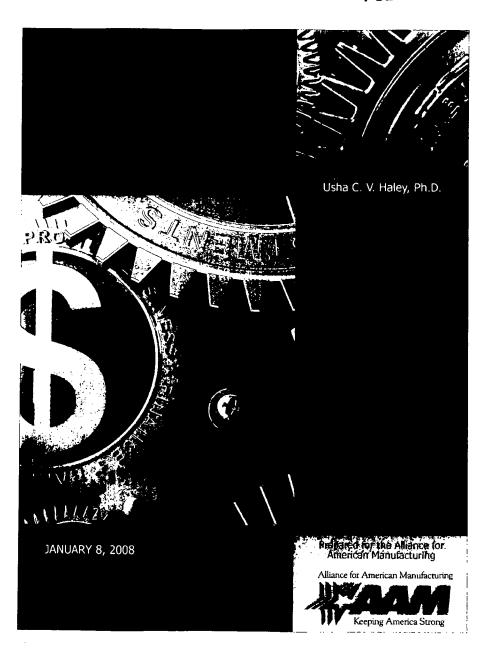


Table of Contents

LIS	T OF FIGURES	
LIS	T OF TABLES	3
EXE	ECUTIVE SUMMARY	4
INT	RODUCTION	5
ı.	CHARACTERISTICS OF THE STEEL INDUSTRY IN CHINA	8
	Fragmentation	9
	Supply and Demand	13
	Cost Structure	16
	Exports	18
II.	MEASURING ENERGY SUBSIDIES IN CHINA	19
	Data	20
	Definition and Measurement of Variables	24
m.	ENERGY SUBSIDIES TO THE CHINESE STEEL INDUSTRY	26
	Subsidies to Coal	29
	Subsidies to Electricity	31
	Subsidies to Natural Gas	38
IV.	CONCLUSIONS	41

PUBLIC FILE 92

LIST OF FIGU	DEC

Figure 1. Production of Crude and Finished Steel in China	
Figure 2. Growth of China's Energy Subsidies, Crude Steel Production	
Figure 3. Firm Share of Chinese Steel Production in 2004 and 2006	
Figure 4. Chinese Steel Production by Province in 2005 (millions of tons)	
Figure 5. Supply and Demand of Chinese Steel 2000 - 2010	1
Figure 6. Breakdowns of Steel Production Costs in China and India	
Figure 7. Energy Subsidies to Chinese Steel 2000 - 2007	
Figure 8. Subsidies to Thermal Coal in Chinese Steel Production 2000 - 2007	
Figure 9. Subsidies to Coking Coal in Chinese Steel Production 2000 - 2007	
Figure 10. Subsidies to Electricity in Chinese Steel Production 2000 - 2007	
Figure 11. Provincial Subsidies to Electricity in Chinese Steel Production 2000 - 2007	
Figure 12. Natural Gas Supply Chain and Pricing Mechanisms in China	3
Figure 13. Subsidies to Natural Gas in Chinese Steel Production 2000 - 2007	4

LIST OF TABLES

Table 1.	Some Subsidies to Electricity in China	36
	Relationships Between Chinese Energy Subsidies, Chinese Steel Exports Worldwide at	
	orts of Chinese Steel	

©Usha C. V. Haley

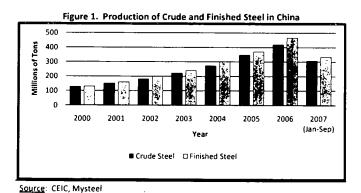
EXECUTIVE SUMMARY

- In 2007, China is the largest producer and consumer of steel in the world, with 40
 percent of the global market. Much has changed for China's steel industry in the last 5
 years. In 2005, China went from a net steel importer to a steel exporter. In 2006, China
 became the largest steel exporter in the world by volume, up from fifth largest in 2005.
 Iron and steel accounted for 28 percent of total industrial consumption in China.
- Energy subsidies fell in 2002 and 2003, after China joined the WTO. However, the
 subsidies surged in 2004 and continued to grow exponentially till today, along with
 China's rise as the largest producer and exporter of steel in the world, and with steel's
 designation as a strategic industry for China. From 2000 to 2006, total energy subsidies
 to steel grew by 1365 percent. In 2007, energy subsidies to Chinese steel are estimated
 at approximately S15.7 billion, showing a 3800 percent increase since 2000; similarly, in
 2007, Chinese production of steel and Chinese global steel exports (including to the
 USA) are estimated to grow by 289 percent and 1276 percent from 2000.
- The central government's policies of consolidating the steel industry have failed. The
 Chinese steel industry is becoming more fragmented, while the rest of the world is
 concentrating production. Every Chinese province and region wants its own steel mill,
 and local governments provide lavish benefits to their steel industries. The forecasted
 growth of Chinese steel supply in 2007 is 19.3 percent, compared to 25 percent and 26.4
 percent in 2005 and 2006, respectively.
- Total energy subsidies to Chinese steel from 2000 to mid-year 2007 reached \$27.11 billion. Energy subsidies to Chinese steel since 2002 (following China's WTO entry) through mid-year 2007, approximated \$25.07 billion. Energy subsidies included subsidies to thermal and coking coal, electricity and natural gas.
- Thermal-coal subsidies to Chinese steel from 2000 to mid-year 2007 reached \$11.16 billion. From 2002 (following China's WTO entry) through mid-year 2007, the subsidies approximated \$10.21 billion.
- Coking-coal subsidies to Chinese steel from 2000 to mid-year 2007 reached \$15.29 billion. From 2002 (following China's WTO entry) through mid-year 2007, the subsidies approximated \$13.88 billion.
- Electricity subsidies to Chinese steel from 2000 to mid-year 2007 reached \$916.39 million. From 2002 (following China's WTO entry) through mid-year 2007, the subsidies approximated \$912.97 million.
- Natural-gas subsidies to Chinese steel industry from 2000 to mid-year 2007 reached \$54.12 million. From 2002 (following China's WTO entry) through mid-year 2007, the subsidies approximated \$66.75 million.
- Statistical analysis shows that energy subsidies have a very strong correlation with Chinese steel exports and US steel imports from China. Indeed, one can almost perfectly predict China's steel exports from its energy subsidies.

©Usha C. V. Haley

INTRODUCTION

In 2007, China is the largest producer as well as consumer of steel in the world, representing 40 percent of the global market. Much has changed for China's steel industry in the last 5 years. In 2003, China imported 43.2 million tons of semi-finished and finished steel products, or about 13 percent of the global steel trade flow. In late 2005, China went from a net steel importer to a steel exporter. In 2006, China became the largest steel exporter in the world by volume, up from fifth largest in 2005. In 2006, China claimed 34 percent of the global steel production of 1.24 billion tons, displaying a six year Compounded Annual Growth Rate (CAGR) of 23 percent and enormous ramping up of domestic supply¹. In the first 9 months of 2007, China produced 308 million tons of crude steel and 337 million tons of finished steel. Figure 1 shows the growth in Chinese production of crude and finished steel.



The Chinese steel industry as it exists today stems from government intervention, oversight and subsidies. Previous reports have documented the off-the-book and on-the book

¹ US Department of Commerce, ISI Analytics

subsidies that permeate Chinese industry, including steel². This report concentrates on energy subsidies to the Chinese steel industry from 2000 to 2007. Drawing on published research and public data sources, many from the Chinese government, the research shows that energy subsidies fell in 2002 and 2003, immediately after China joined the WTO; however, the subsidies surged in 2004 and have continued to grow exponentially since then, corresponding to China's rise as the largest producer and exporter of steel in the world.

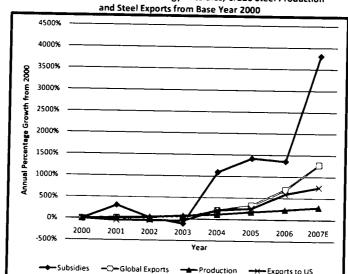


Figure 2. Growth of China's Energy Subsidies, Crude Steel Production and Steel Exports from Base Year 2000

<u>Sources</u>: Mysteel, Iron and Steel Statistics Bureau, Citigroup Global Markets, <u>Business Standard</u>, United States International Trade Commission, author's estimates

http://www.uscc.gov/hearings/2006hearings/written_testimonies/06_04_04wrts/06_04_04_halev.php; and, Wiley Rein LLP (2007) "Money for Metal: A Detailed Examination of Chinese Government Subsidies to its Steel Industry", July.

OUsha C. V. Haley

² See U. C. V. Haley (2005) Testimony on "Chinese Economic Planning and the Role of Subsidies," Hearing on China's WTO Compliance and Industrial Subsidies, the US-China Economic and Security Review Commission, Washington, DC, April 4. Available at

Figure 2 traces how energy subsidies to Chinese steel have continued to rise along with the industry's growth and exports. By 2006, total energy subsidies to steel had grown by 1365 percent over 2000. Energy subsidies to steel exceeded \$7.8 billion in the first half of 2007, growing 25 percent since 2006. In 2007, energy subsidies to Chinese steel are estimated at approximately \$15.7 billion, showing a 3800 percent increase since 2000; similarly, in 2007, Chinese production of steel and Chinese global steel exports (including to the USA) are estimated to grow by 289 percent and 1276 percent from 2000³. In 2007, Chinese steel exports to the USA alone are estimated to grow by 751 percent from 2000⁴. Growth of Chinese steel exports to the USA may have decelerated relative to the rest of the world because of the declining value of the dollar in 2007⁵.

The Chinese government has not acknowledged the presence of energy or any other subsidies to its domestic steel producers in its declaration to the World Trade Organization (WTO). The WTO requires annual notification from members on subsidies they maintain and encourages additional, needed information on subsidies. On April 13, 2006, China, a WTO member since 2001, submitted an overdue subsidies notification to the WTO in which it identified 78 subsidy programs from 2001 to 2004, but none to the steel industry. The WTO specifies that members should provide sufficient information "to enable other members to evaluate the trade effects and to understand the operation of notified subsidy programs."

³ Growth in China's global steel exports is derived from data from the Iron and Steel Statistics Bureau, Mysteel, and A. Mathur (2007), "Chinese Steel Exports Boom Despite Curbs", <u>Business Standard</u>, November 24; growth in China's steel production is derived from data from Citigroup Global Markets (2005), "Metals-Steel", August 30, and Mysteel.

 $^{^4}$ Growth in China's exports to the USA is derived from United States International Trade Commission data.

See remarks of Cheng Siwei, Vice Chairman of National People's Congress, and Xu Jian, Director of Central Bank, quoted in A. Lovasz and S. White (2007), "Dollar Hits Low against the Euro", <u>Bloomberg News</u>, November 7; and analysis by Credit Suisse (2007) "US Steel Sector. May US Steel Imports – China Imports Rise", June 26.

monitored subsidies, and extensive legislation in China supported the subsidies. Yet, surprisingly, no statistical data existed in China to assess the trade effects of any subsidy or even the total annual amounts budgeted to these subsidies. Foreign-Invested Enterprises (FIEs)/Foreign Equity Joint Ventures and Agriculture/Animal Husbandry appeared as the primary beneficiaries in China's notification. China's subsidy notification to the WTO ignored subsidies to the steel industry by:

- Concentrating on subsidies to FIEs to invest in key strategic Chinese sectors and ignoring
 most subsidies that reduce local steel producers' operating and production costs vis-àvis foreign producers⁶;
- Concentrating on subsidy programs supported by the central government and ignoring all programs offered by provincial and municipal governments which greatly benefit domestic steel producers in China; and,
- Ignoring the subsidy effects of maintaining a cheap currency, as well as subsidies in several sectors including commercial banks' lending policies or other financial preferences that infuse the steel industry?

1. CHARACTERISTICS OF THE STEEL INDUSTRY IN CHINA

In July 2005, the National Development and Reform Commission (NDRC) released the China Iron and Steel Industry Development Policy highlighting steel as a strategic and pillar

©Usha C. V. Haley 8

⁶ On November 29, 2007, China agreed to terminate a dozen subsidies and tax rebates. At the time of writing this report, details of this agreement are still pending. However, the agreement mostly affects exports by Chinese companies that have foreign investors or are joint ventures with foreign companies, not the steel industry. See S. R. Wesiman (2007), "China Agrees to Remove Certain Subsidies", New York Times, November 30.

² For a more complete discussion of China's subsidy notification to the WTO, see U. C. V. Haley (2007) Testimony in "Support for the Non-Market Economy Trade Remedy Act," Committee on Ways and Means, Subcommittee on Trade, 110th Congress, Washington, DC, March 15. Available at http://waysandmeans.house.gov/hearings.asp?formmode-view&id-5688

industry. The policy announced the central government's aim of consolidating and modernizing the industry, with the specific goal of "strategic reorganization". The policy also announced the creation by 2010 of two 30-million-ton annual capacity producers and several "internationally competitive" companies at the 10-million-ton level.

In October 2005, in a joint statement to the WTO Transitional Review Mechanism on China's accession, the United States, Canada and Mexico noted that two articles on the state's role in implementing policy could violate WTO anti-subsidy rules. Specifically, article 16 of the Chinese policy provided for various types of state support in developing and modernizing the industry. Also, article 18 "encouraged" the Chinese steel industry to use domestically produced equipment, and to import equipment only if domestically made equipment was insufficiently advanced, unavailable or in short supply.

The central government has also repeatedly announced its intention to control and to direct the steel industry. For example, in its Steel Policy of 2005, China banned foreign acquisition of large steel mills. The Eleventh Five-year plan for National Economic and Social Development of the People's Republic of China also reiterated the principle of using central control to eliminate the obsolete, to restructure, to upgrade industrial product and to lower consumption of raw materials⁹. Yet, in 2007, the Chinese steel industry is characterized by overcapacity and fragmentation and is the arena of political struggles between the central and the provincial governments.

Fragmentation

Beijing has learned that fewer producers can lead to stronger pricing power in the global markets, and its policies' objectives seem aimed in that direction. The Steel Policy of 2005

©Usha C. V. Haley

⁸ S. Cooney (2006), "Steel: Price and Policy Issues", CRS Report to Congress, August 31.

⁹ Outline of the Eleventh Five-Year Plan for National Economic and Social Development, available at http://en.ndrc.gov.cn/hot/W020060531535878205383.jpg

PUBLIC FILE

PUBLIC FILE 85

emphasized the government's proclaimed determination to avoid inefficient use of resources, including capital, energy, and raw materials (such as iron ore and coking coal), and to protect both intangible (such as environmental) and tangible assets. Raising the equity requirements for steel plants also highlighted the central government's efforts to curb excess capacity. These attempts at consolidation synchronize with Beijing's policy of building 150 State Owned Enterprises (SOEs) as global champions ^{10, 11}.

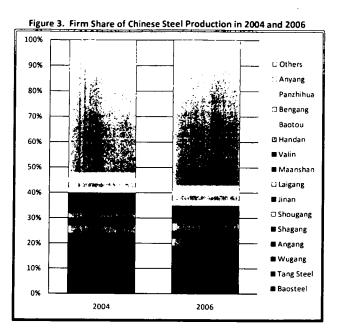
The central government 's policies of consolidating the steel industry have failed. As Figure 3 shows, the top 15 producers controlled 48 percent of domestic production in 2004, but their aggregate share dropped to 43 percent in 2006. These data indicate that the central government can strongly influence the major producers' expansion, yet production is shifting out of Beijing's radar and weakening the major producers' market power. The Chinese steel industry is becoming more fragmented, while the rest of the world is moving towards more concentrated production.

The major Chinese steel producers' production rankings bring the industry's fragmentation into sharper focus. Although China has the world's largest steel industry, in 2004 only one Chinese producer, Shanghai Baosteel, ranked among the world's ten largest producers. Only two Chinese producers, Shanghai Baosteel and Anshan (now Anben), produced more than 10 million tons in that year, while eight reached that level in 2005. In 2005, 25 Chinese producers ranked in the top 80 in the world. Yet, these producers accounted for less than 40 percent of total Chinese production¹².

¹⁰ See G.T. Haley (2007) Testimony on "State-Owned Enterprises: Vehicles of Industrial Policy Implementation", Hearing on the Extent of the Government's Control of China's Economy, and Implications for the United States, the US-China Economic and Security Review Commission, Washington, DC, May 24-25. Available at https://www.uscc.gov/hearings/2007hearings/hr07-05-24-25.php
¹¹ Beijing has chosen Baosteel, Beijing Shougang, Tangshan Iron and Steel, Anben Steel and Wugang as a

focus for industry consolidation activities, with limited success.

¹² ISI Analytics



Source: BNP Paribas

The structure of the Chinese steel industry also reflects the Chinese central and provincial governments' ongoing roles. The Chinese steel industry continues as primarily state-owned. Although minority positions in some of the larger producers are privately owned, the Chinese governments hold majority interests in every major Chinese steel producer. Every

province and every region seemingly wants its own steel mill, and local governments are providing lavish benefits to build or to keep their steel industries¹³.

Consequently, the Chinese steel industry is also fragmented geographically. While steel production is concentrated in the Northeast, no province accounts for more than 18 percent of China's annual production. Moreover, several provinces have annual production of less than five million metric tons per year. Figure 4 shows annual production of finished steel in China, by province, in 2005¹⁴.

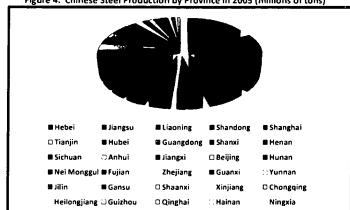


Figure 4. Chinese Steel Production by Province in 2005 (millions of tons)

Source: China Steel Industry Association, CEIC

In 2005, Hebei province ranked highest among China's provinces for steel production.

By September 2006, Hebei earned \$2.04 billion for the export of iron and steel products, up by

¹³ Directorate for Science Technology and Industry Steel Committee (2006), "Current Situation of the Chinese Steel Industry", OECD, Joint India/OECD/IISI Workshop, New Delhi, India, May 16-17, DSTI/SU/SC(2006)9.

¹⁴ China Steel Industry Association, CEIC

46.3 percent from the previous year. The number of profitable steel producers in Hebei province rose by 178 from the corresponding period in 2005 to 904¹⁵.

Supply and Demand

Despite its strategic and political importance, lack of government statistics has obfuscated a systematic understanding of the Chinese steel industry, including trends in domestic supply and demand ¹⁶. Steel demand in China grew at 19.9 percent per annum from 2000 to 200517. Over 50 percent of the steel demand in China comes from long products such as rebar and H-beam, which are primarily used in the property and construction sectors. Conversely, in most industrialized countries, over 50 percent of steel demand comes from flat products such as steel sheets and plates. Steel demand from construction has been slowing down because of the central government's efforts to cool down this overheated sector. The construction sector's steel consumption growth rate declined from 33 percent in 2003 to 9 percent in 2005 18. Overall, China's population growth rate has also decelerated to 0.6 percent per annum since 2000; the population growth rate is expected to remain stable at 0.6 percent per annum up to 2010. Based on the above assumptions, it can be estimated that steel demand will rise to 512 million tons and 592 million tons in 2007 and 2008, respectively, or demonstrate a 15.7 percent year on year increase. Applying a 15 percent growth rate, China could reach steel consumption per capita of 853 pounds and 981 pounds in 2007 and 2008, respectively. In contrast, the more industrialized countries consume between 550 and 1320 pounds of steel per capita.

¹⁵ ISI Analytics

¹⁶ See T. G. Rawski (2001) "What's Happening to China's GDP Statistics?", <u>China Economic Review</u>, 12, pp. 347-354; and U. C. V. Haley (2003) "Assessing and Controlling Business Risks in China", <u>Journal of International Management</u>, 9, pp. 237-252.

¹⁷ BNP Paribas

¹⁸ World Steel Dynamics Inc.

Although demand has been increasing in China, supply surges from China pose the biggest concern for the global steel industry. The NDRC's estimate of crude steel capacity increases in 2007 range from 10 percent to 15 percent year on year. However, independent research shows that total crude steel capacity in China could reach 499 million tons in 2007, up 19.3 percent year on year.

Extensive anecdotal evidence supports the provincial drive behind excess capacity in Chinese steel²⁰. Every steel mill wants to increase its size in order to survive. Aside from cost efficiencies and economies of scale, local governments support these expansions for their own benefit: large-scale steel operations can translate to higher employment and tax revenues for local authorities. As a result, while the NDRC's Steel Policy encourages consolidation by phasing out furnaces smaller than 300 cubic meters by 2007 (translating to crude steel capacity of 357,000 tons per annum) a different trend is emerging. Instead of mergers among the steel companies to form larger entities, each small mill is defending its position through organic growth by increasing output. The stated need for the central government's approval does not hinder creeping excess capacity from de-bottlenecking, and this additional capacity can amount to as much as 20 percent of current capacity. In 2007, some small steel producers have suggested that they are adding one to two million tons of crude steel which does not require approval from the central government. The NDRC has extended the deadline for the closure of small plants to 2010.

