



OTTAWA, September 27, 2016

FISC 2016 IN

## STATEMENT OF REASONS

Concerning the initiation of investigations into the dumping of

**CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS  
ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA, THE  
KINGDOM OF SPAIN, THE UNITED ARAB EMIRATES AND THE UNITED  
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

and the subsidizing of

**CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS  
ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

## DECISION

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the Canada Border Services Agency initiated investigations on September 12, 2016 respecting the alleged injurious dumping of certain fabricated industrial steel components originating in or exported from the People's Republic of China, the Republic of Korea, the Kingdom of Spain, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland, and the alleged injurious subsidizing of certain fabricated industrial steel components originating in or exported from the People's Republic of China.

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

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## TABLE OF CONTENTS

<b>SUMMARY.....</b>	<b>1</b>
<b>INTERESTED PARTIES.....</b>	<b>1</b>
COMPLAINANTS .....	1
OTHER PRODUCERS .....	3
EXPORTERS .....	3
IMPORTERS.....	3
GOVERNMENT OF CHINA .....	3
<b>PRODUCT INFORMATION .....</b>	<b>3</b>
DEFINITION .....	3
ADDITIONAL PRODUCT INFORMATION .....	4
CLASSIFICATION OF IMPORTS .....	11
<b>LIKE GOODS AND CLASS OF GOODS.....</b>	<b>11</b>
<b>THE CANADIAN INDUSTRY .....</b>	<b>14</b>
STANDING .....	14
<b>CANADIAN MARKET .....</b>	<b>14</b>
<b>EVIDENCE OF DUMPING.....</b>	<b>16</b>
NORMAL VALUE .....	18
EXPORT PRICE.....	20
ESTIMATED MARGINS OF DUMPING .....	21
<b>SECTION 20 INQUIRY .....</b>	<b>22</b>
<b>EVIDENCE OF SUBSIDIZING .....</b>	<b>23</b>
PROGRAMS BEING INVESTIGATED.....	24
CONCLUSION.....	26
ESTIMATED AMOUNT OF SUBSIDY .....	27
<b>EVIDENCE OF INJURY .....</b>	<b>27</b>
INCREASED VOLUME OF DUMPED AND SUBSIDIZED IMPORTS .....	27
LOSS OF SALES.....	28
PRICE UNDERCUTTING.....	29
PRICE DEPRESSION .....	29
DECLINING MARKET SHARE.....	30
DECLINING PRODUCTION AND CAPACITY UTILIZATION .....	30
POOR FINANCIAL RESULTS.....	30
REDUCTION IN EMPLOYMENT.....	30
<b>THREAT OF INJURY .....</b>	<b>31</b>
SUBJECT GOODS IMPORTS TRENDS TOWARD A DOMINATION OF THE CANADIAN MARKET .....	31
CHINA'S OVERCAPACITY AND OVERPRODUCTION OF STEEL .....	31
STRESSED MARKET CONDITIONS .....	32
VULNERABILITY TO UNFAIRLY TRADED IMPORTS.....	34
<b>CAUSAL LINK – DUMPING/SUBSIDIZING AND INJURY .....</b>	<b>34</b>
<b>CONCLUSION .....</b>	<b>35</b>
<b>SCOPE OF THE INVESTIGATION .....</b>	<b>35</b>
<b>FUTURE ACTION .....</b>	<b>36</b>
<b>RETROACTIVE DUTY ON MASSIVE IMPORTATIONS.....</b>	<b>37</b>
<b>UNDERTAKINGS .....</b>	<b>37</b>
<b>PUBLICATION.....</b>	<b>38</b>
<b>INFORMATION .....</b>	<b>38</b>
<b>APPENDIX – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES.....</b>	<b>40</b>

## **SUMMARY**

[1] On July 22, 2016, the Canada Border Services Agency (CBSA) received a written complaint from Supermetal Structures Inc. (Supermetal), located in Lévis, Québec, Supreme Group LP (Supreme), located in Edmonton, Alberta and Waiward Steel LP (Waiward), located in Edmonton, Alberta (hereinafter “the complainants”), alleging that imports of certain fabricated industrial steel components (FISC) originating in or exported from the People’s Republic of China (China), the Republic of Korea (Korea), the Kingdom of Spain (Spain), the United Arab Emirates (UAE) and the United Kingdom of Great Britain and Northern Ireland (UK) (hereinafter “named countries”) are being dumped, and that certain FISC originating in or exported from China are being subsidized. The complainants allege that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[2] On August 12, 2016, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainants that the complaint was properly documented. The CBSA also notified the governments of China, Korea, Spain, the UAE and the UK that a properly documented complaint had been received. The Government of China (GOC) was provided with the non-confidential version of the subsidy complaint and was invited for consultations prior to the initiation of the subsidy investigation, pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*; however, no such consultations took place.

[3] The complainants provided evidence to support the allegations that certain FISC from China, Korea, Spain, the UAE and the UK have been dumped and that certain FISC from China have been subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[4] On September 12, 2016, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping of certain FISC from the named countries and the subsidizing of certain FISC from China.

## **INTERESTED PARTIES**

### **Complainants**

[5] The complainants account for a major proportion of the production of like goods in Canada.

[6] The names and addresses of the complainants are as follows:

Supermetal Structures Inc.  
1955, 5e Rue  
Lévis, QC  
G6W 5M6

Supreme Group LP  
10457 – 184 Street NW  
Edmonton, AB  
T5S 1G1

Waiward Steel LP  
10030 – 34 Street NW  
Edmonton, AB  
T6B 2Y5

*Supermetal Structures Inc.*

[7] Supermetal is a producer and installer (erector) of FISC, in addition to fabricated structural steel components for bridges and commercial buildings.<sup>1</sup> The company's main production facility is in Lévis, Québec. In Canada, Supermetal also has production facilities in Sherbrooke, Québec and in Leduc, Alberta. The company operates a plant in South Carolina, in the United States of America. FISC produced in Québec is produced not only for projects in the eastern parts of the country but also for projects in western Canada, as the FISC can be transported by train or truck to western provinces.

*Supreme Group LP*

[8] Supreme is the parent company of several FISC manufacturing companies in Canada, with its head office in Edmonton, Alberta.<sup>2</sup> Supreme's fabrication business focuses primarily on the fabricated structural steel sector, which includes FISC. The company estimates that approximately 85% of its steel fabrication was of FISC, namely producing fabricated steel and certain plate-work components for industrial projects, particularly oil and gas and mining projects. The rest of its production was for bridges, commercial projects and industrial uses that are not the subject of the complaint. Among its 12 companies, five core companies manufacturing FISC operate under the Supreme Steel LP banner, and are located in Edmonton, Alberta, Winnipeg, Manitoba, Welland, Ontario and Saskatoon, Saskatchewan. Another company, Canron Western Constructors Ltd., manufactures FISC and is located in Delta, British Columbia. Quality Fabricating and Supply LP, located in Edmonton, Alberta, can also produce FISC when required. Supreme also provides steel structure erection services and produces other steel products, such as pressure piping.

*Waiward Steel LP*

[9] Waiward, located in Edmonton, Alberta is a large producer and installer (erector) of FISC.<sup>3</sup> The company estimates that 85% of its FISC production is for the oil and gas industry and 13% for the mining industry, with the remaining 2% for other industrial end uses.

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<sup>1</sup> Exhibit 2 (NC) – FISC Complaint; Public Attachment 5

<sup>2</sup> Exhibit 2 (NC) – FISC Complaint; Public Attachment 2

<sup>3</sup> Exhibit 2 (NC) – FISC Complaint; Public Attachment 1

## **Other Producers**

[10] The complaint is supported by MacDougall Steel Erectors Inc. of Borden Carleton, Prince Edward Island, MQM Quality Manufacturing Ltd. of Tracadie-Sheila, New Brunswick, Ocean Steel & Construction Ltd. of Saint John, New Brunswick and Walters Inc. of Hamilton, Ontario.<sup>4</sup>

[11] Other known producers in Canada are: ADF Group Inc., of Terrebonne, Québec, Burnco Mfg Inc., of Vaughan, Ontario, Canam Group Inc., of Boucherville, Québec, Coastal Metals Ltd., of Beresford, New Brunswick, Beauce Atlas Steel Fabricators, of Sainte-Marie de Beauce, Québec, IWL Steel Fabricators LP, of Saskatoon, Saskatchewan, Proco Constructions Inc., of Saint-Nazaire, Québec, Saskarc Fabrication, of Oxbow, Saskatchewan, and Structures GB Ltée, of Rimouski, Québec.<sup>5</sup>

## **Exporters**

[12] The CBSA has identified 155 potential exporters of the subject goods from CBSA import documentation and from information submitted in the complaint.

## **Importers**

[13] The CBSA has identified 89 potential importers of the subject goods from CBSA import documentation and from information submitted in the complaint.

## **Government of China**

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

## **PRODUCT INFORMATION**

### **Definition**

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

Fabricated structural steel and plate-work components of buildings, process equipment, process enclosures, access structures, process structures, and structures for conveyancing and material handling, including steel beams, columns, braces, frames, railings, stairs, trusses, conveyor belt frame structures and galleries, bents, bins, chutes, hoppers,

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<sup>4</sup> Exhibit 2 (NC) – FISC Complaint; Public Attachment 116 – Letters of Support

<sup>5</sup> Exhibit 2 (NC) – FISC Complaint; Revised Public Attachment 7

ductwork, process tanks, pipe racks and apron feeders, whether assembled or partially assembled into modules, or unassembled, for use in structures for: 1. oil and gas extraction, conveyance and processing; 2. mining extraction, conveyance, storage, and processing; 3. industrial power generation facilities; 4. petrochemical plants; 5. cement plants; 6. fertilizer plants; and 7. industrial metal smelters; but excluding electrical transmission towers; rolled steel products not further worked; steel beams not further worked; oil pump jacks; solar, wind and tidal power generation structures; power generation facilities with a rated capacity below 100 megawatts; goods classified as “prefabricated buildings” under HS Code 9406.00.90.30; structural steel for use in manufacturing facilities used in applications other than those described above; and products covered by Certain Fasteners (RR-2014-001), Structural Tubing (RR-2013-001), Carbon Steel Plate (III) (RR-2012-001), Carbon Steel Plate (VII) (NQ-2013-005), and Steel Grating (NQ-2010-002); originating in or exported from the People’s Republic of China, the Republic of Korea, the Kingdom of Spain, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland.

#### **Additional Product Information<sup>6</sup>**

[16] Goods falling within the product definition are fabricated steel components such as angles, columns, beams, girders, base plates, trusses, kits of fabricated structural shapes and “plate-work” components, such as bins, hoppers, chutes and the like, as well as related steel products that have been custom fabricated into articles suitable for erection or assembly into a variety of structures according to specific custom plans.

