



OTTAWA, March 18, 2015

## STATEMENT OF REASONS

Concerning the final determinations  
with respect to the dumping of

**CERTAIN OIL COUNTRY TUBULAR GOODS ORIGINATING IN OR EXPORTED  
FROM CHINESE TAIPEI, THE REPUBLIC OF INDIA,  
THE REPUBLIC OF INDONESIA, THE REPUBLIC OF THE PHILIPPINES,  
THE REPUBLIC OF KOREA, THE KINGDOM OF THAILAND, THE REPUBLIC  
OF TURKEY, UKRAINE AND THE SOCIALIST REPUBLIC OF VIETNAM**

and the subsidizing of

**CERTAIN OIL COUNTRY TUBULAR GOODS ORIGINATING IN OR EXPORTED  
FROM THE REPUBLIC OF INDIA, THE REPUBLIC OF INDONESIA AND THE  
SOCIALIST REPUBLIC OF VIETNAM**

and regarding the termination of the investigation with respect to  
the subsidizing of

**CERTAIN OIL COUNTRY TUBULAR GOODS ORIGINATING IN OR  
EXPORTED FROM THE REPUBLIC OF THE PHILIPPINES, THE KINGDOM  
OF THAILAND AND UKRAINE**

## DECISION

Pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, on March 3, 2015, the President of the Canada Border Services Agency made a final determination of dumping respecting certain oil country tubular goods originating in or exported from Chinese Taipei, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam and a final determination of subsidizing respecting such goods from the Republic of India, the Republic of Indonesia and the Socialist Republic of Vietnam.

Pursuant to paragraph 41(1)(b) of the *Special Import Measures Act*, on March 3, 2015, the President of the Canada Border Services Agency terminated the subsidy investigation with respect to such goods from the Republic of the Philippines, the Kingdom of Thailand and Ukraine.

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

## TABLE OF CONTENTS

SUMMARY OF EVENTS .....	1
PERIOD OF INVESTIGATION.....	3
PROFITABILITY ANALYSIS PERIOD .....	3
INTERESTED PARTIES.....	4
COMPLAINANTS .....	4
OTHER PRODUCERS .....	5
IMPORTERS .....	5
EXPORTERS.....	5
FOREIGN GOVERNMENTS.....	5
PRODUCT INFORMATION.....	6
PRODUCT DEFINITION.....	6
ADDITIONAL PRODUCT INFORMATION .....	6
PRODUCTION PROCESS .....	6
PRODUCT USE AND CHARACTERISTICS .....	8
CLASSIFICATION OF IMPORTS .....	9
LIKE GOODS AND CLASSES OF GOODS.....	10
THE CANADIAN INDUSTRY .....	10
IMPORTS INTO CANADA .....	10
INVESTIGATION PROCESS .....	11
DUMPING INVESTIGATION.....	12
NORMAL VALUES .....	13
EXPORT PRICES.....	13
RESULTS OF THE DUMPING INVESTIGATION BY COUNTRY .....	13
CHINESE TAIPEI .....	14
INDIA.....	16
INDONESIA .....	17
PHILIPPINES .....	19
REPUBLIC OF KOREA .....	19
THAILAND.....	22
TURKEY .....	23
UKRAINE.....	25
VIETNAM .....	26
ALL OTHER EXPORTERS – ALL COUNTRIES .....	26
SUMMARY RESULTS - DUMPING.....	28
SUBSIDY INVESTIGATION .....	29
INDIA.....	30
INDONESIA .....	33
PHILIPPINES .....	35
THAILAND.....	37
UKRAINE.....	39
VIETNAM .....	40
SUMMARY RESULTS - SUBSIDY .....	41
DECISIONS .....	42
FUTURE ACTION .....	43
RETROACTIVE DUTY ON MASSIVE IMPORTATIONS .....	44
PUBLICATION .....	44
INFORMATION .....	45
APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY .....	46

APPENDIX 2 – SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS.....	48
INDIA.....	48
INDONESIA .....	55
PHILIPPINES .....	57
THAILAND.....	60
UKRAINE.....	62
VIETNAM .....	64
APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS .....	65

## SUMMARY OF EVENTS

[1] On June 6, 2014, Tenaris Canada of Calgary, Alberta and Evraz Inc. NA Canada, of Regina, Saskatchewan (hereinafter 'the Complainants') filed a complaint with the Trade and Anti-dumping Programs Directorate of the Canada Border Services Agency (CBSA). The Complainants alleged that imports into Canada of certain oil country tubular goods (OCTG) originating in or exported from Chinese Taipei, the Republic of India (India), the Republic of Indonesia (Indonesia), the Republic of the Philippines (the Philippines), the Republic of Korea, the Kingdom of Thailand (Thailand), the Republic of Turkey (Turkey), Ukraine and the Socialist Republic of Vietnam (Vietnam) have been dumped and (with the exception of certain OCTG from Chinese Taipei) subsidized. These countries will be referred to collectively as "the named countries" throughout this document. The Complainants alleged that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[2] On June 20, 2014, the CBSA informed the Complainants and the governments of the named countries that the complaint was properly documented. The Governments of India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine, and Vietnam were also provided with a copy of the non-confidential version of the subsidy portion of the complaint.

[3] The governments of the countries subject to the subsidy investigation were invited for consultations prior to the initiation of the investigations, pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures* (ASCM). Consultations were held with the Governments of the Republic of Korea, Turkey and Vietnam.

[4] On July 15, 2014, the Government of Canada received written representations from the Government of the Republic of Korea with respect to its views on the adequacy of the evidence presented in the non-confidential version of the subsidy portion of the complaint.

[5] On July 17, 2014, consultations pursuant to Article 13.1 of the ASCM were held between the Government of Canada and the Government of the Republic of Korea. During these consultations, the Government of the Republic of Korea reiterated its written representations with respect to its views on the adequacy of the evidence presented in the non-confidential version of the subsidy complaint. On the same day, consultations were also held between the Government of Canada and the Government of Vietnam. During the consultations with the Government of Vietnam, the CBSA also received written representations concerning the sufficiency of the non-confidential version of the subsidy complaint.

[6] On July 18, 2014, consultations pursuant to Article 13.1 of the ASCM were held between the Government of Canada and the Government of Turkey. During these consultations, the CBSA also received written representations concerning the adequacy of the evidence presented in the non-confidential version of the subsidy portion of the complaint.

[7] The CBSA considered the written representations of the Governments of Turkey, Vietnam and the Republic of Korea, to the extent possible given the limited time available, in its analysis of whether there was sufficient evidence of subsidization to warrant the initiation of a subsidy investigation.

[8] On July 21, 2014, pursuant to subsection 31(1) of the *Special Import Measures Act* (SIMA), the President of the CBSA (President) initiated investigations respecting the dumping of certain OCTG originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam, and the subsidizing of certain OCTG originating in or exported from India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam.

[9] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain OCTG originating in or exported from the named countries has caused injury or retardation or is threatening to cause injury to the Canadian industry producing the goods.

[10] On August 22, 2014, the CBSA extended by four weeks the time permitted for the Government of Ukraine, the exporter North American Interpipe, Inc. and the manufacturer Interpipe Ukraine Ltd. to respond to their Requests for Information (RFI) in consideration of the situation in Ukraine.

[11] On August 27, 2014, the CBSA extended by two weeks the time permitted for the Governments of India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey and Vietnam to respond to the subsidy RFI in light of the number of requests for extension, as well as the related complexities in respect of the investigations.

[12] On September 19, 2014, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the alleged dumping and subsidizing of certain OCTG originating in or exported from the named countries have caused injury or are threatening to cause injury to the Canadian industry.

[13] On September 19, 2014, pursuant to subsection 39(1) of SIMA, the President extended the time period for making the preliminary determinations or terminating all or part of the investigations from 90 days to 135 days. The time was extended due to the number of parties involved and the complexity and novelty of the issues presented by the investigations.

[14] On December 3, 2014, pursuant to paragraph 35(2)(a) of SIMA, the President terminated the subsidy investigation with respect to certain OCTG originating in or exported from the Republic of Korea and Turkey. The subject goods from the Republic of Korea and Turkey have been subsidized, but the amounts of subsidy were insignificant.

[15] On the same day, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the President made a preliminary determination of dumping respecting certain OCTG originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam and a preliminary determination of subsidizing respecting such goods from India, Indonesia, the Philippines, Thailand, Ukraine and Vietnam and began imposing provisional duties on imports of the subject goods pursuant to subsection 8(1) of SIMA.

[16] The CBSA continued its investigation and, on the basis of the results, the President was satisfied that certain OCTG originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam had been dumped and that the margins of dumping were not insignificant. Consequently, on March 3, 2015, the President made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.

[17] Similarly, the President was satisfied that certain OCTG originating in or exported from India, Indonesia and Vietnam had been subsidized and that the amounts of subsidy were not insignificant. As a result, on March 3, 2015, the President also made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[18] The President was also satisfied that certain OCTG originating in or exported from the Philippines, Thailand and Ukraine had been subsidized but that the amounts of subsidy were insignificant. As a result, on March 3, 2015, the President terminated the investigation into the subsidizing of certain OCTG originating in or exported from the Philippines, Thailand and Ukraine pursuant to paragraph 41(1)(b) of SIMA.

[19] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing, and it has announced that it will issue its decision by April 2, 2015. Provisional duties will continue to apply on imports of subject goods from the named countries until the Tribunal issues its decision. However, the provisional duties related to the subsidization of goods from the Philippines, Thailand and Ukraine will no longer apply, and the provisional duty paid or security posted will be returned.

#### **PERIOD OF INVESTIGATION**

[20] The Period of Investigation (POI) with respect to dumping and subsidizing covered all subject goods released into Canada from January 1, 2013 to March 31, 2014.

#### **PROFITABILITY ANALYSIS PERIOD**

[21] The Profitability Analysis Period (PAP) covered domestic sales and costing information for goods sold from October 1, 2012 to March 31, 2014.

## **INTERESTED PARTIES**

### **Complainants**

[22] The Complainants are producers of OCTG accounting for a major proportion of the production of like goods<sup>1</sup> in Canada. The names and addresses of the Complainants are as follows:

Tenaris Canada  
Algoma Tubes Inc.  
Prudential Steel Inc.  
Hydril Canadian Company LP  
5308 Ave SW, Suite 400  
Calgary, Alberta T2P 3S8

Evrax Inc. NA Canada  
P.O. Box 1670, 100 Armour Road  
Regina, Saskatchewan S4P 3C7

#### **Tenaris Canada (Tenaris):**

[23] The company manufactures OCTG in Canada at its Algoma Tubes Inc. (Algoma Tubes) facility in Sault Ste. Marie, Ontario using the seamless process and at its Prudential Steel Inc. (Prudential) facility in Calgary, Alberta using the electric resistance welded (ERW) production process. Hydril Canadian Company LP (Tenaris Hydril) located in Nisku, Alberta produces specialized premium connection OCTG products.

#### **Evrax Inc. NA Canada (Evrax):**

[24] The company operates ERW OCTG manufacturing facilities in Regina, Saskatchewan; Calgary, Alberta; and Red Deer, Alberta. The Evrax North America group of companies also owns Canadian National Steel Corporation, which operates an ERW OCTG manufacturing facility in Camrose, Alberta.

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<sup>1</sup> Refer to the definition of like goods in the Like Goods section of this document.

## **Other Producers**

[25] There are two other significant domestic producers of OCTG in Canada, namely, Energex Tube (Energex), of Welland, Ontario and Welded Tube of Canada (Welded Tube), of Concord, Ontario. Both Energex and Welded Tube supported this complaint.<sup>2</sup> In March 2014, Energex idled the operations of its Welland plant, citing pressures in the market from unfair offshore competition. However, up until that point in time, the company produced like goods throughout the period covered by this complaint.<sup>3</sup>

## **Importers**

[26] At the initiation of the investigations, the CBSA identified 61 potential importers of the subject goods from information provided by the Complainants and CBSA import entry documentation.

[27] The CBSA sent an importer RFI to all potential importers of the goods. The CBSA received seven responses to the importer RFI.

## **Exporters**

[28] At the initiation of the investigations, the CBSA identified 196 potential exporters and producers of the subject goods from information provided by the Complainants and CBSA import entry documentation. The CBSA sent exporter dumping RFIs to each of these potential exporters. Exporter subsidy RFIs were sent to these same exporters with the exception of exporters located in Chinese Taipei. Additionally, exporters located in Vietnam were sent an exporter section 20 RFI.

[29] The CBSA received 16 responses to the exporter dumping RFI and 12 responses to the exporter subsidy RFI. A response to the exporter section 20 RFI was received from an OCTG processor in Vietnam.

## **Foreign Governments**

[30] The CBSA sent a government subsidy RFI to the Governments of India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam. The CBSA received responses to the government subsidy RFI from the respective government of each of these countries. The response from the Governments of India, the Republic of Korea, Turkey, and the Philippines were considered sufficient. The CBSA received less than sufficient responses to the government subsidy RFI from the Governments of Indonesia, Thailand, Ukraine, and Vietnam.

[31] The CBSA also sent the Government of Vietnam a government section 20 RFI. A sufficient response was received from the Government of Vietnam.

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<sup>2</sup> Exhibit 1 (NC) – OCTG Complaint, Exhibit 1-1 and 1-2.

<sup>3</sup> Exhibit 1 (NC) – OCTG Complaint, page 1, paragraphs 3 – 6.



## **PRODUCT INFORMATION**

### **Product Definition**

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

Oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 ¾ inches to 13 ¾ inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from Chinese Taipei, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam.

### **Additional Product Information**

[33] The product definition includes “green tubes”. Green tubes, as they are commonly referred to in the OCTG industry, are intermediate or in-process tubing and casing which require additional processing, such as threading, heat-treatment or testing, before they can be used as fully finished oil and gas well casing or tubing in end-use applications.

[34] Pup joints, which are essentially short lengths of OCTG used for spacing in a drill string, are excluded where their length is 12 feet or below (with a three inch tolerance), as defined in the API 5CT specification.

[35] The product definition also includes non-prime and secondary OCTG (limited service pipes).

### **Production Process**

[36] OCTG may be manufactured by the seamless or electric welded (ERW) process. Typical casing and tubing end finishes include: plain end, beveled, external upset ends, threaded, or threaded and coupled (including proprietary premium connections).<sup>4</sup>

[37] Premium or Proprietary connections refer to higher-end threading and coupling of the pipes. They are preferred by users who want to provide, for example, more reliable sealing under extreme loads and complex operating conditions, where standard connections may not suffice in maintaining the integrity of the pipe string.

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<sup>4</sup> Exhibit 1 (NC) – OCTG Complaint, paragraph 11.

[38] The seamless process begins with the formation of a central cavity in a solid steel billet to create a shell. The shell is then rolled on a retained mandrel and reduced in a stretch reduction mill to produce the finished size before cooling on a walking beam cooling bed.<sup>5</sup>

[39] Algoma Tubes employs this production process, starting with its purchase of steel bars. The steel bar is cut into a billet and then loaded into the rotary furnace to be heated and ready for the Hot-Rolling Mill (HRM).<sup>6</sup> Depending on the grade desired, the next process may involve heat-treatment. Finishing operations may include one or more of:

- Heat-treatment;
- Threading and coupling;
- Testing

[40] All OCTG produced by Algoma Tubes are green tubes before they are finished. While Algoma Tubes has its own threading, coupling, and heat-treating capability, some of Algoma Tubes' product is threaded and coupled at the Tenaris Hydril facility in Alberta with a premium connection.

[41] ERW OCTG is produced by slitting flat hot-rolled steel in coil form in a given thickness (skelp) to the proper width required to produce the desired pipe diameter. The skelp is then sent through a series of forming rolls that bend the steel into a tubular shape. As the edges come together under pressure in the final forming rolls, an electric current is passed between them. The resistance to the current heats the edges of the skelp to the welding temperature and the weld is formed as the two edges are pressed together.

[42] Evraz, Prudential and Welded Tube all essentially employ the ERW production process. Evraz produces ERW OCTG in Canada at four separate facilities.

[43] Energex produces ERW OCTG by the stretch-reduction method. In this modified process, the outside diameter and wall thickness is achieved after the tube is formed. Specifically, a formed tube is heated to approximately 1850 degrees Fahrenheit and passed through a series of stretch reduction roll stands until the final outside diameter and wall thickness is achieved.

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<sup>5</sup> Exhibit 1 (NC) – OCTG Complaint, paragraph 18.

<sup>6</sup> In typical industry language, a billet is a semi-finished round which has been partially worked, but will be further worked to final size. A bar is finished material that has been completely rolled to size ([www.rolledalloys.ca](http://www.rolledalloys.ca)).

[44] Tube formed by either the seamless or the ERW methods is then cut-to-length. Depending on the API specifications required, OCTG may also be heat-treated at this point. The product is then sent to the finishing line where it is beveled and threaded on both ends. Tubing undergoes a separate process of upsetting and normalizing prior to threading. Finally, a coupling and coupling protector are applied to one end of the pipe and a thread protector is applied to the other end before it is ready for shipment. Finishing operations also include cooling, straightening, facing, testing, coating and/or bundling.<sup>7</sup>

[45] Generally, where a green tube undergoes full heat-treatment such that the pipe is upgraded to a higher strength casing or tubing and is end-finished and tested to API specifications in a given country, the CBSA will determine the product to be originating in that country for SIMA purposes.

### **Product Use and Characteristics**

[46] Casing is used to prevent the walls of the bored hole from collapsing, both during drilling and after the well has been completed. Tubing is used to transport oil and gas to the surface.

[47] Subject OCTG are supplied to meet API specification 5CT, in all grades including and not limited to, H40, J55, K55, M65, N80, L80, L80 HC, L80 LT, L80 SS, C90, C95, C110, P110, P110 HC, P110 LT, T95, T95 HC and Q125, or proprietary grades manufactured as substitutes for, or enhancements to, these specifications. The grade numbers define the minimum yield strength required of the grade in kilopound per square inch (ksi).

[48] OCTG must be able to withstand outside pressure and internal yield pressures within the well. In addition, they must have sufficient joint strength to hold their own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined. Threading may be performed by the manufacturer or a third party threading operation. Various factors limit the total amount of open hole that can be drilled at any one time and it may be necessary to set more than one string of OCTG concentrically for certain portions of the well depth.

[49] Heat-treated grades are more sophisticated grades of pipes used in horizontal applications, deeper wells, and more severe environments such as low temperature services, sour service,<sup>8</sup> heavy oil recovery, etc.

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<sup>7</sup> Exhibit 1 (NC) – OCTG Complaint Narrative, paragraphs 16 – 26.

<sup>8</sup> “Sour Service” refers to a well environment containing Hydrogen Sulfide (H<sub>2</sub>S), which is naturally associated with acidic conditions. <http://www.vamservices.com/library/files/SOURSERVICE.pdf>.

[50] These grades are made beginning with the use of a specific chemistry in the steel (either in billet for the seamless process or the steel coil in the ERW process) and are further processed with heat-treatment to attain certain combinations of mechanical properties<sup>9</sup> and/or resistance to corrosion and environmental cracking. For example, maximum strength (N80, P110, Q125), high-strength with low ductility (normally proprietary enhancements of API grades), or high-strength combined with resistance to corrosion and environmental cracking (L80, C90, C95, C110, T95 and proprietary enhancements).