The larger steel companies such as Baosteel, Wugang and Angang have the central government's unquestioned support for their expansion; but, even the small companies have expressed confidence in their ability to obtain financing – through their connections or through

¹⁹ BNP Pariba

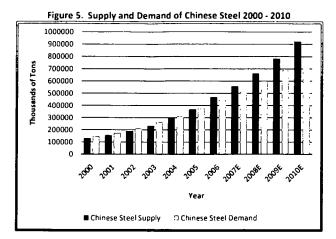
²⁰ See D. H. Rosen and T. Houser (2007) "China Energy. A Guide for the Perplexed", Peterson Institute for International Economics paper, May.

convertible bonds. For example, in December 2006, Panzhihua New Steel and Vanadium Co. Ltd., a Shenzhen-listed arm of Panzhihua Iron and Steel Group (Pangang), announced it would issue convertible bonds to raise RMB 3.2 billion (\$406.63 million) to buy assets from Pangang. Net proceeds from bond placements amounting to RMB 3.107 billion (\$394.82 million) were to be used to acquire Pangang's steel and mining assets, including a cold-rolling plant with a 1.3 million ton capacity of cold-rolled plates and galvanized plates a year, and the first phase of Baima iron ore mine, which was scheduled to start operation in December 2006 and to reach designed capacity by 2008²¹.

Consequently, rapid growth of steel production has outstripped consumption since the second quarter of 2004, when the central government announced the tightening of measures to control construction activities. The large gap between demand and supply, will lead to even more Chinese steel flooding the world markets. Taking the steel consumption per capita, and the central government's policy measures, and cross-checking these figures with other industrial data and economic indices, the forecasted growth of Chinese steel supply in 2007 is 19.3 percent, compared to 25.0 percent and 26.4 percent in 2005 and 2006, respectively. Figure 5 sketches supply and demand of Chinese steel from 2000 to 2006 and the projected increase from 2007 to 2010. China will be producing more steel than its domestic appetite can digest.

²¹ Interfax-China Metals Weekly, 2006

©Usha C. V. Haley



Source: BNP Paribas, author's estimates

Cost Structure

Eighty-seven percent of China's crude-steel capacity comes from blast furnaces (BOF), the highest percentage in the world. The process of making steel influences the choice of raw materials and thereby determines the steel producers' cost structures. The more the steelmakers integrate upstream, the more cost efficient their production. BOF steel production on average has lower costs per ton of crude steel, given its integration with iron ore. The raw materials for BOF steel production (iron ore, coking coal, and thermal coal) form the principal components of steel-manufacturing costs, and represent 50 percent to 70 percent of the cost of goods sold for Chinese steel producers.

The author's research shows that Chinese steel producers' costs are generally 20 to 25 percent lower than those of the American and European producers. Quality differentials

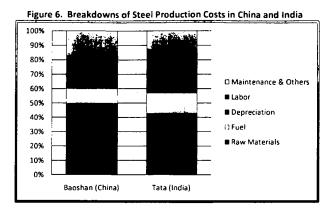
contribute to overall differences in costs as China has focused on low-end steel²². However, even if we assume the same quality, factors such as the production process and costs of raw materials and electricity/utilities reduce costs. As the analysis later elaborates, the costs of raw materials and electricity in Chinese steel factories have been significantly reduced through subsidies.

Transportation costs associated with raw materials also affect steel producers' costs, but they vary widely in China. Low-cost producers such as Baosteel are located at harbors, whereas others, such as Wugang, rely on inland transportation to get raw materials from the port to the mills, adding additional costs. Compared with steel mills located inland, plants located by harbors can save about RMB20 to 30 per ton on time and costs associated with inland transportation. Producers with their own fleets also have lower freight costs for imported raw materials such as coking coal and iron ore than those that depend on external ships. For instance, the prevailing rate to transport coking coal from Australia to China is US\$16 per ton; but, Baosteel pays only US\$6 per ton as shipping takes place on its own vessels ²³.

Figure 6 below compares production costs for steel in China and India, another large Asian emerging-market country. For the Chinese steel maker, raw materials form a greater proportion of the cost structure than for the Indian; but, labor and fuel each form a smaller proportion of the costs.

²² RNCOS

²³ BNP Paribas



Source: BNP Paribas, Yuanta Core Pacific Securities, author's estimates

Exports

Previous research has shown a relationship between China's exports and subsidies to SOEs²⁴. Other research has shown that a large portion of the subsidies have come from local and provincial governments to enhance regional exports²⁵.

The surge in exports outlined in Figure 2 has resulted from fragmentation in the steel industry, ramped up production, destocking of steel products and a significant slowing of demand growth²⁶. Lower prices for Chinese steel have also served as drivers for exports. The cost structure of the Chinese steel industry, and the US and European companies' strong pricing power have elevated steel prices in the two markets above steel prices in Asia, particularly in China. In 2006, Hot Rolled Coil (3.0mm) was priced at \$602 per ton and \$633 per ton in the USA

©Usha C. V. Haley

²⁴ See S. Girma, Y. Gong, H Gorg and Z Yu (2007) "Can Production Subsidies Foster Export Activity? Evidence from Chinese Firm-Level Data", Centre for Economic Policy Research Working Paper Series, No. 6052, January.

²⁵ See R. S. Eckaus (2006) "China's Exports, Subsidies to State Owned Enterprises and the WTO", <u>China Economic Review</u>, 17, pp. 1-13.

See Macquarie Research (2007) "Steel sector – China continues to Export Aggressively", January 12.

PUBLIC FILE

and Europe, respectively, compared to \$505 per ton in Asia and \$424 per ton in China (excluding value-added tax or VAT). With shipping freight at \$60 to \$70 per ton, Chinese steel can still sell at an 18.8 percent discount to domestic products in the USA, the largest steel importer 17.

Consequently, US imports of finished steel products from China more than doubled in 2006, increasing from 2.3 million tons in 2005 to 5.35 million tons in 2006. This rate of increase has continued in 2007. In the first half of 2007, US imports increased 23.8 percent over the same period in 2006. China's total finished steel exports surged to 33.8 million tons in the first half of 2007, up nearly 100 percent compared to the same period in 2006.

To summarize, under true market conditions, China would undoubtedly have had a large and diverse steel industry, but not one that has grown to account for a staggering 34 percent of total world steel production in three years. The Chinese steel industry in its current form is the creation of the Chinese government. It has benefited from massive direct and indirect subsidies, many of which violate the WTO's Subsidies Agreement, China's obligations under its WTO accession agreement, or both. As described earlier, the Chinese government has also adopted an official policy that requires it to continue to provide the steel industry with massive subsidies.

II. MEASURING ENERGY SUBSIDIES IN CHINA²⁹

The WTO has generally defined subsidies as unrequited transfers from governments to enterprises, including direct payments, tax concessions, contingent liabilities and the purchase and provision of goods and services³⁰. China defines subsidies more narrowly as unrequited

©Usha C. V. Haley

19

²⁷ Mysteel, BNP Paribas, CEIC, US Department of Commerce

²⁸ United States Department of Commerce, Bureau of Census

¹⁹ The author is indebted to George T. Haley for his help with data collection, analysis and interpretation.
³⁰ World Trade Organization (2006) "World Trade Report: Exploring the Links Between Subsidies, Trade and the WTO". Available

at http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report06_e.pdf

direct payments from governments to enterprises, including the returning of VAT³¹. This study uses the WTO definition.

Subsidies exist in all industries that the Chinese central and provincial governments consider economically or militarily strategic, including Steel, Energy, Resource Extraction, Computing, Software, R & D, Environmental Services and Conservation, and Autos. The Chinese central and provincial governments have subsidized the growth of steel and other strategic industries through at least 14 different subsidies ³². The Chinese governments have also historically supported inefficient firms, such as those in the steel sector, through subsidies ³³.

Data

Institutional reasons (including poor infrastructure to gather data) and strategic reasons (such as using data to create an informational black hole to confuse competitors) hinder the collection of high-quality data in China³⁴. Researchers and analysts have found energy subsidies particularly difficult to measure because of the problems with the quality of energy statistics as well as the quality of accounting data^{35,36}. In China's case, the country's size, its rapidly shifting quasi-market system and the tendency of provincial officials to lie to boost their political

³¹ S. Girma et al., op. cit.

³² U. C. V. Haley (2006), op. cit.

³³ See S. Claro (2006) "Supporting Inefficient Firms with Capital Subsidies: China and Germany in the 1990s", Journal of Comparative Economics, 34, pp. 377-401.

For a discussion of the informational black hole see G. T. Haley and C. T. Tan (1996), "The Black Hole of South-East Asia: Strategic Decision-Making in an Informational Void", <u>Management Decision</u>, 34, 9, pp. 37-48; and, G. T. Haley, C. T. Tan and U. C. V. Haley (1998) <u>New Asian Emperors: The Overseas Chinese their Strategies and Competitive Advantages</u>, Butterworth-Heinemann, Oxford (updated and to be republished in 2008 by John Wiley & Sons, Singapore and New Jersey).

¹⁵ Wiley Rein, op. cit., found no systematic evidence of energy subsidies to the Chinese steel industry, but presented anecdotal evidence of an electricity subsidy to Baosteel.

is See F. Birol and J. H. Keppler (1999) "Looking at Energy Subsidies: Getting the Prices Right", <u>Energy Prices and Taxes</u>, 3rd Quarter, for a listing of some of the measurement problems attending the gauging of energy subsidies in China.

fortunes magnify the problems of data quality³⁷. Chinese central and provincial governments also covertly and overtly use many policy instruments to reduce industrial costs. For example, analysts from the International Energy Agency (IEA) noted major problems with energy statistics submitted by China, including the substantial discrepancy between coal supply and demand arising from poor data on stock changes. Consequently, the IEA started compiling its own statistics to estimate Chinese coal production based on demand-side statistics³⁸.

Lack of regular and rigorous surveys also clouds other official statistics on energy.

China's official statistics are riddled with inconsistencies. For example, the numbers reported on growth in both GDP and Fixed Investment, as well as between Investment and Savings are incompatible. Services are poorly covered in national-account measures and consumption of all kinds, including industrial consumption, is probably grossly underestimated 33

Accounting data in China are particularly opaque. Despite Beijing's avowed goal of adopting international accounting standards, certain activities, such as "related-party transactions", are not consistent with international standards, so officials and managers fudge. Under international accounting norms, managers should clearly disclose deals between companies with overlapping ownership. But, because overlapping ownership permeates China, and the government still owns majority shares in every large steel company ⁴⁰, detailing individual transactions would overwhelm financial reports. Consequently, "pure state-

©Usha C. V. Haley

³⁷ For a discussion of problems surrounding data collection in China and interpretation of official Chinese statistics see G. T. Haley, U. C. V. Haley, and C. T. Tan (2004) The Chinese Tao of Business: The Logic of Successful Business Strategy, John Wiley & Sons, Hoboken, NJ & Singapore.

Successful Business Strategy, John Wiley & Sons, Hoboken, NJ & Singapore.

14 International Energy Agency (2007) China and India Insights, World Energy Outlook, Insights Series, OECD, Paris.

³⁹ See <u>The Economist</u> (2002) "How Cooked are the Books?", March 14; and, <u>The Economist</u> (2006) "Dim Sums", November 2.

⁴⁰ See Wiley Rein (2007) op. cit.

controlled enterprises" have no disclosure requirements ⁴¹. For this study, many of the steel companies' annual reports did not reveal standard accounting data such as "Bad Debts" and did not define terms such as "Payables to The Government". Cash Inflows from some companies' operations exceeded the Sales reported on the Income statements with no clarification.

Given the monumental problems associated with getting valid and reliable data from China, this study used data from multiple reliable sources across China, the USA, Taiwan, India, and Australia including Chinese government agencies (such as the NDRC), US government agencies (such as the United States International Trade Commission), international agencies (such as the IEA), international investment houses (such as BNP Paribas), and industry associations (such as the American Iron and Steel Institute). Data were also obtained from individual Chinese companies. Data were cross-checked across at least two sources when possible, and when discrepancies arose, the most conservative data were used. Estimates were checked against accounting data provided by individual companies and interviews with managers. Ill-defined data were discarded. For example, the China Iron and Steel Association's (CISA's) Financial Assets Department has recorded subsidies to steel companies and disclosed in publicly-available accounting statements that subsidies to the industry are included in various industry-level calculations. However, the CISA's accounting figures were incompatible across variables. Inquires revealed that the Department officially defines only two terms that it publishes – "Pretax Profit" and "Recovery Rate of Payment". Third parties were not entitled to define the terms that the CISA published. Consequently, the data were not used in the analysis.

⁴¹ For a discussion of research on obtaining valid information in Asia see <u>The Economist</u> (2001) "From Bamboo to Bits and Bytes", April 7, p. 13; and, for a discussion of Chinese accounting see <u>The Economist</u> (2007) "Cultural Revolution", January 11.

In cases of murky data, analysts commonly adopt the price-gap approach to measure subsidies ⁴². According to the price-gap approach, subsidies to consumers lower end-user prices and result in higher consumption levels. End-user prices are compared to reference prices to measure the price gap. The reference price represents the efficient price that would prevail in a market undistorted by subsidies and corresponds to the opportunity cost of the last unit consumed. The reference price is usually taken as the border price adjusted for transport and distribution margins and any country-specific taxes in the case of traded goods or the long-run marginal cost of production in the case of goods that are not significantly traded. The approach is designed to capture the net effects of all the different policy instruments that affect a good's price ⁴³. The price gap can be represented as a dollar value of subsidy per unit of subsidized good or as a percentage of the reference price.

Several issues and assumptions shape the calculation of subsidies. The estimation of the reference price plays a key role in the calculation of the price gap and therefore in the size of the subsidy. Different reference prices can produce very different subsidy estimates. The choice of exchange rate used to compare domestic and international prices also assumes importance. The use of official exchange rates may give very different results from the use of purchasing power parities (PPP) as end-user prices can differ significantly across countries in non-traded goods⁴⁴. Multiple prices in one economy (as exists in China) can also affect the estimation of end-user prices. This study used official exchange rates for the years in question; the reference prices

⁴² World Bank (1997) "Expanding the Measure of Wealth: Indicators of Environmentally Sustainable Development", Environmentally Sustainable Development Studies and Monograph Series no.17, Washington, DC; and, International Energy Agency (1999) <u>Looking at Energy Subsidies: Getting the Prices Right</u>, World Energy Outlook, Insights Series, OECD, Paris

for a discussion of the problems surrounding using PPP to understand China's economy and prices see Ine-Economist (2007) "A Less Fiery Dragon?", November 29.

were industry-specified world prices for thermal coal, coking coal and natural gas as indicated by the international industry associations for steel.

Definition and Measurement of Variables

This study identifies and measures energy subsidies to the steel industry in China, specifically to coking coal, thermal coal, natural gas and electricity. The mathematical equations to calculate subsidies follow:

1. Thermal Coal Subsidies (Tcs):

2007

$$T_{cs} = \sum_{yr} ((WPT_{yr} - CPT_{yr}) KT_{yr}), \text{ where:}$$

T_{cs} = Total subsidies paid to Chinese steel industry for thermal coal

WPT_{vr} = World price of thermal coal in each year from 2000 to 2007

CPT_{yr} = Chinese price for thermal coal in each year from 2000 to 2007

KT_{yr} = Kiloton usage in the Chinese steel industry of thermal coal in each year from 2000 to 2007

2. Coking Coal Subsidies (Ca):

200

$$C_{cs} = \sum_{yr} ((WPC_{yr} - CPC_{yr}) KC_{yr}), \text{ where:}$$

Ccs = Total subsidies paid to Chinese steel industry for coking coal

WPC_{vr} = World price of coking coal in each year from 2000 to 2007

CPC_n = Chinese price for coking coal in each year from 2000 to 2007

 KC_{vr} = Kiloton usage in the Chinese steel industry of coking coal in each year from 2000 to 2007

PUBLIC FILE つり

25

3. Electricity Coal-Price Increase Subsidy (CPI,):

2007

$$CPI_s = \sum_{yr} (S_{yr}(EU_{yr} - SEU_{yr}))$$
, where:

CPI_s = Total benefits to Chinese steel industry for coal-price subsidy paid to electricitygeneration industry.

EU_v = Total electricity usage in each year from 2005 to 2007

SEU_{yr} = Percent of electricity usage by Chinese steel industry in each year from 2005 to 2007

S_v = Coal-price-increase subsidy rate in each year from 2005 to 2007

4. Provincial Electricity Subsidies (PEs):

2007

$$PE_s = \sum_{yr} (Skwh_{yr} (EU_{yr} \times SEU_{yr})), where:$$

PE_s = Total benefits to Chinese steel industry by provinces' electricity subsidies.

EU_{yr} = Total electricity usage of Chinese steel industry in each year from 2000 to 2007

SEU_{yr} = Percent of steel produced by Chinese steel industry in electricity-subsidizing provinces in each year from 2000 to 2007

Skwh_{vr} = Coal-price-increase subsidy rate in each year from 2000 to 2007

And SEU_v, is determined by:

200

$$SEU_{yr} = \sum_{yr} ((6((TS_{yr} - TSIP_{yr})/22) + TSIP_{yr})/TS_{yr}), where^{45}$$
:

TS = Total steel production in all 30 Chinese provinces producing steel

TSIP = Total steel production in 8 Chinese provinces producing steel identified as paying electricity subsidies

⁴⁵ Six provinces are paying electricity subsidies but have not been specifically identified by the NDRC; 22 steel-producing provinces have not been specifically identified as paying electricity subsidies by the NDRC.

[©]Usha C. V. Haley

5. Natural-Gas Usage Subsidies (NG,):

2007

 $NG_s = \sum_{v} \{ (WP_{vr} - CPvr) SG_{vr} \} \}, where:$

NG, = Total natural-gas subsidies paid to steel industry

WP_{vr} = World price of natural gas in year 2000 to 2007

CP_{vr} = Chinese price of natural gas in year 2000 to 2007

SG_{yr} = Natural-gas usage by Chinese steel industry in year 2000 to 2007

III. ENERGY SUBSIDIES TO THE CHINESE STEEL INDUSTRY

In 2007, China has become the world's second-largest consumer of energy. Industry accounts for over 70 percent of final energy consumption in China, while the residential, commercial and transportation sectors account for 10, 2, and 7 percent, respectively⁴⁶. In 2005, the iron and steel industry accounted for 28 percent of total industrial consumption and coal dominated the energy mix ⁴⁷.

As the preceding sub-section highlighted, despite its importance, researchers and analysts have difficulty deciphering China's energy consumption, and attendant effects on steel. The steel industry's energy consumption fluctuates constantly, and presents a fusion of governmental plans and market forces, formal regulation and seat-of-the-pant remedies, central intentions, and local interests. National security considerations or SOEs' habits of secrecy obscure many key metrics. While the NDRC, the country's top economic planning agency, sets price guidelines, the actual costs and subsidies vary across China since local regulators influence the prices. In a recent white paper, the Information Office of the State Council admitted that "China's energy market system is yet to be completed, as the energy pricing mechanism fails to

⁴⁶ CEIC

⁴⁷ International Energy Agency (2007) op. cit.

fully reflect the scarcity of resources, its supply and demand, and the environmental cost"⁴⁸.

Local influences on pricing, dual supply chains for steel companies and arrears can obfuscate assessments of what the steel companies pay for coal, electricity or natural gas.

In September 2007, a draft version of China's Energy Law included the suggestion that China establish a unified institution, such as a Ministry of Energy, to supervise the country's energy industry. Currently, multiple ministries and commissions govern China's energy industry, including the NDRC, the State Electricity Regulatory Commission (SERC), the Ministry of Land Resources (MLR) and the Ministry of Commerce (MOFCOM). The Energy Bureau, an NDRC bureau in charge of supervising the energy industry, has a full-time staff of only 100 people; in contrast, the USA's Energy Department has a staff of 110,000. Furthermore, companies such as the China National Petroleum Corporation (CNPC) and the China Petroleum and Chemical Corporation (Sinopec), both of which originally comprised one ministry before being converted to SOEs in the 1980s, still retain the same hierarchical rank as ministries in the government, putting them higher than the bureau that is charged with supervising them. The proposed institution would have a higher rank than these companies. However, experts have argued that the establishment of such a Ministry of Energy would involve the interests of too many parties, leading to potential bureaucratic conflict, and the plan would stall as similar plans have in the past^{\$1}.

This research shows that though some subsidies have fallen, total energy subsidies to steel have increased overall and most dramatically since 2004, corresponding to the sharp increase in exports. Figure 7 summarizes subsidies to thermal coal, coking coal, electricity and

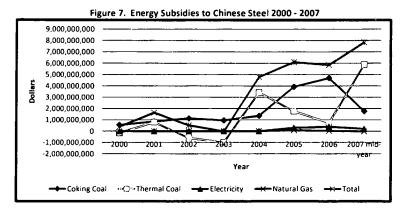
⁴⁸ Information Office of the State Council of the People's Republic of China (2007) "China's Energy Conditions and Policies", White Paper, December.