[17] With regards to fabricated industrial steel components, “industrial” is not a technical term, but a reference to the seven end uses identified in the product definition. FISC is used in the construction industry for support frameworks and integrated basic processing equipment traditionally fabricated by FISC suppliers. FISC are inherently structural. They are components specifically designed to be assembled into a particular structure. In their simplest form, they are custom structural components that form the skeleton of a structure. These components are custom fabricated into pieces that precisely fit together to form support structures. Structures may include an enclosed structure, such as a building, or a structure that is open to the elements. Many of these components will consist of beams and columns. Columns are steel shapes used as vertical supports in a building. Beams which may not be readily distinguished from columns in terms of shape and appearance are steel shapes used horizontally in structures to provide floor support, floor beams, or connect columns girders. FISC includes walkways, ladders and handrails that form part of the steel structure.

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<sup>6</sup> Exhibit 2 (NC) – FISC Complaint; paras. 32-53



[18] In some cases, FISC will include the skeleton framework and integrated structural objects supported by the framework, such as hoppers, chutes and bins. These objects are typically constructed from steel plate and are closely related to the structure or are integrated as part of it. For example, in an oil sands project or similar open pit mining operation, large trucks will dump ore into a very large hopper that funnels the ore to a conveyor or crusher that begins preparing the ore for processing. The FISC fabricator will provide the structural steel components for the hopper structure, which may stand several hundred feet tall. It will also fabricate the hopper components from steel plate. The hopper components are large pieces of steel plate precisely fabricated in a FISC producer's facility so as to be assembled within the hopper structure. Similarly, FISC producers will supply the structure for surge bins (a process tank which holds crushed ore) and the components that comprise the surge bin. Other examples of plate-work components include ducts, chutes, bins and bents.

[19] Plate-work refers to custom fabricated structural components made from steel plate. For example, a hopper would consist of a significant amount of plate-work. Some fabricated components will involve plate-work as part of the connection system or to strengthen beams. Some FISC modules also include significant amounts of plate-work depending on the design. Plate-work could also include large ducts or tanks that comprise part of the project.

[20] FISC also includes structural components of heavy equipment, such as conveyance machinery. In mining and oil sands extraction, ore and other raw materials are carried along large, heavy conveyance systems. FISC producers will fabricate the galleries, trusses, and apron feeder components for these pieces of machinery. These FISC are structural frameworks designed to support a particular piece of integrated machinery.

[21] The product definition is based on a specific set of "end uses". "Oil and gas extraction, conveyance and processing" includes FISC used to fabricate steel frameworks and plate-work components to support the processes and facilities used to extract resources and process them into a marketable product. It also includes FISC used to support the facilities that process oil and gas, such as refining.

[22] FISC used in mining applications includes steel framework structures and plate-work components that support the equipment and processes for the extraction, conveyance storage and processing of mining resources. Processing refers to the initial process of mining resources that occurs at the mine or within close proximity and that is completed in order to market the extracted material.

[23] FISC used in industrial power generation facilities includes the structural steel frameworks and plate components designed to support the production and processes in electrical plants, including hydro, coal, gas and nuclear facilities. Cogeneration power plants are included. Excluded from the product definition are FISC for power generation plants with a capacity of less than 100 megawatts, wind and tidal power generation facilities and structures to support solar panels.

[24] FISC used in petrochemical plants includes the structural steel frameworks and plate components designed to support the production and processes of chemicals and material derived from processing oil and natural gas. This includes petrochemical based plastics, kerosene, propane and other similar goods.

[25] FISC used in cement plants includes the structural steel frameworks and plate components designed to support the production and processing of cement. Cement is a hardening compound used in concrete and mortar. Concrete mixing and processing plants are distinct from cement plants.

[26] FISC used in fertilizer plants includes the structural steel frameworks and plate components designed to support the production and processing of chemical fertilizers. Many potash mines also process extracted resources into fertilizers and would fall under both fertilizer plants and mining operations.

[27] FISC used in industrial metal smelters includes the structural steel frameworks and plate components designed to support the production and processing of ores into refined or semi-refined metals, such as aluminum and steel. The term “industrial” refers to large commercial smelting operations, as opposed to artisan or hobby smelters.

[28] FISC may leave the production facility as components (often referred to the industry as “sticks”) or in a semi-assembled modular configuration. Modules consist of FISC that have been partially assembled, erected or constructed into a module prior to being integrated into the finished steel structure.

[29] Material conveyance structures are structures, usually shop assembled (modular), to support moving conveyor belts. They are often built as box trusses. Trusses consist of a series of welded steel sections that are used in place of conventional beams to span large areas.

#### **Goods not Covered by the Subject Goods Definition**

[30] Goods that are not covered by the subject goods definition include steel components for electrical transmission towers, pre-fabricated metal buildings falling under HS Code 9406.00.90.30, goods subject to specified existing Canadian International Trade Tribunal orders or findings, power plants with a rated capacity of less than 100 megawatts, and solar, wind and tidal power generation structures. Also excluded are structural steel components for use in structures for manufacturing or processing, other than the seven end uses specified in the product definition.

[31] Structural steel components for use in “commercial” structures, such as warehouses, commercial buildings, high-rises, hospitals, and cultural buildings (e.g. arenas, theatres, etc.) are not covered by the product definition.



[32] Note 4 of the Customs Tariff Chapter 94 provides that, “For the purposes of heading 94.06, the expression “prefabricated buildings” means buildings which are finished in the factory or put up as elements, presented together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings.” Industrial structural steel frameworks, such as those identified in the product definition, are not “similar buildings” to housing, offices, schools, shops, sheds, garages or similar buildings. Prefabricated buildings are, however, commonly present on the physical sites of the industrial operations enumerated in the production definition. Structural steel components comprising these prefabricated buildings are therefore not included in the product definition.

[33] Fabricated reinforcing bars used in concrete structures are not included in the production definition as they are reinforcing steel, not structural steel. Also not included are fabricated structural steel components used in buildings and structures for end uses not specified in the production definition.

### **Production Process<sup>7</sup>**

[34] The primary steel products used as inputs for FISC are structural shapes, which include angles, beams and in some cases hollow structural sections, and steel plate. Other steel inputs that may be used include carbon steel sheet, bar, rod, and fasteners. These input products are purchased directly from either Canadian or foreign steel mills or from service centers.

[35] The structural shapes used in FISC are produced using several different methods. Steel scrap or billet may be melted in a large electric furnace and cast into beam shapes that are then hot-rolled to form a precise shape. Hollow structural sections may be produced from hot-rolled coil. Plate may also be cut or formed into structural steel components or welded or bolted into structural beams or columns.

[36] The overseeing engineer on a project will design the structure and develop detailed engineering specifications of the structures to ensure the structural performance. In large projects, this role would be fulfilled by the firm with the Engineering, Procurement and Construction contract (the “EPC”).

[37] Based on the engineering specifications and plans, the FISC producer will develop detailed drawings for the various components. The FISC producer will also undertake detailed engineering including designing the connections (either welds or fasteners) to resist the required design forces, the position and size of holes in the components, the reinforcements that such holes might require, and assessing the need for and placement of stiffeners on built up members.

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<sup>7</sup> Exhibit 2 (NC) – FISC Complaint; paras. 54-71

[38] The basic fabrication operations for FISC include, but are not limited to, the cutting to length, drilling, punching, bending, connecting and welding of steel, and the finishing of such steel into structural components. Each component is custom manufactured for a specific project. Components can be as simple as a beam cut to length with a few holes punched or drilled into it. Alternatively, a component can be comprised of dozens of beams and plates of different sizes and thicknesses connected and welded into a particular three-dimensional component.

[39] Production involves steel materials progressing through several stages of fabrication to produce finished components. The first stage of fabrication usually involves cutting material to length with a shear, saw or torch. At this stage the steel may also be punched or drilled. Some producers use computerized machinery to ensure precise cuts and holes.

[40] The steel then goes to the layout crew which performs the welding, punching and bending operations. Drilling of structural steel is usually limited to making holes in material too thick for the punching machines, though it may be required to meet specifications in lighter material as well. A press brake is also used to form angular bends in wide sheets and plate.

[41] Various components to be welded together are tacked together and checked for proper placement before welding. The thickness of the welding depends on the particular specifications. In addition to welding, component parts of a member may be fitted with fasteners. Permanent shop bolting of structural connections is accomplished with hand or power wrenches.

[42] Throughout the process the assembly is checked for overall dimensions. Material is inspected again prior to final shop welding to check overall dimensions, proper positioning of all connections, and to ensure that all joints fit properly. After the welding is completed a visual inspection can be followed by the testing of welds. Such tests include magnetic particle inspection, dye penetrant inspection, ultrasonic inspection, and radiography. An independent testing laboratory may be involved in inspection prior to shipment of the FISC.

[43] Steel that needs to be painted or galvanized is thoroughly cleaned of loose mill scale rust and other foreign matter. The cleaning can be done with hand or power driven wire brushes, by flame descaling, by pickling acid treatment, or by sand shot or grit blasting. After painting the shipping mark is placed on each piece and an inspection ensures that proper identification of each structural component is clearly indicated.

[44] FISC encompasses the individual fabricated components, which are sometimes referred to as "sticks". They can vary from short small beams with minimal processing to large pieces made up of various items welded or bolted together into a single component.

[45] Labour is the variable factor that most affects the unit price for FISC. In general, the cost of material inputs into a metric ton (MT) of FISC is fairly consistent. However, the cost of FISC per MT will vary considerably depending on how many hours it takes to fabricate a ton of FISC. For example, a large heavy beam that is cut, punched and then welded to a base plate involves relatively few hours of labour and thereby has a relatively low cost per MT. However, if a beam of similar weight and size is cut into many small pieces, welded to various gussets with complex connection, reinforced with stiffener plates, and attached to complex braces, the number of hours of labour increases significantly and the cost per MT of FISC will increase significantly.

[46] A typical fabrication project will require between 15 and 20 hours of shop time per MT of fabricated steel. Plate-work can be far more time consuming and costly on a per ton basis as there can be 40 to 80 hours of shop time per MT.

### **Modularization in yard**

[47] It is common in the oil, gas and mining industries for FISC to be partially assembled into modules prior to being shipped to the construction site. Modularization is typically done outside in a module yard, the same environment in which FISC would be assembled into a structure at the construction site. The reasons for off-site modularization are cost and safety. Labour is expensive at many of the remote locations where FISC is installed. Further, it is more efficient and cheaper to have components fitted together in large modules at ground level, than to have individual components individually attached to a structure at great heights.

[48] A module may be very large, weighing dozens of MTs. Modules could include pipe racks, furnace ductwork (e.g. 16'x16' ducts made from heavy plate), equipment supports or enclosures, walkway components, conveyor systems supports and hopper or chute components (e.g. walls). Further, the modules may then have various components that are not FISC, such as piping, electrical conduits and other utilities, and specialized equipment (e.g. pumps, machinery, etc.) attached to the semi-constructed structure at the modularization yard.

[49] The modules are then shipped to the site and assembled into or connected to a structure. Modules produced in a yard can be up to 36 metres long, 6 metres wide and 6 metres high, and can weigh up to 100 MT. The modules are built in such a way that they can be transported by oversized trucks on a highway to be staged and eventually put together on site to form the complete project or process.