[51] Casing and tubing that still require heat-treatment to meet the API 5CT specification are referred to in the industry as “green tubes”, as are tubes that require further finishing before they can be used down well. A green tube for a higher strength grade can have a chemistry that meets a lower grade like H40 or J55 that does not require heat-treatment and could just be tested and threaded to meet the lower grade.

### Classification of Imports

[52] The subject goods are normally imported under the following 22 Harmonized System (HS) classification codes for OCTG (*Customs Tariff – 2014*):

7304.29.00.11	7304.29.00.69
7304.29.00.19	7304.29.00.71
7304.29.00.21	7304.29.00.79
7304.29.00.29	7306.29.00.11
7304.29.00.31	7306.29.00.19
7304.29.00.39	7306.29.00.21
7304.29.00.41	7306.29.00.29
7304.29.00.49	7306.29.00.31
7304.29.00.51	7306.29.00.39
7304.29.00.59	7306.29.00.41
7304.29.00.61	7306.29.00.49

[53] The subject goods, particularly in the form of green tubes, may also be imported under the following seven HS classification codes (*Customs Tariff – 2014*):

7304.39.00.10	7306.50.00.90
7304.59.00.10	7306.90.00.10
7306.30.00.29	7306.90.00.20
7306.30.00.39	

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<sup>9</sup> Mechanical properties are those that describe how an object performs when a load or stress is applied to it.  
<http://www.corpacsteel.com/resource-center/glossary-of-industry-terms/>.

## **LIKE GOODS AND CLASSES OF GOODS**

[54] 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 identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[55] OCTG produced by the domestic industry competes directly with, has the same end uses as, and can be substituted for, the subject goods. Therefore, the CBSA has concluded that the OCTG produced by the Canadian industry constitutes like goods to the subject goods. The CBSA is also of the opinion that subject and like goods constitute only one class of goods.

[56] In the Tribunal’s Determination and Reasons – Preliminary Injury Inquiry No. PI-2014-002, issued on October 3, 2014, the Tribunal found “that the evidence does not support a conclusion that seamless OCTG and welded OCTG constitute separate classes of goods. The Tribunal, therefore, finds that seamless OCTG and welded OCTG comprise a single class of goods.”<sup>10</sup>

## **THE CANADIAN INDUSTRY**

[57] Tenaris Canada and Evraz Inc. NA Canada (the Complainants) account for a major proportion of the domestic production of like goods. Two other significant domestic producers of OCTG in Canada, namely, Energex Tube, of Welland, Ontario and Welded Tube of Canada, of Concord, Ontario supported this complaint.

## **IMPORTS INTO CANADA**

[58] During the final phase of the investigations, the CBSA refined the estimated volume of imports based on information from CBSA import entry documentation and other information received from exporters and importers.

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<sup>10</sup> Preliminary Injury Inquiry No. PI-2014-002; Oil Country Tubular Goods, issued on October 3, 2014, paragraph 33, Reasons available online at <http://www.citt-tcce.gc.ca/en/node/6925>.

[59] The following table presents the CBSA's analysis of imports of certain OCTG during the POI:

**Import Volumes of Certain OCTG  
(January 1, 2013 to March 31, 2014)**

Imports into Canada	% of Total Import Volume*
Chinese Taipei	2.5%
India	1.3%
Indonesia	1.9%
Republic of Korea	3.1%
Thailand	1.2%
Philippines	2.4%
Turkey	5.3%
Ukraine	1.0%
Vietnam	2.7%
All Other Countries	78.5%
<b>Total Imports</b>	<b>100.0%</b>

\*rounded to the closest decimal.

**INVESTIGATION PROCESS**

[60] Regarding the dumping investigation, information was requested from all known and potential exporters, producers, vendors and importers, concerning shipments of certain OCTG released into Canada during the dumping POI of January 1, 2013 to March 31, 2014.

[61] Regarding the section 20 inquiry, information was requested from all known and potential exporters and producers of OCTG in Vietnam and from the Government of Vietnam.

[62] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from all known and potential exporters and producers in India, Indonesia, the Republic of Korea, the Philippines, Thailand, Turkey, Ukraine and Vietnam. Information was also requested from the respective government of each of these countries, concerning financial contributions made to exporters or producers of certain OCTG released into Canada during the subsidy POI of January 1, 2013 to March 31, 2014.

[63] In consideration of the situation in Ukraine, the CBSA extended by four weeks the time permitted for the exporters and the Government of Ukraine to respond to their RFIs. The CBSA also extended the time permitted for the Governments of India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey and Vietnam to respond to the subsidy RFI in light of the number of requests for extension, as well as the related complexities in respect of the investigations.

[64] After reviewing the responses to the RFIs, Supplemental Requests for Information (SRFI) were sent to responding parties to clarify information provided in the submissions and request any additional information needed. In addition, on-site verifications were conducted at the premises of selected exporters and the governments during the preliminary phase of the dumping and the subsidy investigations.

[65] Details pertaining to the information submitted by the exporters in response to the exporter dumping RFI as well as the results of the CBSA's dumping investigation, including the section 20 inquiry with respect to Vietnam, are provided in the "Dumping Investigation" section of this document. Details pertaining to the information submitted by the exporters and governments in response to the subsidy RFI as well as the results of the CBSA's subsidy investigation are provided in the "Subsidy Investigation" section of this document.

[66] As part of the final stage of the investigations, case briefs and reply submissions were provided by counsel representing the Complainants, exporters and the Government of Thailand. Details of all representations are provided in **Appendix 3**.

[67] Under Article 15 of the World Trade Organization (WTO) *Anti-dumping Agreement*, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As India, Indonesia, the Philippines, Thailand, Turkey, Ukraine and Vietnam are listed on the *Development Assistance Committee (DAC) List of Official Development Assistance (ODA) Recipients* maintained by the Organization for Economic Co-operation and Development (OECD)<sup>11</sup>, the President recognizes these countries as developing countries for purposes of actions taken pursuant to SIMA.

[68] Accordingly, the obligation under Article 15 of the WTO *Anti-dumping Agreement* was met by providing the opportunity for exporters to submit price undertakings. In this particular investigation, the CBSA did not receive any undertaking proposals from exporters in India, Indonesia, the Philippines, Thailand, Turkey, Ukraine and Vietnam.

## **DUMPING INVESTIGATION**

[69] The CBSA received responses to the dumping RFI from 16 exporters, in addition to one response that was considered insufficient.

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<sup>11</sup> The Organization for Economic Co-operation and Development, DAC List of ODA Recipients from 2014 to 2016, the document is available at: <http://www.oecd.org/dac/stats/documentupload/DAC%20List%20of%20ODA%20Recipients%202014%20final.pdf>

## **Normal Values**

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

[71] Sufficient information was provided to determine normal values for the two exporters each located in Chinese Taipei, India, the Republic of Korea; and one exporter each located in Indonesia, the Philippines, Thailand and Turkey. The normal values for these exporters were determined pursuant to paragraph 19(b) of SIMA and pursuant to subsection 29(1) of SIMA, using the methodology of paragraph 19(b) of SIMA.

[72] With respect to Vietnam, the normal values for subject goods originating in or exported from Vietnam and imported into Canada during the POI were determined pursuant to subsection 29(1) of SIMA.

## **Export Prices**

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

[74] Where, in the opinion of the President, sufficient information has not been furnished or is not available, export prices are determined pursuant to subsection 29(1) of SIMA.

## **Results of the Dumping Investigation by Country**

[75] With respect to each of the exporters that provided sufficient information in response to the exporter dumping RFI, the CBSA determined a margin of dumping by comparing the total normal value with the total export price of the goods. When the total export price was less than the total normal value, the difference was the margin of dumping for that specific exporter.

[76] For those exporters that did not submit sufficient information in response to the exporter dumping RFI, the normal value of the goods was determined pursuant to subsection 29(1) of SIMA.

[77] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter was determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e., 100%) was considered dumped. Similarly, where a given exporter's net aggregate dumping results were zero, the total quantity of exports considered to be dumped by that exporter was zero.



[78] In determining the margin of dumping for each country, the margins of dumping found in respect of each exporter were weighted according to each exporter's volume of subject goods exported to Canada during the dumping POI.

[79] Details of the results of the investigation by exporter follow. A summary of each exporter's margin of dumping is provided in **Appendix 1** and the overall margin of dumping for each country is provided in the table at the end of this section.

## **Chinese Taipei**

### Chung Hung Steel Corporation

[80] Chung Hung Steel Corporation (CHS) is an exporter of subject goods from Kaohsiung, Chinese Taipei.

[81] CHS is a publicly-listed company and its head office is located in Kaohsiung, Chinese Taipei. The company provided sufficient information in response to the exporter dumping RFI and SRFIs.

[82] CHS reported some domestic sales of like goods during the PAP. However, these domestic sales of like goods could not be used to determine normal values pursuant to subsection 16(2) of SIMA. As such, normal values could not be determined pursuant to section 15 of SIMA based on the domestic selling prices of like goods.

[83] In their response to the dumping RFI, CHS submitted some information regarding their domestic sales of OCTG during the PAP. The CBSA concluded that these domestic sales of OCTG did not meet the conditions outlined in paragraph 13(a) of the *Special Import Measures Regulations* (SIMR) and could not be used to determine a reasonable amount for profits pursuant to subparagraph 11(1)(b)(i) of SIMR. The CBSA also requested CHS to provide the domestic sales information and the corresponding costing information for the goods of the same general category as the subject goods exported to Canada during the POI. However, CHS did not submit the requested information to the CBSA. There was not sufficient information available to the CBSA to determine a reasonable amount for profits pursuant to other subparagraphs under paragraph 11(1)(b) of SIMR. Therefore, normal values could not be determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits.

[84] As such, normal values were determined pursuant to subsection 29(1) of SIMA, in accordance with the methodology of paragraph 19(b) of SIMA. A reasonable amount for profits was determined based on the weighted average profit of OCTG earned by other exporters who provided sufficient information in response to the exporter dumping RFI.

[85] For subject goods exported from CHS to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[86] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 7.0%, expressed as a percentage of the export price.

Tension Steel Industries Co., Ltd.

[87] Tension Steel Industries Co., Ltd. (Tension Steel) is an exporter of subject goods from Taipei, Chinese Taipei.

[88] Tension Steel's head office is located in Taipei, Chinese Taipei and it has two manufacturing facilities. The company provided sufficient information in response to the exporter dumping RFI and SRFIs.

[89] Tension Steel had no domestic sales of OCTG during the POI. As such, normal values could not be determined pursuant to section 15 of SIMA based on the domestic selling prices of like goods.

[90] In their response to the dumping RFI, Tension Steel submitted information regarding their export sales of certain OCTG to the importers in the United States of America (USA) during the PAP. However, the CBSA was not satisfied that these export sales fairly reflected the market value of goods. As such, normal values could not be determined pursuant to paragraph 19(a) of SIMA based on export sales of like goods to any other country other than Canada.

[91] As requested by the CBSA, Tension Steel submitted the domestic sales information and the corresponding costing information for the goods that were of the same general category as the subject goods exported to Canada during the POI. The CBSA concluded that this information could not be used to determine a reasonable amount for profits pursuant to subparagraph 11(1)(b)(ii) of SIMR. Also, sufficient information was not available to the CBSA to determine a reasonable amount for profits pursuant to other subparagraphs under paragraph 11(1)(b) of SIMR. As such, normal values could not be determined pursuant to paragraph 19(b) of SIMA.

[92] As a result, normal values were determined pursuant to subsection 29(1) of SIMA, in accordance with the methodology of paragraph 19(b) of SIMA. The cost of production of the goods and the amount for administrative, selling and all other costs was based on the information provided by Tension Steel. A reasonable amount for profits was determined based on the weighted average profit of OCTG earned by other exporters who provided sufficient information in response to the exporter dumping RFI.

[93] For the subject goods exported by Tension Steel to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[94] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 2.6%, expressed as a percentage of the export price.

## **India**

### **GVN Fuels Limited / Maharashtra Seamless Limited**

[95] Maharashtra Seamless Limited (MSL) is the producer of subject goods exported to Canada by its related company, GVN Fuels Limited (GVN). GVN is an export trading arm of MSL. MSL's production facilities are located in Raigad, Maharashtra while MSL's and GVN's corporate offices are jointly located in Gurgaon, Haryana. GVN does not manufacture OCTG products nor does it sell OCTG products in its domestic market. MSL, on the other hand, is a producer of subject goods and has domestic sales of subject goods within India. Due to the relationship between GVN and MSL, the companies were permitted to file a joint response to the CBSA's dumping RFI and have been treated as a single entity with respect to the CBSA's investigation. Where appropriate, the companies are referred to collectively as GVN/MSL.

[96] GVN/MSL provided sufficient information in response to both the CBSA's exporter dumping RFI and SRFIs.

[97] Although MSL had domestic sales of like goods during the PAP, normal values for the goods sold to the importer in Canada could not be determined in accordance with section 15 of SIMA because there were not a sufficient number of sales of like goods that complied with all the terms and conditions referred to in sections 15 and 16 of SIMA as to permit a proper comparison with the sales of the goods to the importer in Canada. As such, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The amount for profits was determined pursuant to subparagraph 11(1)(b)(i) and section 13 of SIMR, based on MSL's weighted average profit made on domestic sales of like goods.

[98] For subject goods exported to Canada by GVN during the POI export prices were determined pursuant to section 24 of SIMA based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[99] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 0%, expressed as a percentage of the export price.

### **Jindal Saw Limited**

[100] Jindal Saw Limited (Jindal Saw) is a producer and exporter of the subject goods from Nashik, Maharashtra, India.

[101] Jindal Saw's head office is located in New Delhi, India. The company provided sufficient information in response to the exporter dumping RFI and SRFIs. An on-site verification meeting was conducted by CBSA officials with Jindal Saw from November 21 to November 27, 2014.

[102] Jindal Saw did not have sufficient domestic sales of like goods to enable the determination of normal values using section 15 of SIMA because there were not a sufficient number of sales of like goods that complied with all the terms and conditions referred to in sections 15 and 16 of SIMA to permit a proper comparison with the sales of the goods to the importer in Canada. Normal values were determined pursuant to paragraph 19(b) of SIMA, as the sum of cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits. The amount for profits was determined in accordance with subparagraph 11(1)(b)(i) and section 13 of SIMR based on Jindal Saw's weighted average profit made on domestic sales of like goods.

[103] For subject goods exported by Jindal Saw to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[104] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 0%, expressed as a percentage of the export price.

## **Indonesia**

### **P.T. Citra Tubindo Tbk**

[105] P.T. Citra Tubindo Tbk (Citra) is a producer and an exporter of subject goods from Kabil, Indonesia.

[106] Citra's manufacturing factory is located on the island of Batam, in Kabil, Indonesia. Citra has heat-treatment, threading and coupling facilities. Citra provided sufficient information in response to the exporter dumping RFI and SRFIs. An on-site verification meeting was conducted by CBSA officials from November 24 to November 27, 2014.

[107] Citra had domestic sales of certain OCTG during the POI. Normal values for Citra could not be determined under section 15 of SIMA as there were not a sufficient number of sales of like goods that complied with all the terms and conditions referred to in sections 15 and 16 of SIMA as to permit a proper comparison with the sale of the goods to the importer in Canada.

[108] As such, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The amount for profits was determined pursuant to subparagraph 11(1)(b)(i) and section 13 of SIMR, based on Citra's weighted average profit made on domestic sales of like goods.

[109] For subject goods exported from Citra to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[110] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 6.4%, expressed as a percentage of the export price.

#### Petro Amigos Supply Incorporated

[111] Petro Amigos Supply Incorporated (PASI) is a distributor and exporter of subject good from Texas, USA. PASI's head office is located in Houston, Texas, USA.

[112] The goods exported to Canada by PASI during the POI are of Indonesian origin. PASI provided sufficient information in response to the exporter dumping RFI and SRFIs.

[113] In situations where goods are shipped indirectly to Canada from the country of origin through one or more other countries, other than goods that pass in transit through another country, subsection 30(2) of SIMA applies and stipulates that the normal value is to be the higher of the normal value in the country of export or in the country of origin.

[114] PASI had domestic sales of certain OCTG during the POI. However, normal values in the country of export for PASI could not be determined under section 15 of SIMA as there were not a sufficient number of sales of like goods that complied with all the terms and conditions referred to in sections 15 and 16 of SIMA as to permit a proper comparison with the sale of the goods to the importer in Canada.

[115] Sufficient information was not available to permit the determination of normal values in the country of export pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits.

[116] During the final phase of the investigation, the CBSA received additional information in regards to the goods from the exporter (producer) located in Indonesia. Upon analyzing the documentation, the CBSA has determined that the exporter (producer) in Indonesia did not provide certain information required to permit the determination of a normal value in the country of origin under sections 15 to 28 of SIMA. In particular, the CBSA must have the total cost of production of goods in order to determine a normal value in the country of origin (Indonesia).

[117] Consequently, for the final determination, the normal values for PASI was determined pursuant to subsection 29(1) of SIMA, based on the methodology explained in the section below entitled "All Other Exporters' – All Countries".

## **Philippines**

### HLD Clark Steel Pipe Co. Inc.

[118] HLD Clark Steel Pipe Co. Inc. (HLD Clark) is an exporter of subject goods from Angeles City, the Philippines.

[119] HLD Clark's head office is located in Angeles City, the Philippines. The company provided sufficient information in response to the exporter dumping RFI and SRFIs. An on-site verification meeting was conducted by CBSA officials from November 24 to November 27, 2014.

[120] HLD Clark had no domestic sales of OCTG during the POI. Therefore, normal values could not be determined pursuant to section 15 of SIMA, based on domestic selling prices of like goods.

[121] Sufficient information was not available to permit the determination of normal values pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. Specifically, an amount for profits could not be determined under paragraph 11(1)(b) of SIMR.

[122] As such, the normal values were determined pursuant to subsection 29(1) of SIMA, in accordance with the methodology of paragraph 19(b) of SIMA. The cost of production of the goods and the amount for administrative, selling and all other costs was based on the information provided by HLD Clark. The amount for profits was based on the weighted average profit made on domestic sales of OCTG by other exporters who provided sufficient information in response to the exporter dumping RFI.

[123] For subject goods exported from HLD Clark to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling prices less all costs, charges and expenses resulting from the exportation of the goods.

[124] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 0%, expressed as a percentage of the export price.

## **Republic of Korea**

### Hyundai Hysco Co., Ltd.

[125] Hyundai Hysco Co., Ltd. (H. Hysco) is a producer and exporter of subject goods from Ulsan, Republic of Korea.

[126] H. Hysco's head office is located in Seoul, Republic of Korea. During the POI, all subject goods exported to Canada were shipped directly from H. Hysco's factory in Ulsan, Republic of Korea. However, the subject goods were first sold to a subsidiary in the USA, and then to an unrelated vendor in the USA, MS Global Steel, before being ultimately sold to unrelated importers in Canada. The goods were shipped directly from H. Hysco to the unrelated importers in Canada without entering the commerce of the USA.

[127] Both H. Hysco and MS Global Steel provided sufficient information in responses to the exporter dumping RFI and SRFI. An on-site verification meeting was conducted by CBSA officials at H. Hysco's plant in Ulsan and in its offices in Seoul from November 10 to November 17, 2014.