⁴⁹ Shanghai Securities News

⁵⁰ J. Kahn and J. Yardley (2007) "As China Roars, Pollution Reaches Deadly Extremes", New York Times, August 26.

⁵¹ Interfax China Energy Weekly, 2006

natural gas. Using the conservative data and methods outlined in Section III, this study determined that total energy subsidies to Chinese steel from 2000 to mid-year 2007 reached \$27.11 billion. Total energy subsidies in 2006 approximated \$5.84 billion, and from January through mid-year 2007 reached a recorded high of \$7.84 billion. Energy subsidies to Chinese steel since 2002 (immediately following China's WTO entry) through mid-year 2007, approximated \$25.07 billion.



<u>Source</u>: Derived from data provided by International Energy Agency, Steelonthenet, Deutsche Bank, The Standard (January 21, 2006), CEIC, China Statistical Yearbooks, Mysteel, Australian Bureau of Agricultural and Research Economics, Interfax China Energy Weekly, Dragonomics, National Development and Reform Commission

©Usha C. V. Haley

⁵² The International Energy Agency (2007) *op. cit.*, estimated that in 2006, total energy consumption subsidies in China (net of taxes) amounted to \$11 billion with coal as the most heavily subsidized product. This research synchronizes with those general results.

Subsidies to Coal

Since the 1980s, China has gradually liberalized coal pricing. As with many other

Chinese goods, a two-tiered price system emerged, the first set by the NDRC for plan-allocated quotas and the second set by the market for other demand. Over the last two decades, the amount of coal produced for other demand has grown. At the beginning of 2007, the Chinese government abolished the two-tier system and both contract and spot coal must now be negotiated at market rates; however, legacy behaviors linger among the steel companies 53.

China has the world's largest coal market, double the size of the USA's. While down from a post-reform high of 76 percent in 1990, coal still meets over two-thirds of China's energy needs. In 2006, China consumed 2.4 billion tons of coal, nearly twice the amount consumed just six years ago. Over 75 percent of the demand growth in recent years has come from the power sector, as electricity demand boomed and alternative fuel sources (hydro, natural gas, wind, and nuclear) for generating that electricity failed to keep pace. Of the 50 percent of coal not consumed by the power sector, the majority sells directly to industry for use in boilers, coking ovens and on-site ("inside the fence") power generation. Household coal consumption, which accounted for 20 percent of total demand in 1985, dropped to 4 percent as China's residents move into homes equipped with gas and electricity for cooking and heating.

In 2004, the iron and steel industry accounted for around 13 per cent of total coal consumption in China⁵⁴.

Figure 8 traces the subsidies towards thermal coal received by China's steel industry.

Using the data and methods outlined in Section III, this study determined that subsidies for thermal coal to the Chinese steel industry from 2000 to mid-year 2007 reached \$11.16 billion.

⁵³ For discussions of China's coal sector see J. Melanie, R. Curtotti, M. Saunders, K. Schneider, L. Fairhead and Y. Qian (2002) "Global Coal Markets", ABARE Research Report 02.2; and, J. Melanie and A. Austin (2006) "China's Coal Sector. Recent Developments and Implications for Prices", <u>Australian Commodities</u>, 13, 3, September, pp. 542-554.

Morld Energy Outlook, OECD, Paris.

Subsidies to thermal coal in 2006 fell to \$731.25 million, as coal prices tended to converge towards market prices. However, from January through mid-year 2007, subsidies to thermal coal rose to an all time high of \$5.88 billion as provincial subsidies may have kicked in to bolster steel production. Thermal-coal subsidies to Chinese steel since 2002 (immediately following China's WTO entry) through mid-year 2007, approximated \$10.21 billion.



Figure 8. Subsidies to Thermal Coal in Chinese Steel Production 2000 - 2007

Source: International Energy Agency, Steelonthenet, Deutsche Bank, The Standard (January 21, 2006),

Similarly, coke prices have continued to converge upwards with world prices since 2004, leading to increased provincial subsidies. The Chinese coke industry which supplies about 80 percent of its products to the domestic steel sector has traditionally suffered from fragmentation and overcapacity. At the end of 2005, China had 1480 coke producers and a total production capacity of 300 million tons. Demand stood at 220 million tons in 2005 and capacity exceeded demand by as much as 100 million tons. Yet, new coke facilities capable of producing 30 million tons are being planned across the country. The overcapacity has led in 2007 to

decreases in coke prices55. In the first half of 2007, recorded subsides to coke fell to \$1.8 billion, substantially down from the same time last year.

Using the data and methods outlined in Section III, this study determined that subsidies for coking coal to the Chinese steel industry from 2000 to mid-year 2007 reached \$15.29 billion. Subsidies to coking coal in 2006 reached an all-time high of \$4.70 billion and from January through mid-year 2007 fell to \$1.77 billion. Coking-coal subsidies to Chinese steel since 2002 (immediately following China's WTO entry) through mid-year 2007, approximated \$13.88 billion.

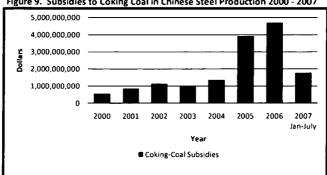


Figure 9. Subsidies to Coking Coal in Chinese Steel Production 2000 - 2007

Source: Steelonthenet, CEIC, International Energy Agency, China Statistical Yearbooks, Mysteel

Subsidies to Electricity

Like the coal used to generate it, industry consumes the majority of the country's electricity, with 10 percent going to iron and steel production. Households account for 11 percent of demand, down slightly from a high of 12.5 percent in 2001⁵⁶.

⁵⁵ RNCOS, National Bureau of Statistics

Electricity prices for Chinese industry appear high. However, conversations with industry analysts indicate that many steel companies do not bear the full costs indicated by national average figures from the National Statistics Bureau. Subsidies or "price adjustments" permeate the system, and some of these price adjustments occasionally become declassified. The NDRC sets electricity tariffs province-by province based on the recommendations of local pricing

the system, and some of these price adjustments occasionally become declassified. The NDRC sets electricity tariffs province-by province based on the recommendations of local pricing bureaus that answer to local officials. Local social and economic concerns often impede the NDRC's efforts to rationalize energy pricing and to reduce overall energy consumption. The Chinese steel industry's energy-intensive firms consume about 20 to 40 percent more energy per ton of output than their competitors in the OECD⁵⁷, and are therefore sensitive to electricity-price increases. The provinces that support their inefficient steel companies have resisted the NDRC's recent efforts to raise prices for steel and nonpayment has become an important issue.

The NDRC on April 16, 2007 required 14 provinces to halt immediately their preferential electricity-price policy for local, high-energy-consuming enterprises, in an attempt to curb these industries' development see. To restrain high-energy-consuming industries, China had previously introduced in September 2006 differentiated electricity prices for such industries as steel, electrolytic aluminum, ferroalloy, calcium carbide, caustic soda, cement, yellow phosphorus and zinc smelting. The provincial governments failed to implement the policies uniformly.

Consequently, the NDRC, together with the SERC ordered locals to rectify their misbehavior by the end of April 2007.

S6 CEIC

⁵⁷ Y. Wan (2006) "China's Energy Efficiency Policy in Industry", Expert Group Seminar with the OECD

Global Forum on Sustainable Development, Paris, March.

58 Asia Pulse (2007) "China Halts Preferential Pricing of 14 Provinces", April 17.

Yet, provinces continue to subsidize routinely the cost of electricity for steel and metal production. In 2006, when Beijing announced its nationwide campaign to raise electricity prices to energy-consuming industries, officials in the Ningxia province worked to evade the requirements. Fearing the impact on the local economy, the provincial government brokered a special deal for the Qingtongxia Aluminum Group which accounts for 20 percent of the province's industrial consumption and 10 percent of its GDP. Provincial officials removed the company from the national electricity grid and supplied electricity directly to it, exempting it from expensive fees. Consequently, Qingtongxia continued to get its electricity at the lowest price available⁵⁹.

Statistics show that some energy-intensive industries have recorded rapid surges in production and profits. Specifically, the steel industry logged year-on-year profit surges of 3.6 times in the first two months of 2007, with crude steel production up 23.1 per cent. In the same period, electricity-generation capacity went up 16.6 per cent, 5.4 percentage points faster than growth in 2006.

Electricity prices overtly remain tightly controlled by the NDRC's Price Bureau. Unlike the developed countries, China has no separately determined transmission tariffs. The NDRC determines both the price at which the generators can sell power to the grid and what the grid can charge different categories of users. The NDRC sets these prices province-by-province in consultation with local price bureaus and tries to accommodate provincial stakeholders' interests. Provincial officials lobby for end-user pricing low enough to keep their industries viable and citizens happy. The power generators lobby for on-grid tariffs high enough to cover their fuel costs and to ensure profits for future investments. And, the grid companies emphasize that they need the margins to finance a \$130 billion expansion of China's

⁵⁹ H. W. French (2007) "Beijing Seeks Energy Cuts; Localities Find Loopholes", <u>New York Times</u>, November 24.

transmission network between 2006 and 2010⁵⁰. Complex and opaque end-user pricing and transmission costs obfuscate the allocation of rents across the electricity-value chain. Because this study relied solely on published prices and the NDRC's disclosures on provinces that had subsidized their steel industries, the subsidies to electricity are probably underrepresented.

The demand surges over the past three years shrank coal inventories and doubled spot prices. In response, the NDRC enacted a price pass-through mechanism whereby electricity tariffs could be raised by 75 percent of coal-price increases. Yet, electricity prices have only risen by 20 percent on average since the beginning of 2004. The gap between the published national average on-grid price and end-user prices indicate that the grid should make huge profits. However, the reported transmission industry-wide data show meager 2006 profits of 4 percent, up from 1.6 percent in 2004. Further investigation has revealed that the grid can collect less from end-users such as steel companies (either because of reduced rates or nonpayment) than the published rate tables suggest⁶¹.

Reflecting the dominance of coal in China's electricity fuel mix, substantial growth in electricity output has increased demand for thermal coal. Coal consumption by the electricity sector increased at an average annual rate of around 21 per cent between 2002 and 2004 following an increase of 5.6 per cent in 2001. Many coal and power-generation companies have public listings, but considerable government control and ownership remains in both industries. The government is increasingly linking electricity prices with coal costs, and electricity consumption with the introduction of more transparent pricing mechanisms. For example, two-part tariff rates have been introduced to curb electricity consumption by energy-intensive industries and retail electricity charges have also risen recently to reflect higher coal prices 62.

⁶⁰ D. H. Rosen and T. Houser (2007) op. cit.

[°]¹ Ibia

⁶² Australian Bureau of Agricultural and Research Economics

In mid-2004, the price of electricity was increased on average by 0.08 cents per kWh. A further increase of 0.27 cents per kWh was introduced in the east, north, central and southern grids to pass on additional costs of transmission. In 2005, the State Council approved the implementation of a new pricing mechanism to link electricity charges to coal costs. An increase in the coal price is passed on to electricity consumers when the average coal price changes by more than 5 percent over six-months. If the change in the average coal price is less than 5 percent in six months, the percentage price change carries over to the next six months. However, as Table 1 reveals, the central government simultaneously offers a subsidy to the electricity-generation industry, in effect since 2005, to offset the higher electricity prices; this subsidy is then passed on to electricity's customers, including the steel industry 63. The fuelinput adjustment in 2005, and the attendant increase in subsidy, responded to a significant increase in thermal-coal prices in 2004⁶⁴. In June 2006, electricity charges were increased in response to higher coal costs, additional adjustments for new generation and transmission projects' higher construction costs, and relocation compensation and support for the development of renewable-energy projects. Simultaneously, a subsidy to industry was added to "adjust" for the increased prices.

Using the data and methods outlined in Section III, this study determined that total subsidies for electricity to the Chinese steel industry from 2000 to mid-year 2007 reached \$916.39 million. Subsidies to electricity in 2006 reached an all time high of \$385.44 million and from January through mid-year 2007 were about \$215.88 million. Electricity subsidies to Chinese steel since 2002 (immediately following China's WTO entry) through mid-year 2007, approximated \$912.97 million. Figure 10 sketches total recorded energy subsidies (provincial

⁶³ Interfax China Energy Report Weekly, 2006

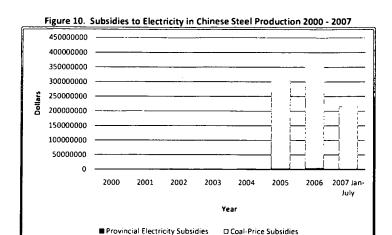
Institute of Energy Economics (2006) "China's Electric Power Industry and its Trends", Chun Chun Ni Electric Power, Nuclear Power and Coal Group, Industrial Research Unit, April.

and coal price) to China's steel industry. The coal-price subsidies (to compensate for the increased price of coal) that started in 2005 dwarf the recorded provincial subsidies; Figure 11 records these subsidies from 2000 to 2007. Because of the circumstances described in this subsection, most of the subsidies to electricity have probably not been uncovered.

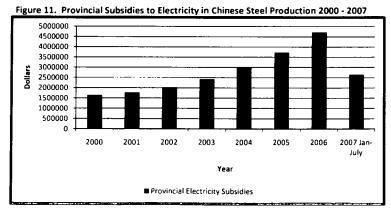
Table 1. Some Subsidies to Electricity in China

	Rise in Price	
	USc/kWh	
Average Regional Increases in Sales Prices		
Eastern China	0.22	
Central China	0.36	
Southern China	0.37	
Northeastern China	0.17	
Average Increase (all regions)	0.30	
Subsidies for State Government Projects		
Relocation compensation for new projects)	0.78	
Support for the development of renewable	0.0125	
energy projects		
Subsidies for Power Generation Projects		
Compensation for losses caused by the rise in	0.122	
coal cost and transport fees		
Compensation for installation of	0.03	
desulphurization facilities		
Subsidies for Grid Construction		
State power grid construction	0.026	
Rural power grid construction	0.007	
Subsidies for Local Government Projects		
Subsidies to small hydropower projects, gas	0.016	
fired projects, wind power projects and WEP		
projects		

<u>Source</u>: Derived from data provided by Australian Bureau of Agricultural and Research Economics, Interfax China Energy Weekly



<u>Source</u>: Australian Bureau of Agricultural and Research Economics, Dragonomics, China Statistical Yearbooks, Interfax China Metals Weekly



Source: Interfax China Metals Weekly, China Statistical Yearbooks, Dragonomics

©Usha C. V. Haley 37

Subsidies to Natural Gas

China's central government has tightly controlled natural-gas prices and attempted to keep gas prices for industry competitive with other developing countries. But, this approach failed to induce the development or importation of sufficient quantities of natural gas to meet burgeoning demand. Consequently, natural-gas prices have increased. Although Beijing sets natural-gas prices, they vary by province and sector. In most provinces, residential users pay the highest price, followed by chemical producers, power generators, and fertilizer manufacturers⁶⁵.

China has a long history of using natural gas. Yet, in 2000, because of underdeveloped gas markets and institutions, and the lack of an integrated, national gas-pipeline network, the share of gas in the fuel mix remained at a low 3.0 percent. The chemicals and fertilizer industries, and the oil and gas sector, served as primary consumers of natural gas. In 2000, only 0.5 percent of electricity generation in China was gas fired.

As the chart from the NDRC below reveals, the Chinese prices of natural gas are based on Cost Plus rather than Net-Back pricing where:

Cost-Plus Pricing = Well-head Regulated Price + Pipeline Mark-up Cost + Local Distribution Markup Cost = Sales Price to Consumer

and,

Net-Back Pricing = Market Value of Gas Based on Price of Consumer's Competing Fuel
Distributor Charges - Pipeline Transportation Charges = Net-Back Price at the Well Head⁶⁶

OUsha C. V. Haley

38

⁶⁵ For the role of natural gas see K. Schneider, Q. Ye, R. Curtotti, A. Ball, X. Liu, Z. Wu, S. Gao X. Jiang and Z. Su (2003) "Natural Gas in Eastern China: The Role of LNG", ABARE Research Report 03.1, Canberra, March.
⁶⁶ National Development and Reform Commission

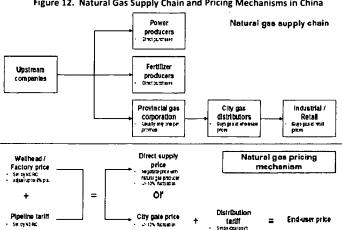


Figure 12. Natural Gas Supply Chain and Pricing Mechanisms in China

Source: National Development and Reform Commission through HSBC

On 22 December 2005, the NDRC announced that it had changed the natural-gas pricing system and would allow a natural-gas price hike of 8 percent per annum⁶⁷. Despite the government proposal of hiking prices by 8 percent a year, it could be the year 2016 before China's domestic-gas prices synchronize with international averages 68. Due to pricing controls on natural gas, China's well-head gas price trades 60 percent lower on average to international prices, providing a significant subsidy. The EBITDA ⁶⁹ margin on the domestic wellhead price is 16 percent against the 60 percent of major international benchmarks. These artificially low gas prices reduce the financial burden for end-users, including steel companies.

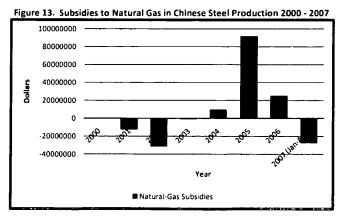
Despite the low usage of natural gas in the Chinese steel industry's cost structure, the industry benefited in 2005 from the artificially low prices. However, as natural gas prices have

⁶⁹ Earnings before Interest, Taxes, Depreciation and Amortization

⁶⁷ Andrew Yeh, "China Raises Price of Natural Gas", <u>Financial Times</u>, December 27, 2005

⁶⁸ HSBC

risen 8 percent per annum, many of these gains appear to have eroded. Also, a tight gas market creates an incentive for CNPC and Sinopec to supply residential customers at the expense of industry. Several companies have had difficulty ensuring reliable supply at the government-stipulated price. Using the data and methods outlined in Section III, this study determined that subsidies for natural gas to the Chinese steel industry from 2000 to mid-year 2007 reached \$54.12 million, but four of these years saw losses of subsidies. Subsidies to natural gas in 2005 reached an all time high of \$91.78 million and from January through 2007 mid-year, because of the supply problems, the loss of subsidies amounted to approximately \$27.51 million. Natural-gas subsidies to Chinese steel since 2002 (immediately following China's WTO entry) through mid-year 2007, approximated \$66.75 million.



Source: China Statistical Yearbooks, International Energy Agency, CEIC, Steelonthenet

IV. CONCLUSIONS

The research has shown that subsidies have generally declined since 2000, but then shot up sharply in 2004 and later, synchronizing with the buildup in steel capacity in China and the rise in steel exports from China. Preliminary regression analysis outlined in Table 2 shows that Chinese Energy Subsidies to Steel has a very strong correlation with both Chinese Steel Exports Worldwide as well as US Imports of Chinese Steel? Indeed, one can almost perfectly predict Chinese Steel Exports Worldwide from Chinese Energy Subsidies to Steel.

Table 2. Relationships Between Chinese Energy Subsidies, Chinese Steel Exports
Worldwide and US Imports of Chinese Steel

	Pearson Correlation Coefficient	Significance (1-tailed)	N
Chinese Steel Exports Worldwide with Chinese Energy Subsidies to Steel	.959	.000	8
US Imports of Chinese Steel with Chinese Energy Subsidies to Steel	.883	.002	8

<u>Source</u>: G. T. Haley and U. C. V. Haley (2007), "Understanding Subsidies to the Chinese Steel Industry from 2000 – 2007: Spotlight on Energy", Industry seminar, United States International Trade Commission, December 5.

The analysis 12 predicts that in any given year,

Chinese Exports of Steel Worldwide (in tons) = 3,192,511.1 + .005 (Chinese Energy Subsidies to Steel)⁷³

⁷⁰ In this analysis, the Pearson correlation coefficient measures the strength of the linear relationship between the variable Chinese Energy Subsidies to Steel and the two variables, Chinese Steel Exports Worldwide and US Imports of Chinese Steel. A value of 1 indicates that one can perfectly predict the value of one variable from another: the coefficients in the analysis are very close to 1, and highly significant, indicating an almost perfect relation between the variables.

⁷¹ G. T. Haley and U. C. V. Haley (2007), "Understanding Subsidies to the Chinese Steel Industry from 2000 – 2007: Spotlight on Energy", Industry seminar, United States International Trade Commission, December 5.
⁷² (Inited)

and,

US Imports of Steel from China (in \$) = 480,000,000 + .27 (Chinese Energy Subsidies to Steel)⁷⁴

The Chinese central government's policies appear to be aimed at consolidating the steel industry and curbing excess capacity. However, the policies have failed to reduce energy subsidies to steel and are unlikely to do so in the future if recent pronouncements from the steel companies' senior executives provide indicators. For example, on October 26, 2007, Chairman Li Xiawei of Hunan Valin Iron and Steel Group said China will keep exporting steel despite governmental efforts to rein in exports of low-end products 73. Hunan Valin plans to export between 2.2 million and 2.3 million tons of steel products in 2007, a rise of at least 24 percent from last year, Chairman Li said. Valin Group, China's tenth-largest producer, plans to raise its output by 9 percent to 10.8 million tons in 2007, and it expects revenue to rise 12 percent to about 45.5 billion yuan, Li said. "This year a few dozen million tons were supposed to be shut; if they haven't it creates more pressure for next year. So far, I haven't seen the policies have much effect." he said 76.