[50] The complainants stated that the modularization process completed in a yard is not the manufacturing or fabrication of FISC, but the construction of modules from FISC. Construction of modules in a yard is the same as the construction of the structure in the field. It is done outside in the elements with portable tools and equipment by individuals specialized in the erection of FISC.

[51] The complainants submit that the assembly of a module in a module yard is not the production of “like goods”. A modular service provider does not produce or fabricate goods, rather it provides construction services. They do not take ownership of the FISC and then turn it into something else. Rather, they semi-erect FISC procured by a purchaser of FISC from a fabricator of FISC in one location and that piece is then transported to its final location for installation.

[52] The CBSA agreed with this conclusion and did not consider the assembly of modules in a module yard to constitute production of like goods in Canada.

### **Product Use**

[53] In industrial settings, FISC is used to construct a variety of structures including buildings and structures that support processing facilities, equipment and systems and parts used for conveyancing and material handling, including but not limited to conveyor belt frame structures and galleries and bents, bins, chutes, hoppers, silos, storage and process tanks, and pipe racks.

[54] FISC for buildings and process structures is used to construct a skeleton that fulfills the load bearing function required for the erection of the building or process. Structures composed of FISC are diverse. They include modest structures requiring several hundred tons of steel to multistory complexes or large support structures such as pipe racks used in oil and gas facilities or giant structures to hold a hopper for processing mining resources and requiring thousands of tons of steel.

[55] Many large structures are beam and column structures that consist of fabricated H and I shapes, i.e. wide flange beams and I-beams, joined in an interlocking fashion to form a rigid steel frame. Significant tonnages of FISC have been used in industrial structures such as oil and gas and mining facilities, including in support structures for large pipes, conveyancing systems used in oil and gas and mineral processing facilities, structural supports for mines, structural supports for processing facilities, and components of processing facilities (e.g. hoppers and storage tanks).

[56] As discussed above, finished FISC is shipped either unassembled or partially assembled from the fabricating facility to construction sites. Delivery of individual components requires coordination between the fabricator and the erector. Erectors are responsible for the placement and connection of the structural components at the construction site. The erector may be either an independent company or an operation related to the fabricator.

[57] Delivery schedules to a project site vary significantly based on the scope and size of the project. Most often delivery begins 16 to 20 weeks from the date of contract, and delivery can occur over a few months or over one or two years, sometimes more.

[58] FISC, whether in stick form or modules, is produced and then delivered to the jobsite in a deliberate sequence by the fabricator in order to allow the erector to proceed efficiently. Upon arrival at a job site, the FISC is checked by the erector's crew chief who determines from blueprints the order in which the material is to be placed. The crane operator lifts sections to the proper place where ironworkers secure the piece by bolting it to existing sections. Welding may also be required to make connections.

### **Classification of Imports**

[59] The allegedly dumped and subsidized goods are normally classified under the following Harmonized System (HS) classification numbers:

7216.99.00.10	7216.99.00.20	7216.99.00.30	7216.99.00.91
7216.99.00.99	7301.20.00.10	7301.20.00.20	7308.40.00.10
7308.40.00.90	7308.90.00.60	7308.90.00.81	7308.90.00.89
7308.90.00.92	7308.90.00.99	7326.90.90.99	8428.31.00.00
8421.99.00.90	8428.32.00.90	8428.33.00.90	8428.39.00.20
8428.39.00.31	8428.39.00.34	8428.39.00.39	8428.39.00.80
8428.39.00.90			

[60] The HS classification numbers identified are for convenience of reference only. The HS classification numbers include non-subject goods. Also, subject goods may fall under HS classification numbers that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

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

[61] Subsection 2(1) of SIMA defines "like goods" in relation to any other goods as goods that are identical in all respects to the other goods, or in the absence of any identical goods, goods the uses and other characteristics of which closely resemble those of the other goods. In considering the issue of like goods, the Canadian International Trade Tribunal (CITT) typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

[62] According to the complainants, the "like goods" are domestically produced FISC, as described in the product definition, for the seven end uses set out in the product definition.<sup>8</sup> The complainants stated that like goods do not include fabricated plate-work and structural components for end uses not specified in the product definition, such as commercial buildings, residential buildings, warehouses, bridges, and cultural facilities (e.g. concert halls and arenas).

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<sup>8</sup> Exhibit 2 (NC) – FISC Complaint; para. 107



[63] In *Unitized Wall Modules*, the CITT held that “like goods” must be coextensive with the subject goods as defined in the product definition.<sup>9</sup> In that case, it did not consider other types of building envelope systems to be like goods on the basis that they were excluded from the product definition.

[64] The CBSA agrees that all domestically produced FISC are “like goods” to the “subject goods”. The like goods and subject goods are products that compete with one another in the Canadian market place, and, subject to them being fabricated to meet the design specifics of a particular project, are fully interchangeable.

[65] In addition, the complainants contend that whether FISC is framework components for a skeleton, a skeleton and integrated plate-work, or a framework for a large conveyor system, FISC fits within a single class of goods. The complainants noted that the CITT has recognized that goods may fall within a single class even if they consist of different styles and varieties.<sup>10</sup> In *Unitized Wall Modules*, the CITT held that curtain wall and window wall style modules consisted of a single class of goods, despite their different design, pricing and physical characteristics, because they were produced on the same equipment, used the same input materials and were marketed to similar customers. All FISC components and products fit along a single spectrum. They are produced on the same machinery. In many cases, they appear physically identical. They are distributed in the same channels, sold to the same customers, and often the different FISC elements will be procured all as part of a single order. For example, in a mining operation or an ore-preparation plant in an oil sands project, the FISC can consist of galleries, skeleton frameworks, and plate-work components.<sup>11</sup>

[66] The complainants<sup>12</sup> have indicated that fabricated structural steel sections and plate work produced for other end uses may have some similar physical characteristics to FISC. For example, both may use beams, columns and plate inputs with similar metallurgical properties. Further, these components may go through a similar manufacturing process, including cutting, drilling, bending and welding. That said, FISC can have physical characteristics that are different from components used for other end uses. First, FISC is often stronger and heavier than commercial steel components. Second, FISC is designed to support production equipment, conveyance systems, and piping, whereas commercial structural steel components are typically designed to support the building’s floors, roof and building envelope. These different “end uses” require different designs of fabricated components such as bracing and beams with stiffeners. Further, once assembled, the structures look very different. Generally, a FISC structure is designed around the equipment and processes for which it was designed, creating unique structures with unique frameworks. Structural steel components fabricated for other end uses are generally used to construct a building and the steel skeleton is fairly consistent despite varying building designs. Namely, a non-industrial steel structure consists largely of beams and columns designed to support floors, a roof, and the building envelope. Consequently, FISC structures generally require more unique, complex and heavy components.

<sup>9</sup> *Unitized Wall Modules*; *Inquiry No. NQ-2013-002*, para. 34

<sup>10</sup> Exhibit 2 (NC) – FISC Complaint; para. 39

<sup>11</sup> *Ibid.*

<sup>12</sup> Exhibit 2 (NC) – FISC Complaint; para. 108

[67] The complainants further allege that FISC also has differentiating market characteristics from structural steel and plate-work fabricated for other end uses.<sup>13</sup> They stated that, unlike commodity steel products, like plate or coil, the “product” is not individual fabricated beams and steel plate, each of which can be marketed individually. Rather, the “product” is a complete set of precise steel components to erect an industrial structural framework, which is comprised of hundreds or thousands of tons of fabricated structural steel components that are designed, engineered and produced by the fabricator as the precise components for a steel structure.

[68] The complainants stated that structural steel components designed for other end uses are not substitutable for FISC.<sup>14</sup> The former cannot support the weight and design of the machinery, equipment, processes and conveyance systems required for industrial projects. Similarly, the components designed for FISC end uses are often too heavy and ill-suited for commercial applications.

[69] Pricing also differs between industrial and non-industrial structural steel components.<sup>15</sup> While pricing varies according the project, FISC is generally more expensive than non-industrial structural steel components on a unit basis. According to the complainants, the reason is that FISC requires more labour per MT as it generally involves more connections and bracing, both of which are frequently more complicated than those in a commercial structures and result in high costs.

[70] The complainants further specified that FISC requires a specific set of design and fabrication capabilities that exceeds the requirements for components used in non-industrial applications. This includes both sophisticated engineering and drafting capabilities, and fabrication capacity and capabilities. Consequently, while FISC producers can generally meet the requirements for non-industrial projects, the reverse is not true. While there are many Canadian firms that can fabricate and erect structural steel for commercial and cultural buildings, there are only a handful that have the capabilities to fabricate structural steel components for industrial projects.<sup>16</sup> Overall, the complainants listed 16 known producers of FISC in Canada.<sup>17</sup>

[71] The complainants, in addressing the issue of classes of goods, noted that the CITT typically examines whether goods potentially comprising separate classes of goods constitute “like goods” in relation to each other, in which case they will be regarded as comprising a single class of goods.<sup>18</sup> In other words, the complainants noted that the CITT uses the same factors as those discussed above.<sup>19</sup>

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<sup>13</sup> Exhibit 2 (NC) – FISC Complaint; para. 109

<sup>14</sup> Exhibit 2 (NC) – FISC Complaint; para. 111

<sup>15</sup> Exhibit 2 (NC) – FISC Complaint; para. 112

<sup>16</sup> Exhibit 2 (NC) – FISC Complaint; para. 113

<sup>17</sup> Exhibit 2 (NC) – FISC Complaint; para. 120

<sup>18</sup> *Hot-Rolled Carbon Steel Plate And High-Strength Low-Alloy Steel Plate*, NQ-2015-001; Statement of Reasons (January 20, 2016), para. 39

<sup>19</sup> Exhibit 2 (NC) – FISC Complaint; para. 114

[72] The CBSA agrees with the complainants that the subject goods and like goods cannot be subdivided into classes based on specifications, method of manufacture, means of distribution, pricing or end use. While there is a difference in the types of structures used in different industrial applications, the design, engineering and fabrication of the components are very similar. Further, the CBSA agrees that there are no material distinctions to be made based on product characteristics, channels of distribution, product methods, or other factors that would justify separate classes of goods.

[73] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that subject goods and like goods constitute only one class of goods.

### **THE CANADIAN INDUSTRY**

[74] The complaint includes data on domestic production and on domestic sales of FISC for domestic consumption. As previously stated, the complainants account for a major proportion of known domestic production of like goods.

#### **Standing**

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

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

[76] Based on an analysis of the information provided in the complaint, in letters of support provided by other Canadian producers and by the Canadian Institute of Steel Construction, the CBSA is satisfied that the complaint is supported by domestic producers, who represent more than 50 percent of the total production of those domestic producers expressing an opinion, and who represent more than 25 percent of FISC production in Canada.

### **CANADIAN MARKET**

[77] The complainants stated that there was no statistical information on FISC imports into Canada. In particular, the HS classification numbers applicable to FISC include a large volume of goods that do not meet the product definition. Further, the HS classification numbers are not specific to end uses, while the goods covered by this complaint are only subject to the extent that they are used in specific applications.