[128] H. Hysco did not have sufficient domestic sales of like goods during the POI to enable the determination of normal values under section 15 of SIMA. As such, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The amount for profits was determined pursuant to subparagraph 11(1)(b)(ii) and section 13 of SIMR, based on H. Hysco's weighted average profit made on domestic sales of goods that are of the same general category.

[129] For subject goods exported by H. Hysco to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on H. Hysco's selling prices to its subsidiary in the USA, as they were lower than the importer's purchase prices from MS Global Steel. These prices were then adjusted by deducting all costs, charges and expenses resulting from the exportation of the goods.

[130] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 0%, expressed as a percentage of the export price.

#### SeAH Steel Corporation

[131] SeAH Steel Corporation (SeAH) is an exporter of subject goods from Pohang, Republic of Korea.

[132] SeAH's head office is located in Seoul, Republic of Korea. The subject goods, which were shipped directly from the Republic of Korea to Canada, were sold by Pusan Pipe America Inc. (PPA), a subsidiary of SeAH located in the USA. The companies provided sufficient information in their responses to the exporter dumping RFI and SRFIs. An on-site verification was conducted by CBSA officials from November 18 to November 20, 2014.

[133] SeAH had no domestic sales of OCTG during the POI. As such, normal values could not be determined pursuant to section 15 of SIMA based on domestic selling prices of like goods.

[134] The normal values for non-premium connection goods were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The amount for profits was determined pursuant to subparagraph 11(1)(b)(ii) of SIMR, based on SeAH's weighted average profit made on the domestic sales of goods of the same general category.

[135] The normal values for premium connection goods were determined pursuant to subsection 29(1) of SIMA, in accordance with the methodology of paragraph 19(b) of SIMA. The cost of production of the goods and the amount for administrative, selling and all other costs was based on the information provided by SeAH. The amount for profits was based on the weighted average profit earned on sales of premium connection OCTG by other exporters who provided sufficient information in response to the exporter dumping RFI.

[136] For subject goods exported from SeAH to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the lesser of SeAH's selling prices to PPA or the importer's purchase price from PPA adjusted by deducting all costs, charges and expenses resulting from the exportation of the goods.

[137] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 8.8%, expressed by a percentage of the export price.

#### Pan Meridian Tubular

[138] Pan Meridian Tubular (PMT) is an exporter of subject goods from Texas, USA.

[139] PMT is a division of Pusan Pipe America Inc. (PPA), a subsidiary of SeAH located in the USA. Its office is located in Houston, Texas. The subject goods exported to Canada by PMT during the POI were produced in the Republic of Korea. The subject goods were first shipped to the USA and re-exported to Canada after the goods were further processed in the USA. PMT provided sufficient information in response to the exporter dumping RFI and SRFI.

[140] In situations where goods are shipped indirectly to Canada from the country of origin through one or more other countries, other than goods that pass in transit through another country, subsection 30(2) of SIMA applies and stipulates that the normal value is to be the higher of the normal value in the country of export or in the country of origin.



[141] Regarding normal values in the country of origin, the producer did not have domestic sales of OCTG during the POI. As such, normal values could not be determined pursuant to section 15 of SIMA based on domestic selling prices of like goods. The normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The amount for profits was determined pursuant to subparagraph 11(1)(b)(ii) and section 13 of SIMR, based on the weighted average profit made on the producer's domestic sales of goods of the same general category.

[142] With respect to normal values in the country of export, PMT had domestic sales of like goods in the USA. However, there were not sufficient domestic sales of like goods that complied with all the terms and conditions referred to in subsection 16(2) of SIMA. As such, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The amount for profits was determined pursuant to subparagraph 11(1)(b)(i) and section 13 of SIMR, based on the weighted average profit made on PMT's domestic sales of like goods.

[143] Based on the analysis, the normal values in the country of export were higher than the normal values in the country of origin. As a result, the normal values for the subject goods exported by PMT were based on the normal values in the country of export.

[144] For subject goods exported from PMT to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling prices less all costs, charges and expenses resulting from the exportation of the goods.

[145] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 0%, expressed as a percentage of the export price.

## **Thailand**

### Thai Oil Pipe Co., Ltd.

[146] Thai Oil Pipe Co., Ltd. (TOP) is an exporter of subject goods from Rayong, Thailand.

[147] TOP was created in 2012 and its production facility started production for commercial purposes during the year 2013. TOP provided sufficient information in response to the exporter dumping RFI and SRFIs. An on-site verification was conducted by CBSA officials from November 17 to November 21, 2014.

[148] In situations where goods are shipped indirectly to Canada from the country of origin through one or more other countries, other than goods that pass in transit through another country, subsection 30(2) of SIMA applies and stipulates that the normal value is to be the higher of the normal value in the country of export or in the country of origin.

[149] Regarding normal values in the country of export, TOP had no domestic sales of OCTG during the POI. Therefore, normal values could not be determined under section 15 of SIMA. Sufficient information was not available to permit the determination of normal values pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. Specifically, an amount for profits could not be determined under paragraph 11(1)(b) of SIMR.

[150] As such, the normal values were determined pursuant to subsection 29(1) of SIMA, in accordance with the methodology of paragraph 19(b) of SIMA. The cost of production of the goods and the amount for administrative, selling and all other costs was based on the information provided by TOP. The amount for profits was based on the weighted average profit made on domestic sales of OCTG by other exporters who provided sufficient information in response to the exporter dumping RFI.

[151] When the normal value of the goods in the country of export was determined to be higher than the normal value of the goods in the country of origin, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[152] When the normal value of the goods in the country of origin was determined to be higher than the normal value in the country of export, then the export price was determined as if the goods were shipped directly to Canada from the country of origin.

[153] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 28.0%, expressed as a percentage of the export price.

## **Turkey**

### **Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş.**

[154] Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş. (BMB) is an exporter of subject goods from Gemlik, Turkey.

[155] BMB's head office is located in Istanbul, Turkey. The company provided sufficient information in response to the exporter dumping RFI and SRFI. An on-site verification was conducted by CBSA officials from November 10 to November 14, 2014.

[156] BMB had insufficient domestic sales of OCTG during the POI. As such, normal values could not be determined pursuant to section 15 of SIMA based on domestic selling prices of like goods.

[157] As a result, the normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. The amount for profits was determined pursuant to subparagraph 11(1)(b)(ii) and section 13 of SIMR, based on the weighted average profit made on BMB's domestic sales of goods of the same general category.

[158] For subject goods exported from BMB to Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[159] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 0%, expressed as a percentage of the export price.

#### IMCO International Inc.

[160] IMCO International Inc. (IMCO) is an exporter of subject goods produced by BMB originating in Turkey and exported from the USA.

[161] IMCO's head office is located in Burlington, Ontario. The company provided sufficient information in response to the exporter dumping RFI and SRFIs. An on-site verification was conducted by CBSA officials from January 13 to January 14, 2015.

[162] In situations where goods are shipped indirectly to Canada from the country of origin through one or more other countries, other than goods that pass in transit through another country, subsection 30(2) of SIMA applies and stipulates that the normal value is to be the higher of the normal value in the country of export or in the country of origin.

[163] Normal values could not be determined pursuant to section 15 of SIMA because there were not a sufficient number of sales of like goods in the country of export that complied with all the terms and conditions referred to in sections 15 and 16 of SIMA to permit a proper comparison with the sales of the goods to the importer in Canada.

[164] Sufficient information was not available to permit the determination of normal values pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits. Specifically, an amount for profits could not be determined under paragraph 11(1)(b) of SIMR.

[165] As such, normal values were determined pursuant to subsection 29(1) of SIMA, in accordance with the methodology of paragraph 19(b) of SIMA. The cost of production of the goods and the amount for administrative, selling and all other costs was based on the information provided by IMCO. The amount for profits was based on the weighted average profit made on domestic sales of OCTG by exporters who provided sufficient information in response to the exporter dumping RFI.

[166] Pursuant to subsection 30(2) of SIMA, the normal values in the country of export were determined to be higher than the normal values determined for the country of origin.

[167] For subject goods exported from the USA to Canada during the POI, export prices were determined pursuant to subsection 29(1) of SIMA, as export price could not be determined pursuant to either section 24 or section 25 of SIMA.

[168] The total normal value of the subject goods imported into Canada during the POI was compared with the total export price. This resulted in a margin of dumping of 13.0%, expressed as a percentage of the export price.

## **Ukraine**

### North American Interpipe Inc. and Interpipe Ukraine LLC

[169] North American Interpipe Inc. (NAI), located in Houston, Texas, is an exporter of subject goods originating in Ukraine and exported from the USA.

[170] The subject goods were manufactured in Ukraine by PJSC Interpipe Nizhnedneprovsky Tube Rolling Plant (NTRP) and LLC Interpipe Niko Tube (Niko), both of whom are located in the Dnepropetrovsk region of Ukraine and are related to NAI.

[171] During the POI, all of the subject goods that were manufactured in Ukraine by NTRP and Niko were shipped to NAI in the USA before subsequently being re-exported to Canada. NAI incurred additional production costs for some of these goods where further finishing was required prior to shipment to their customers in both Canada and the USA.

[172] Interpipe Ukraine LLC (IPU), a related trading company in Ukraine, submitted a response to the exporter dumping RFI on behalf of the manufacturers of the subject goods. The CBSA also received a response to the exporter dumping RFI from NAI. As noted in the Statement of Reasons for the preliminary determination, both NAI's and IPU did not provide sufficient information in response to their exporter dumping RFI. However, both companies submitted multiple revisions of their costing and sales information following their initial RFI response and the CBSA used their information to estimate a margin of dumping for the purposes of the preliminary determination.

[173] During the final phase of the investigation, the CBSA requested and received additional information from both NAI and IPU. In reviewing the information submitted by the exporter, the CBSA's analysis identified a number of inconsistencies and errors in the sales and costing information submitted by NAI. As a result, the information submitted by NAI was found to be unreliable and was not used for the purposes of the final determination.

[174] Consequently, the normal values and the export price for NAI were determined pursuant to subsection 29(1) of SIMA, based on the methodologies explained in the section below entitled "All Other Exporters – All Countries".

## **Vietnam**

[175] No exporter in Vietnam provided a response to the dumping RFI.

### **Section 20 Inquiry**

[176] In the case of a prescribed country such as Vietnam, normal values are to be determined under section 20 of SIMA where, in the opinion of the President, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market. The President may form this opinion where there is sufficient information supporting the conditions outlined above.

[177] At the initiation of the dumping investigation, the CBSA had sufficient information, supplied by the Complainants and obtained through its own research, to support the initiation of a section 20 inquiry to examine the extent that the Government of Vietnam determines the price of OCTG in Vietnam. As such, the CBSA sent Section 20 RFIs to the Government of Vietnam and to all known OCTG producers and exporters in that country.

[178] During the course of the dumping investigation the CBSA received responses to its Section 20 RFI and SRFI from the Government of Vietnam and from one processor in that country, Vietubes Corporation Ltd. However, the CBSA did not receive a response to either the Section 20 RFI or to the exporter dumping RFI from any other producer or exporter in Vietnam.

[179] As no exporter in Vietnam participated in the CBSA's dumping investigation, there was insufficient information for the President of the CBSA to form an opinion with respect to Section 20 of SIMA. Similarly, as sufficient information was not furnished or made available to the CBSA to enable the determination of normal values in accordance with sections 15, 19 or 20 of SIMA, normal values for subject goods originating in or exported from Vietnam and imported into Canada during the POI were determined pursuant to subsection 29(1) of SIMA.

[180] Consequently, the normal values and the export prices for all exporters in Vietnam were determined pursuant to subsection 29(1) of SIMA, based on the methodologies explained in the section below entitled "All Other Exporters – All Countries".

### **All Other Exporters – All Countries**

[181] At the initiation of the investigation, all known and potential exporters were sent an exporter dumping RFI in order to solicit information required for purposes of determining normal values and export prices of subject goods in accordance with the provisions of SIMA. As such, all exporters were given the opportunity to participate in the investigation. In the RFI, the exporters were notified that the failure to submit all required information and documentation, including non-confidential versions, or failure to permit verification of any information, would result in the normal values of the subject goods exported by their company being based on the facts available. It was further stated that such a decision may be less favourable to their company than if full and verifiable information were made available.

[182] For exporters who, in the opinion of the President, did not provide sufficient information to enable the determination of normal values and export prices under sections 15 to 28 of SIMA, normal values and export prices were determined under a ministerial specification pursuant to subsection 29(1) of SIMA on the basis of facts available. In establishing the methodology for determining normal values and export prices under the ministerial specification, the CBSA examined all information on the record, including information provided in the complaint, information provided by the exporters, and customs documentation.

[183] The CBSA considered that the information presented by the exporters who provided sufficient information in response to the exporter dumping RFI, rather than the information provided in the complaint, was the best information on which to base the methodology for determining normal values since it reflects the exporters' trading practices during the period of investigation. The CBSA examined the difference between the normal value and export price of each individual transaction for the exporters who provided sufficient information in order to obtain an appropriate amount for the ministerial specification. The transactions were also examined to eliminate anomalies from being considered.

[184] The CBSA considers that the highest amount by which the normal value exceeded the export price found on an individual transaction (expressed as a percentage of the export price), excluding anomalies, is an appropriate basis for determining normal values. This method of determination of normal values is based on information on the record and limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information. Therefore, the normal values were determined under a ministerial specification pursuant to subsection 29(1) of SIMA, based on the export price as determined under section 24, 25 or 29 of SIMA, plus an amount equal to 37.4% of that export price.

[185] The CBSA considered that the information submitted on the CBSA customs entry documentation was the best information on which to determine the export price of the goods as it reflects actual import data. This information is more comprehensive than what was available in the complaint.

[186] Based on the above methodologies, the subject goods exported to Canada by all other exporters were found to be dumped by a margin of dumping of 37.4%, expressed as a percentage of the export price.

## Summary Results - Dumping

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

### Summary of Results of the Dumping Investigation Period of Investigation – January 1, 2013 to March 31, 2014

Country	Volume of Dumped Goods as a Percentage of Country Imports	Margin of Dumping as a Percentage of Export Price	Volume of Country Imports as a Percentage of Total Imports	Volume of Dumped Goods as Percentage of Total Imports
Chinese Taipei	100%	15.8%	2.5%	2.5%
India	13.1%	5.6%	1.3%	0.2%
Indonesia	100%	21.7%	1.9%	1.9%
Philippines	9.3%	4.2%	2.4%	0.2%
Republic of Korea	77.4%	19.1%	3.1%	2.4%
Thailand	100%	33.0%	1.2%	1.2%
Turkey	100%	18.9%	5.3%	5.3%
Ukraine	100%	37.4%	1.0%	1.0%
Vietnam	100%	37.4%	2.7%	2.7%

[188] Under paragraph 41(1)(a) of SIMA, the President shall make a final determination of dumping when he is satisfied that the goods have been dumped and that the margin of dumping of the goods of a country is not insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant.

[189] The margins of dumping of certain OCTG from Chinese Taipei, India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam, are above 2% of the export price of the goods and are, therefore, not insignificant.

[190] For the purposes of a preliminary determination of dumping, the President is responsible for determining whether the actual and potential volume of dumped goods is negligible. After a preliminary determination of dumping, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, if the Tribunal determines the volume of dumped goods from a country is negligible, the Tribunal is required to terminate its injury inquiry in respect of those goods.

## **SUBSIDY INVESTIGATION**

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

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

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

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

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



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

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

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

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

[198] The following presents the final results of the investigation into the subsidizing of certain OCTG originating in or exported from India, Indonesia, the Philippines, Thailand, Ukraine and Vietnam. A summary of each exporter’s amount of subsidy is provided in **Appendix 1**. As noted previously, the investigation into the subsidizing of certain OCTG originating in or exported from the Republic of Korea and Turkey was terminated on December 3, 2014.

## **India**

[199] At the initiation of the subsidy investigation, the CBSA sent a subsidy RFI to the Government of India as well as to all known exporters of certain OCTG located in India. Information was requested in order to establish whether there had been financial contributions made by any level of government including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain OCTG; and whether any resulting subsidy was specific in nature.

[200] The Government of India was also requested to forward the RFI to all subordinate levels of government that had jurisdiction over the exporters. The exporters were directed to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[201] Sufficient information in response to the subsidy RFIs was received from the Government of India, Jindal Saw and GVN Fuels Limited/Maharashtra Seamless Limited.

[202] The CBSA conducted on-site verifications with the Government of India on November 20, 2014; and with Jindal Saw Ltd. on November 21, 2014 and from November 24 to November 27, 2014.

[203] At the initiation of the subsidy investigation, the CBSA identified 48 potential subsidy programs. As a result of information obtained in the course of the investigation, one program, Program 23, was eliminated and four additional programs were added (Programs 49 to 52 as listed in **Appendix 2**).

[204] In total, 52 programs were investigated for purposes of this investigation. Information concerning these programs is provided in **Appendix 2**.

#### GVN Fuels Limited / Maharashtra Seamless Limited

[205] Maharashtra Seamless Limited (MSL) is the producer of subject goods exported to Canada by its related company, GVN Fuels Limited (GVN), collectively referred to as GVN/MSL. MSL's production facilities are located in Raigad, Maharashtra while MSL's and GVN's corporate offices are jointly located in Gurgaon, Haryana. Due to the relationship between GVN and MSL, the companies filed a joint response to the CBSA's subsidy RFI and SRFI. Sufficient information was provided by GVN/MSL.

[206] For the purposes of the preliminary determination, the CBSA estimated, based on its analysis of the information provided by GVN/MSL and by the Government of India, an amount of subsidy on the basis of the financial benefits received under 6 programs.

[207] For the purposes of the final determination, the CBSA eliminated *Program 23 – Purchase of Hot-rolled Steel and Billets from State-owned Enterprises for Less than Fair Market Value*, as information obtained in the course of the investigation and the verification meeting with the government indicated that the Government of India was not directly involved in the operations of the state-owned steel company producing the hot-rolled steel sheet.

[208] In addition, based on the information available, the CBSA determined that there were three separate programs under the *Package Scheme of Incentives by the State Government of Maharashtra* (SGOM), under which that GVN/MSL had received financial benefits, rather than the two programs identified at the preliminary determination.

[209] For the purposes of the final determination, the CBSA determined, based on its analysis of information provided by GVN/MSL and the Government of India, an amount of subsidy on the basis of financial benefits received under the following six programs:

- Program 20: Export Promotion Capital Goods Scheme
- Program 28: Package Scheme of Incentives by the State Government of Maharashtra (SGOM) - Exemption from Electricity Duty
- Program 30: Package Scheme of Incentives by SGOM – For Mega Projects -Stamp Duty Benefit
- Program 31: Package Scheme of Incentives by SGOM – Exemption from Sales Tax and other levies – a. Sales Tax Deferral
- Program 49: Duty Exemption/Remission Schemes – b. Advance Authorization Scheme
- Program 51: Duty Exemption/Remission Schemes – d. Duty Drawback Scheme

[210] For the purposes of the final determination, all six programs are considered to be specific and, therefore, actionable. **Appendix 2** provides descriptions of the programs used by the exporter in the investigation and a summary of the legislative basis on which the programs are considered actionable.

[211] The CBSA has determined that GVN/MSL received an amount of subsidy equal to 2.2%, when expressed as a percentage of the total export price.

