



OTTAWA, November 22, 2019

**COR2 2019 IN**

## **STATEMENT OF REASONS**

**Concerning the initiation of investigations into the dumping and subsidizing of**

**CERTAIN CORROSION-RESISTANT STEEL SHEET  
ORIGINATING IN OR EXPORTED  
FROM TURKEY, THE UNITED ARAB EMIRATES, AND VIETNAM**

## **DECISION**

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the Canada Border Services Agency initiated investigations on November 8, 2019 respecting the alleged injurious dumping and alleged injurious subsidizing of certain corrosion-resistant steel sheet originating in or exported from Turkey, the United Arab Emirates, and Vietnam.

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

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## SUMMARY

[1] On September 20, 2019, the Canada Border Services Agency (CBSA) received a written complaint from ArcelorMittal Dofasco G.P. of Hamilton, Ontario (hereafter, “the complainant” or “AMD”), alleging that imports of certain corrosion-resistant steel sheet (COR) originating in or exported from Turkey, the United Arab Emirates (UAE), and Vietnam (hereafter “the named countries”) are being injuriously dumped and subsidized. The complainant alleged that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[2] On October 11, 2019, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the embassies of Turkey, the UAE, and Vietnam that a properly documented complaint had been received. The Governments of Turkey, the UAE, and Vietnam were also provided with the non-confidential version of the subsidy complaint and were invited for consultations pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*, prior to the initiation of the subsidy investigation.

[3] On November 1, 2019, consultations were held between the Government of Canada and the Government of Turkey (GOT) via telephone conference. During the consultations, the GOT made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. A written copy of the GOT’s remarks regarding the complaint was submitted on the same day. The CBSA considered the written representations made by the GOT in its analysis.

[4] On November 5, 2019, consultations were held between the Government of Canada and the Government of Vietnam (GOV). During the consultations, the GOV made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint. A written copy of the GOV’s remarks regarding the complaint was submitted on the same day. The CBSA considered the written representations made by the GOV in its analysis.

[5] The complainant provided evidence to support the allegation that COR from the named countries have been dumped and subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[6] On November 8, 2019, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of COR from Turkey, the UAE, and Vietnam.

## **INTERESTED PARTIES**

### **Complainant**

[7] AMD was founded as the Dominion Steel Casting Company in 1912 in Hamilton, Ontario. In 2006 Dofasco was acquired by Arcelor S.A. Later that year, Arcelor S.A. merged with Mittal Steel.<sup>1</sup>

[8] AMD is a manufacturer of COR which it produces at its facility in Hamilton, Ontario. The company is the largest of the three known producers of COR in Canada and accounts for a major proportion of the total domestic production of like goods.

[9] The name and address of the complainant is as follows:

ArcelorMittal Dofasco G.P.  
1330 Burlington St E,  
Hamilton, Ontario L8N 3J5

[10] The other two known manufacturers of like goods in Canada are:

Stelco Inc. (Stelco)  
386 Wilcox Street  
Hamilton, Ontario L8L 8K5

Continuous Colour Coated Limited (CCCL)<sup>2</sup>  
1430 Martin Grove Road  
Rexdale, Ontario M9W 4Y1

### **Trade Union**

[11] The complaint identified the following trade union as representing persons employed in the production of COR in Canada<sup>3</sup>:

United Steel Workers  
234 Eglinton Avenue East, 8<sup>th</sup> floor  
Toronto, Ontario M4P 1K7

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<sup>1</sup> Exh 003 (NC), AMD-History

<sup>2</sup> Formerly known as Material Sciences Corp

<sup>3</sup> Exh 003 (NC), paragraph 47

## **Exporters**

[12] The complainant provided a list of suppliers that produce the subject goods in the named countries or exported the subject goods to Canada during the period reviewed (July 1, 2018 to June 30, 2019).<sup>4</sup> The CBSA has identified 55 exporters of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential exporters were asked to respond to the CBSA's Dumping and Subsidy Request for Information (RFI).

[13] With respect to Vietnam, the complainant alleged that the conditions of section 20 of SIMA exist and that the CBSA should conduct a section 20 inquiry. Based on its own analysis, the CBSA included in its investigation, a section 20 inquiry in order to determine whether the conditions set forth in paragraph 20(1)(a) of SIMA prevail in the flat-rolled steel sector, which includes COR, in Vietnam. Potential exporters located in Vietnam were therefore also asked to respond to the CBSA's Section 20 RFI.

## **Importers**

[14] The CBSA has identified 64 importers of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential importers were asked to respond to the CBSA's Importer RFI.

## **Governments**

[15] Upon initiation of the investigations, the Governments of Turkey, the UAE and Vietnam were sent the CBSA's Government Subsidy RFI requesting information concerning subsidy programs available in each respective country. In addition, the Government of Vietnam was sent the CBSA's Government Section 20 RFI. The CBSA also requested information from the GOT with respect to the possibility of a particular market situation.

[16] For the purposes of these investigations, "Government of Turkey (GOT)", "Government of United Arab Emirates (GOU)", and "Government of Vietnam (GOV)" refer to all levels of government, i.e., federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

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<sup>4</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC) Exh 002, Public Attachment 05 – List of Exporters

## **PRODUCT INFORMATION**

### **Definition**

[17] For the purpose of this investigation, subject goods are defined as:<sup>5</sup>

*Corrosion-resistant flat-rolled steel sheet products of carbon steel including products alloyed with the following elements:*

- *Boron (B) not more than 0.01%,*
- *Niobium (Nb) not more than 0.100%,*
- *Titanium (Ti) not more than 0.08%, or*
- *Vanadium (V) not more than 0.300%*

*in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 inch (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, with or without passivation and/or anti-fingerprint treatments, originating in or exported from the Republic of Turkey, the United Arab Emirates, and Socialist Republic of Vietnam, and excluding:*

- *corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;*
- *steel products for use in the manufacture of aeronautic products;*
- *steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”);*
- *stainless flat-rolled steel products;*
- *corrosion-resistant steel sheet products that have been pre-painted, including with lacquers or varnishes, or permanently coated in plastic;*
- *galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated;*
- *perforated steel,*
- *and tool steel.*

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

[18] The product definition includes corrosion-resistant steel sheet where the substrate is coated with a corrosion-resistant material such as zinc, aluminum, and other alloys. The coating may be applied by a variety of processes including hot-dip galvanizing or electro-galvanizing.

[19] The product definition includes galvanized steel. Galvanized steel is produced by passing the steel through an annealing furnace after it completes the hot-dip galvanizing process and while the zinc is still liquid. This causes the iron and zinc layers to diffuse into each other, creating a zinc-alloy layer at the surface.

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<sup>5</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 10

<sup>6</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 11-16

[20] Passivation refers to a material becoming “passive”, that is, less affected or corroded by the environment of future use. Passivation involves creation of an outer layer of shield material that is applied as a micro-coating, created by chemical reaction with the base material, or allowed to build from spontaneous oxidation in the air. As a technique, passivation is the use of a light coat of a protective material, to create a shell against corrosion.

[21] Corrosion-resistant steel with anti-fingerprint coatings (whether as part of a passivation treatment or separate) are also included within the product definition.

[22] Corrosion-resistant steel sheet is usually produced from cold-rolled carbon steel sheet (CRS) and sometimes from hot-rolled carbon steel sheet (HRS). However, additions of certain elements, such as titanium, vanadium, niobium or boron, during the steel-making process enable the steel to be classified as alloy steel. Therefore, corrosion-resistant steel produced from either carbon steel or alloy steel is included in the definition of the subject goods.

[23] The subject goods (and like goods produced by the domestic industry) are manufactured to meet certain American Society for Testing and Materials (ASTM), Society of Automotive Engineering (SAE) or equivalent specifications, including, but not limited to:

ASTM A653/653M  
ASTM A792/A792M  
SAE J403  
SAE J1392  
SAE J2329  
SAE J1562

[24] The product definition includes “seconds”. Seconds are goods that do not meet some aspect of the original specification. This could include dimensions, grade, or coating. It could also include a coil that has been damaged. Seconds are sold at a discount. Seconds may meet ASTM, SAE or other specifications or may be re-certified to meet a standard. For example, a coil that is damaged along the edge may be a “second”. However, if the damaged edge is slit and the damage is removed the coil could be classified as a primary coil produced to the new width. Seconds are graded and sold on a scale of five.<sup>7</sup>

For greater clarity, the product definition does not cover<sup>8</sup>:

- Corrosion-resistant steel for use in automobiles and automobile parts, hereafter referred to as “Automotive”. Automotive end users include Original Equipment Manufacturers (“OEMs”) and auto part producers. Such excluded goods may fall under Customs Tariff item 9959.00.00.

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<sup>7</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 19

<sup>8</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 17-18

- Pre-painted steel and steel permanently coated in plastic. Pre-painted steel is steel on which paint has been applied by coil coating at the manufacturing facility. The paint may be applied to one or both sides. The paint may be applied as a liquid, paste, powder, varnish or lacquer. Paints may include, but are not limited to, primers, finishing coats, polyesters polymers, plastisol paints, polyurethanes, polyvinylidene fluorides, and epoxy. Steel permanently coated in plastic is steel to which plastics, including films or laminates, are permanently attached.

### **Production Process<sup>9</sup>**

[25] The subject goods are usually produced from CRS and sometimes from HRS sheet. The steel sheet to be coated is commonly referred to as steel substrate. Hot-dip galvanizing and electro-galvanizing are the two processes that can be used to coat the substrate steel sheet with zinc, aluminum, or other alloys. AMD uses hot-dip galvanizing.

[26] In the hot-dip galvanizing process, the first step is to clean the surfaces to improve the adhesion of the coating. After cleaning, the substrate enters a continuous annealing furnace. The furnace heats the substrate to the temperature necessary to develop the desired metallurgical properties of the final product. The substrate is then placed in a molten coating bath and, as it emerges from the bath, an air, nitrogen or steam wipe is used to control the thickness of the coating. The galvanized steel sheet is then cooled in a cooling tower.

[27] In the electro-galvanizing process charged steel passes through a plating bath and opposite electrical charges cause the zinc solution to coat the steel. Cold-rolled steel coils are batch annealed in multi-stack furnaces or in off-line continuous annealing process, often skin passing on a temper mill, before being electro-galvanized with a thin coating of zinc on a continuous processing line.

### **Product Use<sup>10</sup>**

[28] Common applications for COR falling within the product definition include, but are not limited to, production of farm buildings, grain bins, culverts, garden sheds, roofing material, siding, floor decks, roof decks, wall studs, drywall corner beads, doors, door frames, ducting (and other heating and cooling applications), flashing, hardware products and appliance components.

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<sup>9</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 21-24

<sup>10</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 26



## **Classification of Imports<sup>11</sup>**

[29] The allegedly dumped and subsidized goods are normally classified under the following tariff classification numbers<sup>12</sup>:

7210.30.00.00	7210.69.00.10	7225.91.00.00
7210.49.00.10	7210.69.00.20	7225.92.00.00
7210.49.00.20	7212.20.00.00	7226.99.00.10
7210.49.00.30	7212.30.00.00	
7210.61.00.00	7212.50.00.00	

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

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

[31] Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as goods that are identical in all respects to the other goods, or in the absence of any identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[32] The complainant submits that like goods are those goods described in the product definition. That is, domestically produced COR, which meets the product definition, and does not include domestically produced goods which are specifically excluded in the product definition. The complainant also noted that in a previous finding concerning COR, the Canadian International Trade Tribunal (CITT) concluded that domestically produced corrosion-resistant steel sheet constituted like goods to the subject goods.

[33] The complainant submits that like goods and subject goods are commodity products that compete directly with each other in the Canadian market, and are fully interchangeable.