[78] The complainants stated that normally, FISC are imported for a limited number of large projects and that the domestic industry is aware of the existence of such projects either because they bid on the projects, because they are involved in bidding for their erection, because of their involvement in other aspects of a major construction project, or simply based on general industry knowledge. Accordingly, the complainants estimated the volume and value of FISC imports on a project-by-project basis based on commercial intelligence. The complainants estimated the volume and value of the FISC imported for these projects between January 1, 2013 to March 31, 2016.

[79] The CBSA conducted its own analysis of imports of the goods based on actual import data from CBSA documentation and based on commercial intelligence provided in the complaint. Using its internal database, the CBSA identified shipments imported and/or exported by the companies operating in the relevant fields (i.e. oil and gas, mining, industrial power generation, petrochemical, cement, fertilizer and industrial metal smelters), by Engineering, Procurement and Construction firms (EPCs) or other companies that are known for their involvement in fabrication, construction or erection of industrial projects in those fields, since 2013. These relevant players were identified on the basis of information supplied by the complainants and on the basis of internal research by the CBSA.

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

**Table 1**  
**CBSA Estimates of Import Share**  
**(percentage based on estimated value)**

<b>Country</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016 (first half)</b>	<b>POI (January 2014 to June 2016)</b>
China	0.1%	30.4%	40.5%	26.5%	36.1%
Korea	34.3%	0.8%	27.1%	63.8%	28.3%
Spain	3.1%	11.1%	2.9%	0.2%	4.0%
UAE	4.1%	0.0%	2.1%	2.0%	1.7%
UK	4.4%	8.3%	1.7%	0.4%	2.8%
All Other Countries	54.0%	49.4%	25.7%	7.1%	27.1%
<b>Total Imports</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

**Table 2**  
**CBSA Estimates of Apparent Canadian Market Share**  
**(percentage based on estimated value)**

	2013	2014	2015	2016 (first half)*
Canadian producers	68.8%	79.7%	53.5%	60.8%
Imports:				
China	0.0%	6.2%	18.8%	10.4%
Korea	10.7%	0.2%	12.6%	25.0%
Spain	1.0%	2.2%	1.3%	0.1%
UAE	1.3%	0.0%	1.0%	0.8%
UK	1.4%	1.7%	0.8%	0.2%
All others	16.9%	10.0%	12.0%	2.7%
Total Imports	31.2%	20.3%	46.5%	39.2%
<b>Total Estimated Canadian Market</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\* Given that the complaint only included data for the domestic producers for the first quarter of 2016, the CBSA estimated the Canadian producers' domestic sales for the first half of 2016 by doubling the data provided for the first quarter of 2016. Import data for the first half of 2016 are based on actual estimated imports to June 30, 2016.

[81] The CBSA has made these estimates using the information available. However, due to the complexity of the product mix, and before obtaining information from interested parties, the CBSA was limited in its ability to identify all FISC imports during these periods. The CBSA will continue to gather and analyze information on the volume of imports during the period of investigation (POI) of January 1, 2014 to June 30, 2016 as part of the preliminary phase of the dumping and subsidy investigations and will refine these estimates.

### **EVIDENCE OF DUMPING**

[82] The complainants allege that subject goods from China, Korea, Spain, the UAE and the UK have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

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



[84] The complainants provided information to support the allegation that the fabricated structural steel sector in China, which includes FISC, may not be operating under competitive market conditions and as such, normal values should be determined under section 20 of SIMA.

[85] If there is sufficient reason to believe that the conditions described in section 20 of SIMA exist in the sector under investigation, normal values will be determined, where such information is available, on the basis of the domestic selling price or as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits of the like goods sold by producers in any country designated by the CBSA and adjusted for price comparability; or on the basis of the selling price in Canada of like goods imported from any country designated by the CBSA and adjusted for price comparability.

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

[87] The complainants noted that FISC is a custom product sold as part of a package, which typically includes design, drafting, engineering and fabrication of the required components according to the engineering plans provided by the purchaser, and may also include the erection of the components into the structure.<sup>20</sup> Thus, the complainants concluded that the normal values and export prices cannot be estimated for each component but rather for the entirety of the components required for a project.

[88] The complainants' allegations of dumping are based on a comparison of estimated normal values of the subject goods for ten specific industrial projects with the estimated export prices to Canada of those goods. The estimated volume for the ten selected projects (four from China, three from Korea and one each from Spain, the UAE and the UK) represented a significant proportion of the total estimated volume of subject goods from the named countries.

[89] The 10 industrial projects selected by the complainants in order to estimate the margins of dumping are listed below:<sup>21</sup>

1. Fort Hills Utilities and Offsite (China)
2. Canadian Natural Resources Limited (CNRL) Train 4&5 –HWS4 Slurry Preparation Plants (China)
3. Fort Hills Ore Preparation Plant (China)
4. Mosaic Potash – K2 and K3 (China)
5. Fort Hills Secondary Extraction Facility (Korea)
6. North West Redwater Partnership's (NWRP) Sturgeon Refinery Light End Recovery Unit (Unit 50) and Sulphur Plant (Unit 60) (Korea)
7. Imperial Oil's Kearl Expansion Crusher (Korea)

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<sup>20</sup> Exhibit 2 (NC) – FISC Complaint; para. 84

<sup>21</sup> Exhibit 2 (NC) – FISC Complaint; paras. 262-282

8. CNRL's Horizon Upgrader U31A, U31 and U32 Facilities (Spain)
9. Vale Long Harbour Nickel Processing Plant (UK)
10. CNRL Unit 45 Combined Hydrotreating Unit (UAE)

[90] The CBSA's analysis of the alleged dumping is based on a comparison of the CBSA's estimated normal values with the estimated export prices of subject goods for ten specific industrial projects.

[91] The 10 industrial projects selected by the CBSA in order to estimate the margins of dumping are listed below:

1. Fort Hills Utilities and Offsite (China)
2. Fort Hills Ore Preparation Plant (China)
3. Fort Hills Mine Extraction (China)
4. NWRP Sturgeon Refinery Hydrotreaters (China)
5. Fort Hills Secondary Extraction Facility (Korea)
6. NWRP's Sturgeon Refinery Light End Recovery Unit (Unit 50) and Sulphur Plant (Unit 60) (Korea)
7. Syncrude Mildred Lake Mine Replacement (MLMR) Surge Bins (Korea)
8. CNRL's Horizon Upgrader U31A, U31 and U32 Facilities (Spain)
9. MLMR Slurry Buildings (UK)
10. CNRL Unit 45 Combined Hydrotreating Unit (UAE)

[92] As can be observed, four of the projects selected by the CBSA differ from the projects selected by the complainants. For two of the projects selected by the complainants - CNRL Train 4&5 HWS4 Slurry Preparation Plants and Vale Long Harbour Nickel Processing Plant - the CBSA was unable to identify imports destined for those projects, and thus, was unable to estimate the export prices. For another project - Imperial Oil's Kearn Expansion Crusher - all identified shipments that were believed to be destined for the project were imported prior to the POI. Finally, the CBSA was unable to estimate the export price for Mosaic Potash K2 and K3 on the basis of actual import data because shipments for the project had not yet started. For these reasons, the CBSA did not select the projects. Instead, the CBSA selected four alternative industrial projects: Fort Hills Mine Extraction; NWRP Sturgeon Refinery Hydrotreaters; MLMR's Surge Bins and MLMR's Slurry Buildings. These four projects were selected because the FISC was supplied by the same countries that supplied FISC for the projects selected by the complainants that were not used by the CBSA. Further, they were selected because the CBSA was able to estimate both the normal values and the export prices for them, as explained below.

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

### **Normal Value**

[94] The complainants submitted that they are unable to estimate the normal values for projects on the basis of domestic prices, using the methodology of section 15 of SIMA, because not only are domestic prices not readily available, but also because each project is unique and

requires made-to-order components.<sup>22</sup> Accordingly, for every country and for each of the ten selected projects, the complainants estimated the normal value on the basis of the methodology of paragraph 19(b) of SIMA, by estimating the costs of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[95] The complainants provided information supporting the initiation of a section 20 inquiry respecting the allegedly dumped goods from China. They alleged that the prices of FISC in the Chinese domestic market are not reliable for determining normal values due to the presence of the conditions of section 20 of SIMA.

[96] As a result, for goods from China, the complainants also estimated the normal values as per the methodology of paragraph 20(1)(c) of SIMA, on the basis of the estimated costs of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits in a surrogate country. The Complainants used Korea as the surrogate country.

[97] In order to estimate the cost of production for the sample of projects, the complainants started by estimating their own cost of production to supply the FISC, often based on their bid information, and adjusted these estimates to reflect the estimated differences in costs in the applicable countries.

[98] For all projects, the complainants estimated the cost of material as being equal to their own cost to acquire the required steel components. The complainants reasoned that they purchase these material inputs efficiently and at world prices.<sup>23</sup> The complainants then adjusted the material costs upward, alleging that for a given application, components produced overseas require slightly more material than if the components for the same application were produced domestically.<sup>24</sup> The reason for this discrepancy is due to the necessity for goods produced overseas to fit in 40' sea containers while goods produced domestically can be fabricated so that they fit on a flatbed transport, which can accommodate longer and taller pieces. Accordingly, the necessity to fit components in a sea container may require that the foreign producer cut longer components in half (i.e. a beam, for example) and fabricate splice plates so the two pieces can be reassembled with fasteners once delivered to the construction site. The additional fabrication and the additional pieces of metal (the plate splice and the fasteners) were not reflected in the complainants material costs given that they do not need to cut the long components. The complainants estimated labour costs by comparing publically available information about manufacturing wages or labour costs in the named countries to Canadian manufacturing wage rates and labour costs, and adjusting their labour costs accordingly.<sup>25</sup> For every country, the complainants made an additional upward adjustment to the labour cost to reflect the additional fabrication, and thus the additional labour costs, necessary to cut long components to fit in sea containers, as discussed above.<sup>26</sup>

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<sup>22</sup> Exhibit 2 (NC) – FISC Complaint; para. 131

<sup>23</sup> Exhibit 2 (NC) – FISC Complaint; para. 142

<sup>24</sup> Exhibit 2 (NC) – FISC Complaint; paras. 146-148

<sup>25</sup> Exhibit 2 (NC) – FISC Complaint; paras. 152, 157, 158, 161, and 164

<sup>26</sup> Exhibit 2 (NC) – FISC Complaint; paras. 146-148

[99] In light of the limited availability of financial data for the producers of subject goods, and the variability of general, selling and administrative (GS&A) expenses reporting, the complainants used their own average ratio of GS&A expenses over cost of goods sold, over the period of January 1, 2013 to March 31, 2016, in order to estimate GS&A expenses for each project.<sup>27</sup>

[100] The complainants also estimated an amount of financial expenses, as a percentage of cost, on the basis of publically available information for what they claimed to be a representative producer from China, Korea and the UK. As financial data for Spain and the UAE was not readily available, the complainants used the same ratio that was used for the UK, which was the lowest ratio of financial expenses found for China, Korea and the UK.<sup>28</sup>

[101] For each project, the complainants based the reasonable amount for profits on publically available financial data for a Korean producer. The complainants suggested that the amount of profits that it found for producers in the other named countries were too low to be considered as reasonable.<sup>29</sup>

[102] Generally, the CBSA found that the complainants' paragraph 19(b) and section 20 normal value estimates were reasonable.