What one hand takes away – the other hand gives, and vice versa. The center and provinces differ on policies and goals⁷⁷. The central government's removal of subsidies often results in the provincial government's increasing them. For example, at a State Council conference held on Apr 27, 2007, NDRC's director, Ma Kai, revealed that 10 provinces and municipalities, i.e. Beijing, Hebei, Shanxi, Liaoning, Jiangsu, Zhejiang, Jiangxi, Shandong, Henan, and Xinjiang, had signed a first round of written commitments to shut down and to eliminate outdated iron-making capacity and obsolete steelmaking capacity of 39.86 and 41.67 million

⁷³ Ibid., significant at .000 level

⁷⁴ Ibid., significant at .004 level.

^{75 &}quot;Execs refuse to co-operate", Shanghai Securities News, October 18, 2007.

⁷⁶ Ibio

³⁷ See G. T. Haley, U. C. V. Haley and C. T. Tan (2004), op. cit. for an elaboration of the historical and strategic divergence between the Chinese central and provincial governments' goals and strategies.

tons respectively in the next five years; 22.55 and 24.23 million tons were to be closed down by the end of 2007. Five out of the above-mentioned steelmaking provinces, Hebei, Shanxi, Henan, Jiangsu and Shandong, are responsible for 70 percent of the nation's outdated iron-making capacity and 50 percent of obsolete steelmaking capacity. However, according to the NDRC, some enterprises reconstruct those would-be eliminated facilities and expand production scale to ward off the elimination; some only suspend production and can resume operation at any moment; some sell outdated equipment to other regions; and, some switch iron-making blast furnaces to the production of ductile iron pipes and ferroalloy, which are already severely oversupplied, thereby thwarting the agreements⁷⁸.

In conclusion, substantial energy subsidies pervade China's steel production. These subsidies have contributed directly to the ballooning of Chinese steel exports and have affected the global and US steel industries. The Chinese central government's policies on consolidating their steel industry appear to have had limited or no effect on the provinces' subsidies. Future policy initiatives from both the USA and China regarding China's steel exports and compliance with WTO standards may need to accommodate these provincial realities to enhance effectiveness.

© Usha C. V. Haley, December 26, 2007. The author may be reached through email <u>uhaley@asia-pacific.com</u> or tel/fax 1-212-208-2468

This research report is based on material compiled from data considered to be reliable at the time of writing. However, information and opinions expressed will be subject to change without notice. We do not accept any liability directly or indirectly that may arise from investment decision-making based on this report.

⁷⁸ Ibid.

Provisions of the State Council on the Encouragement of

Foreign InvestmentGuoFa [1986] No.950ctober 11,1986Anticle 1These Provisions are formulated Enterprises and Technologically Advanced Enterprises shall be exempt from payment to the State of all subsidies to sectors of large cities, shall be computed and charged according to the following standards: (1) Five to twenty RMB to them by such enterprises, the amount remitted shall be exempt from income tax. Anicle 8A fler the expiration of the expenditures incurred in production and operation and the foreign exchange needed for the remittance abroad of the tern working funds needed for production and distribution, as well as for other needed credit. Article 7When Foreign investors in Products Export Enterprises and Technologically Advanced Enterprises remit abroad profits distributed with Foreign Investment") within the territory of China. The State grants special preferences to the enterprises with staff and workers, except for the payment or allocation of funds for labor insurance, welfare expenses and housing Advanced Enterprises, after examination by the Bank of China, shall be given priority in receiving loans for shortsubsidies for Chinese staff and workers in accordance with the provisions of the State. Anicle 4 The site use fees for yuan per square meter per year in areas where the development fee and the site use fee are computed and charged advanced technology, to improve product quality, to expand in order to generate foreign exchange and to develop the national economy. Anicle 2 The State encourages foreign companies, enterprises and other economic entities or together; (2) Not more than three RMB yuan per square meter per year in site areas where the development fee is their products for that year, may pay enterprise income tax at one-half the rate of the present tax. Products Export products, and upgrading and replacing products in order to increase foreign exchange generated by exports or for communication facilities needed for their production and operation. These fees shall be computed and charged in Chinese-foreign contractual joint ventures and foreign-capital enterprises (hereinafter referred to as "Enterprises Products Export Enterprises whose value of export products in that year amounts to 70% or more of the value of enterprises possessing advanced technology supplied by foreign investors which are engaged in developing new mport substitution (hereinafter referred to as "Technologically Advanced Enterprises"). Anicle 3 Products Export foreign investment listed below (1) Production-type enterprises whose products are mainly export, which have a Products Export Enterprises and Technologically Advanced Enterprises, except for those located in busy urban profits carned by foreign investors (hereinafter referred to as" Products Export Enterprises") 2. Production-type themselves. Exemptions for specified periods of time from the fees provided in the foregoing provision may be foreign exchange surplus after deducting from their total annual foreign exchange revenues the annual foreign granted at the discretion of local people's governments. Anick 5 Products Export Enterprises and technologically Enterprises in the special economic zones and in the economic and technological development zones and other period for the reduction or exemption of enterprise income tax in accordance with the provisions of the State, to improve the investment environment, to better facilitate the absorption of foreign investment, to introduce individuals (hereinafter referred to as "Foreign Investors") to establish Chinese-foreign equity joint ventures, accordance with the standards for local enterprises. Annek 6Products Export Enterprises and Technologically Advanced Enterprises shall be given priority in obtaining water, electricity and transportation services and computed and charged on a one-time basis or areas which are developed by above-mentioned enterprises

PUBLIC FILE

accordance with international advanced scientific methods. Within the scope of their approved contracts, enterprises with foreign investment have the right by themselves to determine production and operation plans, to raise funds, to determine by themselves their organizational structure and personnel system, employ or dismiss senior management not be sold on the domestic market. If they are used in products to be sold domestically, then they are required to go operation reaches five years, the amount of enterprise income tax refunded shall be repaid. Aniele 11 Export products according to the governing stipulations. Article 14 Under the supervision of the foreign exchange control departments, personnel and workers in their locality. The unit to which such employed personnel belong shall provide its support Products Export Enterprises that have already paid enterprise income tax at a tax rate of 15% and that comply with of reduction or exemption of enterprise income tax in accordance with the provisions of the State, Technologically nvestment may arrange the export of their products by themselves or may also export by consignment to agents in the foregoing conditions, shall pay enterprise income tax at a rate of 10%. Arricle 4After the expiration of the period nalf. Article 10Foreign investors who reinvest the profits distributed to them by their enterprises in order to establish hay be made every six months in accordance with the annual export plan of the enterprise. Article 13 Machinery and provisions, shall be exempt from the consolidated industrial and commercial tax. Anick 12 Enterprises with foreign component parts and fittings (including imports restricted by the State), which enterprises with foreign investment and are exempt from the requirement for import licenses. The Customs shall exercise supervision and control, and enterprises with foreign investment may mutually adjust their foreign exchange surpluses and deficiencies among use funds, to determine by themselves the wage levels, the forms of wages and bonuses and the allowance system. ess than five years, after application to and approval by the tax authorities, shall be refunded the total amount of enterprise income tax already paid on the reinvested portion. If the investment is withdrawn before the period of accordance with the State provisions. For products that require export licences, an application for export licences need to import in order to earry out their export contracts, are not required to apply for examination and approval The imported materials and items mentioned above are restricted to be used by the enterprise itself only and may and shall permit their transfer. Staff and workers who violate the rules and regulations, and thereby cause certain bad consequences may, in accordance with the seriousness of the case, be given differing sanctions, up to that of or expand Products Export Enterprises or Technologically Advanced Enterprises for a period of operation of not shall inspect and release such imports on the strength of the enterprise contract or the import and export contract. Advanced Enterprises may extend for three years the payment of enterprise income tax at a rate reduced by one security services and may grant loans in Renminbi to Enterprises with Foreign Investment. Article 15 The people's of enterprises with foreign investment, except crude oil, oil products and other products subject to special State personnel, increase or dismiss staff and workers. They may recruit and employ technical personnel, managerial governments at all levels and relevant departments in charge shall guarantee the autonomy of Enterprises with through the import procedures retroactively in accordance with the provisions and the taxes shall be made up equipment, vehicles used in production, raw materials, fuel, bulk parts, spare parts and components, machine themselves. The Bank of China and other banks designated by the People's Bank of China may provide cash Foreign Investment and shall support enterprises with foreign investment in managing their enterprises in Enterprises with foreign investment may, in accordance with their production and operation requirements,

discharge. Enterprises with foreign investment that recruit, employ, dismiss or discharge staff and workers, shall file an Enterprise with Foreign Investment shall be examined and approved by the departments in charge under the State "Circular of the State Council Concerning Firmly Curbing the Indiscriminate Levy of Charges on Enterprises". The applicable to all Enterprises with Foreign Investment. These Provisions apply from the date of implementation to all from Hongkong. Macao, or Taiwan, matters shall be handled by reference to these Provisions. Article 21 The Ministry with foreign investment that require response and resolution. The agreement, contract and articles of association of relations and trade departments where such enterprises are located and the relevant departments in accordance with enterprises invested in and established by companies, enterprises and other economic organizations or individuals a report with the local labor and personnel department. Article 16All districts and departments must implement the export enterprise are unable to realize the goal of surplus in the foreign exchange balance that is stipulated in the enterprise contract, the taxes and fees which have already been reduced or exempted in the previous year shall be improve efficiency in handling matters and shall promptly examine and approve matters reported by enterprises Advanced Enterprises mentioned in these Provisions shall be confirmed jointly as such by the foreign economic administration. Enterprises with Foreign Investment that encounter unreasonable charges may refuse to pay and may also appeal to the local economic committees up to the State Economic Commission. Andle 17 The people's the enterprise contract, and certification shall be issued. If the actual results of the annual exports of a products those Enterprises with Foreign Investment that have obtained approval for establishment before the date of the of Foreign Economic Relations and Trade shall be responsible for interpreting these Provisions. Anixle 22 These Council. The examination and approval authority must, within three months from the date of receipt of all the people's governments at the provincial level shall formulate specific methods and strengthen supervision and governments at all levels and relevant departments in charge shall strengthen the coordination of their work, made up in the following year. Anicle 19 Except where these Provisions expressly provide that they are to be documents, decide to approve or not to approve. Anicle 18 Products Export Enterprises and Technologically applicable to Products Export Enterprises or Technologically Advanced Enterprises, other articles shall be implementation of these Provisions and conform to the preferential terms of these Provisions. Article 20For Provisions shall enter into force as of the date of promulgation.

The State Council 1986-10-11

(XVIII) Development zones shall be regulated and promoted to exert their role of carrier and platform in institutional innovation, scientic and technical leading, industrial agglomeration, land consolidation and other aspects. (NDRC, Ministry of Land and Resources, MOHURD, MOST and MOFCOM)

Qualified provincial-level development zones shall be supported to upgrade and qualified national-level development zones to expand and adjust the locations. (with MOFCOM and MOST taking the lead according to duties and Ministry of Land and Resources, MOHURD and NDRC participating)

Qualified provincial-level development zones shall be supported to expand and edjust locations. (NDRC, Ministry of Land and Resources, MOHURD, MOST and MOFCOM)

Supporting policies and measures shall be prepared to speed up the construction of border economic cooperation zones. (MOFCOM, MOF, Ministry of Land and Resources and MOHURD)

(XIX) Foreign exchange management of foreign investment enterprises shall be further improved and the procedures of settlement of foreign exchange capital for foreign investment enterprises shall be simplified. (SAFE)

Foreign investment enterprises operating business by law but failing to make contribution on time temporarity for tack of capital shall be allowed to protorig the deadline of contribution. (SAIC and MOFCOM)

(XX) Investment promotions half be stepped; up and strength of recommendation and introduction of absorbing foreign investment from key countries and regions and industries shall be enhanced to extensively publicize Chinese policies for foreign investment utilization. Initiatives shall be taken to participate in multilateral investment cooperation to combine "absorb foreign investment" and "go abroad" to boost the cross-border investment policy environment to be constantly improved. (MOFCOM and NDRC)

Several Opinions of the State Council on Further Utilizing Foreign Capital

Guo Fa [2010] No. 9

People's governments of provinces, autonomous areas and municipalities directly under the central government, ministries and commissions and departments directly under the State Council:

Utilizing foreign capital is the important content in China's basic state policy of opening up to the outside world. China has positively been attracting foreign investment and promoted industrial upgrading and technical progress since the opening up, with foreign-invested enterprises being the important component of the national economy. At present, Chinese advantage over utilizing foreign capital remains obvious. For the purpose of raising the quality and level of utilizing foreign capital and better giving full play to utilizing foreign capital in baosting scientific innovation, industrial upgrading and regional coordinated and balanced development, the following opinions are hereby put forward:

Optimize the structure of utilizing foreign capital

(1) The Catalogue for the Guidance of Foreign Investment Industries shall in accordance with the economic growth of China and combining the national industrial restructuring and revitalization plan be revised to expand the open areas and encourage foreign capital to high-end manufacturing, high and new technology industry, modern service industry, new energy and energy-saving and environmental protection industry and "High-polluting, high-energy-consuming and resource-dependent" and low-level and overcapacity expansion projects strictly restricted.

- (2) The policies and measures in the national industrial restructuring and revitalization plan shall be simultaneously subject to qualified foreign-invested enterprises.
- (3) The priority of land use shall be given to the national encourage foreign-invested intense land use projects, which shall be executed based on no less than 70% of the corresponding land as prescribed in the National Standards for the Minimum Transfer Prices of Land for Industrial Purposes after confirming the minimum price.
- (4) Foreign investment in hi-tech enterprises shall be encouraged and hi-tech enterprise recognition improved and perfected.
- (5) Domestic and foreign enterprises shall be encouraged to strengthened R&D cooperation and qualified foreign-invested enterprises supported to cooperate with domestic enterprises and research institutes to apply for the national scientific development projects and innovation capability construction projects and the recognition of the establishment of the national technical center.
- (6) Transnational companies shall be encouraged to set up such functional institutes as regional headquarters, R&D centers, purchase centers, finance management centers, settlement center and cost and profit calculation centers within China. No tariffs and value-added tax and consumption tax of import shall be levied on the products for scientific development use indeed needed by qualified foreign-funded R&D centers prior to December 31, 2010, and
- (7) Supporting policies shall be implemented and perfected to encourage foreign investment in the service outsourcing industry so as to bring in advanced technologies and management experience to raise the international competitiveness of China's service outsourcing industry.
- Guide foreign capital to central and west China and increase of investment
- (8) In accordance with the amendment of the Catalogue for the Guidance of Foreign Investment Industries, the Catalogue of Priority Industries for Foreign Investment in the Central-Western Region shall be supplemented to add the items of labor-intense projects and encourage foreign businessmen to develop the labor-intense industries qualified for environmental protection in the central and western region.
- (9) The preferential policies of enterprise income tax shall be continuously subject to qualified domestic and foreign-invested enterprises in the central and west China to maintain the good momentum of growth in attracting foreign investment in the region.
- (10) The shift of foreign-invested enterprises in the east to the central-western region shall be strengthened the support in policy opening and supporting technologies and funds, and simultaneously, administrative services perfected to provide facility in handling such procedures as industry and commerce, taxation, foreign exchange and social insurance and encourage and guide foreign-funded banks to set up branches and conduct business in the central and west China.
- (11) The east and the central-westera region shall be encouraged to be market-oriented to jointly construct development zones in the principle of complementing advantages each other, industrial combination and jointly sharing profits in the forms of mandatory management and investment cooperation.
- Promote diversification of utilizing foreign capital
- (12)Foreign capital shall be encouraged to participate in the restructuring and merger of domestic enterprises by means of equity participation and acquisition, A-share listed companies supported to bring in domestic and overseas strategic investors, regulations a made for foreign capital participating in domestic securities investment and acquisition and antitrust scrutiny executed according to law and the establishment of the system of foreign capital merger and acquisition security serutiny sped up.
- (13) Qualified enterprises shall be continuously supported to utilize overseas capital market to be listed in overseas market and make full use of two markets and two kinds of resources to constantly raise competitiveness in accordance with the national development strategy and self-development.
- (14) The pilot project in utilizing foreign capital to set up the minor enterprises guarantee companies shall be advanced and foreign businessmen encouraged to invest to set up investment enterprises, private equity and investment funds proactively utilized and exit mechanism perfected.
- (15) Qualified foreign-invested enterprises shall be bolstered to publicly issue stocks, corporate bonds and medium-term notes within China to widen financing channel and financial institutes guided to continuously strengthen support of credit loan for foreign-invested enterprises. The scale of overseas subjects issuing Renminbi within China shall be steadily expanded.

Deepen the reform of the foreign investment management system

- (16)The projects of encouragement and permission in the Catalogue for the Guidance of Foreign Investment Industries with the total investment (inclusive of increase of capital) below USD300m shall be approved by local governments except those approved by relevant departments under the State Council as prescribed in the Catalogue of Investment Projects Approved by the Government. Relevant departments under the State Council may authorize the local government to approve their responsible items under the premise of strengthening supervision except that laws and regulations specifically provide the projects shall be approved by relevant department under the State Council. The establishment of foreign-invested enterprises in the service area (exclusive of finance and telecommunication service) shall be approved by local government according to relevant provisions.
- (17) Approval contents shall be adjusted and approval procedures shall be simplified to narrow the approval and check scale to the maximum and strengthen the transparency of approval. Full clearance of approval items related to foreign investment shall be made to shorten the time of approval, improve the approval mode, grodually conduct the format approval of contract and article of association of foreign-invested enterprises across the country on the basis of conducting pilot program and summing up experience and strongly promote online administrative licensing and regulate administrative acts.

Create a good investment environment

- (18)Development zone development shall be regulated and promoted to exert the carrier and platform role of development zones in institutional innovation, scientific leading, industrial cluster and land consolidation. Qualified provincial development zones shall be supported to upgrade and qualified national and provincial development zones supported to expand districts and adjust the locations of districts, with the policies and measures to speeding up the construction of border economic cooperation zones to formulate.
- (19) Foreign exchange management of foreign-invested enterprises shall be further perfected and the procedures of foreign exchange capital settlement for foreign-invested enterprises simplified. The foreign-invested enterprises operating by law but temporarily failing to make contribution on time for lack of capital shall be allowed to extend the deadline of contribution.
- (20) Investment promotion shall be intensified to strengthen the promotion and introduction to key countries, regions and industries to publicize Chinese policies of utilizing foreign capital and positively participate in multilateral investment cooperation to combine "absorb foreign capital" and "expand export" to boost the constant improvement of cross-border investment policy environment.

Relevant departments under the State Council and local people's governments at all levels shall reach an uniform consensus, adhere to the guideline of positively and effectively utilizing foreign capital, insist on self-independence, select foreign capital amid the best and boost the combination of "absorb foreign capital" and "bring in advancement" to constantly raise the quality of utilizing foreign capital, and also sum up the experience of reform and opening up and combine the new situation and requirements to further enhance reform and innovation and raise the facilitation to create a more open and optimized environment of environment so as to fully raise the level of utilizing foreign capital.

The State Council April 6, 2010

Circular of the Ministry of Finance and the State Administration of Taxation concerning Lowering the Export Rebate Rates for Some CommoditiesCal

Shui[2007] No. 90Each department (bureau) of public finance, and state taxation bureau of each province, autonomous region, municipality directly under the Central Government and each city specifically designated in the state plantific export rebate rates for some commodities have been adjusted upon approval of the State Council. The related matters are hereby noticed as follows: Cancel the export tax rebates for the following commodities:(i) Endangered animals and plants, and their products;(ii) The mineral products such as sait, solvent naphtha, cement, liquefied propane, liquefied butane and liquefied petroleum gas;(ii) Fertilizer (not including urea and diammonium phosphate for which the tax rebates have been cancelled);(ii) Chemical product such as chlorine, dyestuffs (excluding fine chemical products);(is) Metal carbides and activated carbon products;(ii) Leather;(ii) Some wood boards and one-off wood products;(iii) Ordinary plain carbon welded pipe products (excluding petroleum casing pipes);(ii) Simple products processed from nonferrous metals such as non-alloyed aluminum bars;(iii) Segmented vessels and non-motor vessels. See Appendix 1 for the names and HS codes of the specific commodities. Lower the rates of export tax rebate for the following commodities:(ii) The rate of export tax

Focus: China adjusts foreign investment regime

14 May 2010

In brief: The State Council of the People's Republic of China has released Opinions on Further Improving the Utilization of Foreign Investment (No 9, 2010) which will have a significant impact on foreign investors. Partner Stuart Mengler and Senior Associate Frank Fan consider this release and its implications.