[34] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that domestically produced COR are like goods to the subject goods and constitute only one class of goods, as previously determined by the CITT in a previous COR finding.<sup>13</sup>

## **THE CANADIAN INDUSTRY**

[35] In addition to the complainant, there are two other producers of COR in Canada, CCCL and Stelco.

[36] The complainant provided a letter of support from Stelco.<sup>14</sup>

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<sup>11</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 27-28

<sup>12</sup> Tariff Classification number: 7212.50.00.14 was also used for statistical purposes for the year 2016.

<sup>13</sup> Corrosion-Resistant Steel Sheet, 8 March 2019, NQ-2018-004, Statement of Reasons (CITT), at paragraphs 24-25

<sup>14</sup> Corrosion-Resistant Steel Sheet 2 Complaint; Public Attachment – Ltrs Support Stelco

[37] The complainant submits that as concluded by the CITT in *Certain Corrosion Resistant Steel Sheet* from China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), India and South Korea (COR1), CCCL does not have a significant production capacity for COR and as a result, their actual production volume would be a very small portion of total domestic production in comparison to the combined production volume of the complainant and Stelco.<sup>15</sup> The complaint included production and domestic sales figures for the complainant and for Stelco and also included estimated production figures for CCCL.

[38] The complainant and the supporting producer, Stelco, account for nearly all of the domestic production of like goods.

### **Standing**

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

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

[40] As the complainant and the supporting producer represent the vast majority of the total production of like goods in Canada, the CBSA is satisfied that the standing requirements pursuant to subsection 31(2) of SIMA have been met.

### **CANADIAN MARKET**

[41] The complainant provided estimates of the total volume of imports of subject goods into Canada from all countries based on data from Statistics Canada. However, the tariff classification numbers for COR include both subject and non-subject goods. As such, the complainant made a number of adjustments in an effort to remove non-subject COR. The most significant adjustments relate to the removal of automotive corrosion-resistant steel sheets.<sup>16</sup>

[42] The CBSA conducted its own analysis of imports of the goods based on CBSA's import data, which demonstrated similar trends and volumes with respect to imports of COR compared to information provided in the complaint.

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

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<sup>15</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 35

<sup>16</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 52

**Table 1**

**CBSA'S ESTIMATE OF IMPORT SHARE  
(EXPRESSED AS A % OF TOTAL VOLUME)**

<b>Country</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>H1-2019<sup>17</sup></b>	<b>POI</b>
Turkey	0.6%	2.5%	15.9%	21.7%	23.8%
UAE	0.1%	2.4%	2.0%	7.1%	4.3%
Vietnam	0.8%	1.2%	0.6%	40.3%	16.7%
<b>Total Imports from Named Countries</b>	<b>1.5%</b>	<b>6.1%</b>	<b>18.5%</b>	<b>69.1%</b>	<b>44.8%</b>
All Other Countries	98.5%	93.9%	81.5%	30.8%	55.2%
<b>Total Imports</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\*totals may not add to exactly 100% due to rounding

[44] The CBSA will continue to gather and analyze information on the volume of imports during the period of investigation (POI) of July 1, 2018 to June 30, 2019 as part of the preliminary phase of the dumping and subsidy investigations and will refine these estimates.

**EVIDENCE OF DUMPING**

[45] The complainant alleged that COR from the named countries have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

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

[47] The complainant provided information to support the allegation that the flat-rolled steel sector in Vietnam, which includes COR, may not be operating under competitive market conditions and as such, the domestic market may not be reliable for determining normal values. Accordingly, the complainant submitted that normal values should be determined under section 20 of SIMA.

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

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<sup>17</sup> H1-2019 refer to the first half of 2019 (i.e. January 1 to June 30, 2019)

[49] The complainant made the allegation that particular market situations (PMS) may exist in Turkey which does not permit a proper comparison between the sale of like goods with the sale of the goods to the importer in Canada as described in paragraph 16(2)(c) of SIMA. As such, AMD submitted that normal values should not be estimated using the methodology of section 15 of SIMA.<sup>18</sup>

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

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

## **Normal Value**

### **Complainant's Estimates**

[52] The complainant submitted that they are unable to estimate the normal values on the basis of domestic prices, using the methodology of section 15 of SIMA because the domestic prices available are published third party pricing. The complainant contends that this would not be appropriate for estimating section 15 normal values because these prices are average COR prices that are inclusive of steel for automotive applications and tool steel which are excluded from the definition of subject goods. As such, the complainant did not provide estimated normal values using the methodology of section 15.<sup>19</sup>

[53] Accordingly, the complainant estimated the normal values for the named countries on the basis of the constructed cost methodology of paragraph 19(b) of SIMA. For each quarter of the POI, July 1, 2018 to June 30, 2019, based on information from the preceding quarter, the complainant estimated one weighted average normal value for each named country, by estimating the aggregate costs of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits. The complainant's methodology was based on its estimates of the following:

- a) Cost of production:
  - i) Substrate: Cold-rolled steel (CRS) prices in the named country were based on third-party publications;
  - ii) Other materials: the complainant used their own "other material costs" for the conversion of CRS into COR consisting particularly of coating, and also additional inputs such as fuel, utilities, consumables, auxiliaries, etc. AMD's assumption is that the requirement for other materials is consistent across all production of COR;

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<sup>18</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 67

<sup>19</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 66

- iii) Labour: the complainant used their own labour cost to convert CRS to COR which they adjusted to better reflect labour cost in the named country based on third-party data; and
  - iv) Overhead: the complainant used their own overhead to reflect costs of converting CRS to COR.
- b) Administrative, selling and all other costs: the complainant used annual reports available from a producer operating in each of the named countries (or a proxy country if no information from a producer in a named country was available) in order to determine a ratio of these expenses relative to the cost of production in each country. The ratio was applied to the estimated cost of production for the country.
- c) Profit: the complainant used annual reports available from a producer operating in each of the named countries (or a proxy country if no information from a producer in a named country is available) in order to determine a ratio for the profit to the cost of production in each country. The ratio was applied to the estimated cost of production for the country.

Turkey:

[54] For Turkey<sup>20</sup>, the complainant maintains that a PMS may exist because the price of the input (i.e. CRS as the substrate) does not reflect the actual cost of the input. Accordingly, the complainant provided both the Turkish and the Southern European prices of CRS, as published by Metal Bulletin. The complainant maintained that the Southern European prices of CRS are reflective of normal market forces and that the difference between the two sets of prices is reflective of the differences caused by the PMS. The complainant suggested that the CBSA may adjust the Turkish substrate price in accordance with paragraph 11.2(2)(e) of the *Special Import Measures Regulations (SIMR)*. The complainant stated that it was unable to locate information on Turkey's productivity adjusted manufacturing wage; as such, it used the productivity adjusted manufacturing wage of Poland as a proxy, which was based on a Wall Street Journal article.<sup>21</sup> This resulted in a 42% downward adjustment to the labour cost. The amount for selling, general and administrative expense (SG&A), financial expenses and profit was estimated on the basis of confidential financial information from ArcelorMittal Belgium (a sister company of the Complainant) for corrosion-resistant steel sheets.

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<sup>20</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 72-75

<sup>21</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Attachment 15; Kathy Chu and Bob Davis, "As China's Workforce Dwindles, the World Scrambles for Alternatives", *Wall Street Journal* (23 November 2015).

UAE:

[55] For the UAE<sup>22</sup>, the complainant used Metal Bulletin's reported, "UAE import cold-rolled coil cfr Jebal Ali", to estimate the substrate cost in absence of availability of domestic pricing for CRS. The complainant stated that it was unable to locate information on the UAE's productivity adjusted manufacturing wage; as such, it used the productivity adjusted manufacturing wage of Poland as a proxy, which was based on a Wall Street Journal article. This resulted in a 42% downward adjustment to the complainant's labour cost. Further, the complainant alleges that subject goods from the UAE consist of thinner, light gauge steel sheet, which is more expensive to produce and to coat. For this reason, the complainant added an extra cost based on half of the extra costs they report in their price list for light gauge coil. As the complainant was unable to find publically available financial information for a flat-rolled steel producer in the UAE or a neighbouring country, the amount for SG&A, financial expenses and profit was estimated on the basis of confidential financial information from ArcelorMittal Belgium for corrosion-resistant steel sheets.

Vietnam:

[56] For Vietnam, the complainant used the reported CRU "Asia" price for CRS, as an estimate of the Vietnamese substrate cost.<sup>23</sup> The complainant stated that it was unable to locate information on Vietnam's productivity adjusted manufacturing wage; as such, it used the productivity adjusted manufacturing wage of Thailand as a proxy, which was based on a Wall Street Journal article. This resulted in an 80% downward adjustment to the labour cost. The amount for SG&A, financial expenses and profit was estimated on the basis of financial information from Vietnamese producer Hoa Sen Group. The resulting ratios for SG&A and financial expenses were 2% and 3% of cost of goods manufactured, respectively, and the ratio for the amount for profit was 8%.

[57] As mentioned, the complainant argued that the CBSA should apply the provisions of section 20 of SIMA to the determination of normal values for Vietnam. The complainant submits that South Korea (Korea) would be an appropriate surrogate country. To support this assertion, the complainant noted that producers in Korea export substantial volumes of COR and that just like Vietnam, Korean producers pay wages that are substantially lower than Canada, although the cost of steel material used by COR producers in Korea is based on international market-based prices.

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<sup>22</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 76-79

<sup>23</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), attachment 19

[58] Accordingly, the complainant provided estimated quarterly normal values using a constructed cost approach to reflect the methodology defined under subparagraph 20(1)(c)(ii) of SIMA, on the basis of the aggregate of a) the cost of production of the goods, b) a reasonable amount for administrative, selling and all other costs, and c) a reasonable amount for profits, as estimated for Korea. The complainant used the same methodology as described above for estimating normal values under paragraph 19(b) of SIMA.<sup>24</sup> For estimating the substrate cost, the complainant used MEP's average reported price for Korean CRS. The complainant adjusted labour cost downward by about 40% to reflect lower wage cost in Korea, based on information from a Wall Street Journal article. The amount for SG&A, financial expenses and profit was estimated on the basis of financial information from Korean producer POSCO. The resulting ratios for SG&A and financial expenses were 4% and 0% of cost of goods manufactured, respectively, and the ratio for the amount for profit was 15%.

CBSA's Estimate:

[59] Based on the information available, the CBSA finds the complainant's proposed constructed cost methodology and constructed surrogate methodology to be reasonable, although the CBSA has made some modifications to the complainant's normal value estimates.

Turkey:

[60] While there is sufficient evidence that a PMS may exist in Turkey to warrant further investigation, for the purpose of initiation, the CBSA has not formed an opinion that a PMS exists in Turkey. Accordingly, normal values for Turkey were estimated for the purposes of initiation based on the constructed cost methodology of paragraph 19(b) of SIMA, using estimated costs in Turkey.

[61] As such, the CBSA modified the complainant's methodology by using the Turkish domestic price of CRS as published by Metal Bulletin, as an estimate of the substrate cost, and used the publically available 2018 Annual Report of Turkish steel producer Erdemir to estimate a reasonable amount for administrative, selling and all other costs, including net financial expenses (estimated at 5.1%), and a reasonable amount for profits (estimated at 9.4%). The other estimated cost components were consistent with the complainant's methodology. Using the complainant's methodology, the CBSA estimated a normal value for each quarter of the POI based on costs in the preceding quarter<sup>25</sup>.