[103] As discussed above, if there is sufficient reason to believe that conditions described in section 20 of SIMA exist in the sector under investigation, normal values will be determined pursuant to section 20 of SIMA.

[104] As detailed in the "Section 20 Inquiry" section of this Statement of Reasons, the CBSA has information which demonstrates that the conditions of section 20 may exist in the sector under investigation. As a result, the CBSA estimated normal values for China in accordance with the methodology of section 20 of SIMA.

[105] The CBSA estimated the normal values, for each project, on the basis of the complainants' methodologies, except that it applied an amount for profits equal to the profit sought by the relevant domestic producer in their bid or estimated bid for the project.

## **Export Price**

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

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<sup>27</sup> Exhibit 2 (NC) – FISC Complaint; para. 149

<sup>28</sup> Exhibit 2 (NC) – FISC Complaint; paras. 150, 153, 159, 162, 165 and 171

<sup>29</sup> Exhibit 2 (NC) – FISC Complaint; paras. 154, 159, 160, 162, 165 and 171

[107] Competitors' bid prices are not readily available in the FISC industry. In respect of nine of the projects selected by the complainants, the export prices were estimated by the complainants using their own losing bid price or the estimated Canadian bid price, adjusted downwards based on commercial intelligence. For the remaining project, the complainants used a specific price, estimated on the basis of commercial intelligence. Where appropriate, the complainants also deducted an amount for estimated export charges. The methodologies used were based on Section 24 of SIMA.

[108] In estimating the export prices, the CBSA relied on actual import data from commercial and customs documentation, in addition to intelligence on specific industrial projects provided by the complainants. For each project selected by the CBSA, the export prices were estimated on the basis of the weighted average value for duty per MT of the aggregate imports of FISC that were believed to be destined for the project.

[109] As previously indicated, the CBSA selected six of the same projects that were selected by the complainants and four other projects that were identified in the complaint. For two of the projects selected by the complainants, the CBSA was unable to identify imports destined for those projects, and thus, was unable to estimate the export prices. For another project, all identified shipments that were believed to be destined for the project were imported prior to the POI. Accordingly, the CBSA did not select this project. Finally, the CBSA was unable to estimate the export price for the remaining project on the basis of actual import data because shipments for the project had not yet started.

### **Estimated Margins of Dumping**

[110] For each named country, the CBSA estimated the margin of dumping by comparing the total estimated normal value with the total estimated export price. Based on this analysis, it is estimated that the subject goods from China, Korea, Spain, the UAE and the UK were dumped. The estimated margins of dumping for each country are listed in the table below.

**Table 3**  
**Estimated Margins of Dumping**

<b>Country</b>	<b>Estimated Margin of Dumping as % Export Price</b>
China	21.4%
Korea	95.8%
Spain	90.3%
UAE	48.1%
UK	57.7%



## **SECTION 20 INQUIRY**

[111] Section 20 is a provision of SIMA that may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the CBSA, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.<sup>30</sup>

[112] The complainants alleged that the conditions described in section 20 prevail in the fabricated structural steel sector, in China. The complainants alleged that this industry sector in China does not operate under competitive market conditions and consequently, prices established in the Chinese domestic market for FISC are not reliable for determining normal values.

[113] The complainants provided a variety of evidence supporting the claim that the GOC substantially determines prices of FISC sold in China. The complainants provided evidence of export controls and state-ownership in the steel industry and the fabricated structural steel sector. The complainants provided evidence of subsidization in the steel industry, which includes the fabricated structural steel sector. The complainants also provided information on large purchases of FISC by the GOC, via state-owned enterprises. Finally, the complainants cited specific GOC policies such as the *2015 Steel Adjustment Policy*, *State Council Decision on Accelerating the Development of Strategic Emerging Industries* and *China's 12th Five-Year Plans*.

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

[115] With respect to the fabricated structural steel sector, the CBSA has information which demonstrates that the input prices of FISC may be significantly affected by the GOC's policies and that input prices of FISC in China may not be substantially the same as they would be if they were determined in a competitive market.

[116] Consequently, on September 12, 2016, the CBSA included in its investigation a section 20 inquiry in order to determine whether the conditions set forth in paragraph 20(1)(a) of SIMA prevail in the fabricated structural steel sector in China. A section 20 inquiry refers to the process whereby the CBSA collects information from various sources so that the CBSA may, on the basis of this information, form an opinion regarding the presence of the conditions described under section 20 of SIMA, in the sector which includes the goods under investigation.

[117] As part of this section 20 inquiry, the CBSA sent section 20 questionnaires to all potential producers and exporters of FISC in China, as well as to the GOC requesting detailed information related to the fabricated structural steel sector in China.

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<sup>30</sup> China is a prescribed country under section 17.1 of the *Special Import Measures Regulations*.

[118] In the event that the CBSA forms the opinion that domestic prices of FISC 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 if they were determined in a competitive market, the normal values of the goods under investigation will be determined, pursuant to paragraph 20(1)(c), where such information is available, on the basis of the domestic selling price or the aggregate of the cost of production of the goods, a reasonable amount for GS&A, and a reasonable amount for profits of the like goods sold by producers in any country designated by the CBSA and adjusted for price comparability; or, pursuant to paragraph 20(1)(d), where such information is available, on the basis of the selling price in Canada of like goods imported from any country designated by the CBSA and adjusted for price comparability.

[119] To enable the determination of normal values, should paragraph 20(1)(a) of SIMA be applicable, the CBSA requested domestic pricing and costing information from producers of FISC in the Federal Republic of Germany (Germany), the Republic of India (India), Malaysia, and the United States of America (USA). These countries were selected as they are all major exporters of FISC to Canada. Domestic pricing and costing information has been requested from producers in Korea, Spain, the UAE and the UK as they are included in this investigation and may be used to determine normal values, should paragraph 20(1)(a) of SIMA be applicable. The CBSA also requested information from Canadian importers of FISC regarding their sales of FISC from other countries.

### **EVIDENCE OF SUBSIDIZING**

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

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

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

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

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

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

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

[125] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an “actionable subsidy”, meaning that it is countervailable.

[126] The complainants alleged that subject goods originating in or exported from China have been subsidized and that exporters of subject goods from China have benefitted from actionable subsidies provided by various levels of the GOC, which may include the governments of the respective province or municipalities in which the exporters are located.

### **Programs Being Investigated**

[127] The complainants alleged that subject goods have been subsidized at a significant level and maintained that exporters/producers of subject goods have received countervailable subsidies from various levels of the GOC, including the central government as well as provincial and local government authorities.<sup>31</sup>

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<sup>31</sup> Exhibit 2 (NC) – FISC Complaint, page 93.

[128] The complainants provided evidence/information for 116 specific subsidy programs that they argued exporters/producers of subject goods may have benefited from.<sup>32</sup> The complainants referred primarily to the CBSA's various investigations<sup>33</sup>, including *Certain Aluminum Extrusions, Steel Grating, Copper Tube, Certain Unitized Wall Modules, Galvanized Steel Wire, Rebar, Photovoltaic Modules, Silicon Metal, Certain Laminate Flooring, Oil Country Tubular Goods, Stainless Steel Sinks, and Line Pipe*, to identify countervailable subsidy programs that may have been available to exporters/producers of subject goods. The complainants also relied upon a series of studies and reports<sup>34</sup>, three WTO documents<sup>35</sup>, several website publications and articles<sup>36</sup> and annual reports<sup>37</sup> for two identified exporters of subject goods to demonstrate the existence of countervailable subsidy programs in China that may have been available to exporters/producers of subject goods.

[129] In examining the 116 specific subsidy programs identified by the complainants, the CBSA removed 67 programs from the list of programs identified by the complainants. Those programs were removed by the CBSA due to the following considerations:

- a) None of the identified exporters/producers of subject goods was/is located in the regions that would allow them to qualify for the program;
- b) There is insufficient information available to the CBSA to determine if the program was/is potentially available to the identified exporters/producers of subject goods;
- c) The program appears to have already expired or appears to have already been repealed;
- d) The program appears to be the duplicate of another investigated program or appears to be covered by another investigated program.

[130] If more information becomes available during the investigation process, and this information indicates that these removed programs or others not listed may have provided benefits to exporters/producers of subject goods during the POI, the CBSA will pursue the investigation of these programs and request complete information from the GOC and exporters/producers of subject goods.

[131] The CBSA identified 109 potential programs through research of its previous subsidy investigations involving China, information previously obtained by the CBSA and publicly available information.

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<sup>32</sup> Exhibit 2 (NC) – FISC Complaint, pages 93-119.

<sup>33</sup> Exhibit 2 (NC) – FISC Complaint, paras. 305 to 311, 316, 322, 326-330, 332, 336, 337, 339, 340, 346-348.

<sup>34</sup> Exhibit 2 (NC) – FISC Complaint, Attachments 36, 39, 40, 41, 48, 55- 66, 68.

<sup>35</sup> Exhibit 2 (NC) – FISC Complaint, Attachments 55, 64, 68.

<sup>36</sup> Exhibit 2 (NC) – FISC Complaint, Attachments 56-63, 65, 66.

<sup>37</sup> Exhibit 2 (NC) – FISC Complaint, Attachments 40, 41.

[132] In analyzing the information provided by the complainants and obtained by the CBSA through its own research, the CBSA has developed the following categories of programs and incentives that may be provided to exporter/producers of subject goods:

1. Special Economic Zones (SEZ) and other Designated Areas Incentives;
2. Preferential Loans and Loan Guarantees;
3. Grants and Grant Equivalents;
4. Preferential Tax Programs;
5. Relief from Duties and Taxes on Inputs, Materials and Machinery;
6. Reduction in Land Use Fees;
7. Goods/Services Provided by the Government at Less than Fair Market Value; and
8. Equity Programs.

[133] A full listing of all 158 programs to be investigated by the CBSA is found in the **Appendix**. As explained in more detail therein, there is sufficient reason to believe that these programs may constitute actionable subsidies and that exporters/producers of subject goods may have benefitted from these programs.

[134] In the case of programs where an enterprise's eligibility or degree of benefit is contingent upon export performance or the use of goods that are produced or originate in the country of export, such programs may constitute prohibited subsidies under SIMA.

[135] For those programs where incentives are provided to enterprises operating in Special Economic Zones or Other Designated Areas inside the territory of a granting authority, the CBSA considers that these may constitute actionable subsidies for the reason that eligibility is limited to enterprises operating in such regions or is limited to certain enterprises operating within those regions.

[136] As well, the CBSA is satisfied that there is sufficient evidence indicating that exporters/producers of subject goods may receive subsidies in the form of grants, preferential loans, relief from duties or taxes, and provision of goods and services, which may provide a benefit and that may not be generally granted to all companies in the territory of the granting authority.