- Background
- Amendments to the current rules
 New measures to benefit foreign investors
- General comments

How does it affect you?

- Opinions on Further Improving the Utilization of Foreign Investment (Opinion No. 9), provides high-level direction to reforming the current regulatory system in China relating to foreign investment.
- . Opinion No. 9 indicates proposed revisions at the policy level as well as detailed implementation rules. These changes are likely to have a significant impact on the current and future operations of foreign investors in China.
- Dplnion No. 9 is likely be followed by a new wave of regulatory system reforms.

Background

On 13 April 2010, the State Council of China published Opinion No. 9, which sets out an adjusted framework for foreign investment in China, and should be seen as a three to five-year medium-term quideline to attract foreign investment into areas and industry sectors which facilitate the Chinese Government's development requirements. Opinion No. 9 also provides proposals to streamline central and local government regulatory systems in order to improve the efficiency of the approval procedure for foreign investment.

Return to top

Amendments to the current rules

Opinion No. 9 sets out a target to reform the current implementing rules and guidance in connection with foreign investment in China. Guidance and regulatory rules that will be amended include:

Revising the Foreign Investment Industrial Guidance Catalogue

The main purpose of amending the Foreign Investment Industrial Guidance Catalogue (the Foreign Investment Catalogue), as stated in Opinion No. 9, is to identify areas to be opened up further to foreign investors, provide direction to foreign investment into areas that are encouraged by the Government – such as new technology, new energy and projects related to environmental protection – and at the same time set out areas where foreign Investments are more tightly restricted, such as projects that are 'high-polluting, high-energy-consuming and resource-dependent'.

Revising Catalogue of Priority Industries for Foreign Investment in Central and Western China

The latest amended version of the Catalogue of Priority Industries for Foreign Investment in Central and Western China (the Central and Western Catalogue) was promulgated on 1 January 2009. The Central and Western Catalogue sets out specific industries in the central and western areas of China that want to attract investment by foreign investors. Such investors may enjoy favourable treatment in those locations. Labour-intensive projects may also be added into the Central and Western Catalogue in the future. Opinion No. 9 further confirms that income tax preferential treatment of qualified foreign invested enterprises (FIEs) in the western areas of China will continue after 20101.

Reforming the determination procedure for new and high tech FIEs

The current Administrative Measures for Determination of High and New Tech Enterprises was released by the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation in 2008. These measures provide a guideline for determining new and high technology enterprises (including FIEs) by the designated government departments. New and high technology FIEs, designated as priority industries, will enjoy a reduced income tax treatment of 15 per cent. Reform of the determination procedure for determining whether an FIE is a new and high technology FIE is considered a way of attraction more foreign investment in these sectors.

Further opening of capital markets in China

Opinion No. 9 sets out a number of actions to be taken by the Government to further strengthen the opening of the Chinese financial and capital markets, such as supporting A-share listing of qualified FIEs, and improving the exit route mechanism for foreign private equity investments.

Return to top

New measures to benefit foreign investors

Although Opinion No. 9 is issued by the State Council representing the Central Government and represents general guidance for the policy of foreign investment utilisation, it also sets out a number of detailed measures to attract foreign investors, such as:

- The threshold for foreign investment projects that need Central Government approvals will be increased from US\$100 million to US\$300 million. Local government will be given more power to approve projects involving foreign investment, particularly in the service sector (excluding finance and telecom sectors), which will streamline the review process and improve investment afficiency. However, such allocation only applies to projects under the 'encouraged' or 'permitted' categories of the Foreign Investment Catalogue. The threshold for projects under the 'restricted' category will remain at US\$50 million, above which approval from the Central Government is required.
- National industrial adjustment and revitalisation plans (NARPs) will also apply to qualified FIEs. The
 Chinese Government has published a number of NARPs since 2009, in the wake of the global financial
 crists. These applied to the electronics and information, iron and steel, shipbuilding, automobile, non-ferrous
 metal, equipment manufacturing, textille, petrochemical industry, and to light industries. Under these
 NARPs, the Government provides detailed support measures and incentive plans, such as preferential tax
 treatment for relevant industries. It was reported recently that a new NARP, relating to new energy and
 resources, will be published soon.

- Incentive plans are provided for multinational companies to establish operational and management centres.
 In China, such as regional headquarters, R&D centres and financial management centres. Qualified foreign invested R&D centres will be entitled to an exemption on tariffs, import VAT and service tax for importing related scientific and development goods.
- Reduced land prices rates (70 per cent of the minimum price required by law) may also apply to foreign
 investment projects under the 'encouraged' category of the Foreign Investment Catalogue.
- Considering the downtum in the world economy, foreign investors that commit capital into FIEs in China, but experience temporary financial difficulties, are permitted to extend their schedule of capital contributions.
- . The procedure to settle the capital account funds for FIEs will be streamlined.

Return to top

General comments

Opinion No. 9 seeks to emphasise the overall position of the Chinese Government of wanting to attract and support foreign investment. However, it delivers a clear message that the investment direction has been altered from a somewhat generalist and broad approach to a more focused model that aims to support China's development requirements and benefit China's global competitiveness.

The publication of Opinion No. 9 should lead to a new wave of regulatory system reform in China. Updated rules and amendments will be published following Opinion No.9, and detailed implementing rules or guidelines will be released to reflect the directions provided, such as the revised Foreign Investment Catalogue and Central and Western Catalogue. Those reforms will significantly impact the current operations and future investment plans of foreign companies in China.

Usually, before the official publication of new or amended rules, the Government will solicit opinions from relevant industry representatives. Of particular note, the proposed areas to be opened for wholly foreign investment, as unofficially released by the Ministry of Commerce, may include manufacture of civil craft, educational and medical institutions3, etc. The revised Foreign investment Catalogue may be published in the next three to six months and will reflect those updates. Foreign investors who have an interest in those areas should take prior strategic action. Footnotes

- From 2001 to 2010, the income tax rate that applies to qualified FIEs Investing in western areas of China is 15 per cent compared with the typical rate of 25 per cent.
- 2. Approval by the National Development and Reform Commission and/or Ministry of Commerce, if applicable,
- 3. Currently, foreign investment in these areas is limited to joint venture arrangements.

For further information, please contact:

http://www.aar.com.au/pubs/asia/foasiamay10.htm



China's State Council Issues New Policies to Boost Foreign Investment in China

Fishering 1, 2011 - To UB & Co. Afterneys and Counselors

@ Firm's Website Published Articles 👺 i sej tak shkangoj ga rido 25 680 Pako. 🗸 ji na Guanakalasa

Several Opinions on Further Improving the Work of Utilizing Poreign Investment (the "Opinions") were Attorneys & Counselors

www.ub-co.com

UB & CO

The promulgation of the Opinions aim at improving the quality and standard of use of foreign investment, streamilining the foreign investment regulatory system and encouraging the further development of foreign investment in China.

The Opinions will most likely influence the enactment of new laws and regulations in the following months.

The Opinions mainly include the following contents:

- Foreign hurstanne Intertial Sordane Latalique 1. To optimize the use of foreign investment:
- a. The Catalog of the Guidance of Foreign Investment Industries (the "Catalog") will be amended, in order to encourage foreign investment in high-end manufacturing, new high-tech industry, modern services industry, new energy and energy saying environmental protection industry.
- b. The qualified projects under the "encouraged" category will benefit from discounted and prices at 70% of the statutory minimum price according to the "Standard of the minimum price of land for industrial use".
- c. The foreign investment towards the high-tech companies will be encouraged continuously and the Identification of the High-tech companies will be improved.
- d. Multinational companies will be encouraged to establish regional headquarters, R&D centers, procurement centers, finance management centers and accounting centers, and other functional institutes in China.

Facilities necessary for R&D of qualified foreign R&D centers shall be exempted from custom duties and value-added tax as well as consumption tax at the time of Importation before December 31st, 2010.

- 2. To guide the foreign investment to central and western regions:
- a. Labor-intensive projects category will be increased in "The Catalog of the Advantage Industries of Foreign Investment in Central and Western Regions", Foreign investors will be encouraged to invest labor-intensive Industries which shall meet the requirement of environment protection in central and western regions.
- b. Preferential tax policies shall be offered to the qualified foreign and local companies in these regions.
- c. The government departments, including Administration of Industry and Commence, tax, foreign exchange, social security and other relevant authorities, will perfect the administration services, in order to facilitate the administrative procedures for the companies.

Foreign banks will be encouraged to establish branches or representative offices and operate their business in the central west regions.

3. To promote the Diversification of forms of foreign investment:

Foreign investors are encouraged to reform and merge with local companies by means of equity participation or MSA.

The listed companies in A stock market are encouraged to introduce foreign strategic investors. Foreign investors are encouraged to establish venture capital companies and private equity funds in China, and better exit regimes will be implemented. Qualified foreign invested companies are supported to list in the domestic stock market, issue corporate bonds and middle-term negotiable instruments in China.

The scope of offshore companies which could issue RNB honds in China will be expanded

- 4. To intensify the reform of foreign investment management system:
- a. Projects which total investment is less than US\$300 million under the "permitted" or "encouraged" categories will be approved by the local government, except the projects which shall be approved by State Council according to "The Catalog of Invested Projects Approved by the Government" (Previously, this threshold was US\$100 million).

The establishment of foreign investment companies which provide services (except financial and telecom services) will be approved by the local governments.

- b. The approval contents and procedures of foreign invested companies will be simplified, and the approval duration limk shall also be shortened.

The Opinions reflect that China will significantly improve its foreign investment environment and perfect the foreign investment supporting system. The main changes set forth in the Opinions are considered as policy goals rather than specific measures. Series of corresponding regulation amendments and new practical measures will be Implemented to follow up the promulgation of the Opinion. Therefore, the Opinion will surely lead to a new trend of reforms in China's foreign investment regulatory system.

Multinational companies and potential foreign investors will benefit from the effect of the Opinion and they should pay attention to the following changes with respect to the foreign investment in China. And the second of the second o and the state of the same of the con-

ABOUT THE AUTHOR: US & CO

UB & CO. Is an international law firm with presence in Greater China and Latin America that provides legal services to local and international clients, including muttinational Corporations, investment funds, social enterprises, environmental enterprises, NGOs, government organizations and high net worth families and individuals.

New State Council Opinion: Directions for Foreig Investment in China

by Michael Tan* and Cara Meng*

On April 6, 2010 the State Council issued the Several Opinions of the State Council on Further Improving Foreign Investment Utilization Work (Guofa No. 9, "Opinions"). The Opinions formulate political and strategic aims in relation to foreign investment in China and target at Improving the legal framework for foreign investment. It is believed that the political aims of the Opinions will be implemented in the near future. The related future implementing legislation will have impact on foreign investment in China. This newsletter summarises some major issues relevant to foreign invested enterprises ("FIE").

Intended Adjustment of Foreign Investment Industrial Guidance Catalogue

The Foreign Investment Industrial Guidence Cataloguewas introduced in China in 1995. It classifies foreign investment into "encouraged", "restricted" and "prohibited" investment projects. Foreign investment projects in industries not listed in the catalogue are "permitted" projects. Since its creation, the catalogue was updated every two or three years. The amendments reflected the policy changes in relation to foreign investment over the years. The latest revision took effect in 2007.

According to the Opinions, the Foreign Investment Industrial Guidance Catalogue shall be amended again to further openup and encourage foreign investment in the field of high-end manufacturing, high-tech, modern services, new energy, energy-saving and environmental protection. The Opinions also encourage multinational companies to set up regional headquarters, R&D centres, procurement centres, financing management centres, financial clearance centres, as well as costs and profits verification centres in China.

On the other hand, foreign Investment in high-energyconsumption, heavy-pollution, natural resources exhausting, low-end and over-capacity industries shall be subject to stricter control.

The Opinions further emphasises the "go West" policy. Foreign investment in labour intensive industries fulfilling environmental protection requirements shall be encouraged in Middle and Western China by revising the Advantageous Industrial

CHINA ALERTER JUNE 2010

New State Council Opinion:
Directions for Foreign
Investment in China
PDF Version
BlackBerry/Printversion
Taylor Wessing Homepage

Clean Tech Investments currently r
China into the
of the Chinese Government as we
foreign Technology Co
and Venture Capital im

Download the complete article here

Useful tips on how to optimise sourcing in

Read more about this here

The China Group regularly presents s on legal developments that may be i to your bi

Click here to view our Events page.

To view our China Group newsletter

Please click here

Questions or Contact com

Chinaalerter@taylorwessing.com

Click here for further information our China Group,

Catalogue for Foreign Investment in the Middle and Western Regions. Foreign banks are also encouraged to set up establishments and open business in these regions.

Tax Incentives

In 2008 China's enterprise Income tax system was reformed. China eliminated the previous preferential tax treatments for foreign investment production enterprises and gradually replaced them by a new generally applicable system of tax incentives for high and new technology enterprises, irrespective of the nationality of the investor. The Opinions reiterate these principles. But the Opinions do not contain any clear indication of whether the presently existing high thresholds for the recognition of high and new technology enterprises will be lowered in the future.

The Opinions also mention exemptions from import customs duties, VAT and consumption tax for products imported by foreign investment R&D centres for scientific research purposes. However these preferential tax treatments are already available under China's present tax regime.

Cheaper Supply of Land

Foreign investors have witnessed the increasingly tightened control over land supply in China. The central government attempted to curb the grant of land to all users by introduction of "tendering, auctioning and listing" procedures and by statutory minimum land grant prices. This increased the cost of land for all investors.

During the financial crists in 2009, the Ministry of Land and Resources loosened the control in order to boost economy and provided for a discount of 30% on the statutory minimum land grant price for industrial projects which intensively use land and fall into certain industries to be developed with priority. Against this background the Opinions now extend the scope of the 30% discount to foreign investment projects falling into the category of projects encouraged by the State.

More Room for M&A

The Opinions signalise that the Chinese government encourages M&A deals by foreign investors targeting at Chinese enterprises. The Opinions further support foreign investors to acquire a stake in companies listed on the Chinese domestic stock market as "strategic investors". But they do not indicate any policy preference for acquisition of State-owned enterprises.

Legislation regarding M&A activities of foreign investors (including the anti-trust review system) shall be further improved. In this respect the establishment of a "national security" review mechanism applicable to cross-border M&A deals shall be sped up. Merger control has recently been discovered as a powerful regulatory tool. Therefore foreign investors will have to be prepared for certain political obstacles to M&A deals in sensitive areas.

Financing and Capital Markets

FIEs in China have limited domestic financing sources. Except for bank loans, direct financing via the capital market has always been difficult and there were only a few successful precedents of FIEs going public. The Opinions support qualified FIEs to broaden their financing means by issuing shares, enterprise bonds and middle-term instruments on the domestic capital market. Bank loans to FIEs

shall also be further expanded.

The Opinions further address the feasibility of issuing RMB bonds in China by foreign entities. Such tool, if implemented, could create a significant breakthrough in opening the Chinese capital markets to foreign investors. On the other hand, listings of foreign companies on the Chinese stock market are not mentioned. The so-called "international board", according to some media reports, is expected to be set up by the end of 2010.

More foreign investment via venture capital and private equity is encouraged. This corresponds to the recent legislation permitting foreign companies to set up partnerships in China with simplified set-up procedures which only require business registration but no approval. New exit mechanisms required by such investment models are advocated.

The Opinions also mention an interesting possibility in relation to financing: liliquid foreign investors may protong deadlines for capital contributions to their FIEs if such FIEs have been operating legally. Administrative legislation has already turned this into an implementable procedure[1]. It manifests China's pragmatic approach in addressing the continuing global financial crisis.

Delegation of Approval Competencies

An issue of high practical significance is the further delegation of approval competency for foreign investments by the central government to the local level authorities:

- Encouraged and permitted projects up to USD 300 million (previously USD 100 million) are subject to
 local government approvals, unless the project touches upon sensitive areas requiring central level
 approval. This delegation of approval competency is already implemented in practice[2].
- National ministries are also encouraged to delegate their approval power to local level authorities, except for those reserved for central level approval as explicitly required by law.
- Foreign Investment projects in service industries shall generally be approved at local level, except for those engaged in the financial and telecommunications services.

In addition, the Opinions recommend simplification of approval activities of the governments in order to increase transparency. This includes the possibility of on-line approval procedures.

Outlook

The Opinions show a commitment of the State Council to further attract foreign investment in China, in particular in certain industry sectors. They reflect China's pursuit of foreign investment in the field of innovative technology and environmental protection. This is in line with the Chinese government's general policy turn to have a cleaner and more sustainable economic development. But they do not provide for new tax incentives which used to be the most attractive part of China's "open door" policy in the past.

Although some statements sound very promising, the Opinions are only an indication of China's policy in relation to foreign investment activities. Except for a few measures which are already implemented by new administrative regulations, the major part of the political aims formulated in the Opinions have still to be realised by way of legislation and must then also be implemented by the governmental authorities.

Foreign investors should observe legal developments in order to be prepared for coming changes.

[1] See Several Opinions on Making Full Use of the Administrative Function of Industry and Commerce to Provide Service to the Development of Foreign Investment Enterprises, Issued by the State Administration of Indust Commerce on May 7,

[2] See Notice on Carrying out Properly the Delegation of Foreign Investment Projects Approval Powenssued National Development and Reform Commission on May 4, 2010 which repeats the delegation of a competency.

*Dr. Michael Tan (Special Counsel, Taylor Wessing Shanghai).

Michael advises German and International companies on all legal aspects related to their business transactions in China. His experience includes advising on the establishment of foreign investment enterprises in various industries, liquidation of foreign investment enterprises, technology and software imports, real estate matters, intellectual property rights (in particular internet related aspects), international trade, as well as corporate governance issues. Michael has advised on several projects in the automotive, aviation and mining sectors and has extensive experience in the restructuring of (listed) companies limited by shares.

Michael studied law at the University of International Business and Economics in Beijing, China, where he also completed his LLB and LLM degrees in 1997 and 2000 respectively. In 1997, Michael was admitted to the Chinese bar. After practising in domestic law firms, he worked in the Beijing office of a major international law firm from 2000 to 2002. In 2002, he joined Taylor Wessing in the Shanghai office. From 2006, he has been appointed counsel.

Dissertation: "A Legal Review of the Current Technology Import Control Regime", in the 2005 2nd issue of International Business Research (in Chinese). Michael speaks Mandarin, Fujian dialect as well as English fluently.



**Cara Meng (Research Assistant, Taylor Wessing Shanghai)

Care specialized in foreign direct investment, general corporate law and China-related M&A. She advises foreign companies on all aspects of Chinese laws in relation to their strategy and business in China and projects in various areas.

Cara studied law at East China Normal University in Shanghai, China, where she completed her LLB and LLM degrees in 2006 and 2009 respectively. In 2007, Cara passed the judicial examination of China. Cara joined Taylor Wessing in 2010. Cara speaks fluent Mandarin and English.

*Since Cara is working for a foreign law firm, she is presently not permitted to simultaneously practice

General Office of the State Council Printed and Distributed the Circular Concerning the Plan for the Division of Labor of Departments on Implementing Several Opinions of the State Council on Futher Handling Well the Utilization of Foreign Investment

Guo Ban Han [2010] No. 128

Relevant departments of the State Council.

The Plan for the Division of Labor of Departments on Implementing Several Opinions of the State Council on Futher Handling Well the Utilization of Foreign investment (hereinafter referred to as the Plan for the Division of Labor), which has been approved by the State Council, is hereby printed and distributed to you, and please carry it out seriously.

Relevant departments shall earnestly carry out and implement the spirit of the Several Opinions of the State Council on Futher Handling Well the Utilization of Foreign Investment (Guo Fa (2010) No. 9), specify responsibilities, strengthen leadership, fulfil their own dulles and firmly implement the work, also further detail the work related to themselves as prescribed in the Plan for the Division of Labor and promptly formulate specific measures and organize the implementation as soon as possible. In case the same work is involved in many departments, the departments shall conduct close cooperation and the lead department shall strengthen coordination. The National Development and Reform Commission(NDRC) and the Ministry of Commerce (MOFCOM) shall submit the status of the annual completion of various works to the State Council together with related departments, and the General Office of the State Council will carry out inspection on the implementation of key works at an appropriate time.