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<sup>24</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 96

<sup>25</sup> In other words, the normal value for Q3 2018 is based on costing data from Q2 2018

UAE:

[62] Evidence available to the CBSA supported the complainant's allegations that subject goods from the UAE consist of light gauge COR (i.e. less than 0.02 in. inch thickness, and generally between .009 and 0.012 inch in thickness, which is at the costlier end of the spectrum according to the complainant). On the basis of the sample reviewed, the CBSA accepted the complainant's proposed methodology with respect to adding an amount to account for the additional costs incurred to produce lighter gauge COR. The amount was based on half of the extra costs reported by the complainant in their price list for light gauge coil. Rather than using ArcelorMittal Belgium's financial data, however, the CBSA used the publically available 2018 Annual Report of Turkish steel producer Erdemir to estimate a reasonable amount for administrative, selling and all other costs (estimated at 5.1%), and a reasonable amount for profits (estimated at 9.4%).<sup>26</sup> The other estimated cost components were the consistent with the complainant's methodology. Using the complainant's methodology, the CBSA estimated costs for each quarter of the POI (based on the preceding quarter).

Vietnam:

[63] For the purposes of initiation, the CBSA estimated the normal values for Vietnam under the methodology of subparagraph 20(1)(c)(ii) of SIMA, on the basis of the aggregate of a) the cost of production of the goods, b) a reasonable amount for administrative, selling and all other costs, and c) a reasonable amount for profits, as estimated for a surrogate country. The CBSA accepted the complainant's methodology of using Korea as the surrogate, considering that Korea is a major producer and exporter of COR located in Asia, is believed to be operating under normal market conditions and also in light of Korean cost information that was readily available. The CBSA estimated the normal value based on Korean data using the same methodology and sources as used by the complainant in its estimate, as described above. However, using the same 2018 financial statements from a Korean producer, POSCO, the CBSA estimated a different amount for administrative, selling and all other costs (estimated by the CBSA at 11.2%), and a different amount for profits (estimated by the CBSA at 8.7%).

## **Export Price**

[64] The complainant estimated export prices based on customs data available from Statistics Canada for the period of July 1, 2018 to June 30, 2019, under the tariff classification numbers listed above. This data was adjusted to exclude automotive end-uses.

[65] The complainant calculated quarterly weighted average prices on the basis of the total declared value for duty during a quarter and the total declared quantity during the same quarter, to determine weighted average export prices for each named country during each quarter of the POI.<sup>27</sup>

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<sup>26</sup> Erdemir's financial information was used because it was available, more complete and based on the audited financial statements.

<sup>27</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 63-64



[66] In estimating the export prices, the CBSA relied on the CBSA's Facility for Information Retrieval Management (FIRM). Some data was adjusted by the CBSA after reviewing the import entry documentation to account for non-subject goods and to correct any inaccurate quantities and value for duty as necessary. The CBSA estimated quarterly export prices on the basis of the total declared value for duty during a quarter and the total declared quantity during the same quarter, to determine weighted average export prices for each named country during each quarter of the POI.

### **Estimated Margins of Dumping**

[67] The CBSA estimated the margin of dumping for the named countries by comparing the total estimated normal values with the total weighted average estimated export prices. Based on this analysis, it is estimated that the subject goods imported into Canada from each of the named countries were dumped. The estimated margin of dumping for each country is listed in the table below.

**Table 2**  
**CBSA's Estimated Margins of Dumping**

<b>Country</b>	<b>Estimated Margin of Dumping (expressed as % of export price)</b>
Turkey	7%
UAE	22%
Vietnam	20%

### **SECTION 20 INQUIRY**

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

[69] The provisions of section 20 are applied on a sector basis rather than on the country as a whole. The sector reviewed will normally only include the industry producing and exporting the goods under investigation.

[70] A section 20 inquiry refers to the process whereby the CBSA collects information from various sources in order to form an opinion as to whether the conditions described under subsection 20(1) of SIMA exist with respect to the sector under investigation. Before initiating such an inquiry, the CBSA must first analyze the information submitted in the complaint and the evidence it has gathered independently to determine if it is sufficient to warrant the initiation of an inquiry.

[71] The complainant alleged that the conditions described in section 20 prevail in the flat-rolled steel sector in Vietnam, which includes COR. That is, the complainant alleges that this industry sector in Vietnam does not operate under competitive market conditions and consequently, prices of COR established in Vietnamese domestic markets are not reliable for determining normal values.<sup>28</sup>

[72] The complainant argued that COR substrate is the most significant cost input for COR.<sup>29</sup> The complainant maintained that the existence of section 20 conditions for CRS produced in Vietnam supports the determination that the GOV determined the price of COR in Vietnam.

[73] The complainant provided evidence supporting its claim that the GOV substantially determines domestic prices of COR, including evidence of government control of steel projects and investments as well as state-ownership in the steel industry, which encompasses the flat-rolled steel sector. The complainant also cited specific GOV policies such as the *Steel Master Plan*.<sup>30</sup>

[74] In the course of the dumping investigation into CRS from Vietnam which concluded on October 31, 2018, the CBSA conducted a section 20 inquiry with respect to the flat-rolled steel sector. On the basis of that inquiry, the CBSA determined that the GOV's macro-economic policies and actions had influenced the Vietnamese steel industry, which encompasses the flat-rolled steel sector. The CBSA was also of the opinion that domestic prices were substantially determined by the GOV, and that there is sufficient reason to believe that the domestic prices were not substantially the same as they would be in a competitive market. Thus, the CBSA was of the opinion that the conditions of section 20 applied to the flat-rolled steel industry, which include both cold-rolled products, the substrate of COR, as well as COR itself.

[75] The information currently available to the CBSA indicates that there are numerous GOV industrial policies that have been implemented which influence the steel industry, which includes COR, in Vietnam. Further, the information currently available indicates that prices of COR in Vietnam may not be substantially the same as they would be if they were determined in a competitive market.

[76] In summary, the CBSA believes that there is sufficient evidence to support an inquiry into the allegations that measures taken by the GOV substantially influence prices in the flat-rolled steel sector and that the prices are substantially different than they would be in a competitive market.

[77] Consequently, on November 8, 2019, the CBSA included a section 20 inquiry in its investigation in order to determine whether the conditions set forth in paragraph 20(1)(a) of SIMA prevail in the flat-rolled steel sector in Vietnam which includes COR.

[78] As part of this section 20 inquiry, the CBSA sent section 20 RFIs to all potential producers and exporters of COR in Vietnam, as well as to the GOV, requesting detailed information related to the flat-rolled steel sector which includes COR.

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<sup>28</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Pages 26-30

<sup>29</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Paragraph 83

<sup>30</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Pages 130-134

[79] To enable the determination of normal values, should paragraph 20(1)(a) of SIMA be applicable, the CBSA requested domestic pricing and costing information from producers of COR in Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei). As such, CBSA has sent RFIs to known producers of COR in these countries. Producers in these two countries will receive a Surrogate Country Dumping RFI for this purpose. In addition, information from producers in Turkey and the UAE gathered in the course of this investigation may also be used for the purposes of calculating normal values pursuant to subparagraph 20(1)(c) of SIMA, if the information is sufficient and considered appropriate for this purposes. The CBSA also requested information from Canadian importers of COR regarding their purchases of COR from other countries.

[80] In the event that the CBSA forms the opinion that domestic prices of COR in Vietnam are substantially determined by the government and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be if they were determined in a competitive market, the normal values of the goods under investigation will be determined pursuant to paragraph 20(1)(c). Where such information is available, the normal value will be determined on the basis of the domestic selling price or on the aggregate of the cost of production, a reasonable amount for SG&A, and a reasonable amount for profits of the like goods sold by producers in any country designated by the CBSA and adjusted for price comparability; or, pursuant to paragraph 20(1)(d), where such information is available, on the basis of the selling price in Canada of like goods imported from any country designated by the CBSA and adjusted for price comparability.

### **PARTICULAR MARKET SITUATION**

[81] Paragraph 16(2)(c) is a provision of SIMA that may be applied when the CBSA is of the opinion that domestic sales of like goods in the country of export do not permit a proper comparison with the sales of the goods to the importer in Canada because a particular market situation prevails.

[82] Pursuant to subsection 16(2.1), the CBSA may form the opinion that a PMS exists in respect of any goods of a particular exporter or of a particular country.

[83] In such cases, the CBSA would not estimate normal values using the methodology of section 15 of SIMA, which relies on domestic prices. Accordingly, and where such information is available, the CBSA would look to using the constructed normal value methodology of paragraph 19(b).

[84] Where the CBSA is of the opinion that a PMS also distorts significant production input costs, the CBSA will use information in accordance with subsection 11.2(2) of SIMR, that best represents the actual cost of the input to permit a proper comparison.

[85] Where the CBSA finds there is sufficient reason to believe that a PMS may exist, the CBSA may solicit information from exporters and, where applicable, the government of the country of export, and independently gather other relevant information in order to form an opinion as to whether paragraph 16(2)(c) is applicable.

[86] The complainant made the allegation that a particular market situation may exist in Turkey, which does not permit a proper comparison between the domestic sales of COR in Turkey, or the Turkish export costs with the sale of the goods to the importer in Canada.<sup>31</sup>

[87] The complainant submitted that a PMS exists whenever one, or the combination of several, factors or circumstances renders domestic sales inappropriate for the calculation of dumping margins, regardless of whether or not these sales are in the ordinary course of trade. The complainant also argued that subsection 11.2(2) of the SIMR makes clear that a PMS may exist where the acquisition cost of an input used in the production of a subject good is distorted. The complainant also argued that although the concept of PMS is not limited to government influence, the SIMA Handbook states that a PMS may also exist where a named country's government's actions and policies affect selling prices such that a proper comparison of home market prices do not allow for a proper comparison. Such actions and policies include, according to the complainant, government regulations, taxation policies, and programs that affect domestic pricing and market activities of state-owned enterprises (SOEs).<sup>32</sup>

[88] The complainant submitted that a PMS exists with respect to Turkey for the following reasons<sup>33</sup>:

- government economic policy plans affecting domestic selling prices;
- government support programs;
- Turkey's excess inflation;
- government intervention in Turkey's monetary policy and the lack of central bank independence;
- conversion of foreign exchange denominated contracts to lira-denominated contracts;
- the doubling of US section 232 measures on Turkish steel and its alleged effect on domestic price of Turkish COR;
- the price difference between Turkish CRS and COR which allegedly does not reflect conversion cost;
- acquisition of production inputs from state-owned or state-controlled enterprises at non-market costs; and
- low-priced substrate imports.

[89] The CBSA will further examine whether a PMS exists throughout the investigation.

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<sup>31</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 67-68

<sup>32</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 301-308

<sup>33</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), pages 107-129

## **EVIDENCE OF SUBSIDIZING**

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

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

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

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

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

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

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

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

[96] The complainant alleged that subject goods originating in or exported from Turkey, the UAE, and Vietnam have been subsidized and that exporters of subject goods from these countries have benefitted from actionable subsidies provided by various levels of their respective governments.

[97] In its analysis of the complainant’s allegations, the CBSA reviewed the information submitted in the complaint as well as other publicly available reference material to determine whether the programs listed could constitute financial contributions in accordance with subsections 2(1) and 2(1.6) of SIMA and thereby conferred benefits to the recipients in accordance with the definition of “subsidy” in subsection 2(1) of SIMA. These programs were further examined to establish whether they could also be considered specific under subsections 2(7.2) or 2(7.3) of SIMA.

[98] A country-by-country summary follows below.

## **Turkey**

[99] The complaint provided evidence on 35 different programs which may have conferred benefits to the producers/exporters of subject goods in Turkey, and in turn resulted in the actionable subsidizing of exports of subject goods to Canada.

[100] In alleging that actionable subsidies were applicable to the subject goods imported from Turkey, the complainant relied extensively on the following sources: a research report on the Turkish flat steel industry and government subsidies, Turkey’s most recent notification of active subsidy programs to the WTO, other publicly available information related to government subsidies and previous CBSA and United States Department of Commerce (US DOC) subsidy investigations.