[137] The CBSA will investigate whether exporters/producers of subject goods received benefits under these programs and whether such programs constitute actionable subsidies.

## **Conclusion**

[138] Sufficient evidence is available to support the allegation that the subsidy programs outlined in the **Appendix** are available to exporters/producers of subject goods originating in or exported from China. In investigating these programs, the CBSA has requested information from the GOC, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs are actionable subsidies and, therefore, countervailable under SIMA.



### **Estimated Amount of Subsidy**

[139] The complainants estimated the amount of subsidy by using four Canadian FISC projects that were supplied by Chinese exporters as a representative sample. For each of these four projects, the complainants estimated the amount of subsidy by calculating the difference between the export price of the subject goods and the cost of the subject goods, using the figures estimated by the complainants.

[140] The CBSA used two of the four projects selected by the complainants, as well as two additional representative Canadian FISC projects identified in the complaint to estimate the overall amount of subsidy conferred upon the exporters of subject goods. In estimating the amount of subsidy, the CBSA calculated the difference between the estimated costs of subject goods and the estimated export prices for the four sampled projects. These sampled projects were deemed to be the representative FISC projects for all Canadian FISC projects during the Subsidy POI. For the four sampled projects, the estimated costs of subject goods were based on the information provided in the complaint and the estimated export prices were based on the information contained in the Customs documentation. Since the cited programs are believed to significantly lower the cost of production of the subject goods, this calculation is a reasonable estimate of the amount of subsidy.

[141] The CBSA's analysis of the information indicates that subject goods imported into Canada during the period of January 1, 2014 to June 30, 2016, were subsidized and that the estimated amount of subsidy is 9.1% of the estimated export price of the subject goods.

### **EVIDENCE OF INJURY**

[142] The complainants alleged that the subject goods have been dumped and subsidized and that such dumping and subsidizing have caused material injury to the domestic industry producing like goods in Canada.

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

[144] In support of their allegations, the complainants have provided evidence of increase in the volume of the allegedly dumped and subsidized imports, loss of sales, price undercutting, price depression, declining market shares, declining production and capacity utilization, poor financial results and reduction in employment.<sup>38</sup>

### **Increased Volume of Dumped and Subsidized Imports**

[145] While the total value of the Canadian market for FISC increased by 8.6% between 2013 and 2015, the value of sales by the Canadian producers decreased by 15.6% during that period. The estimated increase in the total value of the Canadian market between 2014 and 2015

<sup>38</sup> Exhibit 2 (NC) – FISC Complaint, para. 356.

was 43.8%. Despite this very strong increase, the value of domestic sales decreased by 3.6%. The Canadian producers did not benefit from the increase in demand during that period. Imports from the five named countries, on the other hand, increased by 162% between 2013 and 2015. At the time of the 43.8% increase in demand between 2014 and 2015, the volume of subject imports increased by 386%. The most substantial increase in the volume of subject imports were from China. In this regard, FISC originating in China, increased by almost 900% between 2013 and 2015. The volume of subject imports from Korea also increased by 28% between 2013 and 2015, while the volume of subject imports from Spain increased by 51%. The volume of subject imports from the UAE and the UK decreased during that period, although the volume from the UAE increased substantially in 2015 in relation to the previous year.

[146] While the relative volume of subject imports has dropped in the first half of 2016, it has been somewhat proportional to a significant decrease in the total market, a decrease that is perhaps largely attributable to a slowdown in the Oil Fields expansion due to the significant decline in oil prices. For example, the latest publication (i.e. Summer 2016) of the Alberta Oil Sands Industry Quarterly Update, a Government of Alberta publication that provides updates for all Oil Sands projects in Alberta, still shows several projects as being “on hold”, “suspended” or “cancelled”.<sup>39</sup> The market share held by subject imports in the first half of 2016 increased despite the major decline in the market.

[147] Overall, the significant increased presence of subject imports, especially from China and Korea, combined with their high estimated margins of dumping, could be indicative of aggressive price strategies from producers from these countries, for the purposes of capturing shares of the Canadian market.

### **Loss of Sales**

[148] The complainants alleged that prior to 2013, the domestic industry supplied FISC for the majority of relevant industrial projects and that it was almost always asked to bid. Since 2013, it has been common practice for the firms responsible for the engineering, procurement and construction (i.e. the EPC) to source in one of the named countries because the suppliers in the named countries were known in the industry to offer pricing that was well below what the domestic industry could offer.<sup>40</sup>

[149] The complainants provided 24 examples of contracts for the supply of FISC for large industrial projects that were lost to producers from the named countries. For nine of these projects, at least one of the complainants was involved in the bidding to supply FISC for at least a portion of the project, and lost to a producer in one of the named countries. For the other projects, the complainants were not invited to bid, as the contracts were awarded directly to producers in the named countries, allegedly because of their willingness to supply FISC at very low prices.

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<sup>39</sup> Alberta Oil Sands Industry Quarterly Update – Summer 2016;  
[http://www.albertacanada.com/files/albertacanada/AOSID\\_QuarterlyUpdate\\_Summer2016.pdf](http://www.albertacanada.com/files/albertacanada/AOSID_QuarterlyUpdate_Summer2016.pdf); pp. 10-15.

<sup>40</sup> Exhibit 2 (NC) – FISC Complaint, para. 376.

[150] The CBSA analysed Facility for Information Retrieval Management (FIRM) reports, Customs document entries, researched companies and industrial projects on the internet, and compared its own data with the complainants' allegation regarding lost sales. In many instances, the CBSA was able to corroborate that specific projects were supplied by the named countries, and, as shown in the dumping section, that the FISC was supplied at significant margins of dumping. As shown in the subsidy section, it is also estimated that the goods from China were subsidized. On the basis of the information available, it seems quite likely that several of these sales were lost due to the significant price difference between the Canadian bid price and the foreign pricing.

[151] As a result of the lost sales, the complainants claim significant lost revenues.

[152] The complainants maintain that these dumped and subsidized imports have been the direct cause of the complainants' suppressed sales volumes.

[153] The CBSA finds the complainants' allegations of lost sales to be reasonable and well supported. The lost sales have been reasonably linked to the allegedly dumped and subsidized imports.

### **Price Undercutting**

[154] The complainants stated that the alleged dumped and subsidized goods from the named countries have captured sales and market share by leveraging low pricing and subsequently undercutting the complainants' pricing. The complainants also alleged that price undercutting by producers in the named countries has caused the domestic industry to discount pricing to obtain orders, resulting in price depression and substantial lost revenue to the domestic industry.

[155] In some instances, the CBSA was able to substantiate allegations of price undercutting by comparing the Complainants' bid price on a project with the CBSA's estimated export price for the project, based on FIRM data. The CBSA finds the complainants' allegations of price undercutting to be reasonable and well supported. The evidence showed strong signs of price undercutting between 2013 and 2016.

### **Price Depression**

[156] The complainants alleged that they have reduced prices on bids in order to remain competitive against imports of subject goods. The complainants also alleged that the impact of price depression and erosion can be seen in the domestic industry's net profit margin. The domestic industry's net profit margin has declined between 2013 and 2015 and the complainants alleged that 2016 is expected to be another year of declining net profit margins.

[157] The CBSA finds the complaint contains evidence of price depression as evidenced by the domestic industry's declining net profit margins.

### **Declining Market Share**

[158] The complainants alleged that the imports of subject goods from the named countries have been increasing the named countries' share of the Canadian FISC market between 2013 and the first quarter of 2016. The complainants also alleged that the present market share of Canadian industry remains well below what it traditionally was prior to 2013.

[159] As illustrated in Table 2, from 2013 to 2016 Canadian producers experienced variable changes in market share. An initial increase of 10.9 percentage points from 2013 to 2014 was followed by a decline of 26.2 percentage points from 2014 to 2015. While the estimated market share for 2016 increased by 7.3 percentage points, this estimate was based on first half results only.

[160] The CBSA finds that imports of subject goods from the named countries have significantly increased the named countries' share of the Canadian Market between 2013 and 2016.

### **Declining Production and Capacity Utilization**

[161] The complainants alleged that the increasing presence of imports from the named countries have negatively affected their production levels and capacity utilization.

[162] The CBSA finds that there is a general trend towards low and decreasing capacity utilization and that, subject to continuing market conditions, there is a reasonable threat to the Canadian industry.

### **Poor Financial Results**

[163] The complainants alleged that domestic FISC producers' net profit has been falling between 2013 and 2016.

[164] The CBSA agrees that the domestic industry as a whole has had poor financial performance and that this is at least partly attributable to the injurious dumping of the subject goods.

[165] The CBSA finds that net profit margins for the industry have been declining and finds the allegations of poor financial results reasonably justified.

### **Reduction in Employment**

[166] The complainants alleged that their employment has dropped between 2013 and the first quarter of 2016. The complainants alleged that the reduction in employment is because of low capacity utilization due to the increasing presence of allegedly dumped and subsidized goods.

[167] The CBSA finds that there has been a reduction in the number of direct employees in the FISC sector and that, subject to continued market pressure due to allegedly dumped and subsidized imports, the threat of further reductions in direct employment is reasonably warranted.

### **THREAT OF INJURY**

[168] The complainants stated that the alleged dumped and subsidized goods threaten to cause further material injury to the domestic production of like goods. The complainants also alleged that the threat posed by the allegedly dumped and subsidized goods is evident in a number of factors which are likely to have an impact in the next 18 to 24 months.

#### **Few Existing Orders**

[169] The complainants alleged that the deteriorating performance of the domestic industry between 2013 and 2015 will worsen through 2016 and beyond. The complainants state that the domestic industry will generally have orders placed at least 12 months in advance and currently orders are quite low.

[170] The CBSA finds that the continued and increasing presence of allegedly dumped and subsidized goods can be reasonably correlated to the deteriorating performance of the domestic industry.

#### **Subject Goods Imports Trends Toward a Domination of the Canadian Market**

[171] The complainants stated that the increase in the volume of allegedly dumped and subsidized subject goods in the Canadian market, at prices that undercut domestically produced like goods, pose a threat of further injury to the Canadian industry. The complainants also alleged that injury to the Canadian industry will continue to worsen through 2016 and 2017.<sup>41</sup>

[172] The CBSA finds that the complainants' allegation of threat of injury posed by an increase in the rate of subject goods imports, both in absolute and relative terms, is reasonable and well supported.

#### **China's overcapacity and overproduction of steel**

[173] The complainants alleged that a multitude of factors affecting the Chinese FISC industry threaten to injure the complainants over the next 18 to 24 months.

[174] Based on publicly available industry reports, Chinese steel production is expected to increase and hit peak production capacity in 2016. The complainants further alleged that China will miss its goal of reducing its excess capacity, thereby suggesting that Chinese steel production will continue to increase until at least 2016.<sup>42</sup> The complainants further alleged that

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<sup>41</sup> Exhibit 2 (NC) – FISC Complaint, page 152.

<sup>42</sup> Exhibit 2 (NC) – FISC Complaint, page 154.



there is weakening domestic steel demand in China, thereby increasing the likelihood that Chinese FISC producers will procure low priced steel inputs and ultimately export their production to Canada.