General Office of the State Council
August 18, 2010

Plan for the Division of Labor of Departments on Implementing Several Opinions of the State Council on Futher Handling Well the Utilization of Foreign Investment

Article: Optimize the structure of foreign investment utilization

- (f) The Catalogue for the Guidance of Foreign investment industries shall be amended in accordance with the requirements for Chinese economic growth and combined with the state industrial restructuring and revitalization plan to expand the open fields and encourage foreign investment in high-end manufacturing, hi-tech industry, modern service industry and new energy and energy-saving and environmental protection industry, and place severe restrictions on "high-polluting, high-energy-consuming and resource-dependent" and low-level and overcapacity expansion projects.(NDRC and MOFCOM with the first being the lead department, the same below)
- (II) The policies and measures as prescribed in the the state industrial restructuring and revitetization plan shall be applied to qualified foreign-invested enterprises.(NDRC and the MIIT)
- (III) Priority shall be given to the foreign investment projects intensively using land encouraged by the state in land use, which shall be executed at 70% of the corresponding land with the ranking not lower than the land they occupy

- upon the determination of the minimum land transfer price as prescribed in the State Standard for the Minimum Price of Transfer of Land for Industry Use. (Ministry of Land and Resources)
- (IV) Foreign investment shall be encouraged in the hi-tech enterprises and the recognition on hi-tech enterprises shall be improved. (MOST, MOF and SAT together with such departments as NDRC, MOFCOM and MIIT)
- (V) Domestic and foreign enterprises shall be encouraged to enhance R&D cooperation and qualified foreign investment enterprises shall be supported to cooperate with domestic enterprises and research institutes to apply for the scientific development projects and innovation capacity building projects of the state. (NDRC, MOST and MOF)
 - And application shall be filed for the recognition of the establishment of the national-level technology center.(NDRC, MOST, MOF, GAC, and SAT)
- (VI) Transnationals shall be encouraged to set up such functional agencies as regional headquarters, R&D centers procurement centers, finance management centers, settlement centers and cost and profits accounting centers within China (MOFCOM, SAFE, CBRC, NDRC, MOF and SAIC)
 - Qualified scientific development products imported and indeed needed by foreign-funed R&D centers shall be exempt from import tariff and the added value tax and consumption tax in the import prior to December 31, 2010. (MOF, MOFCOM, GAC and SAT)
- (VII) Supporting policy shall be implemented and improved to encourage foreign investment in the services outsourcing industry and introduction of advanced technology and management experience so as to raise the international competitiveness of the services outsourcing industry of China. (MOFCOM)
- Article 2 Guide foreign investment in the central and western area and increase of investment
- (VIII) In compliance with the amended Catalogue for the Guldance of Foreign Investment Industries and the supplementary amendment to the Cetalogue for Foreign Investment in Competitive Industries in the Central and Western Area, labor-intensive items shall be increased to encourage foreign-invested enterprises to develop qualified labor-intensive industries in the central and western area. (NDRC and MOFCOM)
- (IX) Preferential policies for business income tax shall be continuously subject to qualified domestic and foreign-funded enterprises in the central and western area to maintain the good trend of absorbing foreign investment. (MOF, NDRC, MOFCOM and SAT)
- (X) The strength in the open policies and technology and capital supporting for the shif of foreign-funded enterprises in the east to the central and western area shall be intensified and administrative services shall be simultaneously improved to provide convenience while handling the formalities of industry and commerce, taxation, foreign exchange and social security. (NDRC, MOFCOM, MOF, MOHRSS, SAIC, AQSIQ, SAT and SAFE)
 - For eign-funded banks shall be encouraged and guided to establish agencies and operate business in the central and western area. (CBRC)
- (XI) The east and the central and western area shall be encouraged to be market-oriented to jointly set up development zones by means of mandatory edministration and investment cooperation in the principle of complementary advantages, industrial linkage and benefit sharing. (NDRC and MOFCOM)

Atticked Promote the diversification of foreign investment utilization

(XII) Foreign investment shall be encouraged in such forms as participation and M&A to participate in the reform and restructuring and merger and reorganization of domestic enterprises. A-share listed companies shall be supported to introduce strategic investors from home and abroad. And regulations shall be conducted for foreign investors to participate in securities investment and corporate M&A within China. (MOFCOM, CSRC, NDRC and MIIT)

Antitrust scrutiny shall be executed by force of law. (MOFCOM, NDRC and SAIC taking responsibilitis in accordance with the duties)

Foreign-capital M&A security review system shall be accelerated to be set up. (NDRC and MOFCOM)

- (XIII) Overseas capital market shall be utilized to continuously boister qualified enterprises to be listed overseas in accordance with the state development strategy and their own situations to make full use of two markets and two kinds of resources to constantly improve competitiveness. (CSRC, NDRC and MOFCOM)
- (XIV) The pilot program on utilizing foreign investment to set up small and medium-sized enterprises bonding companies shall be sped up. (NDRC and MOFCOM)
 - Foreign investors shall be 'encouraged to establish venture investment enterprises, initiatives shall be taken to utilize private equity funds and the withdrawal mechanism shall be improved. (NDRC, MOFCOM, SAIC, CSRC and SAFE)
- (XV) Qualified foreign investment enterprises shall be supported to conduct Initial public offering and issue corporate bonds and medium-term notes to widen the financing channels to guide financial institutions to continuously intensify the credit support for foreign investment enterprises. Overseas subject engaging in Issuing RMB bonds within China shall be steadily being expanded. (PBOC, CSRC, CBRC, NDRC and MOFCOM)
- Articles Deepen the reform of the foreign investment management system
- (XVi) Encourage and permission projects with total investment (inclusive of increase of capital) as prescribed in the Cetalogue for the Guldance of Foreign Investment Industries shall be verified and approved by relevant departments of local governments unless otherwide provided for by the Catalogue for the Investment (tems Verified and Approved by Governments, (NDRC)
 - Relevant departments of the State Council may delegate the approval items in the charge of themselves to local governments under the premise of strengthening supervision and administration unless otherwide specified by laws and regulations, with the establishment of foreign investment enterprises in the service industry (exclusive of finance and telecommunication services) verified and approved by local governments according to relevant provisions.(MOFCOM and other departments)
- (XVII) The contents of verification and approval shall be adjusted and approval procedures shall be simplified to narrow the scope of verification and approval to the largest extent to enhance the transpancy of verification and approval. Verification and approval items involved in foreign investment shall be fully cleared to shorten the approval itme. Approval procedures shall be improved to gradually carry out the formating approval of contract and articles of association for foreign investment enterprises nationwide and strongly implement online administrative licensing to regulate administrative acts on the basis of trial and summing up experience. (MOFCOM and NDRC)

Articles Create a good environment of investment

(XVIII) Development zones shall be regulated and promoted to exert their role of carrier and platform in institutional innovation, scientic and technical leading, industrial agglomeration, land consolidation and other aspects. (NDRC, Ministry of Land and Resources, MOHURD, MOST and MOFCOM)

Qualified provincial-level development zones shall be supported to upgrade and qualified national-level development zones to expand and adjust the locations. (with MOFCOM and MOST taking the lead according to duties and Ministry of Land and Resources, MOHURD and NDRC participating)

Qualified provincial-level development zones shall be supported to expand and adjust locations. (NDRC, Ministry of Land and Resources, MOHURD, MOST and MOFCOM)

Supporting policies and measures shall be prepared to speed up the construction of border economic cooperation zones. (MOFCOM, MOF, Ministry of Land and Resources and MOHURD)

(XIX) Foreign exchange management of foreign investment enterprises shall be further improved and the procedures of settlement of foreign exchange capital for foreign investment enterprises shall be simplified. (SAFE)

Foreign investment enterprises operating business by law but failing to make contribution on time temporarily for lack of capital shall be allowed to prolong the deadline of contribution. (SAIC and MOFCOM)

(XX) .investment promotion shall be stepped up and strength of recommendation and introduction of absorbing foreign investment from key countries and regions and industries shall be enhanced to extensively publicize Chinese policies for foreign investment utilization. Initiatives shall be taken to participate in multifeteral investment cooperation to combine "absorb foreign investment" and "go abroad" to boost the cross-border investment policy environment to be constantly improved. (MOFCOM and NDRC)

Several Opinions of the State Council on Further Utilizing Foreign Capital

Guo Fa [2010] No. 9

People's governments of provinces, autonomous areas and municipalities directly under the central government, ministries and commissions and departments directly under the State Council:

Utilizing foreign capital is the important content in China's basic state policy of opening up to the outside world. China has positively been attracting foreign investment and promoted industrial upgrading and technical progress since the opening up, with foreign-invested enterprises being the important component of the national economy. At present, Chinese advantage over utilizing foreign capital remains obvious. For the purpose of raising the quality and level of utilizing foreign capital and better giving full play to utilizing foreign capital in boosting scientific innovation, industrial upgrading and regional coordinated and balanced development, the following opinions are hereby put forward:

Optimize the structure of utilizing foreign capital

(1) The Catalogue for the Guidance of Foreign Investment Industries shall in accordance with the economic growth of China and combining the national industrial restructuring and revitalization plan be revised to expand the open areas and encourage foreign capital to high-end manufacturing, high and new technology industry, modern service industry, new energy and energy-saving and eavironmental protection industry and "High-polluting, high-energy-consuming and resource-dependent" and low-level and overcapacity expansion projects strictly restricted.

7) as well as special provisions for foreign-invested companies, venture capital investment, finance leasing, business and direct marketing handle with archival management well.

Extinct: The competent commerce authorities of provinces, autonomous areas, municipalities directly under the central government, cities specifically designated in the state plan and Xinjiang Production and Construction Corps should in strict accordance with related provisions examine, check and issue the Confirmation Letter on Chinese-funded and Foreign-funded Projects and the Certification for Equipment, Technology and Components and Parts Imported by Foreign Investment Enterprises and timely submit it to the Ministry of Commerce for filing via the "System of Foreign Investment Approval and Management".

ATTIONERS IN event the content of related documents previously issued by the Ministry of Commerce is inconsistent with the Circular, the Circular shall prevait.

Articles The competent commerce authorities at all levels shall integrate management into service to strongly boost the transformation of governmental functions, innovate service pattern and constantly raise the service level, and simultaneously guide the orientation of foreign investment and intensify the supervision on the fulfillment of foreign investors of the obligation of contracts and articles of association as well as the status on foreign investment enterprises' abiding by laws and regulations and their operation to create a good environment of investment for the establishment and operation of foreign investment enterprises. Please promptly report it to the Ministry of Commerce (the Foreign Investment Department) when any problem arises in the implementation of the Circular herein.

The Circular is hereby notified.

The Ministry of Commerce of the People's Republic of China June 10, 2010

Circular of the National Development and Reform Commission on Doing a Good Job in Delegating the Power to Approve Foreign-invested Projects

Fa Gai Wai Zi [2010] No.914

Development and reform commissions of provinces, autonomous region, municipalities directly under the Central Government, separately planning cities, sub-provincial cities and Xinjiang Production and Construction Corp,

In light of the Some Opinions of the State Council on Doing a Good Job in Utilization of Foreign Investment (Guo Fa [2010] No.9), the issues relevant to delegation of the power to approve foreign-invested projects are hereby promulgated as follows:

Delegation of the power to approve. The projects with the total investment (including increase of investment) less than USD300mn under the categories of encouragement and permission in the Catalogue for the Guidance of Foreign Investment Industries, which are originally subject to the approval of the National Development and Reform Commission, are subject to the approval of the development and reform commission.

at the provincial level, except for those that are subject to the approval of the relevant departments of the State Council as prescribed in the Catalogue of Investment Projects Authorized by the Government.

- Strict administration of projects. After delegating power to approval, the issues concerning project application report and the contents, conditions and procedures of approval shall be still subject to the Interim Measures for Administration of Foreign-invested Projects (No.22 Decree of the National Development and Reform Commission). The power to approve the projects under the category of restriction in the Catalogue for the Guidance of Foreign Investment Industries is not delegated temporarily. If there are special provisions on project approval in state laws and regulations and the documents of the State Council, those provisions shall prevail.
- Improvement of utilization of foreign capital. Development and reform commissions at various levels shall encourage foreign investments in high-end manufacturing, hi-tech industries, modern service industry and new energy and environmental protection industries; and promote foreign investment in application of new technologies, processes, materials and equipment, hence restructuring and uppracting traditional industries. The projects featuring by "high energy and resource consumption and serious pollution" and those at low level with overcapacity or repeated construction shall be strictly restricted.
- Esimplification of the procedures for approval of projects. Development and reform commissions at various levels shall, when regulating the approval of foreign-invested projects according to approval conditions, proactively simplify the procedures for approval, shorten the period for approval and increase the transparency of approval. The approved projects, in principle, shall be open to the public by different means.
- Greation of a good investment environment. Development and reform commissions at various levels shall seize this opportunity of power delegation to guide and regulate sound development of development zones. This commissions shall, according to the requirements on concentrated layout and use of land and industry cluster; promote foreign invested projects to concentrate in development zones, provide more conveniences to investment; chiance entors on publicizing and influencing public opinions on positive role of foreign investment in fostering structural upgrading of industries; and continue to improve investment environment.
- Enhancing of the supervision and examination of projects. Development and reform commission at various levels together with the relevant departments shall strengthen analysis on situation and tendency of foreign investment, focus on major issues, timely help foreign investors to solve difficulties and report main issues to the National Development and Reform Commission in a timely manner.

Development and reform commissions at various levels shall, by taking into consideration of local reality, publicize and carry out the Some Opinions of the State Council on Doing a Good Job in Utilization of Foreign Investment (Guo Fa [2010] No.9). Those commissions shall adhere to the principle of proactive and effective utilization of foreign capital and enhance efforts on reform and innovation to create a more open and optimal investment environment and comprehensively improve the level of utilization of foreign capital.

National Development and Reform Commission May 4, 2010

Reply of the State Administration of Taxation on Issues concerning Applicable Catalogues to the Enterprise Income Tax Preference Policies for the Western Development

Home > News > Updates

P4

Foreign Investment Promotion Plan for Central China Officially Released

2010-05-13

On April 29, the press conference on the Foreign Investment Promotion Plan for Central China was held in Nanchang, Jiangxi province, at which representatives from the Foreign Investment Administration of the Ministry of Commerce (MOFCOM), Chinese Academy of International Trade and Economic Cooperation and six central China provinces were present and delivered speeches. Deputy Head of the MOFCOM Foreign Investment Administration Hu Bin and Doctor with the International Finance Corporation of the World Bank Li Yao addressed the conference, and director of Chinese Academy of International Trade and Economic Cooperation Ma Yu introduced the framework of the "investment promotion plan". Distinguished guests present also answered the questions of reporters.

The Foreign Investment Promotion Plan for Central China was jointly formulated by the MOFCOM Foreign Investment Administration, Chinese Academy of International Trade and Economic Cooperation, Foreign Investment Advisory (FIAS) and departments of commerce of six central China provinces, which specifies the basic idea, main targets, measures of promotion and safeguard measures of foreign investment promotion in central China.

The Plan puts forward the thinking of make overall and concerted development and related policies, hoping to effectively guide six central China provinces to establish and perfect the foreign investment promotion system, intensify the capacity construction of investment promotion sectors and the construction of promotion platforms and enhance the building of regional image to realize the modernization of promotion pattern.

In accordance with the Plan, foreign investment promotion in central China should focus on formulating policies, establishing systems, offering platforms and services and creating environment to attract foreign investment. Top priority should be given to the long-term key points of central China's investment promotion agencies, including perfecting space of industrial development and normative investment services and good supporting environment for foreign investors.

Six provinces in central China have a huge potential of development and unique advantage to attract foreign investment. To promote central China to further expand the scale of attracting foreign investment and raise the level of attracting foreign investment is a long-term and arduous task, which shall practically strengthen leadership and make scientific plant to set up a situation of reasonable division of labor, complementary advantages, benefit sharing and concerted development to create better conditions for fully raising the quality and level of central China attracting foreign investment.

[Origin: MOFCOM Foreign Investment Administration]

Enclosure: Central China Foreign Investment Promotion Plan.doc

[Close]

Home | Opportunities | Sconemy | Services | News | Laws | Investment Statistics | Cutbound Investment | Company Search Investment Channel | Malfornt Operatopment Zone | Sité Map | About Us | Service Mail Rox | Links | Zonouncement

non confidential attachment C-1.2.7

29/04/2011

Invest In China

PUBLIC FILE 30

All information published in this website is authentic in Chinese. English is provided for reference only. Add: No.82 , Donganmen Street , Beijing China (100747)

Copyright by Invest in China

Organized by Ministry of Commerce, P.R.China

Operated by Investment Promotion Agency of MOFCOM

Tel: (86-10) 85226708 (86-10) 85226507

Fax: (86-10) 85226522 (86-10) 85226521

E-mail: service@fdi.gov.cn

中国中部地区外商投资促进规划 Central China Foreign Investment Promotion Plan

(2009-2014)

商务部外资司

商务部研究院

世行集团外国投资咨询服务机构('FIAS')

山西、安徽、江西、河南、湖北、湖南省商务厅

CONTENTS

I. GUIDING PRINCIPLES AND BASIC APPROACHES		
	(I) STRENGTHEN ADVANTAGES & CIRCUMVENT DISADVANTAGES	
	(II) DEFINE GOALS AND PRIORITIES	
	(III) INNOVATE METHODS AND MECHANISMS	!
	(IV) Strive for a win-win situation	
IJ	. PRIORITIES AND KEY OBJECTIVES	11
	(I) KEY INDUSTRIES	1
	(II) KEY INVESTMENT METHODS	12
	(III) KEY INVESTMENT ZONES	1:
	(TV) KEY SOURCES OF INVESTMENT	1
111	. PROMOTION MEASURES AND SUPPORTING POLICIES	
	(I) ESTABLISH A SOUND PROMOTION SYSTEM	1:
	(II) REINFORCE CAPACITY-BUILDING FOR PROMOTION AGENCIES	10
	(III) REINFORCE THE CONSTRUCTION OF PROMOTION PLATFORM	16
	(IV) FORMULATE MODERNIZED PROMOTION MODES	18
	(V) Shape a better regional image	19
IV	. INVESTMENT CLIMATE	20
	(I) Improve investment environment	20
	(II) BUILD A STABLE AND TRANSPARENT FOREIGN CAPITAL ADMINISTRATION SYSTEM QUICKLY	, 2 1
	(III) IMPROVE SUPPORTING POLICIES AND SERVICES	
,	(IV) PROVIDE FINANCIAL AND HUMAN RESOURCES SUPPORT	23
	(V) BUILD A SOUND EVALUATION AND SUPERVISION SYSTEM	24

Preface

With the accelerating economic globalization and regional economic integration, the fourth global gradient transfer of industries and swifter capital flow from coastline to west, China's central region is now witnessing brand new challenges and opportunities in introducing foreign capitals.

China's regional policies for future utilization of foreign investment are supposed to promote balanced inter-regional development in the spirit of building a harmonious society. Thereafter, the central region is faced with greater challenges in bringing more advanced technologies and making better use of foreign investment by unleashing its comparative advantages.

As the central region represents a key footprint in attracting foreign capital, reinforcing efforts to promote foreign investment is essential to follow up on the central government's strategic plans to facilitate the rise of Central China and to improve the competitiveness and innovation of this region. The Ministry of Commerce has taken the initiative to formulate this plan for foreign investment promotion in central China, as part of the effort to set a benchmark for preparing future plans for other regions.

With the help of the World Bank's Foreign Investment Advisory Service (FIAS), Department of Foreign Investment Administration of Ministry of Commerce, Chinese Academy of International Trade and Economic Cooperation of the Ministry of Commerce, together with the foreign investment authorities of Shanxi, Anhui, Jiangxi, Henan, Hubei and Hunan provinces formed a task force and jointly launched the preparation for Central China Foreign Investment Promotion Plan (hereinafter referred to as "Plan") in the

first half of 2007. The draft Plan has been prepared on the basis of extensive information-gathering, analysis and research that lasted over 2 years.

The Plan covers six central provinces, i.e. Shanxi, Anhui, Jiangxi, Henan, Hubei and Hunan, an area of 1.027 million square kilometres and home to a population of 361 million. The Plan is prepared for the period between 2009 and 2014.

It is the first regional investment promotion plan jointly completed by the China Ministry of Commerce, international organizations and local governments. As a guideline for the aforementioned six provinces in promoting foreign investment, the Plan specifies the guiding principles, objectives, tasks, development priorities and key measures for different stages, and proposes the approaches and policies for coordinated development, with a view to effectively guiding these provinces to establish and improve the mechanism for investment promotion.

I. Guiding Principles and Basic Approaches

As the global economic structure and the labor division are undergoing major changes, the central region should take the great opportunity of the new-round international industrial shift to promote coordinated regional development and further open.

To this end, the central region needs an overall strategy of investment promotion in the principle of scientific development perspective to explore innovative, professional and efficient mechanisms suited to this region for management system reform, team building, and investment promotion. The guiding principles are to further mindset open up; expand the scale and optimize the structure of external investment, and give play to the key role of investment in pushing forward independent innovation, industrial upgrade and coordinated regional growth; and to innovate the regional cooperation mechanism to allow for complementary advantages and mutual development.

Based on these guiding principles, the basic approaches for foreign investment promotion are:

(I) Strengthen advantages & circumvent disadvantages

Global foreign direct investment (FDI) will nevertheless keep on growing in the long run, despite an array of risks that will ensue due to the global financial crisis and economic recession. Two features will figure predominately in the growth of a new round FDI: for one thing, more hi-tech and high value-added manufacturing and R&D activities will be moving out of developed countries, and for the other, international capital will have a stronger preference for better government credit, policies and systems, property rights, law enforcement, technical standards, and greater cultural friendliness.