Jindal Saw Limited (Jindal Saw)

[212] For the purposes of the preliminary determination, the CBSA estimated, based on its analysis of the information provided by Jindal Saw and by the Government of India, an amount of subsidy on the basis of the financial benefits received under seven programs.

[213] For the purposes of the final determination, it was determined that Jindal Saw did not receive financial benefits from one of the three programs under the *Package Scheme of Incentives by the SGOM* as was estimated for the purposes of the preliminary determination. The CBSA determined an amount for subsidy on the basis of the financial benefits received by Jindal Saw under the following six programs:

- Program 18: Focus Product Scheme
- Program 20: Export Promotion Capital Goods Scheme
- Program 28: Package Scheme of Incentives by the State Government of Maharashtra (SGOM) – Exemption from Electricity Duty
- Program 31: Package Scheme of Incentives by the SGOM – Exemption from Sales Tax and other Levies a. Sales Tax Deferral
- Program 49: Duty Exemption/Remission Schemes – Advance Authorization Program
- Program 51: Duty Exemption/Remission Schemes – d. Duty Drawback Scheme

[214] For the purposes of the final determination, all six programs are considered to be specific and, therefore, actionable. **Appendix 2** provides descriptions of the programs used by the exporter during the POI and a summary of the legislative basis on which the programs are considered actionable.

[215] The CBSA has determined that Jindal Saw received an amount of subsidy equal to 5.7%, when expressed as a percentage of the total export price.

#### All Other Exporters – India

[216] For all other exporters in India that did not provide sufficient or verifiable information, the CBSA determined an amount of subsidy pursuant to subsection 30.4(2) of SIMA, on the basis of the following methodology:

- (i) the highest amount of subsidy for each of the 7 subsidy programs, as found at the final determination, plus;
- (ii) the simple average of the amount of subsidy for the seven programs referenced in (i), applied to each of the remaining 44 potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[217] Using the above methodology, the amount of subsidy for all other exporters is 41.7%, expressed as a percentage of the total export price.

[218] The overall weighted average amount of subsidy for India is equal to 10.9%, when expressed as a percentage of the total export price of the subject goods.

#### **Indonesia**

[219] At the initiation of the subsidy investigation, the CBSA sent a subsidy RFI to the Government of Indonesia as well as to all known exporters of certain OCTG located in Indonesia. Information was requested in order to establish whether there had been financial contributions made by any level of government including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of OCTG; and whether any resulting subsidy was specific in nature.

[220] The Government of Indonesia was also requested to forward the RFI to all subordinate levels of government that had jurisdiction over the exporters. The exporters were directed to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[221] Sufficient information in response to the subsidy RFI was received from P.T. Citra Tubindo Tbk (Citra). The CBSA conducted an on-site verification with Citra from November 24 to November 27, 2014.

[222] The Government of Indonesia's response to the subsidy RFI was considered insufficient<sup>12</sup> as it was mainly comprised of a narrative description of the listed programs. Additionally, responses to the majority of the questions in the RFI and supporting documentation were not provided.

[223] In the absence of sufficient information, subsidy amounts for all exporters were determined pursuant to subsection 30.4(2) of SIMA, based on a ministerial specification. However, in consideration of the fact that Citra provided sufficient information in response to the subsidy RFI, an individual amount of subsidy was determined based on the information provided in its submission, and obtained during the on-site verification.

[224] At the initiation of the subsidy investigation, the CBSA identified 11 potential subsidy programs, which were examined in the investigation.

[225] In total, 11 programs were examined for the purposes of this investigation. Information concerning these programs is provided in **Appendix 2**.

P.T. Citra Tubindo Tbk (Citra)

[226] For the purposes of the preliminary determination, the CBSA, based on its analysis of the information provided by Citra, estimated an amount of subsidy on the basis of the financial benefit received under the following program:

Program 2: Deferral of Import Income Tax on Imported Capital Goods, Equipment and Raw Materials for Production Destined for Export (Bonded Zone Location)

[227] For the purposes of the final determination, the CBSA found that Citra benefited from this program. As a result, the amount of subsidy for Citra was based on the exemption received under the aforementioned subsidy program.

[228] **Appendix 2** provides information concerning the program used by the responding exporter.

[229] The CBSA has determined that Citra received an amount of subsidy equal to 2.2%, expressed as a percentage of the total export price.

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<sup>12</sup> CBSA Exhibit S364 (P) – Letter to the Government of Indonesia (Subsidy).

### All Other Exporters – Indonesia

[230] For all other exporters in Indonesia that did not provide sufficient or verifiable information, the CBSA determined an amount of subsidy pursuant to subsection 30.4(2) of SIMA, on the basis of the following methodology:

- (i) the amount of subsidy for the one program, as found at the final determination, for Citra, plus;
- (ii) the amount of subsidy for the program in (i), applied to each of the remaining 10 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[231] Using the above methodology, the amount of subsidy for all other exporters is 39.8%, expressed as a percentage of the export price.

[232] The overall weighted-average amount of subsidy for Indonesia is equal to 16.3%, when expressed as a percentage of the export price of the subject goods.

### **Philippines**

[233] At the initiation of the investigation, the CBSA sent subsidy RFIs to the Government of the Philippines, as well as to all known exporters/producers of OCTG in the Philippines. Information was requested in order to establish whether there had been financial contributions made by any level of government, including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain OCTG. Information was also requested to determine whether any resulting subsidy was specific in nature.

[234] The Government of the Philippines was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters. As well, the exporters/producers were directed to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[235] Sufficient information in response to the CBSA's subsidy RFIs was received from the Government of the Philippines and from one exporter, HLD Clark Steel Pipe Co. Inc. (HLD Clark). The government responses were submitted by two separate bodies: the Clark Development Corporation (CDC), which has jurisdiction over the Clark Freeport Zone where the exporter is located; and the Philippine Board of Investments (BOI), which took responsibility for all queries other than those handled by the CDC.

[236] The CBSA conducted an on-site verification of the material submitted by the Government of the Philippines at the premises of the CDC and the BOI on November 28, 2014. Verification meetings with the exporter were conducted from November 24 to November 27, 2014.

[237] The CBSA identified 12 programs at the initiation of the investigation. A further review resulted in the identification of one additional program.

[238] In total, 13 programs were examined for the purposes of this investigation. Further information concerning these programs is provided in **Appendix 2**.

#### HLD Clark Steel Pipe Co. Inc.(HLD Clark)

[239] At the preliminary determination, the CBSA estimated an amount of subsidy for HLD Clark based on benefits received under four programs.

[240] The CBSA determined that the exporter had not received any benefits under one of the programs enumerated, but had received benefits under an additional program identified subsequent to the preliminary determination. The CBSA modified the titles of Programs 1, 5 and 6 to better reflect the actual benefits granted.

[241] For the purposes of the final determination, the following four programs are considered to be subsidies that are actionable:

- Program 1: Reduction of Income Taxes in Special Economic Zones (SEZs)
- Program 5: Exemption in SEZs from Import Taxes and Duties on Importation of Factory Supplies
- Program 6: Exemption in SEZs from Import Taxes and Duties on Importation of Machinery and Equipment
- Program 13: Provision of Electricity at Less than Fair Market Value

[242] **Appendix 2** provides descriptions of the programs used by the exporter during the POI and a summary of the legislative basis on which the programs are considered actionable.

[243] The CBSA has determined that HLD Clark received an amount of subsidy equal to 0.6%, when expressed as a percentage of the total export price.

#### All Other Exporters – Philippines

[244] For all other exporters in the Philippines that did not provide sufficient or verifiable information, the amount of subsidy was determined pursuant to subsection 30.4(2) of SIMA, on the basis of the following methodology:

- (i) the amount of subsidy for each of the 4 subsidy programs, as found at the final determination, for HLD Clark, plus;
- (ii) the simple average of the amounts of subsidy for the 4 programs in (i), applied to each of the remaining 9 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[245] Using the above methodology, the amount of subsidy for all other exporters is 1.7%, expressed as a percentage of the total export price.

[246] The overall weighted average amount of subsidy for the Philippines is equal to 0.8%, when expressed as a percentage of the total export price of the subject goods.

### **Thailand**

[247] At the initiation of the subsidy investigation, the CBSA sent a subsidy RFI to the Government of Thailand as well as to all known and potential exporters and producers of certain OCTG located in Thailand. Information was requested in order to establish whether there had been financial contributions made by any level of government including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of OCTG; and whether any resulting subsidy was specific in nature.

[248] The Government of Thailand was also requested to forward the RFI to all subordinate levels of government that had jurisdiction over the exporters and producers. The exporters were directed to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[249] Sufficient information in response to the CBSA's exporter subsidy RFI was received from one exporter, Thai Oil Pipe Co., Ltd. (TOP). The CBSA conducted an on-site verification with TOP from November 17 to November 21, 2014.

[250] The Government of Thailand provided an insufficient response to the subsidy RFI. As a result, the CBSA sent SRFIs to obtain the requested information and clarification. However, the information submitted in the RFI and the SRFIs' responses was insufficient.

[251] Subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the fact that TOP provided sufficient information in response to the subsidy RFI, an individual amount of subsidy was determined for this specific exporter based on the information provided in its submission.

[252] At the initiation of the subsidy investigation, the CBSA identified 7 potential subsidy programs. A further review during the investigation resulted in 2 additional programs being identified.

[253] In total, 9 programs were investigated for the purposes of this investigation. Information concerning these programs is provided in **Appendix 2**.



Thai Oil Pipe Co., Ltd (TOP)

[254] For the purposes of the preliminary determination, the CBSA estimated, based on its analysis of the information provided by TOP, an amount of subsidy on the basis of the financial benefits received under the following programs:

- Program 1: Exemption or Reduction of Duties on Imports of Machinery
- Program 2: Reduction of Import Duties for Raw or Essential Materials

[255] During the final phase of the investigation, the CBSA confirmed that TOP received benefits from the Government of Thailand under Program 1, which also included a reduction or exemption of Value Added Tax (VAT), as well as under two additional programs identified subsequently. As a result, the amount of subsidy for TOP was based on the benefits received under the following three subsidy programs:

- Program 1: Exemption or Reduction of VAT and Duties on Imports of Machinery
- Program 8: Exemption or Refund of Value-Added Tax on Construction of a Factory or a Building
- Program 9: Exemption or Refund of Value-Added Tax on Purchase of Land

[256] **Appendix 2** provides information concerning the program used by the responding exporter.

[257] The CBSA has determined that TOP received an amount of subsidy equal to 1.0%, when expressed as a percentage of the export price.

All Other Exporters – Thailand

[258] For all other exporters in Thailand that did not provide sufficient or verifiable information, the amount of subsidy was determined pursuant to subsection 30.4(2) of SIMA, on the basis of the following methodology:

- (i) the amount of subsidy for each of the 3 programs, as found at the final determination, for TOP, plus;
- (ii) the simple average of the amounts of subsidy for the 3 programs in (i), applied to each of the remaining 6 potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[259] Using the above methodology, the amount of subsidy for all other exporters is equal to 2.5%, when expressed as a percentage of the export price.

[260] The overall weighted average amount of subsidy for Thailand is equal to 1.8%, expressed as a percentage of the total export price of the subject goods.

## Ukraine

[261] At the initiation of the subsidy investigation, the CBSA sent a subsidy RFI to the Government of Ukraine as well as to all known exporters of certain OCTG located in Ukraine. Information was requested in order to establish whether there had been financial contributions made by any level of government including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of OCTG; and whether any resulting subsidy was specific in nature.

[262] The Government of Ukraine was also requested to forward the RFI to all subordinate levels of government that had jurisdiction over the exporters. The exporters were directed to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[263] Sufficient information in response to the CBSA's exporter subsidy RFI was received from one exporter, Interpipe Ukraine LLP (Interpipe).

[264] The CBSA received insufficient information in response to the government subsidy RFI from the Government of Ukraine. As a result, the CBSA sent a SRFI to the Government of Ukraine requesting additional information. An insufficient response to this SRFI was received 40 days later, on the day of the closing of the record.

[265] In the absence of sufficient information, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the fact that Interpipe provided sufficient information in response to the subsidy RFI, an individual amount of subsidy was determined for this specific exporter based on the information provided in its submission.

[266] At the initiation of the subsidy investigation, the CBSA identified 9 potential subsidy programs. Information concerning these programs is provided in **Appendix 2**.

### Interpipe Ukraine LLP (Interpipe)

[267] For the purposes of the preliminary determination, both Interpipe and the Government of Ukraine provided insufficient information to the subsidy RFIs. As such, the CBSA estimated an amount of subsidy for Interpipe based on the methodology used at the initiation of the investigation by comparing the estimated costs of production of the subsidized goods with their weighted average estimated export prices.

[268] During the final phase of the investigation, the CBSA received additional information from Interpipe. The CBSA determined, based on the analysis of the information available on the administrative record that a financial benefit was received under the following program:

Program 1: Acquisition of State Assets at less than Fair Market Value

[269] **Appendix 2** provides information concerning the program used by the responding exporter.

[270] The CBSA has determined that Interpipe received an amount of subsidy equal to 0.3%, when expressed as a percentage of the total export price.

#### All Other Exporters – Ukraine

[271] For all other exporters in Ukraine that did not provide sufficient or verifiable information, the amount of subsidy was determined pursuant to subsection 30.4(2) of SIMA, on the basis of the following methodology:

- (i) the amount of subsidy for the one program, as found at the final determination, for Interpipe, plus;
- (ii) the amounts of subsidy for the program in (i), applied to each of the remaining 8 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[272] Using the above methodology, the amount of subsidy for all other exporters is 1.8%, expressed as a percentage of the total export price.

[273] The overall weighted average amount of subsidy for Ukraine is equal to 0.3%, expressed as a percentage of the total export price of the subject goods.

#### **Vietnam**

[274] At the initiation of the subsidy investigation, the CBSA sent a subsidy RFI to the Government of Vietnam as well as to all known exporters of certain OCTG located in Vietnam. Information was requested in order to establish whether there had been financial contributions made by any level of government including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of OCTG; and whether any resulting subsidy was specific in nature.

[275] The Government of Vietnam was also requested to forward the RFI to all subordinate levels of government that had jurisdiction over the exporters. The exporters were directed to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[276] An insufficient response to the subsidy RFI was received from the Government of Vietnam. No exporter in Vietnam responded to the CBSA's subsidy RFI.

[277] At the initiation of the subsidy investigation, the CBSA identified 18 potential subsidy programs. Information concerning these programs is provided in **Appendix 2**.

### All Exporters – Vietnam

[278] Since no exporter in Vietnam provided a response to the CBSA's subsidy RFI, the amount of subsidy for all exporters is determined under ministerial specification pursuant to subsection 30.4(2) of SIMA. The amount of subsidy is based on the amount by which the full cost, as estimated by the CBSA at the initiation of the investigation, exceeds the total export price of the subject goods released into Canada in 2013.

[279] Using this methodology, the amount of subsidy for all exporters in Vietnam is 19.0%, expressed as a percentage of the total export price of the subject goods.

### **Summary Results - Subsidy**

[280] A summary of the final results of the subsidy investigation respecting all subject goods released into Canada during the subsidy POI is provided below:

#### **Summary of Results - Subsidy Period of Investigation - January 1, 2013 to March 31, 2014**

<b>Country</b>	<b>Volume of Subsidized Goods as a Percentage of Country Imports</b>	<b>Amount of Subsidy as a Percentage of Export Price</b>	<b>Volume of Country Imports as a Percentage of Total Imports</b>
India	100%	10.9%	1.3%
Indonesia	100%	16.3%	1.9%
Philippines*	100%	0.8%	2.4%
Thailand*	100%	1.8%	1.2%
Ukraine*	100%	0.3%	1.0%
Vietnam	100%	19.0%	2.7%

\*For the Philippines, Thailand and Ukraine, the amounts of subsidy are insignificant and the subsidy investigation concerning OCTG from the Philippines, Thailand and Ukraine is terminated.

[281] According to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the World Trade Organization's (WTO) *Agreement on Subsidies and Countervailing Measures* when conducting a subsidy investigation. This provision stipulates that a subsidy investigation involving a developing country must be terminated if the CBSA determines that the total amount of subsidy for a developing country does not exceed 2% of the value of the goods.

[282] SIMA does not define or provide any guidance regarding the determination of a "developing country" for purposes of Article 27.10 of the WTO Agreement on Subsidies and Countervailing Measures. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Aid Recipients* (DAC List of ODA Recipients)<sup>13</sup>, for guidance. As India, Indonesia, the Philippines, Thailand, Ukraine and Vietnam are included in this listing, the CBSA has extended developing country status to these countries for the purposes of this investigation. For developed countries, an amount of subsidy of less than 1% of the value of the goods is considered insignificant.

[283] The amounts of subsidy of certain OCTG originating in or exported from India, Indonesia and Vietnam were found to be above 2% and were, therefore, determined not to be insignificant.

[284] The amounts of subsidy of certain OCTG originating in or exported from the Philippines, Thailand and Ukraine did not exceed 2% of their value calculated on a per unit basis and were, therefore, determined to be insignificant.

[285] For the purposes of a preliminary determination of subsidizing, the President is responsible for determining whether the actual and potential volume of subsidized goods is negligible. After a preliminary determination of subsidizing, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, if the Tribunal determines the volume of subsidized goods from a country is negligible, the Tribunal is required to terminate its injury inquiry in respect of those goods.

## **DECISIONS**

[286] Pursuant to paragraph 41(1)(a) of the *Special Import Measures Act* (SIMA), on March 3, 2015, the President made a final determination of dumping respecting certain OCTG originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam.

[287] On the same day, pursuant to paragraph 41(1)(a) of SIMA, the President made a final determination of subsidizing respecting certain OCTG from India, Indonesia and Vietnam.

[288] Pursuant to paragraph 41(1)(b) of SIMA, on March 3, 2015, the President terminated the subsidy investigation with respect to certain OCTG from the Philippines, Thailand and Ukraine.

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<sup>13</sup> The Organization for Economic Co-operation and Development, DAC List of ODA Recipients from 2014 to 2016, the document is available at:  
<http://www.oecd.org/dac/stats/documentupload/DAC%20List%20of%20ODA%20Recipients%202014%20final.pdf>

## FUTURE ACTION

[289] The provisional period began on December 3, 2014, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by April 2, 2015. Provisional duties will continue to apply until this date on imports of subject goods from Chinese Taipei, India, Indonesia, the Philippines, the Republic of Korea, Thailand, Turkey, Ukraine and Vietnam. However, the provisional duties related to the subsidization of goods originating in or exported from the Philippines, Thailand, and Ukraine will no longer apply, and such provisional duty paid or security posted will be returned. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available on the CBSA's Web site at [www.cbsa-asfc.gc.ca/sima-lmsi](http://www.cbsa-asfc.gc.ca/sima-lmsi).

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

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

[292] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act*<sup>14</sup> apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[293] In the event of an injury finding by the Tribunal, normal values and amounts of subsidy have been provided to the exporters who provided sufficient information for future shipments to Canada and these normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods should be obtained from the exporter.

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<sup>14</sup> *Customs Act* R.S.C. 1985

[294] Exporters of subject goods who did not provide sufficient information in the dumping investigation will have normal values established by advancing the export price by 37.4% based on a ministerial specification pursuant to subsection 29(1) of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters of subjects goods from India, Indonesia and Vietnam, who did not provide sufficient information in response to the exporter subsidy RFI, will be subject to countervailing duties based on a ministerial specification pursuant to subsection 30.4(2) of SIMA. For all other amounts of subsidy for these countries, see the subsidy investigation section of this statement of reasons.