[175] The CBSA finds that the allegations of significant excess capacity of steel producers in China and the threat of continued expansion of capacity are reasonable and well-supported. Steel is a primary input of FISC.

### **Stressed Market Conditions**

#### *China*

[176] The complainants alleged that Chinese FISC producers will be encouraged to export their products to Canada given a slowing Chinese economy, including construction and oil and gas sectors, and a contracting finished steel industry over the next few years. Further, these allegations are supported by industry publications which forecast market demand.<sup>43</sup>

[177] The complainants alleged that as the construction sector slows, Chinese producers of FISC will have to focus on export markets. Further, as China's mining industry is plagued with overcapacity and the GOC is taking steps to reduce it, the complainants alleged that China's consumption of FISC will decline over the next two years and this will force Chinese FISC producers to find new customers in foreign markets.

[178] The complainants further alleged, with supporting documentation, that many Chinese steel producers are state-owned, which helps explain why steel production is continuing despite overcapacity and unprofitability.<sup>44</sup>

[179] The CBSA finds that the complainants' allegations of the threat of injury to the Canadian FISC industry, posed by stressed market conditions in China, are reasonable and well supported.

#### *Korea*

[180] The complainants alleged that, based on industry data, there has and will continue to be a significant drop in Korea's consumption for finished steel products until at least 2017. In light of the pressure from Chinese imports and Korea's shrinking exports of steel sections, the complainants alleged that Korean FISC producers will dump FISC on export markets, including Canada, in order to maintain market share, remain competitive, and cover production costs. The complainants further alleged that, similar to China, there is an incentive for Korean exporters to export upstream products containing steel sections and steel plate, which are the primary inputs in FISC.<sup>45</sup>

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<sup>43</sup> Exhibit 2 (NC) – FISC Complaint, page 158-162.

<sup>44</sup> Exhibit 2 (NC) – FISC Complaint, page 160-161.

<sup>45</sup> Exhibit 2 (NC) – FISC Complaint, page 162.

[181] The CBSA finds that the allegations of the threat of injury posed by stressed market conditions in Korea to be reasonable and well supported.

#### *Spain*

[182] The complainants alleged that, based on EU and Spanish industry data, low steel consumption, stagnant growth in the EU, and a significant increase in low-priced Chinese and other steel imports will lead to the offloading of Spanish FISC and steel production to export markets, such as Canada.<sup>46</sup> Further, the complainants alleged that while the Spanish construction industry is improving, industry data suggests that steel consumption is forecasted to remain low and the Spanish non-residential construction industry will likely remain sluggish with scarce large infrastructure projects.<sup>47</sup>

[183] The CBSA finds that the allegations of the threat of injury posed by stressed market conditions in Spain to be reasonable and well supported.

#### *United Kingdom*

[184] The complainants documented a number of sources that illustrate the UK steel industry is struggling because of China's overcapacity of steel leading to large volumes of low-priced Chinese imports.<sup>48</sup> Several steel companies also reported significant job losses in 2015.<sup>49</sup> The complainants further alleged, based on public information that the UK's current market is saturated with structural steel and that domestic producers will look for alternate export markets. Assuming the impact of these market conditions in the UK is similar to other named countries, producers in the UK may need to seek alternate export markets for FISC, such as Canada.

[185] The CBSA finds that it is a reasonable inference that an excess of steel in the UK combined with increasing volumes of low-priced Chinese imports will result in the UK seeking alternative markets, such as Canada.

#### *United Arab Emirates*

[186] The complainants alleged that the downturn in the oil and gas industry leading to decreased consumption in the UAE's traditional export markets will probe the UAE to look for orders in order to fill their capacity with export markets, such as Canada.<sup>50</sup> Further, the complainants alleged, with supporting industry data, that the UAE oil and gas industry has been significantly affected by the downturn in oil prices.

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<sup>46</sup> Exhibit 2 (NC) – FISC Complaint, page 164-167.

<sup>47</sup> *ibid.*

<sup>48</sup> Exhibit 2 (NC) – FISC Complaint, page 167-170.

<sup>49</sup> Exhibit 2 (NC) – FISC Complaint, page 169-170.

<sup>50</sup> Exhibit 2 (NC) – FISC Complaint, page 170-171.

[187] The direct consequence of the poor market conditions in the UAE is that the Canadian industry will inevitably be harmed in the following years. Further, increased competition here in Canada for fewer industrial projects may increase the exporters' propensity to export their goods at dumped prices.

[188] The CBSA finds that there is a reasonable indication that stressed market conditions in the UAE pose a threat of injury to the Canadian FISC industry.

### **Vulnerability to Unfairly Traded Imports**

[189] The complainants alleged that, in light of the price of oil and commodities, there will be a decrease in projects requiring FISC over the next several years. With the presence of dumped and subsidized goods, the complainants alleged that domestic FISC producers and subject goods producers will be fighting for market share in the Canadian market. As FISC orders are weak and profits are low for the industry, the complainants alleged that further unfair competition and low FISC demand will cause increasing material injury to the domestic industry.<sup>51</sup>

[190] The CBSA recognizes the complainants' allegations that the domestic industry is vulnerable to subject goods being dumped and subsidized.

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

[191] The CBSA finds that the complainants have provided sufficient evidence that there is a reasonable indication that they have suffered injury due to the alleged dumping and subsidizing of subject goods imported into Canada. The complainant's evidence of injury include increase in the volume of the allegedly dumped and subsidized imports, loss of sales, price undercutting, price depression, declining market shares, declining production and capacity utilization, poor financial results and reduction in employment. This injury relates to the price advantage that the alleged dumping and subsidizing have produced between the imported subject goods and the Canadian produced goods.

[192] The CBSA also finds that the complainants have provided sufficient evidence that there is a reasonable indication that continued alleged dumping and subsidizing of subject goods imported into Canada threaten to cause injury to the Canadian industry producing these goods.

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<sup>51</sup> Exhibit 2 (NC) – FISC Complaint, page 172.

## **CONCLUSION**

[193] Based on information provided in the complaint, other available information, and the CBSA's internal import documentation, the CBSA is of the opinion that there is evidence that certain FISC originating in or exported from China, Korea, Spain, the UAE and the UK have been dumped, and that certain FISC originating in or exported from China have been subsidized, and there is a reasonable indication that such dumping and subsidizing have caused and are threatening to cause injury to the Canadian industry. As a result, based on the CBSA's examination of the evidence and its own analysis, dumping and subsidy investigations were initiated on September 12, 2016.

## **SCOPE OF THE INVESTIGATION**

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

[195] The CBSA has requested information from all potential exporters and importers to determine whether or not subject goods imported into Canada during the period of investigation (POI) of January 1, 2014 to June 30, 2016, were dumped. The information requested will be used to determine the normal values, export prices and margins of dumping, if any.

[196] The CBSA requested information from producers and exporters of FISC in China, as well as the GOC, to determine whether the conditions of section 20 exist in the sector under investigation. The CBSA has also requested costing and sales information from producers of FISC in Germany, India, Korea, Malaysia, Spain, the UAE, the UK and the USA. Where sufficiently available, this information may be used to determine normal values of the goods in the event that the CBSA forms an opinion that the evidence in this investigation demonstrates that section 20 conditions exist in the fabricated structural steel sector, which includes FISC, in China.

[197] The CBSA has also requested information from the GOC and all potential exporters in China to determine whether or not subject goods imported into Canada during the POI of January 1, 2014 to June 30, 2016, were subsidized. The information requested will be used to determine the amounts of subsidy, if any.

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

## **FUTURE ACTION**

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

[200] If the CITT finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the CBSA investigation(s) preliminarily reveals that the goods have been dumped and/or subsidized, the CBSA will make a preliminary determination(s) of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by December 12, 2016. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[201] Previously, under section 35 of SIMA, if, at any time before making a preliminary determination the CBSA was satisfied that there was insufficient evidence of dumping or subsidizing to justify proceeding, the margin of dumping of, or the amount of subsidy on, the goods of a country was insignificant or the actual and potential volume of dumped or subsidized goods of a country was negligible, the CBSA would terminate the investigation with respect to goods of that country.

[202] On June 22, 2016 SIMA was amended so that now if, at any time before the CBSA makes a preliminary determination, the CBSA is satisfied that the volume of goods of a country is negligible, the investigation(s) will be terminated.

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

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

[205] After the preliminary determination, if, in respect of goods of any country, the CBSA's investigation reveals that imports of the subject goods have not been dumped or subsidized, or that the margin of dumping of, or amount of subsidy on, the goods is insignificant, the investigation(s) will be terminated.



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

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

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

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

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

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

### **UNDERTAKINGS**

[211] After a preliminary determination of dumping by the CBSA, other than a preliminary determination in which a determination was made that the margin of dumping of, or the amount of subsidy on, the goods is insignificant, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

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

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

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

## **PUBLICATION**

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

## **INFORMATION**

[216] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping and subsidizing. Written submissions should be forwarded to the attention of one of the officers identified below.

[217] To be given consideration in this phase of these investigations, all information should be received by the CBSA by October 19, 2016.

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

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

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

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

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

**Telephone:** Denis Chenier 613-952-7547  
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**E-mail:** [simaregistry@cbsa-asfc.gc.ca](mailto:simaregistry@cbsa-asfc.gc.ca)

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



Brent McRoberts  
Director General  
Trade and Anti-dumping Programs Directorate

ATTACHMENT

**1. Appendix - Description of Identified Programs and Incentives**

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

Evidence provided by the complainants and obtained by the CBSA suggests that the Government of China (GOC) may have provided support to exporters/producers of subject goods in the following manner. For purposes of this investigation, GOC refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial. Benefits provided by state-owned enterprises, which possess, exercise or have been vested with governmental authority may also be considered to be provided by the GOC for purposes of this investigation.