Such a trend into high value-added manufacturing and service outsourcing has offered great possibilities for the central region to develop continued advantages by participating in the work division of global industrial chain and accommodating the domestic and overseas industrial shift.

Thanks to the implementation of the Rise of Central China strategy, the investment environment in the central region has improved substantially, and development systems, policies and mentality have changed dramatically over the last 2 years. The market conditions for an international and domestic industrial shift are there, and the region has kicked off a good start in attracting foreign investment.

When adjusting the policies for attracting external capital, the region has to be fully aware of its comparative advantages to maximize advantages for industrial growth and economic benefits. Accounting for 10.7% of the total land area, 28.1% of the population and 19.5% of GDP, the central region is the economic hinterland and the transportation hub of China. With a solid foundation and enormous advantages, it plays a vital role in the overall economic and social development, with great potential yet to be tapped into.

In terms of the industrial foundation, the central region has a full assortment of industries and is a key heavy industry base, with 15 boasting absolute or relative advantages among 30 manufacturing sectors. In recent years, the electronic information, bio-pharmaceutics, new materials and other emerging industries have shown sound development momentum, and a number of distinctive hi-tech industry clusters have taken shape.

Transportation-wise, located at the gateway to the west, and the center of the huge crossing— Eurasian Continental Bridge and the golden watercourse of the Yangtze River, the region is a giant hub that connects the east with the west and the south with the north, which basically shapes a convenient land, water and air transportation network equipped with better infrastructure.

In terms of the production elements cost, this region has vast land available for industrial use, 1.4 times larger than the eastern region, and abundant

technological resources, while the cost of labor force, highly skilled, is only 60% of that in eastern region. In the long term, the region is expected to become the country's major base for commercial grain production and efficient agriculture, resource- and labor-intensive industries. It is also expected to become an important hi-tech industry base. The central region will be a key pillar-for China's sustained and rapid economic development, and an emerging growth area.

Thanks to the implementation of the *Rise of Central China* strategy, infrastructures, institutional structure and human resources have been improved greatly in the central region, adding to its existing advantages offered by abundant labor force, low business cost and the complete range of industries.

However, restrictions persist: first, this region has yet to open up further, as the combined exports accounted for only 4.3% of the national total; and the actual utilization of foreign investment was only 11.5% of all; second, heavy industrial and primary processed products such as manufacturing, energy and raw materials represent a significant proportion. The industrial growth is mainly dependent on high inputs and high consumption of resources, due to the lack of deep processing and hi-tech capacity; and third, the low industrialization, urbanization, and marketization level has so far proved unappealing to high-end manufacturing from the outside. As a result, this region is not closely linked with external markets; moreover, institutional reform is lagging far behind.

When it comes to attracting foreign investment, the central region is yet to establish a standard operating mechanism for investment promotion, as well as vertical and multi-layered operation networks.

Generally speaking, the central region fares better than the western region in terms of development conditions available, and the coastal area, potential-wise. The central region must pinpoint its positioning so as to play out advantages and circumvent disadvantages in attracting foreign investment.

(II) Define goals and prioritles

The central region should make it its strategic goal to follow the principle of vigorous attraction and effective use of foreign investment, optimize the capital allocation, and promote technological advancement and further progress of the market economic system. Every effort should be consistent with applicable state plans and requirements, particularly those for the implementation of major strategies, and the overall trend of the international and domestic industrial shift. Problems in connection with investment promotion should be identified and addressed, so should goals and priorities.

Division of work, coordination, giving full play to local advantages and distinctiveness should be the principle of the investment promotion work in the central region. It expected that this region will improve overall competitiveness, with a growing annual foreign capital received and a fast growing productivity. Investments from outside of the region play a greater role in the development of local economy, and serves as a driver in propelling the rise of Central China.

Due to the great similarity in their industry structure, the provinces of this region will inevitably be competing with one another for investment if no precautions are taken. To avoid such a specter, the provinces should define their positioning of industrial division region-wide, and construct a mutually complimentary collaboration system consistent with the goal of coordinated development, thereby minimizing the possibility of structural overlapping and excessive rivalry among and between them. The region should work to create a competitive and unique manufacturing cluster by focusing on such factors as comparative advantage, regional industrial layout, coordination between economic and social development, and population and resources, and implementation of an industrial value-chain strategy. Foreign capital should be channeled to fund technological upgrading in key industries and enterprises,

so as to help create a batch of leading and internationally competitive enterprises with greater overall performance and core competitiveness.

The six central provinces are home to seven model service outsourcing cities, 20 key zones for processing industry. The Ministry of Commerce will be establishing demonstration zones of the sort as part of the effort to support this region in the process of industrial transfer. On top of that, such provinces should also identify the key industries that are in need of investment, so that mobile capital can be utilized to improve the industrial structure and competitive edge. There should be definitive and feasible goals for key sectors, regions and methods in connection with foreign investment promotion.

(III) Innovate methods and mechanisms

Continuous innovation in market mechanism—specifically, establishing a market- and investor-oriented promotion bodies and a sound and efficient system— is necessary for attracting more investment and for better utilization.

It's equally important that a sound investment environment that features good government accountability, efficiency, security and business-friendliness be built and improved to provide investors with standardized and comprehensive services, and to optimize the allocation of resources. The priority should be given to standardized investment services and good investment environment with continuous improvement.

Governments at all levels should work together to set up a harmonized, orderly, standardized, competitive and market-based mechanisms for investment promotion, through integrating investment resources and strengthening communication and decision-making, so as to create synergy between national development plans, projects, industries, businesses and resources. They should also improve the working methods to improve the mechanism and management expertise. In the meantime, the promotion system that is comprised of the governments, professional bodies and local

industries should also be enhanced so that intermediaries can serve as a bridge that links the government and businesses.

(IV) Strive for a win-win situation

The central provinces should adhere to the basic guideline of taking measures adaptable to their local conditions and their respective advantages, according to the *National Central Region Development Plan* and the actual developmental context in each province.

As these provinces enjoy great potential and unique advantages for attracting investment, efforts should be made to seize the opportunities presented by the international and domestic industrial shift to transform this region into a competitive base for manufacturing, hi-tech, energy and key raw materials industries, for development and output of human resources and for accommodation of the industrial shift.

With the ultimate goal being rapid and sound economic development, the central provinces should always look at the whole picture, properly addressing the relationship between local and regional, and immediate and long-term interests. Close cooperation is necessary in resource and industrial development, infrastructure integration, and construction of a unified market, in order to create desirable synergy. There must be a long-term mechanism and platform for regular communication and constant cooperation between the provinces to promote integration of investment resources, overall competitiveness of the whole region, and better development, as well as better regional image.

Constant exchange mechanism should be formulated to encourage collaboration among six central provinces in the pursuit of faster and better growth. Joint Conference for Investment Promotion Agencies of Central China, for one, can be a good idea. With effective information and experience sharing

at the Joint Conference, investment promotion agencies from the central provinces can better cooperate with one another for optimal benefits.

It is important to communicate with investment promotion agencies and intermediaries, through seminars, field visits and information-sharing, and to cultivate and share common operation resources and channels for a win-win situation.

II. Priorities and Key Objectives

(I) Key industries

Central provinces should, by referring to the Foreign Investment Industrial Guidance Catalogue (Amended in 2008) and Guiding Catalogue for Foreign Investment in the Dominant Industries of the Central and Western Regions (amended in 2008), as well as the trend of the new round of industrial shift, identify their respective industrial advantages and development profiles for the purpose of developing accurate positioning and long term strategies, and rejuvenating the key and competitive industries by pooling resources.

Control of the Contro

While the manufacturing industry should be made a priority, investment into the primary and tertiary industries should also be vigorously pursued, especially into modern agricultural and sophistic processing industry, as well as trade, finance, science and technology, education, culture, health, sports, tourism, and infrastructure construction, by means of franchising, leasing, and equity transfer.

Based on the economic development profiles and unique resource advantages of the central region, the key beneficiaries of investment promotion should be feature industries with solid foundation, growth potential, great capacity of employment, and resource advantages, including featured agricultural products and food production; energy and raw materials industries; mining, metallurgical and petrochemical equipment, farm machinery, vehicles,

PUBLIC FILE



and ship-building; clothing, food, light industry, electronics and other labor-intensive industries; logistics, transportation, and other modern services; electronic information, featured biological industries, new energy, new materials, and other hi-tech industries. Meanwhile, the infrastructure industry should also be made a key area.

The central region, most notably the central cities that have abundant well-educated but low-cost work force, and sound industrial foundation, enjoys tremendous comparative advantages in service outsourcing. As service products do not involve physical transportation, service outsourcing can help the central region overcome the restrictions of landlocked geographical conditions, and shorten the distance to coastal areas.

It must be noted that flexibility is required in positioning the target industries. To make the Plan more targeted and helpful, the provinces should keep track of the changes in comparative industrial advantages, make regular adjustments, as appropriate, in accordance with the Foreign Investment Industrial Guidance Catalogue and Guiding Catalogue for Foreign Investment in the Dominant Industries of the Central and Western Regions, and report to competent authorities relevant amendments and suggestions.

(ii) Key investment Methods

Effective attraction of FDI is a systematic work that involves bringing in stable and low-risk capitals, as well as high technology, scientific management expertise, and international marketing channels. With a capital structure conductive to creating optimal benefits and high spill-over effects from economic activities, joint ventures should remain a major means of foreign investment to be encouraged.

Alongside this, other means, including mergers and acquisitions, investment in funds and securities, participation in reorganization and

PUBLIC FILE

upgrading of state-owned enterprises (SOEs), and listing in domestic and overseas capital markets should also be encouraged.

As cross-border mergers and acquisitions (M&As) have become the main form of FDI, central provinces should pay sufficient attention to attracting multinational corporations, especially encouraging their mergers and acquisitions of local businesses.

International practices, including IPO abroad, and BOT or TOT financing should be followed to increase overseas financing by multiple methodologies.

(III) Key investment zones

Starting almost from scratch, the central region does not yet have the capacity to accommodate foreign investment in the region as a whole. Prioritization and proper arrangement are necessary to channel foreign capital to central cities, port cities and those with convenient transportation; provincial-level economic and hi-tech development zones; and heavy industry parks with great potentials.

Priority zones include the economic belts along the Yangtze river and Beijing-Guangzhou Railway, city circles identified by the six provinces respectively, as well as areas that are closely linked with the Yangtze River Delta, Pearl River Delta and the Bohai Bay Rim.

At present, the 7 state-level and provincial-level economic and technological development zones from the central region have already developed a fairly advanced infrastructure capable of accommodating investment projects, featured industrial clusters, and a wealth of management experience in industrial development, and therefore are in the best position to embrace the industrial transfer. These development zones and industrial parks should play a leading role to exert build-up and ripple effects. By bringing in flagship projects and supporting industrial projects, they can reduce industrial costs and help form industrial clusters within the region.

(IV) Key sources of investment

When making efforts to attract foreign investment with market-oriented approaches, the provinces should identify their target investors.

Western Europe, North America, and the Asia-Pacific region are where the world's export of capital occurs most frequently and where original and innovative intellectual property rights, hi-tech and high value-added manufacturing industries and service industries are concentrated, while multinationals are the major carriers of technological transfer worldwide, accounting for 85% of the capacity for technology development. The central region should make it a priority to attract powerful multinationals from these regions, in order to substantially improve the share of investment from developed economies.

This, however, does not mean to belittle the role of small-and medium-sized foreign capitals. If the central provinces should interpret it as an absolute policy and are spurred to compete for investment from multinationals, the cost of cooperation will rise as a result. The provinces must review the structure of foreign capital sources and assess applicability of foreign investment, that is, whether it is consistent with the overall level of local productivity and consumption, in accordance with a market-oriented principle. It should be noted that a large number of established and professional small-and medium-sized enterprises (SMEs) from developed countries are considering branching out into overseas markets to slash costs and maintain their traditional advantages in this fiercely competitive market.

Based on the existing economic and especially the industrial development profiles, and given the mounting pressure of unemployment in the region, the provinces should consider it a medium- and long-term strategy to attract the investment of SMEs from Taiwan, Hong Kong and Macao, Japan and South Korea. While formulating and implementing policies, the provinces should give considerations to the affordability of SMEs.

The provinces should further organize investment promotion events in key target countries and areas in support of the state-prescribed "Businesses Going West" initiative and cooperate with the Yangtze River Delta, Pearl River Delta and Bohai Bay Rim economic zones to flexibly adjust the business investment strategies according to the increased FDI in these regions.

III. Promotion measures and supporting policies

(I) Establish a sound promotion system

In recent years, government investment promotion departments and professional intermediary agencies have been set up in the region to effectively facilitate foreign capital promotion activities, together with the local investment organizations with their respective responsibilities and priorities. The provinces and cities should establish and refine service systems for investment promotion in accordance with their specific conditions and requirements.

The government investment promotion departments are responsible for providing guidance, management and coordination, including formulating and implementing well-conceived investment promotion plans, guiding the establishment of a modern promotion system and taking effective measures.

Inter-provincial joint conferences and regular communication and consultation mechanisms should be established for the provinces to share resources and information with their neighbors, and negotiate cross-provincial investment promotion activities, thereby preventing waste of resources and industrial layout disorder. It is suggested that the provinces establish dedicated bodies to take charge of the investment promotion for key industries, regions and projects in their jurisdictions, and provide subordinating departments at the city and county levels with guidance and coordination. With province-level promotion bodies playing a leading role, the cities and counties should

PUBLIC FILE

PUBLIC FILT

establish investment promotion bureaus (centers), and towns, promotion offices if possible, so that a complete administrative facilitation network can be formed.

(II) Reinforce capacity-building for promotion agencies

The Ministry of Commerce will conscientiously help improve the expertise and skills of frontline investment promotion staff by consolidating relevant resources from different regions and carrying out professional training programs from time to time, including inviting foreign experts to teach them on how to seek various effective promotion methods that are suited to their local conditions when holding exhibitions and special promotion events, receiving foreign delegations, going on business trips with leaders, and participating in international forums; how to make the promotion services more considerate and targeted; and how to strike a chord with potential investors at the first instance.

(III) Reinforce the construction of promotion platform

While hosting "Central China Investment and Trade Fair" and investment promotion events, the central provinces should actively participate in "China International Investment and Trade Fair", "China International Hi-Tech Fair" and other large-scale international investment promotion events so as to build a platform and large network for investment promotion. Efforts remain:

To establish a regional information and resource platform and a service-sharing mechanism, an information and network platform of desirable scale and level should be established to make better use of the Internet so that investors can have easy access to complete and accurate information, considerate on-line services for answers to their questions.

At the same time, laws and regulations in connection with investment polices can by instantly published and made known to ensure

information-sharing with major international investment promotion bodies. In this way, the investment promotion agencies can become effective service interfaces.

To bring in and employ customer relations management and customer tracking software systems, etc. to collect, analyze and process useful information, especially investor-related information, and provide investors and investment targets with all-round counseling services by establishing contact and communication mechanisms with potential investors.

Most investment promotion activities are currently short-term ones that can not be sustained due to the shift of location and time. It is therefore necessary to explore effective and long-term mechanism-based investment promotion platforms on top' of the existing on-line business promotion interface and physical promotional events, such as fairs, business promotion fairs and exhibitions.

To effectively facilitate the transfer of export-oriented industries from coastal areas to the central region, the Ministry of Commerce has established in Kunshan and Shanghai industrial transfer promotion centers as platforms for the central region to showcase its investment environment, attract investment projects and conduct cooperation negotiation. On one hand, the promotion centers help the appointed staff from the central and western regions to pick up new ideas and skills by introducing new methods of investment promotion, industrial development and transfer trends abroad, and successful practices of other investment promotion agencies; while on the other hand, they proactively organize match-making exchanges between the appointed staff and local overseas investment agencies, business associations, regional headquarters of multinational companies, and businesses interested in investing in the central and western regions.

The establishment of these industrial transfer promotion centers will be conductive to comprehensive upgrade of the eastern region's participation in

global division of labor, and the central region's capacity to accommodate transferred industries.

(IV) Formulate modernized promotion modes

The central provinces should formulate their own modernized investment promotion approaches by learning from the latest models and strategies employed around the world, and trying out promotion strategies. Efforts should be made to achieve the following:

Transition from passive operations to proactive ones. On the basis of fully understanding the goals and needs of foreign investors, as well as an accurate grasp of the local investment environment and advantages, the provinces should make comprehensive use of all possible marketing strategies and means to engage target investors, introducing the local investment environment and programs, to facilitate the materialization of projects.

Transition from a local basis to a systematic policy approach. The provinces should innovate institutional mechanisms to further improve and develop the administrative, judicial, market and cultural environments, and give prominence to the building of government and business integrity so as to "attract, reassure, serve and protect investors with good will, credibility, quality and rule of law".

Transition from a less-organized approach to a well-organized one, by designing promotion packages consistent with international practices; preparing brief and standard brochures; implementing business-to-business, themed, professional, industry chain-related, network-oriented and group-based investment promotion tactics; and launching featured promotion for key projects.

Transition from a solely result-based approach to a cost-conscious one, through conducting scientific assessment of promotion performance, outcome and resource utilization efficiency; reinforcing regulation over investment

promotion bodies; adjusting goals, strategies, plans and resource distribution when problems are detected, to avoid further losses and damages to the promotion work; and creating effective incentives.

In addition, the responsibilities of government bodies should be specified, and financial support strengthened. Local governments should provide investment promotion bodies with financial support to cover the costs incurred in the process of promotion and in human resources training; establish a range of technical service agencies to provide institutional guarantee for efficient implementation of promotion plans.

(V) Shape a better regional image

Being less open than the coastal areas, the central region should step up publicity efforts to project a good image to the outside with cost-effective means. Success will hinge upon a number of factors, including positioning by the state and media report, apart from its own economic development profiles and local government behaviors.

Chief among all tasks of image-branding are changing the mentality and government functions, and improving the environment for social and economic development. Bearing in mind the importance and necessity of a great social and economic profile for attracting foreign investment, the central provinces—especially the central cities of this region—should take measures to augment their regional features and project modern and unique city images.

As a second step, awareness-raising and publicity campaigns for the investment promotion endeavors should be launched to ensure all sectors and enterprises have a better understanding of the promotion work being undertaken and contribute their input accordingly, and help foreign investors have a clearer picture of the investment environment, policies and opportunities available in the central provinces.

To forge the central region into an investment destination with the greatest potential entails planned image-branding actions involving general and in-depth publicity via newspaper, magazines, radio, TV, Internet and other media channels. Beyond that, professional foreign bodies should be engaged to help promote the image of central China across the globe, and get the world to know more about this region.

IV. Investment Climate

(i) Improve investment environment

The investment promotion effort is one that involves business-friendly policies, mechanisms, service platforms and environment, all of which are necessary conditions for attracting industries that are moving inwards, and slashing transaction costs, otherwise the industrial transfer won't happen. It is a long-term priority for promotion agencies in the central region to expand the room for industrial development as well as to provide investors with standard investment services and sound business environments.

Central provinces should make efforts to build an integral, sound, effective, and safe investment environment, as a key link for further opening-up.

The provinces should create a liberal policy environment, a clean and efficient administrative environment, a trustworthy and fair market environment, and a fair and just legal environment, and a harmonious cultural environment, and strive to realize a transition in investment promotion from mainly resorting to offering preferential policies to creating a sound holistic environment.

The governments should standardize their behaviors, improve service quality, and innovate management mindset, so that foreign-funded enterprises can enjoy the same level of administrative services that they receive in the coastal areas. On one hand, the attention to details is required to provide

business-friendly and considerate services, including facilitations for business visits, information-sharing and market research, at every stage. Minimized costs for investment, decision-making and operations are greater attraction to foreign capital and will boost the potential investors' confidence. On the other hand, a transparent and efficient administration environment should be created to better serve foreign investors, including through reinforcing coordination between departments, enhancing customs clearance environment and efficiency, and establishing a safeguard mechanism for efficient administration. Mechanisms for accountability, service commitment, once-for-all notification, limited-hours settlement, and complaint accountability should be further put in place in the central region so as to improve the administrative efficiency of government departments:

Aftercare services for enterprises that have settled in the region must be properly addressed to support their development. Any practice that disrupts the business operation and infringes upon investors' interest, a lack of good faith, or random law enforcement by government bodies for instance, must be completely rectified. The coordination and complaint handling functions of foreign investment service centers should be strengthened to address disputes and complaints.

Investment promotion agencies should constantly study and predict investors' up-to-date needs for investment environment and the changing trends of evaluation standards in order to pursue better investment environment.

(II) Build a stable and transparent foreign capital administration system quickly

To build a foreign investment administration system consistent with the requirements of the market economy and international rules is also vitally important for improving the promotion work. With the development of the

marketization, the administration function of government departments is also being reinforced. However, conflict of interests between competent departments has hampered the administration efficiency. As a result, breakthroughs are hard to come by in the current promotion work.