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

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

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

### **PUBLICATION**

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

[298] A notice of the termination of the subsidy investigation in respect of the Philippines, Thailand and Ukraine will be published in the *Canada Gazette* pursuant to paragraph 41(4)(a) of SIMA.

## INFORMATION

[299] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site 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:** Andrew Manera 613-946-2052  
Vera Hutzuliak 613-954-0689

**Fax:** 613-948-4844

**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)

  
D. L. ARSON  
(for) Brent McRoberts  
Director General  
Trade and Anti-dumping Programs Directorate

Attachments



**APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY**

Exporters	Margin of Dumping as % of Export Price	Amounts of Subsidy as % of Export Price	Amount of Subsidy/MT
India – Jindal Saw	0.0%	5.7%	4,630 Rupees
India – GVN/Maharashtra Seamless	0.0%	2.2%	1,571 Rupees
India – Others	37.4%	41.7%	39,443 Rupees
<b>Total – India</b>	<b>5.6%</b>	<b>10.9%</b>	<b>N/A</b>
Indonesia – Citra Tubindo	6.4%	2.2%	598,072 Rupiah
Indonesia – Others	37.4%	39.8%	6,578,792 Rupiah
<b>Total – Indonesia</b>	<b>21.7%</b>	<b>16.3%</b>	<b>N/A</b>
Philippines – HLD Clark	0.0%	0.6%	285.40 PHP
Philippines – Others	37.4%	1.7%	927.55 PHP
<b>Total – Philippines</b>	<b>4.2%</b>	<b>0.8%</b>	<b>N/A</b>
Korea – Hyundai Hysco	0.0%	N/A	N/A
Korea – SeAH Steel	8.8%	N/A	N/A
Korea – PanMeridian	0.0%	N/A	N/A
Korea – Others	37.4%	N/A	N/A
<b>Total – Republic of Korea</b>	<b>19.1%</b>	<b>N/A</b>	<b>N/A</b>
Chinese Taipei – Chung Hung Steel	7.0%	N/A	N/A
Chinese Taipei – Tension Steel	2.6%	N/A	N/A
Chinese Taipei – Others	37.4%	N/A	N/A
<b>Total – Chinese Taipei</b>	<b>15.8%</b>	<b>N/A</b>	<b>N/A</b>
Thailand – Thai Oil Pipe	28.0%	1.0%	373.29 Baht
Thailand – Others	37.4%	2.5%	1,119.87 Baht
<b>Total – Thailand</b>	<b>33.0%</b>	<b>1.8%</b>	<b>N/A</b>
Turkey – Borusan	0.0%	N/A	N/A
Turkey – IMCO	13.0%	N/A	N/A
Turkey – Others	37.4%	N/A	N/A
<b>Total – Turkey</b>	<b>18.9%</b>	<b>N/A</b>	<b>N/A</b>
Ukraine – Interpipe	37.4%	0.3%	45.95 UAH
Ukraine – Others	37.4%	1.8%	413.55 UAH
<b>Total – Ukraine</b>	<b>37.4%</b>	<b>0.3%</b>	<b>N/A</b>
<b>Total – Vietnam (All Exporters)</b>	<b>37.4%</b>	<b>19.0%</b>	<b>4,722,664 Dong</b>

NOTE: The margins of dumping reported in this table are the margins determined by the CBSA for the purposes of the final determination of dumping. These margins do not reflect the amount of anti-dumping duty to be levied on future importations of dumped goods. In the event of an injury finding by the Tribunal, normal values and amounts of subsidy for future shipments to Canada have been provided to the exporters who provided sufficient information in their response to the CBSA RFI. These normal values and amounts of subsidy would come

into effect the day after an injury finding. Information regarding normal values of the subject goods and amounts of subsidy should be obtained from the exporters. Imports from exporters that did not provide sufficient information to the CBSA during the dumping investigation will be subject to an anti-dumping duty rate of 37.4%, expressed as a percentage of the export price, in accordance with a ministerial specification. Imports from exporters located in India, Indonesia and Vietnam that did not provide sufficient information to the CBSA during the subsidy investigation will also be subject to a countervailing duty rate in accordance with a ministerial specification. Please consult the [SIMA Self-Assessment Guide](#) for more detailed information explaining how to determine the amount of SIMA duties owing.

## **APPENDIX 2 – SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS**

### **India**

A total 52 subsidy programs were reviewed by the CBSA in the subsidy investigation.

Of the 48 programs identified at initiation, one program, Program 23 – *Purchase of Hot-rolled Steel and Billets from State-owned Enterprises for Less than Fair Market Value*, was eliminated as information obtained in the course of the investigation indicated that the Government of India was not directly involved in the operations of the state-owned steel company producing the hot-rolled steel sheet.

In addition, the title for Program 19 was revised to that identified by the Government of India as provided in the listing of programs below. Under *Duty Exemption/Remission Schemes*, the Government of India indicated two additional programs, program 49 and 50, and the CBSA also added the *Duty Drawback Scheme*, program 51, under *Duty/Remissions Schemes*. The CBSA's reasons for including these three programs are addressed in the following section.

Furthermore, based on the information available and further clarification, the CBSA added an additional program, Program 52, under the *Package Scheme of Incentives* by the State Government of Maharashtra (SGOM).

With the exception of the one program named above that was removed from the listing, the Government of India has not provided sufficient information to eliminate any additional identified programs. An outline of the investigation results respecting India is provided below.

### **Subsidy Programs Used by the Responding Exporters**

Responses to the subsidy RFI were received from the Government of India and from two exporters, Jindal Saw and GVN/MSL. In its original response to the CBSA's subsidy RFI, the Government of India provided general descriptions of the subsidy programs identified by the CBSA and submitted copies of the relevant supporting laws, regulations and policies. The Government of India also confirmed the amounts for subsidy provided by the two exporters, who provided sufficient information in response to the exporter subsidy RFI. The Government of India was asked to provide additional information in the SRFIs. While the Government of India provided some additional information, it also indicated that, in a number of cases, centralized information for many programs was not available.

In addition, the CBSA conducted on-site verification meetings with the Government of India and Jindal Saw, in which further information was provided and items were clarified and verified. The CBSA's review of the responses provided by the Government of India and the exporters has indicated that sufficient information was provided to determine the amount of subsidy on a program basis for each responding exporter in the prescribed manner, pursuant to subsection 30.4(1) of SIMA.

*Program 18: Focus Product Scheme*

This program was established as per Chapter 3.15 of India's *Foreign Trade Policy (2009-2014)*, which was issued by the Ministry of Commerce and Industry in 2010. The stated objective of the program is to encourage the export of products that have high export or employment potential, by offsetting any infrastructure inefficiencies and costs associated with the marketing of these products. Under this program, since August 27, 2009, exports of certain products to all countries are entitled to a duty credit equivalent to 2% of their value.

The information available indicates that the *Focus Product Scheme* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that it is a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

During the POI, one of the responding exporters received benefits under this program.

*Program 20: Export Promotion Capital Goods Scheme*

This scheme was designed for the modernization and technological upgrade of the production base in the country. This program is governed under *Foreign Trade Policy 2009-2014*. This scheme allows the import of capital goods for pre-production, production and post-production, at zero rate or 3% customs duty, subject to an export obligation equivalent to 6 times of the duty saved on the imported capital goods.

The information available indicates that the *Export Promotion Capital Goods Scheme* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that it is a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

During the POI, both of the responding exporters received benefits under this program.

*Program 28: Package Scheme of Incentives by the State Government of Maharashtra (SGOM) – Exemption from Electricity Duty*

Under paragraph 5.3 of the Mega Project of *Maharashtra Package Scheme of Incentives 2007*, both new and existing companies undertaking expansion/diversification are exempted from payment of electricity duty if located in "Zones C, D, D+ Talukas and No Industry Districts." This benefit is effectively based on a 5% refund of the VAT and a refund of 2% of the Central Sales Tax. As both of the responding exporters had production facilities located in "Zone C",

each company met the stipulated capital investment thresholds, and therefore received an exemption of electricity duty. The electricity duty exemption for eligible companies is for a period of 7 years from the date of commencement of commercial production.

The *Exemption from Electricity Duty Program* is part of the *Package Scheme of Incentives (PSI)* offered by the SGOM that provides certain incentives for industries in the state of Maharashtra, to encourage dispersal of industries outside the Bombay-Thane-Pune belt and to attract industries to the developing and underdeveloped areas of the state. The scheme is amended from time to time with the last amendment occurring in 2013. Eligibility is not contingent upon export performance or the use of domestic over imported goods.

The information available indicates that the *Package Scheme of Incentives* by the SGOM – *Exemption from Electricity Duty* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption. The exemption of electricity duty was limited, in law, to a group of enterprises, and was considered to be specific under paragraph 2(7.2)(a) of SIMA, as it is limited, pursuant to a legislative, regulatory or administrative instrument or other public document.

During the POI, both of the responding exporters received benefits under this program.

*Program 30: Package Scheme of Incentives by SGOM – for Mega Projects – Stamp Duty Benefit*

The purpose of the *Package Scheme of Incentives* by the SGOM – for Mega Projects – Stamp Duty, is to attract industries to the economically backward regions in the state of Maharashtra. One of the responding exporters, located in one of the geographic zones defined under this program, was approved for and received the exemption of stamp duty for the registration of land leased from the Maharashtra Industrial Corporation.

The information available indicates that one of the responding exporters received benefits under this program, which constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption. *Stamp Duty Benefit* provided to enterprises in certain geographic regions that had met certain capital investment thresholds was found to be limited, in law, to a group of enterprises, was considered to be specific under paragraph 2(7.2)(a) of SIMA as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document.

During the POI, one of the responding exporters received benefits under this program.

*Program 31: Package Scheme of Incentives by SGOM - Exemption from Sales Tax and other levies – a. Sales Tax Deferral*

This is another program under the *Package Scheme of Incentives* by the State Government of Maharashtra that provides certain incentives for industries in Maharashtra. It is designed to attract industries to the developing and underdeveloped areas of the state as per specific geographic areas or zones. The exemption from sales tax and other levies permits a payment deferral of sales tax. Under this program, sales tax owing is deferred for a period of 10 years. After 10 years, the deferred tax is due and paid to the state government. The benefit is effectively an interest free loan from the government.

During the POI, both of the responding exporters had production facilities located in “Zone C”, and each company met the stipulated investment thresholds. Both exporters received benefits under this program.

The information available indicates that the *Exemption from Sales Tax and other levies – a. Sales Tax Deferral* offered under the Package Scheme of Incentives (PSI) of the SGOM constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption. *Sales Tax Deferral* provided to enterprises located in specific geographic regions or zones that met certain investment thresholds, was found to be limited, in law, to a group of enterprises and was considered to be specific pursuant to paragraph 2(7.2)(a) of SIMA as it is limited pursuant to a legislative, regulatory, or administrative instrument or other public document.

During the POI, both of the responding exporters received benefits under this program.

*Program 49: Duty Exemption/Remission Schemes - b. Advance Authorization Scheme*

*Advance Authorization Scheme* is a specific program under the *Duty Exemption Scheme* that enables the duty-free importation of inputs required for the production of goods to be exported or for deemed exports. Inputs must be used in the manufacture of exported products or for the replenishment of inputs used in products that have been already exported. The scheme is specifically addressed under Paragraph 4.1 of the Foreign Trade Policy (“FTP”) 2009-2014. Eligibility is not strictly contingent upon export performance; it is available for inputs even if the final products are not exported, as in the case of deemed exports under Chapter 8 of the Foreign Trade Policy. Both of the responding exporters received benefits under the program in “deemed exports”.

The information available indicates that the *Advance Authorization Scheme* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that it is a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon actual or deemed export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

During the POI, both of the responding exporters received benefits under this program.

*Program 51: Duty Exemption/Remission Schemes – d. Duty Drawback Scheme*

The *Duty Drawback Scheme* provides rebates of duties or taxes chargeable on any imported or excisable materials and input services used in the manufacture of exported goods. This includes duty free import of inputs, fuel, energy sources, oil and catalysts required for export products under the provisions of paragraph 4.1.3. of the India Foreign Trade Policy. Import duty exemptions on inputs for exported production are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste. However the government must have in place and apply a system to confirm which inputs were consumed in the production of the exported products and in what amounts. The CBSA requested information in the form of supporting documents for the drawback rates established. Information was not provided to support that the Government of India has an effective system in place to track rates and to confirm that the actual inputs involved are consumed, including normal allowances for waste for the purposes intended.

The information available indicates that the *Duty Drawback Program* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that it is a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

During the POI both of the responding exporters received benefits under this program.

**Other Potentially Actionable Subsidy Programs**

The following 44 programs were also included in the investigation. Questions concerning these programs were included in the RFI sent to the Government of India and to all known exporters of the goods in India. The exporters that provided a response to the RFI reported not using these programs during the subsidy POI.

However, without a sufficient response to the subsidy RFI from all known exporters, the CBSA does not have sufficient information to determine whether or not any of these programs constitute actionable subsidies. In other words, with the exception of the one program that was removed from the investigation, the CBSA did not receive sufficient information to determine that any of the following programs should be removed from the investigation.

- Program 1. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material in Special Economic Zones (SEZs)
- Program 2. Export Income Tax Exemptions in SEZs
- Program 3. Exemption in SEZs from Minimum Alternate Tax
- Program 4. Exemption in SEZs from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material
- Program 5. Exemption in SEZs from Service Tax
- Program 6. Discounted Land Fees and Leases in SEZs
- Program 7. Discounted Electricity Rates in SEZs
- Program 8. Exemption in SEZs from State Sales Tax and Other Levies as Extended by State Governments
- Program 9. Duty-Free Importations for Companies Designated as Export Oriented Units (EOUs)
- Program 10. Reimbursement to EOUs of Central Sales Tax
- Program 11. Duty Drawback for EOUs on Fuel Procured from Domestic Oil Companies
- Program 12. Credit for Service Tax paid by EOUs
- Program 13. Exemptions from Income Tax for EOUs
- Program 14. Assistance to States for Developing Export Infrastructure and Allied Activities
- Program 15. Market Access Initiative
- Program 16. Market Development Assistance
- Program 17. Brand Promotion and Quality
- Program 19. Rupee/Foreign Currency Export Credit & Customer Service to Exporters
- Program 21. Duty Exemption/Remission Schemes - a. Duty Free Import Authorization Scheme
- Program 22. Purchase of Iron Ore From State-owned Enterprises for Less than Fair Market Value
- Program 24. 80-IB Income Deduction Program
- Program 25. 80-IA Income Tax Deduction Program
- Program 26. Steel Development Fund Loans
- Program 27. Steel Development Fund R&D Grants
- Program 29. Package Scheme of Incentives by SGOM – Refund of Octroi Duty or Entry Tax
- Program 32. Reimbursement of the Cost of Land in Industrial Estates and Development Areas under the State Government of Andhra Pradesh Industrial Investment Promotion Policy (SGOAP IIPP)
- Program 33. Reimbursement of Power Costs under the SGOAP IIPP
- Program 34. Subsidy for Expenses Incurred for Quality Certification under the SGOAP IIPP
- Program 35. Subsidy for Expenses Incurred in Patent Registration under the SGOAP IIPP
- Program 36. Subsidy for Cleaner Production Measures under the SGOAP IIPP



- Program 37. Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and Obtaining Financial Deeds and Mortgages under the SGOAP IIPP
- Program 38. Reimbursement of Value Added Tax, CST, and State Goods and Services Tax under the SGOAP IIPP
- Program 39. Provision by the SGOAP IIPP of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas at less than Fair Market Value
- Program 40. Subsidies from the SGOAP IPP for Mega Projects
- Program 41. Andhra Pradesh Industrial Investment's Allotment of Land for Less than Fair Market Value by the Andhra Pradesh Industrial Infrastructure Corporation (APIIC)
- Program 42. APIIC Provision of Deposit Works other than General Governmental Infrastructure
- Program 43. State Government of Gujarat (SGOG) Exemptions and Deferrals on Sales Tax for Purchases of Goods
- Program 44. SGOG VAT Remission Scheme
- Program 45. SGOG Critical Infrastructure Project
- Program 46. SGOG Scheme for Assistance to Industrial Parks/Industrial Estates Set Up by Private Institutions
- Program 47. Reduced VAT Rates for Inputs and Raw Materials from the State Government of Haryana (SGOH)
- Program 48. SGOH Preferential Loans for Large Scale Industries Located in Industrial Estates
- Program 50. Duty Exemption/Remission Schemes – c. Duty Entitlement Passbook Scheme
- Program 52. Package Scheme of Incentives by SGOM – Industrial Promotion Subsidy

## **Indonesia**

As noted in the body of this document, the Government of Indonesia did not submit a sufficient response to the subsidy RFI, and therefore did not provide the required information relating to the financial contribution, benefit and specificity. This significantly impeded the CBSA's investigation as sufficient information had not been provided to enable the determination of the amount of subsidy in the prescribed manner, pursuant to subsection 30.4(1) of SIMA. Due to this lack of information, subsidy amounts for all exporters have been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA based on the best information available to the CBSA.

However, in consideration of the fact that Citra provided sufficient information in response to the subsidy RFI and SRFIs, an individual amount of subsidy has been determined based on the information provided in its submission and information obtained during the on-site verification.

### **Subsidy Program Used by the Responding Exporter**

The CBSA has used the best information available to describe the subsidy program used by the responding exporter in the subsidy investigation.

*Program 2: Deferral of Import Income Tax on Imported Capital Goods, Equipment and Raw Materials for Production Destined for Export (Bonded Zone Location)*

Citra employed different terminology in relation to this program. Instead of *Deferral of Import Income Tax*, Citra used *Exemption of VAT and Customs/Import Duty*; and in relation to a Bonded Zone Location, the company referenced a *Free Trade Zone*. As such, for the purposes of the subsidy investigation, Program 2 is also referenced as a similar program entitled *Exemption of VAT and Customs/Import Duty on Imported Capital Goods, Equipment and Raw Materials (Free Trade Zone)*.

This program appears to be administered by the Government of Indonesia.<sup>15</sup>

During the subsidy POI, Citra, benefited from this program, which constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts which 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, and confer a benefit to the recipient equal to the amount of the exemption/reduction.

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<sup>15</sup> CBSA Exhibit S219 (NC) – Government of Indonesia response to the CBSA Subsidy RFI and CBSA Exhibit S589 (NC) – Verification Exhibits (Subsidy: VES-10) – P.T. Citra Tubindo Tbk.

Due to the insufficient response from the Government of Indonesia and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program appears to be limited to enterprises located in a designated geographic region, that is, a *Free Trade Zone*, which includes the island of Batam and thus appears to be specific.

As a result, the amount of subsidy respecting this program was determined under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received (exemption) by the exporter over the total quantity of goods to which the benefit was attributable.

### **Other Potentially Actionable Subsidy Programs**

The following ten programs were also included in the subsidy investigation. Questions concerning these programs were included in the RFI sent to the Government of Indonesia and to all known exporters of the goods in Indonesia. Citra, the exporter who provided sufficient information in response to the RFI reported not using any of these programs during the subsidy POI. Without sufficient information in response to the subsidy RFI from the Government of Indonesia and all known exporters, the CBSA does not have sufficient information to determine whether or not any of the following programs should be removed from the subsidy investigation.