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

- Program 1: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas
- Program 2: Accelerated Depreciation on Fixed Assets
- Program 3: Accelerated Depreciation on Intangible Assets
- Program 4: Income Tax Refunds where Profits are reinvested in SEZs and other Designated Areas
- Program 5: Local Income Tax Exemption and/or Reduction
- Program 6: Award for Tax Payments
- Program 7: Tariff and Value-Added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas
- Program 8: Preferential Tax Policies for the Western Region, Central Region and Northeast Old Industrial Base
- Program 9: Services or Goods provided by Government or public bodies at preferential prices to enterprises located in SEZs and other designated areas
- Program 10: Custom Duty Exemption and VAT Exemption for machinery, equipment, and construction materials imported into the Export Processing Zone for the construction of production facilities (such as factory and warehouse) in the Export Processing Zone
- Program 11: Custom Duty Exemption and VAT Exemption for machinery, equipment, molds/dies and the corresponding repairing parts imported into the Export Processing Zone and used for the production by Enterprises in the Export Processing Zone
- Program 12: Export Duty Refund or Exemption for the Exported Goods Produced in the Export Processing Zone and exported from the Export Processing Zone
- Program 13: VAT Refunds or Exemptions for domestically purchased machinery, equipment and construction materials used for the production of exported goods and the construction of production facilities in the Export Processing Zone
- Program 14: Extra Deduction for Intangible Assets
- Program 15: Award for being certified to be high-new tech enterprise at provincial level or above
- Program 16: Award for being certified to be national key new product or provincial high-new tech product
- Program 17: Award for implementing provincial key science and technology plan project
- Program 18: Financial subsidy/award for investment on equipment/fixed assets

- Program 19: Exemption of service fees, administrative fees and/or real estate tax
- Program 20: Corporate income tax reductions and/or exemptions
- Program 21: Award for the project being implemented in the zone
- Program 22: Subsidy for building/land rental expenses

## **II. Preferential Loans and Loan Guarantees**

- Program 23: Loans and Interest Subsidies Provided Under the Northeast Revitalization Program
- Program 24: Export Seller's Credit for High-Technology and New-Technology Products by China EMIX Bank
- Program 25: Fixed Asset Import Credit by China EMIX Bank
- Program 26: Offshore project contracting credit by China EMIX Bank
- Program 27: Preferential Loan for the National/Provincial key Science & Technology Industrialization Projects, High Technology Industrialization Projects, Science & Technology Achievements Commercialization Projects, Modern Equipment Manufacturing Industry and key Information Technology Industrialization Projects by Liaoning Governments
- Program 28: Loan provided under financing guarantee special fund for small and medium size foreign trade enterprises
- Program 29: Loan provided under financing guarantee special fund for small and medium size science and technology type enterprises
- Program 30: Preferential Loans and Financing Provided by the GOC through the State-Owned Banks

## **III. Grants and Grant Equivalents**

- Program 31: Grants for International Certification
- Program 32: Innovation Fund for Medium and Small Business
- Program 33: Special fund for developing trade through science and technology by Guangdong
- Program 34: Special Funds for Foreign Economic and Technical Cooperation
- Program 35: Export Brand Development Fund
- Program 36: Provincial Scientific Development Plan Fund
- Program 37: Grants for Encouraging the Establishment of Headquarters and/or Regional Headquarters
- Program 38: Grant - Provisional Industry Promotion Special Fund
- Program 39: Emission Reduction and Energy-Saving Award
- Program 40: Grant - Patent Assistance/Award
- Program 41: Grant - Service Industry Development Fund
- Program 42: Fund for Supporting Strategic Emerging Industries
- Program 43: Quality Grant
- Program 44: Grants for Export Activities
- Program 45: Grant - Provincial Foreign Economy and Trade Development Special Fund
- Program 46: Enterprise Technology Centers
- Program 47: Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings



- Program 48: International Market Fund for Small and Medium Sized Export Companies
- Program 49: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- Program 50: Grant - Special Fund for Fostering Stable Growth of Foreign Trade
- Program 51: Financial Special Fund for Supporting High and New Technology Industry Development Project
- Program 52: Grants and Other Incentives for Development of Famous Brands, China Top World Brands or other well-known Brands
- Program 53: Guangdong Supporting Fund
- Program 54: "Five Points, One Line" Program of Liaoning Province
- Program 55: Fund for Government-Bank-Enterprise Cooperation Projects by Guangdong Governments
- Program 56: Special Fund for Significant Science and Technology by Guangdong Governments
- Program 57: Provincial Fund for Fiscal and Technological Innovation by Guangdong Governments
- Program 58: Provincial Loan Interest Assistance Special Fund for SMEs (small and medium size enterprises) by Guangdong Governments
- Program 59: Supporting Fund for the Projects Used to Resolve the Important Technological Issues for Enterprises' Production and R&D by Liaoning Governments
- Program 60: Technology Innovation Fund for Science & Technology Type SMEs by Liaoning Governments
- Program 61: Special Supporting Fund and Special Loan Assistance by the Chinese Ministry of Science & Technology for revitalizing the Northeast old industrial base
- Program 62: Special Supporting Fund for Key Projects of "500 Strong Enterprises in Contemporary Industries" by Guangdong Governments
- Program 63: Medium Size and Small Size Enterprises Development Special Fund
- Program 64: Medium Size and Small Size Trading Enterprises Development Special Fund
- Program 65: Special Fund for Export Credit Insurance by Guangdong Governments
- Program 66: Interest Assistance for Technology Renovation Projects by Liaoning Governments
- Program 67: Interest Assistance for the Application of Information Technology by Liaoning Governments
- Program 68: Loan Guarantee Fund for Science & Technology Enterprises by Liaoning Governments
- Program 69: Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
- Program 70: Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
- Program 71: Government Export Subsidy and Product Innovation Subsidy in Shandong Province
- Program 72: Export Assistance Grant
- Program 73: Special fund for the development of the advanced manufacturing industry
- Program 74: Special fund for the development of the cultural innovation industry
- Program 75: Special fund for environment protection
- Program 76: Special fund for energy-saving and emission reduction
- Program 77: Special fund for Science and technology innovation

- Program 78: Special fund for Key industry revitalization and technology renovation
- Program 79: Interest payment subsidy for special projects
- Program 80: Subsidy for the demolition and relocation of the manufacturing facilities
- Program 81: Subsidy for the infrastructure construction
- Program 82: Subsidy for developing/manufacturing hi-tech products
- Program 83: Refund of taxes and fees previously collected by the governments
- Program 84: Financial support to encourage the transformation/application of high-new tech achievements
- Program 85: Financial subsidy for training employees
- Program 86: Financial subsidy for waste gas treatment
- Program 87: Financial subsidy for patent pilot enterprises
- Program 88: Special fund to encourage the development of Science and technology
- Program 89: Brand name development Special Fund
- Program 90: Business development Special Fund
- Program 91: Supporting fund for the R&D center of the provincial level high-new tech enterprise
- Program 92: Financial reward for eliminating lagging production capacities
- Program 93: Financial subsidy for the demonstration project in industrial enterprises regarding the establishment of the energy administration center
- Program 94: Financial subsidy for the industry structure adjustment
- Program 95: Financial subsidy to encourage the research and development activities
- Program 96: Financial reward for energy-saving technology renovation
- Program 97: Financial support to encourage the development of business and trade industry
- Program 98: Financial support for the development of the high-new tech industry
- Program 99: Financial support for the purchase of internationally advanced equipment
- Program 100: Financial support/reward for the standardization work in industrial enterprises
- Program 101: Foreign investment and cooperation special fund
- Program 102: Interest subsidy for the importation of encouraged products and technology
- Program 103: Special fund to support the development of the private economy
- Program 104: Land financial subsidy
- Program 105: Financial subsidy for the construction of special/specific project
- Program 106: Financial subsidy received for the sale of land/land use right to the government
- Program 107: Financial subsidy for the restructuring and development
- Program 108: National technology development special fund
- Program 109: Technology development special fund for efficient and economic construction steel
- Program 110: Financial subsidy for provincial construction industry modernization demonstration base
- Program 111: Special fund for national science and technology support plan
- Program 112: Financial subsidy for the research and development expense of major equipment
- Program 113: Financial subsidy for the first application/usage of major science and technology equipment
- Program 114: Financial subsidy for new added investments for high-new tech industrialization
- Program 115: Provincial science and technology Special fund
- Program 116: Provincial financial support for key technical renovation

- Program 117: Provincial special fund for the development of small and medium size science and technology type enterprises
- Program 118: Special fund to encourage the balanced development of foreign economy and trade among different regions
- Program 119: Provincial special fund for the development of informatization
- Program 120: Provincial special fund for self-innovation activities
- Program 121: Provincial special fund for technical renovation
- Program 122: Liaoning High-tech Products & Equipment Exports Interest Assistance
- Program 123: Compensation of interest expenses on export credit insurance financing
- Program 124: Compensation of interest expenses on export financing
- Program 125: Award for science and technology
- Program 126: Funds for key innovation team
- Program 127: Reduction/exemption of water conservancy fund
- Program 128: Special fund for implementation of “going out” strategy
- Program 129: Cleaning-production reward
- Program 130: Advanced Science/Technology enterprise grant
- Program 131: Financial support for water conservation project/work
- Program 132: Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”
- Program 133: Talent Awards
- Program 134: Exemption of Flood-proofing fund payment
- Program 135: Technical Renovation Loan subsidy Fund
- Program 136: National Innovation Fund for Technology Based Firms
- Program 137: Fund for the research and development of exported products

#### **IV. Preferential Tax Programs**

- Program 138: Preferential Tax Policies for the Research and Development of FIEs
- Program 139: Preferential Tax Policies for FIEs and Foreign Enterprises which have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment
- Program 140: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose
- Program 141: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps
- Program 142: Corporate Income Tax Reduction for New High-Technology Enterprises
- Program 143: Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for FIEs
- Program 144: Extra deduction for R&D Expenses for income tax
- Program 145: Preferential tax policy for the employee education fee incurred by high-new tech enterprises
- Program 146: Income tax reduction/exemption for the income from the transfer/sale of technology
- Program 147: Preferential tax policy to support and encourage the employment

- Program 148: Tax offsets for the investment in the acquisition of special facilities for environment protection, energy and water conservation and work safety  
Program 149: Tax Preference Available to Companies that Operate at a Small Profit  
Program 150: VAT exemption/refund for domestically purchased equipment  
Program 151: Preferential tax policy for encouraged projects or industries  
Program 152: Dividend exemption between qualified resident enterprises

#### **V. Relief from Duties and Taxes on Inputs, Materials and Machinery**

- Program 153: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment  
Program 154: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

#### **VI. Reduction in Land Use Fees**

- Program 155: Reduction, Exemption or Refund of Land Use Fees, Land Rental Rates and Land Purchase/Transfer Prices

#### **VII. Goods/Services Provided by the Government at Less than Fair Market Value**

- Program 156: Raw Materials Provided by the Government at Less than Fair Market Value  
Program 157: Utilities Provided by the Government at Less than Fair Market Value

#### **VIII. Equity Programs**

- Program 158: Debt to Equity Swaps

### *Determinations of Subsidy and Specificity*

Available information indicates that the programs identified under *SEZ and Other Designated Areas Incentives; Preferential Loans and Loan Guarantees; Preferential Tax Programs; and Relief from Duties and Taxes on Inputs, Materials and Machinery*, may constitute a financial contribution pursuant to paragraph 2(1.6)(b) of the *Special Import Measures Act (SIMA)*, in that amounts that would otherwise be owing and due to the government are reduced or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

*Grants and Grant Equivalents* may constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA in that they involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities; and pursuant to paragraph 2(1.6)(b) of SIMA as amounts owing and due to the government that are forgiven or not collected.

*Goods/Services Provided by the Government at Less than Fair Market Value* may constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure.

Benefits provided to certain types of enterprises or limited to enterprises located in certain areas under program categories, *SEZ and Other Designated Areas Incentives; Preferential Loans and Loan Guarantees; Preferential Tax Programs; and Relief from Duties and Taxes on Inputs, Materials and Machinery*, may be considered specific pursuant to paragraph 2(7.2)(a) of SIMA.

As well, *Grants and Grant Equivalents, Equity Programs and Goods/Services Provided by the Government at Less than Fair Market Value* may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.