[101] The complainant's allegations largely relied on a research report on the Turkish flat steel industry and government subsidies<sup>34</sup>. In addition to providing an overview of the Turkish economy and an analysis of the Turkish flat steel industry, the report provides an extensive description of most of the subsidy programs listed in Appendix 1 for Turkey, including the legal basis for the alleged programs, and is specifically focused on programs available to flat-rolled steel producers. The report also includes extensive supporting documentations, including copies of laws and decrees to support the allegations. As mentioned in the report, "These support mechanisms take the form of preferential tax policies, tariff exemptions, export financing via preferential loans, and direct funds. The programs covered have two main characteristics: they are either exclusively for exporting activities or are region/location/company specific, giving these subsidies eligibility to be assessed under a CVD investigation."<sup>35</sup>

[102] The CBSA reviewed the extensive information provided by the complainant with respect to Turkish subsidy programs and compiled a list of 35 programs to be investigated as shown in Appendix 1.<sup>36</sup> The subsidy programs were grouped into the following seven categories:

- i. Export financing / preferential loans (Eximbank Programs)
- ii. Regional based; Organized Industrial Zone (OIZ) and Free Zone Programs
- iii. Preferential Tax Policies / Tariffs and VAT exemptions
- iv. Export-oriented Direct Funds
- v. Goods provided by the Government of Turkey at Less than Adequate Remuneration
- vi. R&D Programs
- vii. Others

[103] The CBSA's analysis revealed that the 35 alleged subsidy programs constitute potential financial contributions by the GOT that may have conferred benefits to producers/exporters of COR. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA. Please refer to Appendix 1 for more information.

[104] The CBSA concluded that sufficient evidence is available to support the allegations that COR originating in or exported from Turkey has been subsidized. In investigating the 35 programs, the CBSA has requested information from the GOT, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs, or any other programs, are actionable subsidies and, therefore, countervailable under SIMA.

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<sup>34</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47

<sup>35</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47, page 99

<sup>36</sup> The complainant listed 21 programs but provided information on the 35 programs listed by the CBSA.

## United Arab Emirates

[105] The complainant identified one subsidy program for the UAE. The complainant alleged that COR producers located in free-trade zones in the UAE are exempt from paying a 5% import duty and 5% VAT on the importation of machinery, equipment and other capital used in their production of COR. The allegation is based on online publications by the UAE government and by a consulting firm. The complainant also alleged that at least two of the four known COR producers in the UAE are located in a Free-Trade Zone.<sup>37</sup>

[106] The complainant maintains that this relief provides a beneficial financial contribution in the form of revenue foregone by government and that the benefit is specific because it is only available to enterprises located in such free-trade zones.<sup>38</sup>

[107] Based on additional research, the CBSA has determined that exporters of COR may have also benefited from preferential export financing or export credit insurance from the GOU, in particular from the Etihad Credit Insurance (ECI). The ECI is a Public Joint Stock Company owned by the United Arab Emirates Federal Government and the Government of the Emirate of Abu Dhabi, the Government of the Emirate of Dubai, the Government of the Emirate of Ajman, the Government of the Emirate of Ras Al Khaimah and the Government of the Emirate of Fujairah.<sup>39</sup> Its website says it is a “specialized state institution to support the export and re-export of United Arab Emirates goods, works, services, and the foreign investments of United Arab Emirates companies, through the provision of a range of export credit, financing and investment insurance products.” Services offered also include “Post-shipment financing of exports through bills discounting with the commercial banks at concessional interest rates [emphasis added]; and Pre-shipment financing facilities for exporters through commercial banks against guarantees issued by ECI for working capital requirements, so as to meet and enhance the opportunity for their export sales”.

[108] The CBSA has also identified an “Export Assistance Program” offered by the Dubai Export Development Corporation (Dubai Exports), believed to be the export promotion agency of the government of Dubai.<sup>40</sup> Under the program, according to the agency’s website, “companies can apply for reimbursement on the eligible export promotion activities such as market visits and participation in exhibitions.” Its website also refers to the program as “...an invaluable means to access funding for their export operations.”

[109] The CBSA’s analysis revealed that the three alleged subsidy programs constitute potential financial contributions by the GOU that may have conferred benefits to producers/exporters of COR. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA. Please refer to Appendix 1 for more information.

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<sup>37</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 491-493

<sup>38</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 491-493

<sup>39</sup> Exh 003 (NC); CBSA Supporting Documents, page 39

<sup>40</sup> Exh 003 (NC); CBSA Supporting Documents, page 36



[110] The CBSA concluded that sufficient evidence is available to support the allegations that COR originating in or exported from the UAE has been subsidized. In investigating the three programs, the CBSA has requested information from the GOU, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs, or any other programs, are actionable subsidies and, therefore, countervailable under SIMA.

## **Vietnam**

[111] The complainant alleged that subject goods originating in or exported from Vietnam have been subsidized and that exporters of subject goods from Vietnam have benefitted from actionable subsidies provided by the GOV.

[112] The complainant identified 34 subsidy programs which may have conferred benefits to the producers/exporters of subject goods in Vietnam, and in turn resulted in the actionable subsidizing of exports of subject goods to Canada.<sup>41</sup>

[113] In alleging that actionable subsidies were applicable to the subject goods imported from Vietnam, the complainant relied extensively on Vietnam's most recent notification of active subsidy programs to the WTO pursuant to *Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures* for the years of 2013 and 2014<sup>42</sup>, on two CBSA subsidy investigations with respect to Vietnamese steel products (*Oil Country Tubular Goods II*, and *Cold-Rolled Steel*), a US DOC subsidy investigation regarding *Certain Steel Nails* from Vietnam<sup>43</sup>, as well as on other publically available information on GOV subsidies.

[114] The CBSA reviewed the public reports for the relevant investigations referred to by the complainant and other documentation submitted in the complaint including the latest subsidy notification to the WTO.

[115] Generally speaking, the reference material examined by the CBSA provided support for the complainant's allegation that the subject goods from Vietnam have been subsidized. However, on the basis of its analysis, the CBSA determined that in respect of certain programs identified by the complainant there was not sufficient evidence regarding the applicability of the subsidy programs to producers of COR, as the programs appeared to be generally available.

[116] Further, the CBSA found that a number of programs appeared to be either duplicates or they were very similar. Finally, some of the program names identified by the complainant were modified by the CBSA for consolidation purposes.

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<sup>41</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Appendix 5 – Vietnamese Countervailable Subsidies

<sup>42</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 144

<sup>43</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 145

[117] As a result, the CBSA reorganized the 34 subsidy programs listed by the complainant into 10 potentially actionable subsidy programs. These programs have been investigated and found to be actionable in the CBSA's or the USDOC's previous subsidy investigations involving goods from Vietnam and can be grouped into the following four categories:

1. Relief from Duties and Taxes;
2. Preferential Loans and Loan Guarantees;
3. Preferential Tax Programs; and
4. Grants and Grant Equivalents.

[118] The CBSA's analysis revealed that the alleged subsidy programs constitute potential financial contributions by the GOV that may have conferred benefits to producers/exporters of COR. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[119] Please refer to Appendix 1 for a list of the alleged subsidy programs to be investigated by the CBSA.

[120] If more information becomes available during the investigation process that indicates that some exporters/producers of subject goods may have benefited from any other programs during the POI that are not included in the list, CBSA will request complete information from the GOV and exporters/producers of subject goods to pursue the investigation of these program.

[121] The CBSA concluded that sufficient evidence is available to support the allegations that COR originating in or exported from Vietnam has been subsidized. In investigating the 10 programs, the CBSA has requested information from the GOV, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs, or any other programs, are actionable subsidies and, therefore, countervailable under SIMA.

### **Estimated Amounts of Subsidy**

[122] The complainant was unable to estimate the amounts of subsidy on a program basis for the subject goods imported from Turkey, the UAE and Vietnam.

[123] Alternatively, for Turkey, the complainant estimated the amount of subsidy on the basis of the CBSA's finding in *Dry Wheat Pasta* from Turkey, concluded on June 26, 2018<sup>44</sup>. In this regard, the complainant stated that in *Dry Wheat Pasta*, the CBSA determined that three programs provided a countervailable subsidy of 4.2%, or 1.4% per program.<sup>45</sup> Accordingly, the complainant estimated a subsidy margin of 29.4% by applying the rate of 1.4% per program to the 21 programs that it identified (based on six Exim Bank programs and producers/exporters only benefiting from one of the two Investment Zone programs).

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<sup>44</sup> CBSA, DWP 2017 IN; Statement of Reasons – Final Determination - *Certain Dry Wheat Pasta* from Turkey; July 11, 2018

<sup>45</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph107

[124] The CBSA notes that the complainant appears to have erred in its methodology, as it miscalculated the CBSA's average amount of subsidy per program in *Dry Wheat Pasta*. In that case, the CBSA determined a subsidy rate of 1.4% for the cooperative exporter on the basis of the total benefits received from three programs, an average of 0.467% of the export price per program. For all other exporters, the CBSA determined a total amount of subsidy equal to 4.2% on the basis of 11 potentially actionable subsidy programs, an average of 0.382% of the export price per program.<sup>46-47</sup> Accordingly, a correction to the complainant's proposed methodology consisting of multiplying the average amount of subsidy as a percentage of the export price in *Dry Wheat Pasta* by 21 available programs, should result in the complainant's estimated amount of subsidy being either 9.8% or 8%, depending on whether the average of the cooperative exporter is used, or the average of the all other exporter is used.

[125] For the UAE, the complainant estimated the amount of subsidy as being equal to the difference between the estimated full cost of production (see dumping section) and sale and the estimated export price. Using this methodology, the complainant estimated an amount of subsidy equal to 9% of the export price.

[126] For Vietnam, the complainant estimated the amount of subsidy on the basis of the amount of subsidy determined by the CBSA for Vietnamese producers in the Cold-rolled investigation. Using this methodology, the complainant estimated an amount of subsidy equal to 6.5% of the export price.

Turkey:

[127] For Turkey, the CBSA estimated the amount of subsidy on the basis of a comparison of the average of the CBSA's estimated constructed cost-plus-profit for Turkey (as described in the normal value section) and the average of the published domestic price of corrosion-resistant steel in Turkey during the POI. The difference between the "constructed domestic price" and the published price may reflect the amount of subsidies received by the Turkish producers on the production of subject and like goods, which allows the producers to reduce the selling price of those goods. On this basis, the CBSA estimated an amount of subsidy equal to 21.3% of the export price for Turkey.

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<sup>46</sup> CBSA, DWP 2017 IN; Statement of Reasons – Final Determination - *Certain Dry Wheat Pasta* from Turkey; July 11, 2018

<sup>47</sup> In *Dry What Pasta*, the difference between the average amount of subsidy per program as a percentage of the export price for the cooperative exporters and for all other exporters is explained by the effect of the denominator, as the same average amount of subsidy is divided by different average export price.

UAE:

[128] For the UAE, the CBSA estimated the amount of subsidy conferred on the producers of the subject goods from the UAE by comparing the estimated full costs of the subject goods with their total estimated export prices, as estimated above in the evidence of dumping section. It is the CBSA's understanding that subsidies have the effect of lowering the full cost of the goods, including the cost of production and GS&A, which allows exporters to reduce the selling price of those goods to Canada. Therefore, the CBSA is satisfied that the exporter's ability to sell subject goods to Canada at prices substantially below their estimated full costs supports the complainant's allegations that subsidies are being conferred on the imported goods. On this basis, the CBSA estimated a weighted average amount of subsidy equal to 12.1% of the export price for the UAE.