- Program 1. Tax deduction to Labour Intensive Industries in the Upstream Oil and Gas Sector
- Program 3. Tax Holiday Package for the Large Pioneer Sector Investments
- Program 4. Reduction of net income of 30% of the investment, charged for six years respectively at 5 percent each year under Regulation No. 144 of 2012 (Reg.144)
- Program 5. Accelerated depreciation under Reg.144
- Program 6. Reduction of foreign dividend income tax under Reg.144
- Program 7. Extension of Loss carry-forward allowances under Reg.144
- Program 8. Five Percent income tax reduction for certain publicly traded companies
- Program 9. Import duty exemption for companies using machines with qualifying local content
- Program 10. Coal provided at less than fair market value through Domestic Market Obligation to industries such as steel and cement companies
- Program 11. Electricity provided at less than fair market value through Domestic Market Obligation by state owned electricity company

## **Philippines**

A total 13 programs were reviewed by the CBSA in this investigation.

Along with the 12 programs identified at the initiation, the CBSA determined during the final phase of the investigation that the responding exporter had received benefits under one additional program. The CBSA also modified the titles of the programs relating to *Special Economic Zones* to better reflect the actual benefits granted.

An outline of the investigation results respecting the Philippines is provided below.

### **Subsidy Programs Used by the Responding Exporter**

Responses to the subsidy RFI were received from the Government of the Philippines and from one exporter, HLD Clark. The Government of the Philippines provided general descriptions of the alleged subsidy programs identified by the CBSA and submitted copies of the relevant supporting laws, regulations and policies to the best of its abilities.

The CBSA conducted on-site verification meetings with HLD Clark from November 24 to November 27, 2014, and with the Government of the Philippines on November 28, 2014. The CBSA reviewed the responses provided by HLD Clark and the Government of the Philippines and determined that sufficient information was provided to determine the amount of subsidy for HLD Clark on a program basis in the prescribed manner.

#### *Program 1: Reduction of Income Taxes in Special Economic Zones (SEZs)*

This program was established by the Government of the Philippines pursuant to *the Philippine Republic Act 9400* (amending *Republic Act 7227*) in March 2007, in order to accelerate the conversion of former US military bases into productive uses as *Special Economic and Freeport Zones*. Under this program administered by the Clark Development Corporation, exporters located in the *Clark Freeport Zone* are entitled to pay income tax at the preferential rate of 5 % of gross income in lieu of all local and national taxes.

The information available indicates that the *Reduction of Income Taxes in SEZs* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that it is a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

During the POI, HLD Clark received benefits under this program.

*Program 5: Exemption in SEZs from Import Taxes and Duties on Importation of Factory Supplies*

This program was established by the Government of the Philippines pursuant to the *Philippine Republic Act 9400* (amending *Republic Act 7227*) in March 2007, in its objective to encourage investment in the country's *Special Economic and Freeport Zones*. Under this program administered by the Clark Development Corporation, exporters located in the *Clark Freeport Zone* are entitled to import factory supplies without payment of import duties.

Tax and duty exemptions on the importation of factory supplies that take the form of energy, fuel, oil, catalysts and goods incorporated into the exported goods do not constitute a subsidy in accordance with the definition of "subsidy" in section 2 of SIMA. However, with respect to the other types of goods, the information provided indicates that the *Exemption in SEZs from Import Taxes and Duties on Importation of Factory Supplies* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

The information available also indicates that it is a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

During the POI, HLD Clark received benefits under this program.

*Program 6: Exemption in SEZs from Import Taxes and Duties on Importation of Machinery and Equipment*

The *Philippine Republic Act 9400* (amending *Republic Act 7227*) and *Executive Order No.80*, also granted exemption from taxes and duties on imported machinery and equipment to companies located in SEZs. In the *Clark Freeport Zone* this exemption is administered by the Clark Development Corporation.

The information available indicates that *Exemption in SEZs from Import Taxes and Duties on Importation of Machinery and Equipment* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that it is a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

During the POI, HLD Clark received benefits under this program.

*Program 13: Provision of Electricity at Less than Fair Market Value*

Pursuant to the *Philippine Republic Act 9136 of 2001*, also known as the *Electric Power Industry Reform Act*, competition was introduced into the electrical generation and supply sub-sectors in the Philippines, while electrical transmission and distribution remained regulated monopolies. Under the provisions of this Act, a government agency named the Energy Regulatory Commission is charged with establishing and enforcing a methodology for setting the electrical transmission and distribution rates to be charged by the electrical suppliers. Information provided to the CBSA indicates that the rates for electricity distribution are lower inside the *Clark Freeport Zone* than outside this SEZ. Information provided indicates that one of the reasons companies in the *Clark Freeport Zone* receive electricity at reduced rates is due to the pass-through benefits that accompany the various tax and duty exemptions granted to their supplier<sup>16</sup>, the Clark Electrical Distribution Corporation.

The information supplied to the CBSA indicates that *Provision of Electricity at Less than Fair Market Value* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(d) of SIMA, where the Government permits or directs a non-governmental body to carry out the provision of goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the rates applicable inside the *Clark Freeport Zone* and those immediately outside the *Clark Freeport Zone*.

The *Provision of Electricity at Less than Fair Market Value* was found to be limited in law, to a group of enterprises, and was considered to be specific under paragraph 2(7.2)(a) of SIMA, as it is limited, pursuant to a legislative, regulatory or administrative instrument or other public document.

During the POI, HLD Clark received benefits under this program.

### **Other Subsidy Programs**

The following 9 programs were also included in the investigation. Questions concerning these programs were included in the RFI sent to the Government of the Philippines and to all other exporters of the goods. The exporter that provided a response to the RFI reported not using these programs during the subsidy POI.

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<sup>16</sup> CBSA Exhibit 803 (NC), page 35.

However, due to the insufficient information in response to the subsidy RFI from all other exporters, the CBSA does not have sufficient information to determine whether or not any of these programs constitute actionable subsidies. As such, the CBSA does not have sufficient information to determine if any of the following programs should be removed from the investigation.

- Program 2. Provision of Land for Less than Fair Market Value in SEZs
- Program 3. Exemptions from VAT in SEZs for Purchases from Suppliers in the Customs Territory
- Program 4. Exemption from Real Property Tax in SEZs
- Program 7. Exemption in SEZs from Branch Profit Remittance Tax of 15%
- Program 8. Income Tax Holiday Provided by the Board of Investment (BOI)
- Program 9. Exemption from Taxes and Duties on Imported Capital Equipment, Spare Parts and Accessories Provided by the BOI
- Program 10. Exemption from Wharfage Dues and Any Export Tax, Duty, Impost and Fee Provided by the BOI
- Program 11. Tax Credits for BOI Registered Companies
- Program 12. Tax Deductions for BOI Registered Companies for Labour Expenses

### **Thailand**

As noted in the body of this document, the Government of Thailand did not submit sufficient information in response to the subsidy RFI and SRFIs. This impeded the CBSA's investigation as all information has not been furnished to enable the determination of the amount of subsidy in the prescribed manner, pursuant to subsection 30.4(1) of SIMA. Due to this lack of information, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA based on the best information available to the CBSA. In consideration of the level of cooperation received from TOP, who provided sufficient information in response to the subsidy RFI, an individual amount of subsidy has been determined for this exporter using the information provided in the exporter's submission.

### **Subsidy Programs Used by the Responding Exporter**

The CBSA has used the best information available to describe the subsidy programs used by the responding exporter in the investigation. This includes using information obtained from CBSA research on potential subsidy programs in Thailand and information provided by the responding exporter. Since the Government of Thailand did not submit sufficient information in response to the subsidy RFI and SRFIs, the information available to identify the legal instruments pertaining to the programs is limited and such references may be inaccurate or incomplete.

#### *Program 1: Exemption or Reduction of VAT and Duties on Imports of Machinery*

During the POI, TOP received benefits under this program refunding VAT on imported machinery. This program is administered by the Board of Investment which reports to the Ministry of Industry.

On the basis of the limited available information, the CBSA has determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the insufficient information provided by the Government of Thailand and the lack of details provided by the exporter, there is not sufficient information to determine whether the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. On the basis of the available information, this program is not generally available to all enterprises in Thailand, and thus appears to be specific.

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

*Program 8: Exemption or Refund of Value-Added Tax on Construction of a Factory or a Building*

During the POI, TOP received benefits under this program refunding value-added tax on construction materials and services used in the construction of a factory or a building. This program appears to be administered by the Industrial Estate Authority of Thailand which reports to the Ministry of Industry.

On the basis of the limited available information, the CBSA has determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the insufficient information provided by the Government of Thailand and the lack of details provided by the exporter, there is not sufficient information to determine that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information indicates that this program is limited to companies located in industrial estates and not generally available to all enterprises in Thailand and thus appears to be specific.

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

*Program 9: Exemption or Refund of Value-Added Tax on Purchase of Land*

During the POI, TOP received benefits under this program exempting VAT on the purchase of land. This program appears to be administered by the Industrial Estate Authority of Thailand which reports to the Ministry of Industry.



On the basis of available information, the CBSA has determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA in that amounts that would otherwise be owing and due to the government are exempted or deducted. This financial contribution confers a benefit to the recipient equal to the amount of the exemption/deduction.

Due to the insufficient information provided by the Government of Thailand and the lack of details provided by the exporter, there is not sufficient information to determine that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information indicates that this program is limited to companies located in industrial estates and not generally available to all enterprises in Thailand and thus appears to be specific.

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

### **Other Potentially Actionable Subsidy Programs**

The following 6 programs were also included in the investigation. Questions concerning these programs were included in the RFI sent to the Government of Thailand and to all known exporters of the goods in Thailand. The exporter that provided a response to the RFI reported not using these programs during the subsidy POI. Without sufficient information in response to the subsidy RFI from the Government of Thailand and all other exporters, the CBSA does not have sufficient information to determine whether or not any of these programs constitute actionable subsidies. In other words, the CBSA does not have sufficient information to determine if any of the following programs should be removed from the investigation.

- Program 2. Reduction of Import Duties for Raw or Essential Materials
- Program 3. Exemption from Corporate Income Tax
- Program 4. Exemption of Payment of Surcharge under the Industrial Estate Authority of Thailand Act on Import Duty
- Program 5. Exemption of Payment of Surcharge under the Industrial Estate Authority of Thailand Act on Value Added tax on Machinery, Equipment, Tools and Supplies
- Program 6. Excess VAT Refund on Export of Goods
- Program 7. Export Packing Credits

### **Ukraine**

As noted in the body of this document, the Government of Ukraine did not submit sufficient information in response to the subsidy RFI and SRFI, and therefore did not provide the required information relating to financial contribution, benefit and specificity. This impeded the CBSA's investigation as all information has not been furnished to enable the determination of the amount of subsidy in the prescribed manner, pursuant to subsection 30.4(1) of SIMA. Due to this lack of information, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA based on the best information available to the CBSA. In

consideration of the level of cooperation received from Interpipe Ukraine who provided sufficient information in response to the subsidy RFI, an individual amount of subsidy has been determined for this exporter using information provided in the exporter's submission.

### **Subsidy Program Used by the Responding Exporter**

The CBSA's review of the responses provided by the responding exporter and the best information obtained during the final phase of the investigation indicates that sufficient information was provided to determine the amount of subsidy on a program basis. Interpipe Ukraine provided sufficient information to determine that it received benefit from one program out of the nine programs listed at initiation.

#### *Program 1: Acquisition of State Assets at less than Fair Market Value*

*Acquisition of State Assets at less than Fair Market Value* is an actionable subsidy. This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the insufficient information provided by the Government of Ukraine, there is not sufficient information to determine that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. The available information indicates that this benefit is not generally available to all enterprises in Ukraine, and thus appears to be specific.

### **Other Potentially Actionable Subsidy Programs**

The following eight programs were also included in the subsidy investigation. These programs were identified at the initiation and there have not been any changes in the programs. Questions concerning these programs were included in the RFI sent to the Government of Ukraine and to all known exporters of the goods in Ukraine. The exporter that provided a response to the RFI reported not using these programs during the subsidy POI. Due to the insufficient information provided by the Government of Ukraine and all other exporters, the CBSA does not have sufficient information to determine whether or not any of these programs constitute actionable subsidies. In other words, the CBSA does not have sufficient information to determine if any of the following programs should be removed from the investigation.

- Program 2. The 2013 Government of Ukraine Stimulus Plan for US\$5 billion
- Program 3. Limits to increases in electricity tariffs under the 2013 Rescue Plan for Steel and Mining Companies (2013 Rescue Plan)
- Program 4. Limits to increases in transportation fees under the 2013 Rescue Plan
- Program 5. Implementation of measures to expand markets under the 2013 Rescue Plan
- Program 6. Provision of State Guarantees for Private Projects under the 2013 rescue Plan
- Program 7. Dniprosteel Rescue Fund
- Program 8. State Program for Enhancement of Economic Development in 2013-2014
- Program 9. Provision of Electricity at Less than Fair Market Value

## Vietnam

The following is a listing of the 18 programs that were reviewed by the CBSA during the course of the subsidy investigation. As stated earlier in this Statement of Reasons, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all exporters in Vietnam is determined in accordance with a ministerial specification, pursuant to subsection 30.4(2) of SIMA.

### **Subsidy Programs Investigated by the CBSA**

- Program 1. Land-Use Levy Exemptions or Reductions
- Program 2. Land Rent Exemptions or Reductions
- Program 3. Tax Exemptions and Reductions for Encouraged Sectors
- Program 4. Tax Exemptions and Reductions for Investment in Disadvantaged Regions
- Program 5. Tax Exemptions and Reductions for Investments in Economic Zones or High Tech Industrial Parks
- Program 6. Tax Exemptions and Reductions for Foreign-Invested Enterprises
- Program 7. Additional Income Tax Preferences for Exporters
- Program 8. Accelerated Depreciation of Fixed Assets
- Program 9. Preferential Provisions for Carry-forward of Losses
- Program 10. Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets
- Program 11. Export Support Loans at Preferential Rates
- Program 12. Excessive Duty Exemptions for Imported Raw Materials for Exported Goods
- Program 13. Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets
- Program 14. Interest Rate Support Program under the State Bank of Vietnam
- Program 15. Preferential Lending under the Viet Bank Export Loan Program
- Program 16. Grants to Firms that Employ More than 50 Employees
- Program 17. Assistance to Enterprises Facing Difficulties due to Objective Reasons
- Program 18. Acquisition of State Assets at Less Than Fair Market Value

### **APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS**

Case briefs were received on behalf of the Complainants: Tenaris Canada (Tenaris)<sup>17</sup> and Evraz Inc. NA Canada (Evraz),<sup>18</sup> and on behalf of exporters: IMCO International Inc. (IMCO),<sup>19</sup> SeAH Steel Corporation (SeAH),<sup>20</sup> Thai Oil Pipe Co. Ltd. (TOP),<sup>21</sup> Star International Oil Holdings Ltd. (Star International)<sup>22</sup> and P.T. Citra Tubindo Tbk. (Citra).<sup>23</sup>

Reply submissions were received on behalf of one of the Complainants, Evraz;<sup>24</sup> and on behalf of exporters: Jindal Saw Ltd. (Jindal Saw),<sup>25</sup> SeAH,<sup>26</sup> Hyundai Hysco Co., Ltd. (H. Hysco),<sup>27</sup> HLD Clark Steel Pipe Co., Inc. (HLD Clark),<sup>28</sup> IMCO,<sup>29</sup> and Borusan Mannesmann Boru (BMB).<sup>30</sup>

The Government of Thailand also provided a reply submission.<sup>31</sup>

Another producer in Thailand, Boly Pipe Co., Ltd.<sup>32</sup> provided a reply submission as an interested party.

Certain details provided in case arguments and reply submissions were qualified as confidential information by the submitting counsel. Consequently, this public *Statement of Reasons* does not disclose or discuss parts of representations where such a designation has protected those particulars.

The material issues raised by parties through case briefs for which sufficient information was disclosed in the public versions are summarized as follows:

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<sup>17</sup> Exhibit 789 (NC) – Complainant Case Brief (Tenaris Canada).

<sup>18</sup> Exhibits 800 (PRO) and 801 (NC) – Complainant Case Brief (Evraz).

<sup>19</sup> Exhibits 790 (PRO) and 791 (NC) – IMCO Case Brief.

<sup>20</sup> Exhibits 792 (PRO) and 793 (NC) – SeAH Steel Case Brief.

<sup>21</sup> Exhibits S794 (PRO) and 795 (PRO) and 796 (NC) and S797 (NC) – Thai Oil Pipe Case Brief.

<sup>22</sup> Exhibits 798 (PRO) and 799 (NC) – Star International Oil Holdings Ltd. Case Brief.

<sup>23</sup> Exhibits 802 (PRO) – P.T. Citra Tubindo Tbk Case Brief.

<sup>24</sup> Exhibits 820 (PRO) and 821 (NC) – Complainant Reply Submission (Evraz).

<sup>25</sup> Exhibits 812 (PRO) and 813 (NC) – Jindal Saw Reply Submission.

<sup>26</sup> Exhibits 805 (NC) – SeAH Steel Reply Submission.

<sup>27</sup> Exhibits 804 (PRO) and 807 (NC) - Hyundai Hysco Co., Ltd. Reply Submission.

<sup>28</sup> Exhibits 803 (NC) and 806 (PRO) – HLD Clark Steel Pipe Co., Inc. Reply Submission.

<sup>29</sup> Exhibits 808 (PRO) and 809 (NC) – IMCO Reply Submission.

<sup>30</sup> Exhibits 818 (PRO) and 819 (NC) – Borusan Mannesmann Boru Reply Submission.

<sup>31</sup> Exhibits 814 (PRO) and 815 (NC) – Government of Thailand Reply Submission.

<sup>32</sup> Exhibits 816 (PRO) and 817 (NC) – Boly Pipe Co., Ltd. Reply Submission.

## Dumping Representations

### **General Representations regarding Amount for Profits**

#### Case Briefs

Counsel for both the Complainants and the exporters proposed methodologies for determining the amount for profits under paragraph 19(b) of SIMA, where such amounts could not be determined under the normal provisions of paragraph 11(1)(b) of SIMR.

Counsel for the Complainant (Tenaris) suggested that in absence of the availability of domestic sales on OCTG in the named countries, the amount for profits on sales of tubular products from the 2013 Annual Report of Tenaris S.A. would be a reasonable figure to use as an amount for profit under paragraph 11(1)(b) of SIMA.<sup>33</sup>

Counsel for the Complainant (Evraz) stated that it would be inappropriate to use profits on other non-OCTG pipe products, as they alleged that the profit expectation on those products is lower than for OCTG, thus not permitting a “proper comparison” as required under SIMR.<sup>34</sup>

In their argument, counsel stated that “SIMR set out methods for determining a reasonable amount for profits for the purpose of determining normal values under paragraph 19(b) of SIMA.” Six selection methods are provided in paragraph 11(1)(b) of SIMR, which must be applied in order. However, each method is subject to what the SIMA Handbook characterizes as ‘an overriding requirement’ that the transactions selected for determining an amount for profit must ‘permit a proper comparison.’