Regional development is all about regional integration, which boils down to institutional integration. Without a sound institutional mechanism and policy environment, there can be no correct orientation and effective incentive for investment promotion activities. To accelerate the formation of a stable, transparent foreign capital management system, a fair, foreseeable policy environment and standardized and simplified procedures is essential for following up on promotion plans and improving outcomes.

(III) Improve supporting policies and services

Efforts must be made to reinforce support for the competitive industries in the central region, including giving preferential treatment to the central region in terms of geological arrangement of major projects. In other words, locating in the central region major industrial projects that are consistent with state industrial policies; and providing businesses with policy credits to help them bring in key technologies and equipment, and reducing the proportion of the capital for key projects after approval.

The central region must further build the capacity for accommodating incoming industries from abroad and the coastal areas; establish industrial transfer demonstration zones in the state-level and mature province-level economic development parks and provide these zones with discounted government loans for infrastructure construction. Attention should be paid to attracting quality investment projects, especially the high-end ones with high

added-value, high ripple effect, and low energy consumption through policy incentives and guidance, so as to push forward the industrial upgrading.

The provincial and cities governments should fully support the investment promotion work in accordance through establishing an investment promotion joint conference system to collect inputs from all relevant departments, regularly study the major items on investment promotion and address problems and issues that arise in the materialization process of investments.

Provinces and cities should establish investment promotion associations with the membership consisting of international investment institutions, well-known international business associations, multinational corporations, domestic investment promotion agencies, foreign-invested enterprises and government departments; hold regular events to enhance understanding and cooperation, and information collecting and sharing between investment promotion bodies, and host training programs to provide the government with suggestions on policies and strategies.

(IV) Provide financial and human resources support

Without sufficient input, there won't be sustainable momentum in the promotion activities. The central region should be generously supported financially by the central and provincial governments, including setting aside a larger proportion from the Central Foreign Trade Development Fund.

Staff training is an important guarantee for improving the investment promotion activities, techniques and skills. In this context, the existing resources should be consolidated, and government support and guidance strengthened to develop a team of professionals familiar with operational procedures and methods of investment promotion work, including job rotations to the coastal areas. Experts and consultant groups should be closely engaged to provide investors with a full range of professional services before and after the investment is made. Governments at all levels should designate dedicated

civil servants who are familiar with economics and policies and proficient in foreign languages to the forefront of investment promotion work.

(V) Build a sound evaluation and supervision system

The evaluation system, mechanism and incentives for foreign investment promotion, as well as investment environment evaluation and accountability systems must be improved from the perspectives of technical contents, economic and social relevance and contribution to sustainable development of projects.

The Ministry of Commerce will, together with relevant departments, strengthen tracking, analysis and supervision of the implementation of the Plan; organize interim evaluation of the implementation; and make flexible adjustments where appropriate, to ensure the effective execution of the Plan.

Comprehensive evaluation of work efficiency, service quality, law enforcement, policy follow-up, and handling of complaints filed by foreign investors should be conducted, with the results made public through media on a yearly basis at the provincial, city and county levels. An accountability system, where awards are granted on the basis of merits, with poor performing departments subject to disciplinary actions, should be put in place in order to guide government departments to shift their focus from quantity to quality in foreign investment promotion.

Law may continue to remain in effect until the termination of the period of exemptions and reductions.

Enterprises with foreign investment which completed business registration prior to the promulgation of the Tax Law but which have not earned profits or have earned profits for less than five years may, in accordance with the provisions of Article 8, paragraph 1 of the Tax Law, be granted a corresponding period of treatment in respect of exemptions from or reductions of enterprise income tax.

Article 112 Enterprises with foreign investment which completed business registration after the promulgation of the Tax Law but prior to the entry into force of the Tax Law may refer to the provisions of Article 110 and Article 111 of these Rules for implementation herein.

Article 113 The Ministry of Finance and the State Tax Bureau shall be responsible for the interpretation of these Rules.

Article 114 These Rules shall come into force on the effective date of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises. The Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Equity Joint Ventures and the Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China for Foreign Enterprises shall be abrogated at the same time.

National Development and Reform Commission, Ministry of Commerce jointly promulgated The new "Foreign Investment Industrial Guidance Catalogue"

Approved by the State Council, the National Development and Reform Commission and Ministry of Commerce issued October 31 Decree 57, published in full, "Foreign Investment Industrial Guidance Catalogue (2007 Amendment)" (hereinafter referred to as the new "directory"), since December 1, 2007 into effect. November 30, 2004 the National Development and Reform Commission and Ministry of Commerce issued the "Catalogue for the Guidance of Foreign Investment Industries (amended in 2004)" shall be repealed simultaneously.

New directory is in implementing the scientific concept of development, building a socialist harmonious society, further deepening reform and expanding opening up new situation amendments is to implement the party's congrest's "innovative use of foreign capital optimal use of foreign capital astructure, use of foreign capital play in facilitating independent innovation, industrial upgrading and coordinated regional development, the positive role of "requirements, and guide the direction of foreign investment in the important policy measures. Improve macro-control on, and domestic development and opening up, promote the optimization and upgrading of industrial structure, improve the quality and level of utilization of foreign capital will play a positive role.

"Directory" amendments mainly involve five aspects:

First, insist on expanding opening up, promote industrial upgrading. Manufacturing sector and further encourage foreign investment in China's high-tech industries, equipment manufacturing, new materials, manufacturing and other industries. Service sector, "directory" in the full implementation of China's WTO accession commitments, actively and steadily open wider to increase the "undertaking service outsourcing," "modern legistics" and encouraged the content, and reduce the original restrictions and probabiled items. Meanwhile, the country has mastered a number of mature technologies, with strong production capacity of traditional manufacturing is no longer

PUBLIC FILE

PUBLIC FILE 4

encourage foreign investment, a clear "Guiding Catalogue of Industrial Structure Adjustment" restricted entry for foreign investment projects.

Second, conserve resources, protect the environment. Encourage foreign investment in the development of circular economy, clean production, tenswable energy and environmental protection, comprehensive utilization of resources to encourage foreign investment, "directory" added to the relevant entries encouraged. Our searce or non-creavable mineral resources are no longer important to encourage foreign investment. Some of the important non-renewable mineral resources prospecting and mining to foreign investment is no longer to restrict or prohibit the high moterial consumption, high energy consumption, high pollution access to foreign investment projects.

The third is simply to encourage export-oriented adjustment policies. For China's trade surplus is too large, rapid increase in foreign exchange reserves and other new situation, not simply continue to encourage the export-oriented policies.

Fourth, promote balanced regional development. With the western development, central China, the revitalization of old industrial bases in Northeast China, the amendments to encourage foreign investment in the industry no longer included in the directory only "limited to the central and western regions," the entry. Where a need to encourage foreign investment in central and western regions and the northeast old industrial base competitive industries and specialized industry, in the next revision, "the central and western regions Catalogue of Industries for Foreign Investment," co-ordinate considered for inclusion.

Fifth, to safeguard national economic security. Some related to national economic security, strategic and sensitive industries, cautious openness, appropriate adjustments to related eatries, and domestic development and opening up.

P5



With the issuance of a new guidance catalogue, China has redefined the industries into those that are encouraged, restricted. or prohibited for foreign investment. At the same time, FIE tax preferences and approval procedures are being more closely aligned with the PRC government's evolving national economic development policy. Foreign investors in the PRC must now adapt to some transitional uncertainty and prepare for a somewhat different investment environment.

By Thomas Y. Man, Yan Zeng & Jing (Jean) Sun of Orrick, Herrington & Sutcliffe LLP

1657 2007

policy realignment of sorts took effect on December 1 2007. under the newly revised version of the Foreign knyestment Industrial Guidance Catalogue (Amended 2007) (外有投資产业 指导目录(2007年移订)); which was jointly issued on October 31 2007 by the National Davelopment and Reform Commission (NDRC) and the Ministry of Commerce [MOFCOM]. This marks the fourth revision to the Foreign Investment Industrial Guidance Cetalogue since its first promulgation in 1995 (the previous revisions occurred in 1997, 2002. and 2004 respectively).

POLICY OBJECTIVES

An official NORC news release' has summarized the policy objectives of the 2007 Catalogue as follows:

- 1) To upgrade China's Industrial structure by encouraging invastment projects that use new and high technologies and new materials. and by reducing support for investment in the manufacturing sector using traditional technologies;
- 2) To enhance resource conservation and environmental protection by encouraging investment in environmentally friendly and resourcesaving technologies, and by restricting or prohibiting foreign investment in projects that cause high pollution and consume high amounts of energy and resources;
- 3) To address Chine's trade surplus and rapid increase of foreign exchange reserve by eliminating the encouragement policy for investment projects that export 100% of their products;
- 4) To improve balanced regional development by revising the policy that provides favorable treatment for investment projects in the Central and Western Ragions; and
- 5) To protect national aconomic security by applying "cautiously open" (meaning more restrictive) policy to foreign investments in the sectors that are deemed by the government to be "sensitive" or have strategic importance.

To a very large extent, the 2007 Catalogue faithfully reflects these policy enticulations.

CONTINUITY & CHANGE

The three basic categories: "encouraged", "restricted", and "prohibited" have been carried over to the 2007 Catalogus. Like those in the 2004 Cetalogue, industries not listed are considered to be in a default category normally referred to as "parmitted", and are open to foreign investment unless otherwise specified in other PRC regulations.

The 2007 Catalogue has substantially increased the number of listed industries:

- the "encouraged" category contains 351 industrial areas (an increase of 94 from the 2004 Catalogue);
- the "restricted" category contains 87 Industrial areas (an increase of 9); and
- the "prohibited" category contains 40 industrial areas (an increase of 5).

Omitted from the 2007 Catalogue are two notes contained at the end of the 2004 Catalogue, which are now understood to be unnecessary as they are reflected in the catalogue listings or in related administrative regulations and implementing rules:

- Note 1, which provides that the provisions of the Closer Economic Partnership Agreements (CEPA) between Mainland China and Hong Kong and Macau, respectively, prevail over the provisions of the catalogue:
- Note 2, which appends an Annex listing Chine's commitments in the Protocol on China's November 2001 accession to the World Trade Organization (WTO), relating to specific industrial areas and subject to time achedules ranging from one to five years from the date of the Protocol.

CATALOG CONSEQUENCES

Tax incentives and approval requirements can each be affected by whichever industry category is deemed to apply to a particular foreigninvested enterprise (FIE).

Under the current PRC regulatory regime, foreign investment projects that fell within the "encouraged" category may anjoy cartain tax incentives and be subject to less onerous epproval requirements. Tax incentives that are applicable to an "encouraged" foreign investment project mainly include: (a) equipment imported for own use within the total invastment amount of the project will be exempt from tariffs and import-stage value-added tax2 and (b) foreign investors may claim a refund of value-edded tax for purchasing domestically-made equipment within the total investment.3

There are two types of basic approval requirements for a foreign investment project: (e) the project approval by NDRC or its local counterparts and (b) the foreign investment approval by MOFCOM or

This wifels was published in the Operative 2007/Jesuary 2005 issue of Calcu Law & Produce pregatine, and is reprinted with this germination of Europeaney Haubutana Investor (Jesuary Lawded). To obtain the adjust version, as copins of any other Asta Law & Produce produces produce can all computes @alpha.com. O Europeaney inclinational investor (Jesuary Lawded).

Revised Foreign Investment Industry Catalogue

its local counterparts. For foreign investment in the "encouraged" or "permitted" industries, if the total investment amount is US\$100 million or more, the project must obtain approval from the central NDRC and MOFCOM with the attendant requirement that any project of US\$500 million or more shall be submitted to the State Council for verification. For any project with a total investment of less than US\$100 million. approval by the NORC and MOFCOM counterparts at the provincial level or below will be sufficient. By contrast, for foreign investment projects in the "restricted" category, no approvals may be obtained below the provincial level, the threshold for national approval is lowered to US\$50 million in total investment, and the threshold for verification by the State Council is lowered to US\$100 million.4 Approval at a lower government level is generally preferred, because it usually entails simplified procedures (thus less time-consuming and costly), which are also more flexible, with easier access to approving officials than would be the case in a national approval process.

PROHIBITED CATEGORY

٠.

The changes in the "prohibited" category have highlighted two overriding policy objectives of the Chinese government (a) control and elimination of investment in environmental unfriendly industries: and (b) prohibition of foreign participation in industries that are deemed to be postically "agnative."

In the manufacturing sector, manufactures of open crifice-type (direct efflux of ecid mist) leed-ecid batteries, mercury silver oxide button batteries, paste-type zinc-mangeness batteries, and Ni-Cd batteries have been added to the "prohibited" catagory due to their adverse impact on the environment.

"Scientific research, technical services and geological exploration industry" are important additions to the "prohibited" category. This phrese is not clearly defined but is likely to cover a variety of accivation ranging from development and application of human stem calls, gene diagnosis and treatment technology to geographic surveys, marine mapping, serial survey mapping photography, administrative boundary mapping, relief map compilation, and electronic navigation map compilation.

In the culture, sports and entertainment sector, radio and television program production and operation companies as well as film production companies have been downgraded to the "prohibited" category from the "restricted" category (where a Chinese party must hold a controlling stake), as have the construction and operation of golf courses. Foreign investment in news websites, Internat-based video and audio program services, business premises for internat access services, and Internat cultural operations have also been added to the "prohibited" category, underscoring the heightened control over foreign participation in Internat-based news and cultural services. But it is questionable whether this prohibition is WTO-compliant, bacause China's WTO commitments do not specifically mention Internet-based services, which are widely considered to be a telecom service that belongs to the "restricted" category.

RESTRICTED CATEGORY

The 2004 Catalogue's Annex listed China's commitments and deadlines to open or conditionally open salected industries to foreign investment.

Those industries have now mainly been incorporated into the "restricted" category or have become "permitted". The only notable exception is the domestic and international operations of the basic telecommunications business. In which the foreign equity ratio limit of 35% will be raised to 49% "by" (presumably on) December 11 2007. This approaching deadline has been referenced in the mein text of the 2007 Catalogue.

Since December 11 2006, China has opened damestic wholesaling of certain products [vegetable oils, autos, and chemical fertilizers, and similar products] to foreign Investors without equity participation restrictions. But the 2007 Catalogua, in a rare instance of potential non-compliance with China's WTD commitments, seams to have reiterated the previous restriction, limiting wholesaling of these products to majority Chinase-controlled joint ventures.

With great caution. China has gradually opened up its financial services sector to foreign investment since China's accession to the WTD. The 2007 Catalogue retains most of the conditions set out for the financial service sector in the 2004 Catalogue insurance (foreign equity ratio in life insurance companies is limited to 50%; securidae firms (foreign equity ratio is limited to 1/3), securidies investment and fund management companies (foreign equity ratio is limited to 43%; and futures companies (where a Chinese party must hold a controlling state). The 2007 Catalogue further provides that foreign-invested securities firms can engage in the underwriting of A-sheres and both the underwriting and trading of B-shares, H-shares and government and congretae bands.

One significant change in the financial services sector is that futures companies have been upgreded from the 'prohibited' category to the 'restricted' category, although the controlling take should be held by a Chinese party. New additions to the 'restricted' category also include, among others, some conventional industries downgreded from the 'permitted' category (such as foreign investment in the real estate secondary market trading and real estate brokering or agency business, dua diligence and credit reting services companies, performances brokerings agencies, enterteinment venue operations, as well as the repairing, designing and manufacturing of common vessels).

In addition to being subject to more stringent government approved requirements than the investment projects in the 'encouraged' and 'permitted' categories, foreign investment in the 'restricted' category may also be subject to further restrictions in terms of investment form (e.g., limited to Chinaso-loreign equity or cooperative joint ventures) or equity ratio. Moreover, the 2007 Catalogue should not be regarded as an exhaustive list of all the restrictive conditions for investment projects in the 'restricted' category, as local governments and administrative agencies in different industries may impose additional requirements, sometimes without justifiable legal basis. Foreign investors should refer to these industry-specific and location-specific regulations when determining the applicable requirements for a specific investment project.

ENCOURAGED CATEGORY

The service sector has been opened wider to foreign investors in line with China's WTO commitments with some new areas, notably 'modern logistics' [not yet defined] and "outsourcing services," added to the "encouraged" catagory.

Rayised Foreign Investment Industry Catalogua

Longstending export preferences have been substantially cut back, as the 2007 Caselogue omits the 2004 Catalogue provision. The provision specified that any "permitted" foreign investment project exporting 100% of its products would eutomatically qualify as an "encouraged" project. This signifies the ending of a policy desiry back to China's initial opening up to the world in the late 1970s.

Consistent with the Chinese government's efforts to cool down the real state market by preventing hot foreign money from swarming into China, the 2007 Catalogue stripped the 'oncouraged' status from the category of development and construction of 'common residences.'

The 2007 Catalogue omits geographical preferences, but they will be detailed in a separate catalogue. All regional specific policies, applicable mainly to the "encouraged" industries for foreign investment in the less-developed Western, Centrel, and Northeastern regions, will be further specified in the Catalogue of Priority industries for Foreign investment in the Central and Western Regions. Therefore, for an investment project located in the Central Western or Northeastern regions, both the 2007 Catalogue and the Catalogue of Priority Industries for Foreign investment in the Central and Western Regions should be consulted to according to the applicable investment policy.

Most of the increases in the "encouraged" category are in the broadly defined "manufacturing" sector. In particular, the two sections of "regular" and "special use" machinery manufacturing are significantly expanded. Most items in the Catalogue for Encouraging Foreign Investment in Products with High and New Technologies (2008) [#] 动外南投资高新技术产品目录 [2006]] have been added to the 2007 Catalogue. In general, the added items feature further division of existing areas into sub-areas, based on sophisticated technical criteria rather than a broadening of the overall scope of these industries. These changes reflect that the policy orientation is in fevour of foreign investments in high and new technologies, equipment manufacturing, and new material industries, it also reflects the policy of environmental conservation and energy-saving, which have become conditions for investment projects to acquire the "encouraged" status (for example, the manufacture of agriculture equipment using fertilizer-saving, pesticide-saving and water-saving technology). At the same time, in conventional industries in which Chine has mastered advanced technologies and has competent production capacity, foreign investment is no longer encouraged, evidenced by the downgrading of several conventional industries from "encouraged" to "permitted", or even to the "restricted" category."

TIMING QUESTIONS

'Grandfathering' is likely to enable an existing FE in a downgraded industry to continue to enjoy the more fevoreble treatment of the previous catalogue version, but its duration is not yet clear. It is also not yet clear whether an existing FIE in an upgraded industry would be able to enjoy more fevoreble treatment under the revised catalogue without obtaining approval for a capital increase. If past practices ware followed, an existing FIE in an industry that has been downgraded from "encouraged" to "restricted" category would not be entitled to the tex incentives for its portion of new capital increase. These questions are expected to be clarified through additional administrative regulations.

rules and, to a large extent, interprotations by the competent agencies in practice.

At the time of writing, no authoritative decision had been announced as to which stage of government approval would ensure that previously submitted foreign investment applications will be covered by the revised catalogue. If past practices are followed, then, regardless of whether a new RE has completed its corporate registration with (and business license certificate issuance by) the local bureau of the State Administration for Industry and Commerce, the cut-off will be as follows:

- A project approval issued before December 1 2007 by the NDRC or its local bureau is likely to ensure that on FIE's assoblishment or expansion is covered by the previous 2004 Catalogue.
- For projects that do not require a project approval, a foreign investment approval issued by MOFDOM or its local department before that data is likely to have the same result.
- Other applications that were pending on December 1 2007 will be subject to the 2007 Catalogue.

ACCELERATING CHANGE

Additional (and probably faster) changes in PFC policies can be expected in the future as the government responds to domestic and international policy challenges in a fast-changing environment, and as it monitors the effects of the catalogue on the PRC's attractiveness to foreign investors.

Endnotes

- 1 http://swaundragoven/awfb/120071107_170997.htm.
- Bas the Circuter of the Customa General Administration on Impairs Teaction Publisher.
 Further Encouraging Forsign Intercentant [商光记录大学 列北田市民大学工程中代表 北京村 中,promptiset on November 22 1983 and the Orticier of the Dates Countil on Administration of Impairs England Publisher (2) 1987.

 Applications of Impairs Displayment Teacher Publisher (2) 1987 在 下级社区 2 全线点度处理 种 promptised on December 23 1987.

- 8 Arucie 3 of the Promisms on Guiding the Chemistion of Foreign Investment (刊中 所刊 教者 5)]社 () Journal of the State Countle February 11 2000) provides that the Foreign Investment Industrial Guidance Catalog and the Catalog of Printry Industries for Foreign Investment in the Catalog and Western Regions shall be the basis for spoke bits pclicies in directing, manishing and approving foreign investment projects.
- 7 For example, the emetting and pressing of formion make is [production of dract-induction or and make aduction in an [production of pitch ward on major reads and production of societant, grosse, and dys-stuff for tasks and chamical blood orders which and are downground from "ancouraged" or "permitted". The manufacture of read-repairing machinistic militing equipment is downground from "encouraged" to "estimate".