Vietnam:

[129] For Vietnam, considering that cold-rolled steel represents a substantial proportion of the total cost of production of COR, and knowing that some producers, such as Hoa Sen Group, are integrated producers that are known to produce cold-rolled steel and corrosion-resistant steel, the CBSA applied the 6.5% Vietnam subsidy rate found in the CBSA's CRS Subsidy investigation for Vietnam<sup>48</sup> to the estimated average cost of the cold-rolled substrate in Vietnam using the complainant's estimated Section 19 methodology for Vietnam. This results in an estimated amount of benefit of approximately C\$ 52/MT. Dividing this estimated amount of benefit by the estimated weighted average export price for Vietnam provides an estimated amount of benefit of 4.7%, when expressed as a percentage of the export price. On this basis, the CBSA estimated that the amount of subsidy for Vietnam is 4.7%.

[130] The estimated amounts of subsidy, as a percentage of the export price, found for each of the named countries are summarized in the table below.

**Table 3**  
**CBSA's Estimated Amounts of Subsidy**  
(July 1, 2018 to June 30, 2019)

Country	Estimated Amount of Subsidy as a % of Export Price
Turkey	21.3%
UAE	12.1%
Vietnam	4.7%

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<sup>48</sup> CBSA, Certain Cold-rolled Steel, Statement of Reasons – Final Determination; November 15, 2018; page 40

## **EVIDENCE OF INJURY**

[131] The complainant alleged that the subject goods from the named countries have been dumped and subsidized, and that such dumping and subsidizing have caused material injury and is threatening to cause material injury to the domestic industry producing like goods in Canada.

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

[133] To support these allegations, the complainant has provided evidence of an increase in the volume of imports of the subject goods, loss of market share and sales, price depression, price undercutting, underutilization of production capacity, impacted financial results and threat to continuous investments.

### **Increase in Volume of Imports<sup>49</sup>**

[134] As noted in the “Canadian Market” section of this *Statement of Reasons*, detailed information regarding the volume and value of imports of COR and domestic production cannot be divulged for confidentiality reasons.

[135] The confidential information estimated by the CBSA demonstrates that total volume of imports of COR from the named countries collectively increased by 1,319% from 2016 to 2018 and by 1,497% in the first half of 2019 when compared to the same period a year earlier. There has been a significant increase in the volume of imports of subject goods from the named countries in Q4 2018 following the CBSA’s positive preliminary findings on corrosion-resistant steel sheet against China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), India and Korea (COR1) and the imposition of provisional duties in October 2018.

### **Loss of Market Share<sup>50</sup>**

[136] The import volumes provided by the complainant showed an increase of subject goods since 2016 in both absolute and relative terms. Based on volume, evidence provided by the complainant indicated that its share of the apparent Canadian market has decreased since 2016. The complainant stated that the imposition of anti-dumping and countervailing duties in Q4 2018 resulted in a decrease of market share held by the COR1 countries. However, subject goods from the named countries quickly replaced the COR1 imports as the low-price leaders in the market and have captured and expanded the market share previously held by the COR1 countries.

[137] The CBSA’s estimates of import volumes are based on import data reported in its FIRM database. This information available to the CBSA does correspond with evidence provided by the complainant, but cannot be divulged due to confidentiality reasons.

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<sup>49</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 114-118

<sup>50</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 165-172

[138] The CBSA's data indicates a decrease in domestic sales between 2016 and 2018, despite an increase in the size of the Canadian market for COR of just under 2% over that period. In the first half of 2019, Canadian producers' sales continued to decline, with an additional decline compared to the same period a year earlier, despite a slight increase of 0.6% in the size of the Canadian market for COR. Similarly, between 2016 and 2018, the Canadian producers' share of the Canadian market for COR declined. This loss of market share may be attributable to imports of subject goods from the named countries as they collectively gained part of the market from 2016 to 2018 continuing into the first half of 2019.

[139] The CBSA finds the claim of lost market share to be reasonable and well supported and sufficiently linked to the allegedly dumped and subsidized goods.

### **Lost Sales<sup>51</sup> and Price Depression<sup>52</sup>**

[140] Due to the low prices offered by exporters of COR from the named countries, the complainant submitted that it suffered lost sales. The complainant submitted evidence of an account-specific sale that was lost to allegedly dumped and subsidized goods from Vietnam.

[141] Based on the information provided in the complaint, the CBSA finds that the claim of lost sales with respect to Vietnam is supported and sufficiently linked to the allegedly dumped and subsidized imports of the subject goods.

[142] The complaint alleges that imports of subject goods from the named countries have caused price depression in the Canadian market. This was achieved by following the low prices established by the COR1 countries in order to gain market acceptance, and then steadily increasing import volumes and market share at prices that substantially undercut Canadian producers.

[143] The complainant provided significant evidence of instances during the POI where the complainant was forced to lower prices in response to allegedly dumped and subsidized imports from Turkey and Vietnam.

[144] In addition to the examples provided by the complainant, the supporting domestic producer, Stelco, also provided evidence of instances showing that it has competed directly with low-priced imports from Turkey and Vietnam. The low-priced offers of subject goods from Turkey and Vietnam have resulted in lower selling prices for domestic producers and lost sales, which has caused them to realize lost revenue and has reduced their profitability.

[145] With respect to the UAE, neither the complainant nor the supporting domestic producer has provided specific examples of price depression.

[146] Based on the information provided in the complaint, the CBSA finds that the claim of price depression with respect to Turkey and Vietnam is supported and sufficiently linked to the allegedly dumped and subsidized imports of the subject goods.

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<sup>51</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 138-150

<sup>52</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 119-137

## Price Undercutting<sup>53</sup>

[147] The complainant states that the allegedly dumped and subsidized goods have captured market share at the expense of the domestic industry by undercutting the prices of the domestic producers. To support this allegation the complainant has provided specific examples of lost revenue due to price reduction and offers of subject goods at prices well below that of the complainant.

[148] Further, based on the import data provided by the complainant, it is evident that import pricing of subject goods from the named countries has consistently been below the complainant's pricing between 2018 and first-half of 2019. This trend is similar between the subject goods and goods imported from all other countries. The complainant states that the three named countries have leveraged the low pricing established by the COR1 countries, and entered the Canadian market in increasing volumes and falling prices in the absence of competition from the COR1 countries following the imposition of provisional duties against COR1 countries in Q4 2018.

[149] With respect to imports of subject goods from the UAE, the complainant states the average import price from the UAE and the complainant's average price is not an appropriate comparison. This is because the complainant's price includes a broad mix of COR products whereas the average import price from the UAE is believed to be largely composed of the light-gauge COR which costs more to produce and are sold at higher prices.<sup>54</sup>

[150] The CBSA has verified the complainant's allegation that subject imports from the UAE are mostly light-gauge COR by reviewing CBSA's FIRM database. Additionally, the CBSA estimated the complainant's price of light-gauge COR by using the pricing information provided in the complaint. The estimated price of the complainant's light-gauge COR was higher than the average price of the complainant's broad mix of COR.

[151] The CBSA is of the opinion that using the complainant's pricing information of the material used in the production of light-gauge COR to estimate the price difference as reasonable as the material used is at the lower end of the price spectrum for light-gauge material according to the complainant.

[152] Using the methodology above, the average import price from the UAE has consistently been undercutting the complainant's average price of light-gauge COR, between 2016 and the first-half of 2019, as well as during the POI.

[153] As a result of these significant price differences, particularly during the POI, the complainant states that it has been forced to discount prices to compete with the low priced COR, which led to a significant amount of lost revenue.

[154] Further, the complaint contains evidence, particularly account-specific examples from the complainant and Stelco, of price undercutting by subject goods. It also contains documented instances where prices were suppressed or where the complainant was forced to lower prices in response to allegedly dumped and subsidized imports.

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<sup>53</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 151-164

<sup>54</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 135-137

[155] The average unit prices of subject goods estimated by the CBSA reveal a trend similar to that described by the complainant. Specifically, from 2018 to the first-half of 2019 and during the POI, the average prices of subject goods from the named countries have been less than the complainant's average selling prices. Based on the CBSA's estimate, the average prices of subject goods from the named countries have been between 4.8% and 22.6% lower, except for imports from Turkey in 2016, when the prices were slightly higher than the complainant's price.

[156] The CBSA notes that the analyses above used the complainant's average selling prices in calculating the price difference. The CBSA used financial information of both the complainant and the supporting domestic producer provided in the complaint to manually calculate the average selling prices of the domestic industry.

[157] The average unit price of the domestic industry reveals a similar trend to that described by the complainant. For example, the average selling prices of subject imports from Turkey have been consistently lower than the domestic industry's average selling prices since 2018. Specifically, the average selling prices of imports from Turkey during the POI have been lower than the domestic industry's average selling prices by 7.7%. During the POI, the average selling prices of subject imports from the UAE and Vietnam have been lower by 9.3% and 10.4%, respectively. They have been undercutting Canadian prices by 4.0% and 22.0% on average since 2016. Based on CBSA's estimates, the volume of subject imports from Vietnam has been relatively low until Q1 2019 when it increased significantly by 1,637% over the same period in 2018. In absolute terms, the volume of subject imports from Vietnam in Q1 2018 was 2,418 MT and increased to 41,990 MT in Q1 2019.

[158] Based on the above and the CBSA's analysis of the information contained in the complaint, the CBSA finds the claim of price undercutting to be supported and sufficiently linked to the allegedly dumped and subsidized goods.

### **Underutilization of Production Capacity<sup>55</sup>**

[159] The complainant states that capacity utilization rates with respect to the production of COR have declined due to the presence of the dumped and subsidized goods. To support this allegation, the complainant provided domestic industry data outlining production capacity and production quantity for both the complainant and the supporting domestic producer for the period of 2016 through the first-half of 2019.

[160] Based on the information provided in the complaint, the CBSA finds that there is a reasonable link between the allegedly dumped and subsidized goods from the named countries and the complainant's underutilization of production capacity.

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<sup>55</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 182-184



## **Impacted Financial Results<sup>56</sup>**

[161] The complainant alleges that the injurious impact of the dumped and subsidized goods is demonstrated by the financial results of the complainant and the supporting domestic producer. To support this allegation the complainant has provided financial results for the complainant and the supporting domestic producer for 2016 through the first-half of 2019.

[162] Detailed information regarding the revenue and profitability cannot be divulged for confidentiality reasons. However, the CBSA has reviewed this information and found that there has been a trend to the impact of the financial results during the POI which supports the link to the allegedly dumped and subsidized goods and financial injury.

## **Threat to Continuous Investments<sup>57</sup>**

[163] The complainant claims that its ability to continue investing in their production facilities is at risk due to the continuation of unfairly traded imports from the named countries.

[164] The CBSA finds that the allegation, as described in the complaint, does not appear to be an indicator of injury, as no evidence was provided to suggest that the complainant has suffered injury in this regard. As such, the CBSA instead reviewed this information as a factor to be considered in assessing the threat of injury posed by subject goods from the named countries, as explained further below.

## **CBSA's Conclusion – Injury**

[165] Based on the evidence provided in the complaint, and supplementary data available to the CBSA through its own research and customs documentation, the CBSA is satisfied that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods from the named countries has caused injury. The injury factors specifically suffered by the domestic industry include increase in the volume of dumped and subsidized imports, loss of market share and revenue, price depression, price undercutting, underutilization of production capacity, and impacted financial results.

## **THREAT OF INJURY<sup>58</sup>**

[166] The complainant alleges that the dumped and subsidized goods from the named countries threaten to cause further material injury to the domestic producers of COR. The complainant argues that the threat posed by the allegedly dumped and subsidized goods is evident in a number of factors which are likely to have an impact in the next 12 to 24 months.

[167] The complainant provided the following information to support the allegation that the subject imports from the named countries threaten to cause further injury to the Canadian domestic industry.