To that extent, counsel further cited the SIMA Handbook and stated that “the Agency will take into consideration any other relevant factors to determine whether sales permit a proper comparison, including factors such as sales volumes, trends, manufacturing processes, and marketing strategies.”<sup>35</sup>

Counsel for Evraz further argued that the amount for profits for other exporters where there are no OCTG sales from the same country should be determined under a ministerial specification pursuant to subsection 29(1) of SIMA using OCTG profits earned in another country.<sup>36</sup>

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<sup>33</sup> Exhibit 789 (NC) – Tenaris Canada Case Brief; pages 1 and 2.

<sup>34</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraphs 3, 5.

<sup>35</sup> SIMA Handbook – Section 5.4.2.2.

<sup>36</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraph 26.

Counsel for IMCO argued that distinctions should be made between producers and distributors and that any methodology used by the CBSA should follow as closely as possible the procedures described in paragraph 19(b) of SIMA and paragraph 11(1)(b) of SIMR. An amount for profit derived from publically available financial statements from Russell Metals, a distributor dealing in OCTG, was suggested by counsel for IMCO.<sup>37</sup>

### Reply Submissions

Counsel for IMCO stated that whatever profit is applied under a paragraph 19(b) methodology, should reflect profits earned by distributors on the lowest grade of OCTG in the market.<sup>38</sup>

Counsel for HLD Clark (Philippines) argued that the CBSA is obligated to follow the six-part hierarchy set out in paragraph 11(1)(b) of SIMR in determining an amount for profits. Counsel also argued that other tubular products such as line pipe and welded steel pipes are of the same general category as OCTG. Counsel refuted the arguments put forward by the Complainants that OCTG is a more costly product to produce and argued that those costs are captured in the cost of production and not related to the profit expectations of the OCTG.<sup>39</sup>

Counsel for Boly Pipe also rejected the argument from the Complainants' counsel that profits other than those reported by participating exporters of subject goods should be used under section 11 of SIMR. Counsel stated that:

“There is no support in the regulations or legislation that the CBSA should depart from the accepted methodology and instead use information from other countries to establish amounts for profit. The legislation and regulations make it clear that paragraph 11(1)(b) of SIMR directs the CBSA to examine sales and profits in the country of export of goods that are for use in the country of export. The amount for profits determined under paragraph 11(1)(b) may be higher or lower than profits in the industry at issue – this is not surprising or abnormal.”<sup>40</sup>

### CBSA's Response to Case Briefs and Reply Submissions

The CBSA agrees with the statement from counsel for Boly Pipe. Where sufficient information on like goods is not available under subparagraph 11(1)(b)(i) of SIMR, the next item in the hierarchy directs the CBSA to use “goods of the same general category” under subparagraph 11(1)(b)(ii) of SIMR, with consideration to whether those goods together produce a profit and permit a proper comparison.

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<sup>37</sup> Exhibit 791 (NC) – IMCO Case Brief; paragraphs 10 and 11.

<sup>38</sup> Exhibit 809 (NC) – IMCO Reply Submission; paragraph 2.

<sup>39</sup> Exhibit 803 (NC) – HLD Clark Reply Submission; paragraph 27.

<sup>40</sup> Exhibit 817 (NC) – Boly Pipe Co., Ltd. Reply Submission, paragraph 18.

Furthermore, the evidence available from the record in the present investigation did not demonstrate that a profit earned exclusively on OCTG products was necessary to 'permit a proper comparison' in the determination of an amount for profits under paragraph 11(1)(b) of SIMR and that profits earned on other similarly manufactured goods were sufficient to satisfy the requirements of SIMA and SIMR.

### **Specific Representations**

The following summary is in respect of case briefs made by counsel in relation to specific parties, the reply submissions to those briefs and the CBSA's response to those briefs and submissions. The summary is based on the non-confidential documents submitted by counsel.

### **Amount for Profits (Borusan Mannesmann Boru)**

#### Case Briefs

Counsel for the Complainant (Evraz) suggested that the amount for profits in determining normal values for Borusan Mannesmann Boru (BMB) could be based on sales of like goods in BMB's domestic market in Turkey.<sup>41</sup>

#### Reply Submissions

Counsel for BMB responded to the suggestion that BMB's domestic sales of like goods could be used in determining amount for profits by referring to paragraph 13(a) of SIMR, which prevent the use of these goods as they do not "permit a proper comparison." Counsel for BMB also stated that the CBSA has "significant discretion" in determining goods of the same general category which should be exercised reasonably with regard to the facts of each case.<sup>42</sup>

#### CBSA's Response to Case Briefs and Reply Submissions

The CBSA could not use the domestic sales suggested by counsel for Evraz to determine the amount for profits in the determination of normal values for BMB for reasons identified by counsel for BMB. As such, goods of the same general category were used in calculating normal values for BMB.

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<sup>41</sup> Exhibit 800 (PRO) – Evraz Case Brief; paragraph 30.

<sup>42</sup> Exhibit 809 (NC) – BMB Reply Submission; paragraphs 2 and 3.

## **Amount for profits (IMCO)**

### Case Briefs

Counsel for the Complainant (Evraz) argued that the suggested amount for profits source provided by counsel for IMCO, which is based on the publically available financial results of Russell Metals, was inappropriate, primarily because those profits include sales of material that is largely not OCTG.<sup>43</sup>

### Reply Submissions

Counsel for IMCO responded that whatever methodology is used to determine the amount for profits, such amount should reflect profits earned by distributors, not producers, of the lowest grade of OCTG in the market and that a profit amount based on sales of higher-end products would not be reasonable.<sup>44</sup>

### CBSA's Response to Case Briefs and Reply Submissions

The CBSA determined the amount for profits for IMCO under a ministerial specification, pursuant to subsection 29(1) of SIMA, based on the weighted average profit made on sales of like goods as the goods sold to the importer in Canada, as determined for exporters that provided sufficient information for the purposes of the final determination.

## **Amount for Profits (India)**

### Case Briefs

Counsel for the Complainant (Evraz) submitted that the amount for profits established for the participating exporters in India should not be used in the determination of normal values as the producers in India applied for and received "Safeguard Measures Protection" for seamless tubular products, including OCTG from 12 countries, which were in effect during the POI.<sup>45</sup>

Counsel for Evraz argued that the Indian OCTG market was depressed by injurious imports during the CBSA's POI and as a result, profits were at abnormally depressed levels. The safeguard investigation in India was initiated and supported by producers in India that included the two exporters in India that participated in this investigation. The investigating authority found that the profits earned by the industry in India in 2012/2013 were 43% of the profits earned in 2009 and the producers' market share in India had decreased from 2009/2010 to 2012/2013.<sup>46</sup>

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<sup>43</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraph 40.

<sup>44</sup> Exhibit 809 (NC) – IMCO Reply Submission; paragraph 2.

<sup>45</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraphs 37-39.

<sup>46</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraph 37.



On March 11, 2014, the investigation in India concluded that the domestic industry was seriously injured by imports and safeguard measures were imposed for two and a half years at a decreasing rate starting at 25%.

Counsel for Evraz cited that the CBSA in its examination of market factors in determining whether domestic sales and profits earned on those sales permit a proper comparison as per paragraph 11(1)(b) of SIMR, should have accounted for the fact that OCTG producers in India have experienced serious injury and in turn rejected the depressed profit data of exporters of subject goods in India.<sup>47</sup>

Counsel for Evraz submitted that for the preliminary determination, the CBSA found that producers in India were subsidized by the Government of India and that producers in India received subsidy benefits that would not figure into the CBSA's amount for profit calculation.

In particular, subsidy benefits were not captured by the amount for profit calculation as they either do not relate to the goods from which the profit is calculated, such as income taxes or, they fall under the "below-the-line" items such as "grants" under accounting rules.

In this kind of subsidization, Indian producers would appear to be earning a given amount of profit, but in reality they receive higher profits in the form of government subsidies. As such, Indian producers are enabled by the government subsidy to tolerate distorted OCTG market prices and lower profit margins. Counsel argued in light of this that the CBSA should not use such information as constituting a reasonable amount for profits under paragraph 19(b) of SIMA.

### Reply Submissions

Counsel for Jindal Saw argued that market conditions in India do not alter the reliability of the amount for profits that were calculated by the CBSA and there is no basis in SIMA for establishing uniform profits among respondents and companies outside of the investigation.<sup>48</sup>

Counsel for Jindal Saw submitted that Jindal Saw's domestic sales reflect market conditions in India during the POI and the CBSA conducted a proper profitability analysis for the preliminary determination. Furthermore, counsel for Jindal Saw maintained that Evraz' suggestion to reject Indian domestic sales of OCTG has no legitimate basis and it is not contemplated by SIMA nor SIMR.

In response to the argument that the subsidy benefits are not captured by the amount for profits, counsel for Jindal Saw cited that each subsidy program was clarified and verified. Furthermore, counsel for Jindal Saw submitted that there is no support in SIMA or SIMR for Evraz' argument.<sup>49</sup>

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<sup>47</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraph 38.

<sup>48</sup> Exhibit 813 (NC) – Jindal Saw Reply Submission; paragraph 12.

<sup>49</sup> Exhibit 813 (NC) – Jindal Saw Reply Submission; paragraphs 19 and 20.

## CBSA's Response to Case Briefs and Reply Submissions

The domestic OCTG market in India, which operates under competitive conditions, contended with the safeguard measures investigation in addition to other external and internal market pressures during the POI. These factors all impacted the Indian domestic sales and the resulting amount for profits earned on these sales. These Indian domestic sales were made in the ordinary course of trade and the sales permitted a proper comparison for the POI. SIMA does not provide for the rejection of otherwise appropriate sales because the amount for profits earned on these sales are considered low or conversely too high.

The CBSA conducted an on-site verification of Jindal Saw's information in respect of the dumping and subsidy investigations. The CBSA determined the amount for profits pursuant to subparagraph 11(1)(b)(i) of SIMR, based on Jindal Saw's domestic sales of like goods that were such to permit a proper comparison, other than sales referred to in paragraphs 16(2)(a) and 16(2)(b) of SIMA, that satisfy the greatest number of the conditions set out in section 15 of SIMA and subsection 16(1) of SIMA, as per paragraph 13(a) of SIMR.

### **Amount for Profits (Indonesia)**

#### Case Briefs

Counsel for Citra argued that a reasonable amount for profits should be determined under subparagraph 11(1)(b)(ii) of SIMR; that is, goods that are of the same general category and not under subparagraph 11(1)(b)(i) of SIMR; that is, like goods.<sup>50</sup>

#### CBSA's Response to the Case Briefs

Citra's information provided in the appendices was verified and the CBSA is satisfied with the information. Like goods pertain to goods which meet the definition of goods subject to this dumping investigation while goods that are of the same general category would include goods such as line pipe. Accordingly, the CBSA determined an amount for profits pursuant to subparagraph 11(1)(b)(i) of SIMR on the basis of like goods.

### **Amount for Profits (H. Hysco)**

#### Case Briefs

Counsel for the Complainant (Evraz) stated that the CBSA should reject H. Hysco's arguments against using the company's domestic sales of OCTG as the basis for determining "a reasonable amount for profits" pursuant to subparagraph 19(b)(iii) of SIMA.<sup>51</sup>

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<sup>50</sup> Exhibit 824 (NC) – P.T. Citra Tubindo Tbk Case Brief; paragraphs 24-36.

<sup>51</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraph 31.

## Reply Submissions

In response, Counsel for the exporter maintained that although H. Hysco did report sales of OCTG in its original submission, these goods were not sold for OCTG application in the “ordinary course of trade,” and cannot be considered to be “like goods.” Counsel further argued that H. Hysco’s sales of line pipe are more appropriate to use when determining an amount for profits, since such sales are of a similar quantity and trade level and are for an end-use similar to that of sales of OCTG to Canada.<sup>52</sup>

## CBSA’s Response to Case Briefs and Reply Submissions

The CBSA’s analysis of the data submitted has indicated that H. Hysco’s domestic sales of OCTG during the POI do not meet the profitability and multiple customer criteria referred to in paragraphs 16(2)(a) and 16(2)(b) of SIMA. As a result, according to paragraph 13(a) and subparagraph 11(1)(b)(i) of SIMR, these sales are not to be used when determining an amount for profits for the purposes of paragraph 19(b) of SIMA.

Therefore, following the hierarchy stipulated for this purpose in paragraph 11(1)(b) of SIMR, the CBSA determined an amount for profits for H. Hysco using the company’s domestic sales of line pipe as goods “of the same general category,” pursuant to subparagraph 11(1)(b)(ii) of SIMR.

## **Amount for Profits (HLD Clark)**

### Case Briefs

In regards to the manner in which the amount for profits was determined in respect of HLD Clark (Philippines) for the preliminary determination, counsel for the Complainant (Evraz) argued that using profits earned on non-OCTG products as a proxy for an amount for profits for OCTG does not permit a proper comparison as required by SIMR because there is a materially higher profit expectation associated with OCTG versus other steel pipes not produced to the API 5CT specification.<sup>53</sup>

Counsel for the Complainant (Tenaris) advocated the use of the financial results for the global Tenaris operation in determining a reasonable amount of profits.<sup>54</sup>

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<sup>52</sup> Exhibit 807 (NC) – Hyundai Hysco Reply Submission; paragraphs 21-25.

<sup>53</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraph 24. Exhibit 800 (PRO) – Evraz Case Brief; paragraph 20.

<sup>54</sup> Exhibit 789 (NC) – Tenaris Canada Case Brief; pages 1 and 2.

### Reply Submissions

Counsel for HLD Clark refuted the arguments put forward by Tenaris that the profit earned by one of the Complainants represents a viable OCTG-specific profit and argued that the Complainant is not an exporter or producer in the country of export and as such, its profit cannot be used to determine an amount for profits under paragraph 11(1)(b) of SIMR.<sup>55</sup>

Counsel for HLD Clark noted that profit information related to two of the largest welded pipe producers in the Philippines is on the record and their profits are best suited as a reasonable amount of profits in accordance with paragraph 11(1)(b) of SIMR to be used in constructing normal values for HLD Clark. Counsel further stated that the weighted average of profits earned on acceptable domestic sales of OCTG by other exporters subject to this investigation may be used by means of a ministerial specification if the CBSA is unable to determine an appropriate amount for profits for HLD Clark.<sup>56</sup>

### CBSA's Response to Case Briefs and Reply Submissions

The CBSA determined an amount for profits pursuant to subsection 29(1) of SIMA, based on the weighted average profit made on sales of like goods as the goods sold to the importer in Canada, as determined for exporters that provided sufficient information for the purposes of the final determination.

### **Amount for Profits (SeAH)**

#### Case Briefs

Counsel for the Complainant (Evraz) argued that the amount for profits for the exporters in the Republic of Korea, who did not have domestic sales of OCTG should be based on the profit amount earned on the domestic sales of OCTG reported by other exporters in the country of export, pursuant to subparagraph 11(1)(b)(iii) of SIMR. As such, the amount for profits should be based on domestic sales information of exporters in the Republic of Korea who provided sufficient information.<sup>57</sup>

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<sup>55</sup> Exhibit 803 (NC) – HLD Clark Reply Submission; paragraph 40.

<sup>56</sup> Exhibit 803 (NC) – HLD Clark Reply Submission; paragraph 54.

<sup>57</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraph 17.

## Reply Submissions

Counsel for SeAH (Republic of Korea), argued that the CBSA should reject the arguments put forward by the Complainants regarding their proposed methodology for determining the amount for profits for SeAH. Counsel argued that the proposed methodology is inconsistent with the legislation, regulations and jurisprudence, and violates the cascading, or hierarchical, interpretation of paragraph 11(1)(b) of SIMR. Counsel for SeAH further argued that line pipe is of the same general category as OCTG and meets the conditions of subparagraph 11(1)(b)(ii) of SIMR.<sup>58</sup>

Counsel for HLD Clark argued that the domestic sales of OCTG reported by one of the exporters in the Republic of Korea, who provided sufficient information, are not representative of sales made in the ordinary course of trade and the insignificant volume of the reported sales does not meet one of the qualifying requirements under section 15 of SIMA.<sup>59</sup>

## CBSA's Response to Case Briefs and Reply Submissions

For the subject goods with a non-premium connection end-finishing, the CBSA determined an amount for profits using SeAH's domestic sales of line pipe as "goods of the same general category," pursuant to subparagraph 11(1)(b)(ii) of SIMR. For the subject goods with premium connection end-finishing, the CBSA determined an amount for profits pursuant to subsection 29(1) of SIMA, based on the weighted average profit made on sales of like goods as the goods sold to the importer in Canada as determined for exporters that provided sufficient information for the purposes of the final determination.

## **Amount for Profits (TOP)**

### Case Briefs

Counsel for Thai Oil Pipe Co., Ltd. (TOP) argued that estimating an amount for profits at the preliminary determination from the 2013 financial results of a pipe producer in Thailand, Pacific Pipe Public Company Limited (Pacific Pipe), was unreasonable as 2013 was an extraordinary year for that company.

Counsel further submitted that expanding the sample years in which to measure an amount for profits is more appropriate since the products sold by Pacific Pipe are vastly different from the range of products sold by TOP. Therefore, counsel argued that if the CBSA must use Pacific Pipe's financial results for the final determination, it should combine the 2012 and 2013 results and use an average of those years.<sup>60</sup>

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<sup>58</sup> Exhibit 805 (NC) – SeAH Reply Submission; paragraph 12.

<sup>59</sup> Exhibit 803 (NC) – HLD Clark Reply Submission; paragraphs 37-40.

<sup>60</sup> Exhibit 796 (NC) – TOP Case Brief; paragraphs 3-9.

Counsel for TOP argued that the amount for profits should be determined as a percentage of total revenue rather than on the basis of total expenses since a dumping investigation involves prices and revenue.<sup>61</sup>

### Reply Submissions

Counsel for the Complainant (Evráz) responded to TOP's suggestion that expanding the sample years in which to measure an amount for profits would be more appropriate since the products sold by Pacific Pipe are vastly different from OCTG. Counsel argued that this suggestion lacks merit and should not be taken into account.

Counsel for Evraz further submitted that no matter how many years of Pacific Pipe's financial results are taken into account by the CBSA, it would still result in an inappropriate amount for profit because it would be based on a group of products that is vastly different from the range of products produced by TOP.<sup>62</sup>

Counsel for Evraz argued that the only way for the CBSA to arrive at a reasonable amount of profits for TOP is by using an OCTG-specific or a predominantly OCTG-driven amount for profits as set out in Evraz' case brief.<sup>63</sup>

Counsel for Evraz argued that determining an amount for profits as a percentage of revenue is inconsistent with SIMA, since pursuant to paragraph 19(b) of SIMA, a normal value is determined by adding a reasonable amount for profits to the aggregate of the total cost of production and a reasonable amount for administrative, selling and all other costs.

Counsel submitted that since the amount for profits to be added is determined by multiplying an amount for profit percentage to the costs then the profit percentage must be determined on the basis of costs.<sup>64</sup>

### CBSA's Response to Case Briefs and Reply Submissions

At the final determination, the CBSA did not determine an amount for profits based on the financial results of Pacific Pipe (Thailand) but rather determined the amount for profits pursuant to a ministerial specification in accordance with subsection 29(1) of SIMA equal to the weighted average profit made on sales of goods that are either like goods or goods that are of the same general category as the goods sold to the importer in Canada as determined for exporters that provided sufficient information.