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<sup>56</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 173-181

<sup>57</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 187

<sup>58</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 191-196

## **The Rate of Increase in the Volume of Subject Goods Imports<sup>59</sup>**

[168] The complainant alleges that there has been a trend of rising import volumes from the named countries, and a significant increase following the positive finding against COR1 countries. The complainant alleges that the low-prices and prices that undercut domestically produced like goods will continue the trend of rising import volumes from the named countries and that will have a financial impact on the domestic industry in the foreseeable future.

[169] In support of this allegation, the complainant provided import statistics from the named countries for a period of 2016 through the first-half of 2019.<sup>60</sup>

[170] The complainant submits that the volume of subject goods imports has increased significantly from 2016 to the first-half of 2019. As stated in the complaint, the volume of subject good imports has steadily risen from 6,233 MT in 2016; to 28,798 MT in 2017; to 90,302 MT in 2018, and 161,905 MT in the first half of 2019. The complaint submits that there has been a clear trend of rising import volumes into Canada from the named countries, which it characterized as a massive increase. It was submitted that such trend will continue and pose a threat of further injury.

[171] The CBSA's analysis of the import data provided in the complaint, which is based on the period of 2016 to the first-half of 2019, supports the allegation of an increase in the importation of the allegedly dumped and subsidized goods from the named countries. At the same time, imports from all other countries decreased. Further, the CBSA's analysis of the import data on a quarterly basis shows that the rate of increase in the volume of imports from the three named countries increased significantly in Q4 2018.

## **Overcapacity and Capacity Increases Globally and in the Named Countries<sup>61</sup>**

[172] The complainant submitted that there is a global excess capacity in the steel industry in general, including in the production of COR in the named countries. In support of this allegation, the complainant provided a number of industry reports and publications.<sup>62</sup>

[173] Using information from an steel industry publication (CRU), the complainant estimated the COR excess capacity in the named countries by using the data pertaining to hot-dipped galvanized and electrogalvanized steel. The complainant acknowledges that this data is not exclusive to COR but that it is the best information available and is directly related to COR production capacity as it includes production equipment capable of producing COR.

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<sup>59</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 197-202

<sup>60</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 198-201

<sup>61</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 203-216

<sup>62</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 212-215

[174] Based on the CBSA's analysis of the information provided in the complaint, the capacity and output data reveals that producers in Turkey and the UAE have significant excess capacity. With respect to Vietnam, its gross production is higher than its production capacity as per information from the industry publication. The complainant believes that the publication's current capacity data for Vietnam is outdated and not reflective of Vietnam's actual capacity given it suggests that capacity is lower than production. As such, the complaint excluded Vietnam's excess capacity figures from the named country total.

[175] While the CBSA recognizes the significant excess capacity of COR in Turkey and the UAE, the CBSA is not satisfied with the supporting evidence provided in the complaint with respect to this threat of injury factor in relation to Vietnam. However, the CBSA further notes that the combined excess capacity from Turkey and the UAE, in relation to the size of the Canadian market, even if only a small percentage of the excess was directed to Canada, would result in a significant increase of subject imports, and pose a significant threat to the domestic industry.

### **International and Domestic Market Conditions<sup>63</sup>**

[176] The complainant states that while there has recently been some improvements in the global steel market, it remains vulnerable. The complainant states that COR producers in the named countries will be encouraged to export products in the next 12-24 months as their domestic demand is decreasing while their production capacity is increasing. Further, the complainant pointed to conditions in the named countries such as the European Union and United States' trade measures<sup>64</sup> against Turkish COR and planned capacity increases in Vietnam and the UAE which may increase exports of subject goods to Canada. These allegations are supported by industry publications which forecast market demand and production.

[177] With respect to the COR market in Canada, the complainant noted that the gross consumption of galvanized sheet in Canada is forecasted to contract in 2019 and 2020. As such, the complainant states that, notwithstanding the recent improvements, the Canadian industry is still vulnerable given the market contraction as well as a decreased market share due to rising imports of subject goods.

[178] The CBSA's analysis of the information contained in the complaint revealed market conditions which the CBSA recognizes may lead COR producers in the named countries to target certain export markets, including Canada, which may cause further injury to the complainant and Canadian industry.

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<sup>63</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 217-259

<sup>64</sup> Further information available in the *Diversion* section

## **Pricing<sup>65</sup>**

[179] The complainant alleges that aggressive pricing on subject imports from the named countries has had a depressing effect on the price of like goods in the Canadian market. Furthermore, as a result of the higher price of COR in North America and the lower price in other markets, Canada becomes an attractive market for subject goods, which provides the named countries an opportunity to export dumped and subsidized goods but still acquire a better price than what is available in other major markets.

[180] Based on an analysis of the information provided in the complaint, the CBSA recognizes that the high volume of imports from the named countries at allegedly dumped and subsidized prices may have a further depressive effect on the price of like goods causing further injury to the complainant.

## **Diversion<sup>66</sup>**

[181] The complainant states that there are a number of foreign trade remedy actions in place that are likely to lead to diversion of subject goods into the Canadian market. Specifically, the complainant has pointed to the US Section 232 measures in the United States, and the corresponding impact on the Canadian Market. The CBSA notes that the United States recent increase of the US Section 232 measures on Turkish steel imports from 25% to 50%, announced on October 14, 2019, may result in further diversion of Turkish COR from the United States to Canada.

[182] The complainant also pointed to other conditions as causes for the potential diversion of subject goods into Canada, such as a number of trade remedies imposed by other countries, anti-circumvention investigations against Vietnam and China in the US, and the implementation of safeguard measures by the European Union.

[183] The complainant states that these market restrictions will encourage the named countries to focus on Canada as a prime target for low-priced COR given the relatively higher North American price for COR. The complainant further states that the European Union safeguard and United States Section 232 measures will increase COR imports from non-named countries which may intensify competition in the domestic industry and thus result in even greater injury on the domestic producers.

[184] The CBSA acknowledges the presence of trade remedy actions in the United States, the European Union, and other countries, which may further increase the volume of exports to Canada from the named countries. Furthermore, the CBSA recognizes that these trade remedy actions may have a significant adverse impact on the Canadian market for COR.

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<sup>65</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 260-268

<sup>66</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 269-290

## **Product Shifting<sup>67</sup>**

[185] The complainant states that part of product shifting is diverting an input used to produce one good covered by a trade remedy to another good not covered by a trade remedy. CRS and sometimes HRS, are input for COR. HRS is a stand-alone good, but also the primary input for other steel goods such as piping and tubular goods, and CRS. HRS may also be manufactured using the same equipment used to produce steel plate.

[186] The complainant further argues that the imposition of trade remedies on either HRS, other downstream HRS products as well as CRS will likely encourage exports of goods not subject to a trade remedy and cited a number of such trade remedies. The trade remedies against steel products used as COR input from the named countries demonstrate the propensity to dump by each country and that they have a narrowing list of products and export markets for goods related to COR production.

[187] The CBSA notes that product shifting as a result of the restrictions described above could increase production capacity of the named countries with respect to COR. The CBSA further recognizes that this, in turn, could lead to increased volumes of subject goods being exported to the Canadian market.

## **Investment<sup>68</sup>**

[188] The complainant stated its plan to invest in the COR production facilities. The complainant further states that despite the positive finding from the COR1 case in early 2019, this investment remains at risk of not happening if a trade remedy is not imposed given the continuation of low-priced imports of COR from the named countries.

[189] The CBSA recognizes that the continuation of imports of subject goods may pose a risk to the complainant's planned investment.

## **CBSA's Conclusion –Threat of Injury**

[190] The CBSA is of the view that the evidence discloses a reasonable indication that imports of allegedly dumped and subsidized goods from Turkey, the UAE and Vietnam are posing a threat of injury to the COR industry in Canada.

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<sup>67</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 291-294

<sup>68</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 295

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

[191] The CBSA finds that the complainant has sufficiently linked the injury suffered by the domestic industry, in the form of lost market share and sales, price depression, price undercutting, and underutilization of production capacity, to the alleged dumping and subsidizing of the subject goods imported into Canada from the named countries. The CBSA is satisfied that the injury suffered by the domestic industry is directly related to the price advantage produced by the alleged dumping and subsidizing of subject goods from the named countries. Sufficient evidence has been provided to establish this link in the form of lost revenue, price undercutting and price depression.

[192] The complainant submitted that the continued dumping and subsidizing of goods from the named countries threatens to cause further injury to the Canadian domestic industry. As discussed above, the CBSA is of the opinion that this allegation of threat of injury is reasonably supported.

[193] In summary, the CBSA is of the opinion that the information provided in the complaint has disclosed a reasonable indication that the alleged dumping and subsidizing has caused injury and is threatening to cause injury to the Canadian domestic industry.

## **CONCLUSION**

[194] Based on the CBSA's analysis of information provided in the complaint, together with supplementary data available to the CBSA through its own research and customs documentation, the CBSA is of the opinion that there is evidence that COR originating in or exported from Turkey, the UAE and Vietnam, have been dumped and subsidized. Further, there is a reasonable indication that such dumping and subsidizing has caused or is threatening to cause injury to the Canadian industry. As a result, pursuant to subsection 31(1) of SIMA, dumping and subsidy investigations were initiated on November 8, 2019.

## **SCOPE OF THE INVESTIGATION**

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

[196] The CBSA has requested information from all potential exporters and importers to determine whether or not subject goods imported into Canada during the POI of July 1, 2018 to June 30, 2019, were dumped. The information requested will be used to determine the normal values, export prices and margins of dumping, if any. The CBSA also requested information from the GOT with respect to the possibility of a particular market situation.

[197] The CBSA requested information from producers and exporters of COR in Vietnam, as well as the GOV, to determine whether the conditions of section 20 exist in the sector under investigation. The CBSA has also requested costing and sales information from producers of COR in South Korea and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei). Where sufficiently available, this information may be used to determine normal values of the goods in the event that the CBSA forms an opinion that the evidence in this investigation demonstrates that section 20 conditions exist in the flat-rolled steel sector, which includes COR, in Vietnam.

[198] The CBSA has also requested information from the GOT, GOU, GOV and all potential producers/exporters to determine whether or not subject goods imported into Canada during the POI of July 1, 2018 to June 30, 2019, were subsidized. The information requested will be used to determine the amounts of subsidy, if any.

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

### **FUTURE ACTION**

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

[201] If the CITT finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the CBSA's preliminary investigations reveal that the goods have been dumped and/or subsidized, the CBSA will make preliminary determinations of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by February 6, 2020. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[202] Under section 35 of SIMA, if, at any time before making preliminary determinations, the CBSA is satisfied that the volume of goods of a country is negligible, the investigation(s) will be terminated with respect to goods of that country.

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

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

[205] After the preliminary determinations, if, in respect of goods of a particular exporter, the CBSA's investigations reveal that imports of the subject goods from that exporter have not been dumped or subsidized, or that the margin of dumping or amount of subsidy is insignificant, the investigation(s) will be terminated in respect of those goods.

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

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

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

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

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

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

### **UNDERTAKINGS**

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



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

[213] An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped or subsidized goods. Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone number, mailing address and e-mail address to one of the officers identified in the “Information” section of this document.

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

## **PUBLICATION**

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

## **INFORMATION**

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

[217] To be given consideration in this investigation, all information should be received by the CBSA by March 17, 2020.

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

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

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

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

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

**Telephone:** Denis Chénier 613-954-0032  
Lindsay Kyne 613-960-3099

**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)

Doug Band  
Director General  
Trade and Anti-dumping Programs Directorate

#### ATTACHMENT

- Appendix 1- Description of Identified Programs and Incentives

## **APPENDIX 1 – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES**

Evidence provided by the complainant and obtained by the Canada Border Services Agency suggests that the Governments of Turkey, the United Arab Emirates and Vietnam may have provided support to exporters/producers of subject goods in the following manner.

### **Turkey**

#### **Summary of the Turkish Subsidies to be Investigated**

##### **CATEGORY 1: EXPORT FINANCING / PREFERENTIAL LOANS (EXIMBANK PROGRAMS)<sup>69</sup>**

The complainant alleged that the Export Credit Bank Inc. of Turkey (Eximbank), Turkey's official export credit agency, provides credit and insurance-type programs, some of which have been found to be countervailable by the CBSA and by the United States Department of Commerce (US DOC). It is argued that the credits and facilities granted under the Eximbank program are on more favourable terms than the market offers. A report provided in the complaint suggests that the bank provides favorable credit rates to exporters with at least a 20% to 30% margin.<sup>70</sup> The report also alleges that Canada is currently considered a “new market country” by the Eximbank, which is eligible for the specific favourable rates.<sup>71</sup>

The complainant provided information suggesting that the Eximbank, which is under the authority of the Ministry of Trade, is a public body. Turkey's WTO Notification<sup>72</sup> also describes the Eximbank as a “...wholly state-owned bank, acting as the government's major export incentive instrument in Turkey's sustainable export strategy ...” which “...maintains close co-operation with the related entities of the government.” The CBSA preliminarily agrees that the Eximbank is a public body.

According to the GOT's WTO Notification, the Eximbank provided a total export financing support of US\$ 33 billion in terms of financing support and pure cover, which accounted for over 23% of Turkey's exports in 2016.<sup>73</sup>

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<sup>69</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 423-438

<sup>70</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; footnote 104 on page 82

<sup>71</sup> Ibid., page 82

<sup>72</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 6

<sup>73</sup> Ibid., page 7

The complainant provided information on the following Eximbank programs, which it understands are the most utilized:

- i. Rediscount Credit Program
- ii. Investment Credit for Export and Export-Oriented Working Capital Credit
- iii. Pre-shipment Export Credit Program
- iv. Post-shipment Rediscount Program
- v. Export Credit Insurance Program
- vi. Specific Export Credit Program

The complainant also provided documents describing the Eximbank programs, including Turkey's WTO notification,<sup>74</sup> as well as a report on the Turkish flat steel industry and government subsidies.<sup>75</sup>

### **Program 1: Eximbank – Rediscount Credit Program**

The rediscount program provides pre-shipping financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters. These loans are contingent upon an export commitment, and are allegedly made on preferential terms.

A report estimates that all major flat steel producer-exporters have received financial benefits under this program.<sup>76</sup> The complainant also argues that the US DOC has countervailed this program in Welded Line Pipe.

The program is reportedly administered mainly by the Eximbank, by commercial banks approved by the CBRT, and by the CBRT (funding). The program is reportedly governed by the "*Eximbank's Implementation Principles for Rediscount Programme*" as well as the Eximbank's *Law, Principles and Articles of Associations*.<sup>77</sup>

Turkey's WTO Notification lists this program as a short-term export credit program where credits are provided using the sources of the Central Bank of Turkey.<sup>78</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

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<sup>74</sup> Ibid.

<sup>75</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47

<sup>76</sup> Ibid., page 84

<sup>77</sup> Ibid., page 83

<sup>78</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 8

**Program 2: Eximbank – Pre-shipment Export Credits (PSEC) including:**

- Pre-shipment Turkish Lira Export Credits (PSEC –TL)
- Pre-shipment Foreign-Currency Export Credits (PSEC-FX)
- Priority Development Areas Export Credits

According to the complainant, this program provides short-term export credit to manufacturers, for the purposes of supporting exporters and manufacturers, and to “develop their export trades...to find new markets for the export of goods...”.<sup>79</sup> This program reportedly covers both “Pre-shipment Turkish Lira Export Credits (PSEC-ZTL)” and “Pre-shipment Foreign Currency Export Credits (PSEC-FX)”.<sup>80</sup> According to Turkey’s WTO Notification, 79% of the total credits were provided in foreign currency in 2016.<sup>81</sup> Per the WTO Notification, short-term export credit is provided in the early states of production in all sectors.<sup>82</sup>

The program is reportedly administered by the Eximbank and implemented through selected commercial banks as intermediaries.<sup>83</sup> The program is regulated in the Eximbank’s *Law, Principle and Articles Association*.

Turkey’s WTO Notification list this program as a short-term export credit program where credits are extended via commercial banks.<sup>84</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

**Program 3: Eximbank – Post-shipment Rediscount Credits**

This export contingent program allegedly provides loans against export receivables. The program is reportedly administered by the Eximbank and made available through the Eximbank’s *Law, Principle and Articles Association*.<sup>85</sup>

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<sup>79</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 435

<sup>80</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 85

<sup>81</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 9

<sup>82</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 9

<sup>83</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; pp. 85-86

<sup>84</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 8

<sup>85</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 86

In addition to having preferential rates overall, the program reportedly provides loans at even more discounted rates for exports to new market countries including Canada. For example, while the current cost of the credit for 0-360 days is Libor/Eurobor + 1.5, the posted rate is Libor/Eurobor + 0.75 for exports to Canada.<sup>86</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

**Program 4: Eximbank – Pre-export Credits**

The Pre-export Credit Program is a short-term credit facility provided to export-oriented manufacturers, manufacturers-exporters and exporters in the preparatory phase of exports. It aims to increase the competitiveness of exporters in international markets and support export projects in the preparatory stage. The credits has Turkish lira and foreign currency options. Turkey's WTO Notification list this program as a short-term export credit program where credits are extended directly by Eximbank.<sup>87</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

**Program 5: Eximbank – Export-Oriented Working Capital Credit**

According to the complainant and as detailed in the provided report, the Export Oriented Working Capital Credit Program provides Turkish manufacturers of export products with preferential financing, with a three-year term, for raw materials, intermediate products, final products and final product purchasing transactions. The credit is provided to companies that intend to develop their export operations. Loans under this program are contingent on export.

The program is administered by the Eximbank and governed by Eximbank's *Law, Principle and Articles Association* and the *Implementation Principle for Export-Oriented Working Capital Credit Programme*.<sup>88</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

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<sup>86</sup> Ibid.

<sup>87</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 10

<sup>88</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 85

## **Program 6: Eximbank –Investment Credit for Export**

According to the complainant and as detailed in the provided report, the Investment Credit for Export provides preferential loans, with a five year term, to finance machinery, equipment and other capital for exporters. The credit is provided to companies that intend to develop their export operations. Loans under this program are contingent on export.

The program is administered by the Eximbank and governed by Eximbank's *Law, Principle and Articles Association* and the *Implementation Principle for Export-Oriented Working Capital Credit Programme*.<sup>89</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

## **Program 7: Eximbank – Specific Export Credit**

The Specific Export Credit Program is reportedly a financing program for manufacturers of export products and exporters which are approved by the Eximbank but cannot be financed under other credit programs of the Bank.<sup>90</sup> The program is reportedly administered by the Eximbank and made available through the Eximbank's *Law, Principle and Articles Association*.<sup>91</sup> The scope of the program is reportedly to support exporters for their financing needs arising from longer term production periods or sales conditions of export products in specific export projects, such as new product exports to new markets.

Turkey's WTO Notification describes the program as a "...short and medium-term pre-shipment financing facility provided to manufacturers-exporters and oversea contractors for projects that generate foreign currency. It aims to meet the specific requirements of Turkish manufacturers/exporters through medium-term financing and thus encourage the export of new products to new markets."<sup>92</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

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<sup>89</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 85

<sup>90</sup> Ibid., page 87

<sup>91</sup> Ibid., page 87

<sup>92</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 11

**Program 8: Eximbank – Export Credit Insurance**

**Including:**

- **Short-term Export Credit Insurance**
- **Post-shipment Export Credit Insurance**
- **Pre-shipment Export Credit Insurance**

The Export Credit Insurance Program provides insurance for commercial and political risks arising from cross-border sales. The program includes three sub-programs: the Short-Term Export Credit Insurance, the Post-Shipment Export Credit Insurance and the Pre-Shipment Export Credit Insurance. The program is governed by the *Implementation Principles for Short Term Export Credit Insurance* by the Eximbank.<sup>93</sup> The complainant claims that a financial benefit may arise if the insurance costs less than the insurance available at market rates.

The potential benefit under this program is equal to the difference between the cost of insurance in the open market and the preferential terms provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

**Program 9: Eximbank – Ad-hoc Foreign Exchange Scheme for Rediscount Export Credit by the Central Bank of Turkey**

In addition to benefiting from preferential terms under the Rediscount Credit Program (i.e. Program 1 above), financial benefits may also have been received by way of the application, by the Central Bank of Turkey (CBRT), of a fixed or retrospective foreign exchange rate under the program so as to reduce the exporters' exposure to increasing foreign exchange rates in specified periods and certain rediscount export credits. It is suggested that “[s]ince the Turkish Lira experienced significant deterioration against the reserve currencies in 2017 and 2018, this policy move by the CBRT created substantial financial gains for the exporters”.<sup>94</sup> It is also reported that the fixed exchange rate of repayments was lower than the rates in the actual market.

The potential benefit under this program is equal to the difference in the cost of the credit that is attributable to the difference in the exchange rate applied in the actual market, and the preferential terms applied by the GOT. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

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<sup>93</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 87

<sup>94</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 432 and Public Attachment 47; page 84



## **Program 10: Credit Guarantee Fund (KGF) Scheme for Eximbank Programs**

This scheme is alleged to cover all credit programs provided by Eximbank. It is alleged that the Eximbank provides credit to the manufacturers of export products and exporters with Credit Guarantee Fund (KGF) guarantees, to ensure that they have easy access to the Bank's credit programs at more favorable rates. Under the program, the Turkish Treasury acts as the collateral guarantor.<sup>95</sup>

The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the Eximbank. The program appears to be specific as it is contingent on export and therefore considered a prohibited subsidy.

## **CATEGORY 2: REGIONAL-BASED; ORGANIZED INDUSTRIAL ZONE (OIZ) AND FREE ZONE PROGRAMS**

The complainant alleges that two of the various types of special investment zones in Turkey apply to producers of subject goods and that countervailable subsidies are available to them as a result. These zones are the Organized Industrial Zone (OIZ), and Free Zone Programs (FZs).<sup>96</sup> It is alleged that these areas are region specific and that the operators in these areas are entitled to access to differential treatment, which can take the form of preferential tax applications, additional employment benefits, duty exemptions, land allocation, high-quality infrastructure, low-cost access to utilities, environmental waivers, preferential access to loans, etc. It is also alleged that Turkey's flat steel industry mostly operates under OIZs.<sup>97</sup>

The OIZs are allegedly regulated by the Organized Industrial Zones Law 4562, and related to the Ministry of Science, Industry and Technology – DG of Industrial Zones.

The following producers are believed to be operating mainly in an OIZ<sup>98</sup>:

- Tosçelik (Osmaniye OIZ)
- Tosalı Toyo (Osmaniye OIZ)
- Çolakoglu (Dilovasi OIZ)
- MMK Metalurji (Makina OIZ)
- MMK Atakas (Istanbul Beylikduzu OIZ)
- Tat Metal (Zonguldak Ereğli OIZ)
- Demirsac AS (Kocaeli Gebze OIZ)
- Tezcan Galvaniz AS ((Kocaeli Gebze OIZ)

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<sup>95</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 88

<sup>96</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 456-460

<sup>97</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; pp. 65-66

<sup>98</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 459

Free Zones are special sites deemed outside the customs area, although physically located within the political borders of the country. These zones are designed to boost the number of export-focused investments. Legal and administrative regulations in the commercial, financial and economic domains that are applicable within the customs area are either not implemented or partially implemented in FZs.<sup>99</sup>

The following producers were listed by the complainant as operating in Free Zones:

- Demirsac AS (Tubitak Mam Technological Free Zone)
- MMK Atakas (Istanbul Leather and Industry Free Zone)
- Tosyali Toyo (Adana Yumurtalik Free Zone)
- Borcelik Celik (Bursa Free Zone)

**Program 11: OIZ: Provision of energy (e.g. natural gas, electricity) or utilities (e.g. water) at less than fair market value / at preferential rates**

The complainant alleges that companies located in OIZs save 0.5% on the cost of natural gas for uses other than electricity generation. The complainant also added that in Rebar, the CBSA determined that this program was a countervailable subsidy. A report provided the July 2019 Natural Gas tariff rates inside and outside OIZs, as published by BOTAS, the government entity providing natural gas to the Turkish market.<sup>100</sup> The rates support the complainant's allegation.