For the purposes of the final determination, the CBSA determined the amount for profits as a percentage of total costs of production.

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<sup>61</sup> Exhibit 796 (NC) – TOP Case Brief; paragraph 7.

<sup>62</sup> Exhibit 821 (NC) – Evraz Reply Submission; paragraph 4.

<sup>63</sup> Exhibit 821 (NC) – Evraz Reply Submission; paragraph 5.

<sup>64</sup> Exhibit 821 (NC) – Evraz Reply Submission; paragraph 7.

## **Export Price (IMCO)**

### Case Briefs

Counsel for the Complainant (Evraz), stated that section 27 of SIMA (sales on credit terms) should be applied to IMCO's exports to Canada.<sup>65</sup>

### Reply Submissions

Counsel for IMCO noted that section 27 of SIMA applies only to sales "to an importer in Canada" and thus the context of their argument has no basis.<sup>66</sup>

### CBSA's Response to Case Briefs and Reply Submissions

Export prices were determined pursuant to subsection 29(1) of SIMA. The nature of transactions involving IMCO does not meet the criteria within section 27 of SIMA.<sup>67</sup> Consequently, section 27 of SIMA does not apply.

## **Acquisition Costs (IMCO)**

### Case Briefs

Counsel for the Complainant (Evraz) alleged that information provided by IMCO was insufficient to permit the CBSA to verify that their acquisition costs were enough to cover the production costs of the input material.<sup>68</sup>

### Reply Submissions

Counsel for IMCO responded that verification of both BMB and IMCO was conducted at each company's premises during the investigation and that the CBSA was satisfied with those results.

### CBSA's Response to Case Briefs and Reply Submissions

The CBSA found that the information on the record and the results of the verification exercise both clearly confirmed that IMCO's acquisition costs are sufficient to cover the cost of production of the goods from the supplier.

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<sup>65</sup> Exhibit 800 (PRO) – Evraz Case Brief; paragraphs 84-86.

<sup>66</sup> Exhibit 809 (NC) – IMCO Reply Submission; paragraph 5.

<sup>67</sup> SIMA Handbook – Section 5.11.2; page 392.

<sup>68</sup> Exhibit 800 (PRO) – Evraz Case Brief; paragraph 78.

## **Incremental Cost Allocations (IMCO)**

### Case Briefs

Counsel for the Complainant (Evraz) argued that IMCO's total costs of subject goods were understated.<sup>69</sup>

### Reply Submissions

Counsel for IMCO responded that since paragraph 11(1)(c) of SIMR concerns costs "attributable to the production and *domestic sales of like goods* made by the exporter" that the position raised by counsel for Evraz is without legislative foundation, since the costs at issue are only for exported goods.<sup>70</sup>

### CBSA's Response to Case Briefs and Reply Submissions

The CBSA reviewed the information on the record and verified with IMCO the full costs incurred in acquiring and processing the subject goods up to the point of sale in Canada. The CBSA found that the costs reported by IMCO were accurate and fully representative of the cost of goods for the purposes of paragraph 19(b) of SIMA. Most notably, subparagraph 11(1)(c)(ii) of SIMR permits a determination of such costs that are reasonably attributable to the production and sale of "the goods".

## **Start-up Period Costs and Technical Difficulties (TOP)**

### Case Briefs

Counsel for TOP argued that the company encountered technical difficulties during the start-up period of production that limited their production during that period. Counsel submitted that every new factory is subject to "trial and error" while systems are tested, adjusted and optimized and that these factors must qualify as technical difficulties during the start-up period.<sup>71</sup>

### Reply Submissions

Counsel for the Complainant (Evraz) argued that TOP had failed to establish that its production costs should be subject to start-up adjustments. Counsel further submitted that despite a number of opportunities and specific requests made by the CBSA, TOP never provided specific examples of technical difficulties justifying an adjustment. Furthermore, counsel argued that the credibility of TOP's assertions was undermined by their inconsistencies.

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<sup>69</sup> Exhibit 800 (PRO) – Evraz Case Brief; paragraphs 87-90.

<sup>70</sup> Exhibit 809 (NC) – IMCO Reply Submission; paragraph 6.

<sup>71</sup> Exhibit 796 (NC) – TOP Case Brief; paragraphs 16-17.



## CBSA's Response to Case Briefs and Reply Submissions

The CBSA never received any supporting evidence from TOP indicating that the company encountered technical difficulties that limited the level of production during the start-up period of production. As a result, the CBSA denied TOP's claim for start-up cost adjustments.

### **Certain Material Costs (SeAH Steel)**

#### Case Briefs

Counsel for SeAH noted that adjustments for certain material costs were not taken into account by the CBSA when estimating the total cost of production for SeAH at the preliminary determination. Counsel argued that such adjustments should be taken into consideration for the purposes of determining normal values under paragraph 19(b) of SIMA at the final determination.<sup>72</sup>

#### CBSA's Response to Case Briefs

Information related to the adjustments to certain material costs were verified by the CBSA during the on-site verification, and the CBSA is satisfied that the information can be used in determining normal values for SeAH for the purposes of the final determination.

### **Input Materials from Associated Companies and SOEs in China (HLD Clark)**

#### Case Briefs

Counsel for the Complainant (Evraz) argued that acquisition costs for input materials purchased from associated companies and SOEs in China could not constitute market pricing because such costs were based on distorted purchase pricing of hot-rolled coils in China.<sup>73</sup> Counsel noted that the CBSA has found that the conditions of section 20 of SIMA exist in China's steel industry, including the flat-rolled steel and OCTG sectors.

Counsel for the Complainant (Tenaris) argued that any input materials provided by SOEs in China should be considered as having been provided by an associated person by means of the mutual ownership and direction from the Chinese Communist Party.<sup>74</sup>

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<sup>72</sup> Exhibit 793 (NC) – SeAH Case Brief; paragraph 20.

<sup>73</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraphs 50-51.

<sup>74</sup> Exhibit 789 (NC) – Tenaris Canada Case Brief; paragraph 2.

Counsel for Evraz argued that the CBSA should disregard or adjust the acquisition costs of hot-rolled coils reported by one of the exporters who provided sufficient information and use hot-rolled coil pricing published by trade publications CRU and American Metal Market (AMM), as a benchmark for upward adjustments or as a surrogate cost.<sup>75</sup> Counsel for Tenaris argued that the acquisition costs should be advanced by 77% or 166.9% for hot-rolled coils or green tubes, respectively, if those materials were purchased from China.<sup>76</sup>

### Reply Submissions

Counsel for HLD Clark (Philippines) rebutted that hot-rolled coils from China are not subject to this investigation and that HLD Clark sourced its hot-rolled coils from international suppliers. Counsel further noted that one of the anti-dumping investigations conducted by the US Department of Commerce (USDOC) supports the fact that hot-rolled coils from China were purchased at fairly traded prices.<sup>77</sup>

Counsel also refuted the allegations made by the Complainants that HLD Clark purchased hot-rolled coils from associated suppliers and asked the CBSA to set aside these allegations in view of their inaccuracies.<sup>78</sup>

### CBSA's Response to Case Briefs and Reply Submissions

Information related to HLD Clark's hot-rolled coil purchases were thoroughly reviewed and verified during the on-site verification. The CBSA did not find that any of the hot-rolled coil purchases made by HLD Clark were sourced from associated suppliers.

### **General Selling and Administrative Expenses (Citra)**

#### Case Briefs

Counsel for P.T. Citra Tubindo Tbk (Citra) argued that it would be inappropriate to use the General Selling and Administrative Expenses (GS&A) calculated by the CBSA earlier in the investigation. Counsel argued that the amount for GS&A should be determined in accordance with the methodology detailed in their case briefs.<sup>79</sup>

#### CBSA's Response to Case Briefs

The CBSA agreed with the methodology proposed by counsel as it was more representative and accurate than preliminary calculations made earlier in the investigation. The CBSA thus revised the GS&A calculation in accordance with the information contained on the administrative record.

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<sup>75</sup> Exhibit 801 (NC) – Evraz Case Brief; paragraphs 49 and 53.

<sup>76</sup> Exhibit 789 (NC) – Tenaris Canada Case Brief; paragraph 2.

<sup>77</sup> Exhibit 803 (NC) – HLD Clark Reply Submission; paragraph 61.

<sup>78</sup> Exhibit 803 (NC) – HLD Clark Reply Submission; paragraphs 67 – 76.

<sup>79</sup> Exhibit 824 (NC) – P.T. Citra Tubindo Tbk Case Brief; paragraphs 7 – 23.

## **Associated Persons (Borusan Mannesmann Boru)**

### Case Briefs

Counsel for the Complainant (Evraz) argued that the export prices for subject goods sold to Canada from BMB should be determined under section 25 of SIMA, which contains provisions for dealing with “associated persons.”<sup>80</sup>

### Reply Submissions

Counsel for IMCO responded that there is nothing exclusive regarding the relationship between IMCO and BMB, thus making the interpretation of “associated persons” by counsel for Evraz inappropriate.<sup>81</sup>

### CBSA’s Response to Case Briefs and Reply Submissions

The CBSA verified the parties at issue at their respective premises and did not find that there was evidence to support the allegation that the parties were associated persons as defined under SIMA.

## **Subsidy Representations**

### **No Prohibited or Actionable Subsidies (Indonesia)**

#### Case Briefs

Counsel for P.T. Citra Tubindo Tbk (Citra) argued there is no credible evidence that Citra benefited from subsidies that are contingent on exports, or contingent upon the use of goods that are produced or originate in Indonesia.<sup>82</sup>

Counsel for Citra stated that any existing subsidy is non-actionable; that is, a subsidy that is not specific. Counsel submitted that the documents on the administrative record demonstrate that Batam Island is in a Free Trade Zone and its eligibility criteria are applied in a manner that does not favour, or is not limited to, Citra.<sup>83</sup>

Counsel for Citra stated that any subsidy is “insignificant” because it is less than two percent of the export price and requested that the subsidy investigation regarding Citra be terminated since Citra’s estimated amount of subsidy (at the preliminary determination) of 1.8% was below the specified threshold for a developing country.

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<sup>80</sup> Exhibit 800 (PRO) – Evraz Case Brief; paragraphs 80-82.

<sup>81</sup> Exhibit 809 (NC) – IMCO Reply Submission; paragraph 4.

<sup>82</sup> Exhibit S824 (NC) – Citra Case Brief; paragraph 37.

<sup>83</sup> Exhibit S824 (NC) – Citra Case Brief; paragraph 47.

In addition, counsel for Citra argued that it is patently unreasonable for the CBSA to use the 17.3% figure (“all others” rate) for exporters of subject goods from Indonesia, who were not Citra, based on a methodology that uses “potentially actionable subsidy programs.”<sup>84</sup>

### CBSA’s Response to Case Briefs

The Government of Indonesia response to the subsidy RFI was insufficient. As such, the Government of Indonesia did not provide the required information to determine the financial contribution, benefit and specificity of investigated subsidy programs. This significantly impeded the CBSA’s subsidy investigation as sufficient information had not been provided to enable the determination of the amount of subsidy in the prescribed manner, pursuant to subsection 30.4(1) of SIMA.

Due to the status of the Government of Indonesia’s submission, amounts of subsidy for all exporters were determined pursuant to subsection 30.4(2) of SIMA, based on a ministerial specification. However, in consideration of the fact that Citra provided sufficient information in response to the subsidy RFI and completed the on-site verification process, an individual amount of subsidy was determined for Citra.

Based on the information on the record, Citra is located on Batam Island, a Free Trade Zone. The program in question does not appear to be generally available to all enterprises located in Indonesia. In fact, it appears to be limited to enterprises located in the designated region (Free Trade Zone). As a result, this program is considered specific since it is limited to enterprises located in a defined geographic region, within the jurisdiction of the granting authority i.e. the Government of Indonesia.<sup>85</sup>

Insofar as terminating the subsidy investigation in respect of Citra, the President under subparagraph 41(1)(a)(iv) of SIMA is required to determine the amount of subsidy in respect of a country rather than on an exporter specific basis in assessing if the amount of subsidy is insignificant. Furthermore, as noted above, the Government of Indonesia’s response to the subsidy RFI was insufficient and an amount of subsidy for other exporters in Indonesia was determined on the basis of a ministerial specification. Pursuant to subsection 30.4(2) of SIMA, the amount of subsidy calculated for Indonesia is equal to 16.3%, expressed as a percentage of the export price. The amount of subsidy for Indonesia exceeds the minimum threshold of 2% for a developing country.

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<sup>84</sup> Exhibit S824 (NC) – Citra Case Brief; paragraph 52.

<sup>85</sup> Article 2.2 of the SCM Agreement states that “a subsidy which is limited to certain enterprises located within a designated geographic region within the jurisdiction of the granting authority shall be specific.”

## **Provision of Land for Less Than Fair Market Value (Philippines)**

### Case Briefs

Counsel for the Complainant (Evráz) argued that HLD Clark leases land from the Clark Development Corporation, an entity of the Government of the Philippines, at rates that are lower than other economic zones. As such, counsel asserts that HLD Clark benefits from land provided by the Government of the Philippines for less than fair market value.<sup>86</sup>

### Reply Submission

In response, counsel for HLD Clark stated that Evraz's comparison with lease rates for fully developed commercial lands is totally inapplicable and should be disregarded by the CBSA. Counsel for HLD Clark further submitted that it is instead appropriate to compare the land leased by HLD Clark to rice and agricultural land, since what the company leased from the Clark Development Corporation were undeveloped rice fields and waste land.<sup>87</sup>

### CBSA's Response to Case Briefs and Reply Submissions

The CBSA has thoroughly examined all material submitted by the Complainants<sup>88</sup> and the exporter<sup>89</sup> with regard to the actual rates charged in various regions of the Philippines and the quality of land being leased. The CBSA has concluded that the Government of the Philippines has not provided land to HLD Clark at less than fair market value.

## **Provision of Electricity for Less Than Fair Market Value (Philippines)**

### Case Briefs

Counsel for the Complainant (Evráz) argued that the Government of the Philippines, through its Energy Regulation Commission (ERC), a government body created by statute to regulate the rates paid for electricity, provides electricity to HLD Clark at less than fair market value.<sup>90</sup> Counsel had earlier provided documents indicating that the electricity distribution rates charged to companies like HLD Clark, which are located inside the *Clark Freeport Zone*, are lower than those charged outside the Zone.<sup>91</sup>

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<sup>86</sup> Exhibit S801 (NC) – Evraz Case Brief; paragraph 91.

<sup>87</sup> Exhibit S803 (NC) – HLD Clark Reply Submission; page 23.

<sup>88</sup> Exhibit S2 (NC) – Complaint; Exhibit 7-F-07.

<sup>89</sup> Exhibit S143 (PRO) – HLD Clark RFI Response; page 19; Exhibit S514 (PRO) – HLD Clark Verification Exhibits; VE-33.

<sup>90</sup> Exhibit S801 (NC) – Evraz Case Brief; paragraph 104.

<sup>91</sup> Exhibit S513 (NC) – Evraz comments concerning HLD Clark; Public Attachments G & H.

## Reply Submission

In response, Counsel for HLD Clark contends that electricity is not provided to the exporter by the Government of the Philippines or any government agency, but by a private co-operative, the Clark Electric Distribution Corporation (CEDC). Therefore, the provision of electricity to HLD Clark does not constitute a subsidy.<sup>92</sup>

Counsel further argues that HLD Clark's electricity rates should not be compared with those outside the *Clark Freeport Zone*. Counsel maintains that the CEDC, in charging lower rates to its customers within the Zone, is simply passing through the VAT and duty exemptions the CEDC itself enjoys by virtue of also being located inside the Zone.<sup>93</sup>

## CBSA's Response to Case Briefs and Reply Submissions

The CBSA has reviewed the comprehensive data on this issue provided by Counsel for Evraz,<sup>94</sup> by the Government of the Philippines<sup>95</sup> and by HLD Clark,<sup>96</sup> together with material obtained through its own research.<sup>97</sup>

As detailed in Appendix 2, information provided indicates a substantial level of control exercised by the ERC in the transmission and distribution of electricity in the Philippines. Furthermore, one of the reasons companies in the Clark Freeport Zone receive electricity at reduced rates is due to the pass-through benefits that accompany the various tax and duty exemptions granted to the CEDC. As a result, the CBSA has concluded that the *Provision of Electricity at Less than Fair Market Value* is an actionable subsidy. The CBSA considers this a financial contribution pursuant to paragraph 2(1.6)(d) of SIMA, where the government permits or directs a non-governmental body to carry out the provision of goods or services, other than general governmental infrastructure.

## **Sale of Facility at Less than Fair Market Value (Interpipe)**

### Case Briefs

Counsel for the Complainant (Evraz) argued that the Government of Ukraine transferred the Nikopol ferroalloy plant to Interpipe at a fraction of its fair market value.<sup>98</sup>

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<sup>92</sup> Exhibit S803 (NC) – HLD Clark Reply Submission; paragraph 96.

<sup>93</sup> Exhibit S803 (NC) – HLD Clark Reply Submission; page 35.

<sup>94</sup> Exhibit S513 (NC) – Evraz comments concerning HLD Clark.

<sup>95</sup> Exhibit S658 (NC) – Government of the Philippines Response to Subsidy RFI.

<sup>96</sup> Exhibit S674 (PRO) – Additional Information from HLD Clark.

<sup>97</sup> Exhibits S710 to 714 (NC) – Additional information on electricity rates in the Philippines.

<sup>98</sup> Exhibit S801 (NC) – Evraz Case Brief; paragraphs 130-141.

### CBSA's Response to Case Briefs

The CBSA used the information available on the record to determine the amount of subsidy for Interpipe Ukraine with respect to the sale of the Nikopol ferroalloy plant.

### **Exemption or Reduction of Import Duties (TOP)**

#### Case Briefs

Counsel for TOP argued that no benefits were received by the company on imports of machinery and raw materials as these goods were subject to a zero duty rate.<sup>99</sup>

### CBSA's Response to Case Briefs

At the final determination, the amount of subsidy determined for TOP did not include any benefits related to custom duties on imports of machinery and raw materials.

### **Value-Added Tax (TOP)**

#### Case Briefs

Counsel for TOP argued that no VAT benefits were received by the company since refunds of the VAT were made in accordance with the VAT legislation and that the company never received a refund in excess of the VAT it had paid.<sup>100</sup>

### CBSA's Response to Case Briefs

The CBSA's position regarding VAT subsidy programs used by the exporter of subject goods is explained in Appendix 2.

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<sup>99</sup> Exhibit S797 (NC) – TOP Case Brief; paragraph 3.

<sup>100</sup> Exhibit S979 (NC) – TOP Case Brief; page 4.

## **Industrial Estate Authority (Thailand)**

### Case Briefs

Counsel for TOP argued that the company is located in the Amata-Chinese Industrial Zone which is within the Amata City Rayong Industrial Estate. Although the latter is comprised of a general zone and a free zone, counsel argued that the company is located outside of the free zone and consequently was only eligible for benefits offered by the Board of Investment. Counsel further argued that TOP had no involvement with any program operating under the *Industrial Estate Authority of Thailand Act*.<sup>101</sup>

### CBSA's Response to Case Briefs and Reply Submissions

The CBSA's position regarding each subsidy program used by the exporter of subject goods is explained in Appendix 2.

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<sup>101</sup> Exhibit S979 (NC) – TOP Case Brief; page 5.