The complainant also alleged that producers in IOZ may receive a 10%-20% discount on electricity. The legal basis for the alleged preferential rates is the Article 13 of Electricity Market Law No. 6446.<sup>101</sup> According to the provided report, there is no explicit advantage published for OIZs. The main source of the lower rate would be due to the cost advantage of the transmission ownership, as the transmission network of electricity within the OIZ is wholly owned and maintained by the OIZ, with lower costs than the transmission outside OIZs.<sup>102</sup>

The complainant also alleged that the GOT listed low water cost as an advantage of operating in a OIZ.

The alleged benefit for the provision of energy or utilities at less than fair market value is equal to the difference between fair market value and the preferential rate.

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<sup>99</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 139, Investment Zones – Invest in Turkey; Presidency of the Republic of Turkey Investment Office

<sup>100</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 66

<sup>101</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 453

<sup>102</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 66

**Program 12: OIZ: VAT Exemption or Reduction on Land Acquisition**

A GOT's investment guide published on the internet lists the exemption of VAT on land acquisition as an advantage of operating in an OIZ.<sup>103</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**Program 13: OIZ: Real Estate Duty Exemption or reduction**

A GOT's investment guide published on the internet lists the exemption of real estate duty for five years starting from the date of completion of the plant construction, as an advantage of operating in an OIZ.<sup>104</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**Program 14: OIZ: Municipal Tax Exemption or Reduction (e.g. for construction and usage of the plant, on solid waste, etc.)**

A GOT's investment guide published on the internet lists the exemption of municipal tax on the construction and usage of the plant, as well as on solid waste, as advantages of operating in an OIZ.<sup>105</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**Program 15: OIZ – Exemption from Amalgamation and Allotment Transaction Charges**

A GOT's investment guide published on the internet lists the exemption from amalgamation and allotment transaction charges as an advantage of operating in an OIZ.<sup>106</sup> This program is considered to be 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 amounts of the reductions and exemptions.

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<sup>103</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 139, Investment Zones – Invest in Turkey; Presidency of the Republic of Turkey Investment Office

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

**Program 16 : OIZ – Additional Support Granted Under the Investment Incentives Program**

It is reported that companies in OIZs are eligible for additional support under the Investment Incentive Program (see Program 27). It is alleged that under the program, differing rates of incentives are provided to six regions defined in the program. The OIZ are allegedly subject to regional incentives one level higher than the region they are located in. This upgraded level is valid for Regional and Large-Scale Investment Incentives Schemes and for the tax reductions and social security premiums.<sup>107</sup>

A GOT's investment guide published on the internet also lists the availability of the investment incentive scheme as an advantage of operating in an OIZ.<sup>108</sup>

**Program 17: Free Zones Law – Corporate income tax exemption or reductions**

A GOT's investment guide published on the internet lists the exemption of corporate income tax for manufacturing companies as an advantage of operating in FZs.<sup>109</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**Program 18: Free Zones Law – Stamp duties and fees exemptions or reductions**

A GOT's investment guide published on the internet lists the exemption of stamp duties on applicable documents as an advantage of operating in FZs.<sup>110</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**Program 19: Free Zones Law – Customs duties exemptions or reductions**

A GOT's investment guide published on the internet lists the exemption from customs duties and other assorted duties as an advantage of operating in FZs.<sup>111</sup> The exemption from customs duties may be countervailable if they are considered excessive, for example, if inputs used in the production of domestically sold goods were exempt from duty. This program is considered to be 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 amounts of the reductions and exemptions.

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<sup>107</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 66

<sup>108</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 139, Investment Zones – Invest in Turkey; Presidency of the Republic of Turkey Investment Office

<sup>109</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 139, Investment Zones – Invest in Turkey; Presidency of the Republic of Turkey Investment Office

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

**Program 20: Free Zones Law – VAT and special consumption tax exemptions or reductions**

A GOT's investment guide published on the internet lists the exemption of VAT and special consumption tax as an advantage of operating in FZs.<sup>112</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**Program 21: Free Zones Law – Real Estate Tax Exemptions or reductions**

A GOT's investment guide published on the internet lists the exemption of real estate tax as an advantage of operating in FZs.<sup>113</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**Program 22: Free Zones Law – Income Tax on Employee's Salary Exemptions or Reductions**

A GOT's investment guide published on the internet lists the exemption of income tax on employee's wages for companies that export at least 85% of the FOB value of the goods they produce in FZs, as an advantage of operating in FZs.<sup>114</sup> This program is considered to be 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 amounts of the reductions and exemptions.

**CATEGORY 3: PREFERENTIAL TAX POLICIES / TARIFFS AND VAT EXEMPTIONS**

**Program 23: Inward Processing Regime – Excessive tax exemptions and drawback (Import Duty Rebates/Drawback Under Inward Processing Regime; Tariff and VAT Exemptions Under Inward Processing Certificate Program)**

This program allegedly allows Turkish manufacturers to apply for an Inward Processing Certificate (IPC), which permits the acquisition of raw materials and intermediate unfinished products used in the production of exported products without paying customs duty and VAT, and exemption from trade remedy measures in force.<sup>115</sup> This is in essence a duty drawback program.

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 67

There are reportedly two types of IPCs under the program; the D-1 certificate and the D-3 certificate. The D-1 certificate provides drawback on imported material. The D-3, on the other hand, provides an exemption for customs duties on inputs sold into the domestic market under certain conditions. While there may not be a commitment required for a D-3 certificate, it is reported that the application for the D-3 certificate required the reporting of export activities and that the Ministry of Trade considers export levels to be a decisive factor. Thus, the complainant argues that the D-3 certificate is de facto contingent on export performance. This program is considered to be 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 amounts of the reductions and exemptions.

**Program 24: Deduction from Taxable Income for Export Revenue**

Under this program, all taxpayers engaged in export activities are eligible for an additional deduction of a lump sum amount from their gross income resulting from exports and other activities abroad. The deduction shall not exceed 0.5% of the proceeds they earned in foreign exchange from such activities.

The program was reportedly established under Addendum 4108 of Article 40 of the Income Tax Law No. 193. The program is managed by the Ministry of Treasury and Finance.

The program was determined to be countervailable by the CBSA in *Rebar* and in *Dry Wheat Pasta* as well as by the US DOC in *Line Pipe*.

This program is considered to be 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 amounts of the reductions and exemptions.

**Program 25: Exemption from Banking and Insurance Transactions Tax (BITT) on Foreign Exchange Transactions**

Effective from June 17, 2019, foreign exchange sales to the exporters registered to the Turkish Exporters Association are exempt from the Banking and Insurance Transactions Tax (BITT), which would otherwise be payable at 0.1% of total value of foreign exchange sales.<sup>116</sup>

The exemption is provided by the President Resolution No. 1149 of June 16, 2019 and Article 33 of the Expenditure Law No. 6802.<sup>117</sup>

This program is considered to be 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 amounts of the reductions and exemptions.

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<sup>116</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 63

<sup>117</sup> Ibid. page 64

## **Program 26: Exemption from Property Tax**

Under this program, landlord entities of a property located in certain areas (industrial zones, technology development zones and industrial sites) are eligible to receive a permanent exemption from property tax on buildings, which would otherwise be payable at 0.2% of the value of the building in non-residential areas.<sup>118</sup>

The exemption is provided under sub-paragraph (m) of Article 4 (“Permanent exemptions) of Property Tax Law No. 1319, as amended on July 1, 2017. The program is managed by the Ministry of Treasury and Finance.

This program is considered to be 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 amounts of the reductions and exemptions.

## **Program 27: Investment Incentive Program**

The Investment Incentive Program (IIP) is intended to encourage investment to boost production and employment, to encourage regional, large scale and strategic investments with high R&D content for increased international competitiveness, to increase FDIs, to reduce regional development disparities and to promote investments for clustering, R&D and environment protection for the production and export-oriented growth strategy.<sup>119</sup>

The program is divided into four different incentive schemes and nine different incentive measures<sup>120</sup>:

- i) General Investment Incentives Scheme
  - i. Customs duty exemption
  - ii. VAT exemption
  - iii. Income tax withholding support (Region 6 only)
- ii) Regional Investment Incentives Schemes
  - i. Customs duty exemption
  - ii. VAT exemption
  - iii. Tax deductions
  - iv. Social security premium support (employer’s share)
  - v. Interest support
  - vi. Land allocation
  - vii. Social security premium support (employee’s share) (Region 6 only)
  - viii. Income tax withholding support (Region 6 only)
- iii) Large-Scale Investment Incentives Scheme
  - i. Customs duty exemption
  - ii. VAT exemption
  - iii. Tax deduction

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<sup>118</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC),, Public Attachment 47; page 67

<sup>119</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 1; and Public Attachment 47; page 71

<sup>120</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, pages 1-2

- iv. Social security premium support (employer's share)
- v. Land allocation
- vi. Social security premium support (employee's share) (Region 6 only)
- vii. Income tax withholding support (Region 6 only)
- iv) Strategic Investment Incentive Schemes
  - i. Customs duty exemption
  - ii. VAT exemption
  - iii. Tax deductions
  - iv. Social security premium support (employer's share)
  - v. Interest support
  - vi. Land allocation
  - vii. VAT refund
  - viii. Social security premium support (employee's share) (Region 6 only)
  - ix. Income tax withholding support (Region 6 only)

The IIP is governed by Cabinet Decree No. 2012/3305 on "State Incentives in Investments", published on June 15, 2012, and the consequent amendments to this regulations.<sup>121</sup>

This program is considered to be 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 amounts of the reductions and exemptions.

**Program 28: Project-based Government Support for Investment Program (Super Investment Incentive Scheme)**

This program is alleged to cover the most comprehensive and generous government incentives in Turkey, aiming at attracting investments in high-tech and medium-tech industries (including iron and steel) that are highly dependent on imports and have great export potential.<sup>122</sup> Incentives under this program may include<sup>123</sup>:

- Customs duty exemption
- VAT exemption or refunds
- Corporate tax reductions or exemptions
- Social security premium support
- Income tax withholding support
- Qualified employee support
- Interest support / grant support
- Capital contribution
- Energy support
- Public procurement guarantee
- Land allocation
- Infrastructure support
- Issuance of exemptions for permits, allocations, licenses, etc.

<sup>121</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 132; G/SCM/N/315/TUR, dated August 31, 2017, page 1; and Public Attachment 47; page 71

<sup>122</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 76

<sup>123</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 78



The program is governed by Law No. 6745 on “Supporting Investments on Project Basis and Amending Certain Laws and Decrees Law”, and the Cabinet Decree No. 2016/9495 on “Granting Government Support for the Investment on Project Basis”. The program is said to be managed by the President of Turkey and executed by the Ministry of Science, Industry and Technology.

It is alleged that Tosyali, a steel producer involved in COR production as per the complainant, was announced as one of the main beneficiaries of the program, receiving about 5 billion USD with a greenfield investment project regarding establishing an integrated steel plant in Osmaniye.<sup>124</sup> These funds may not have been received yet.

#### **CATEGORY 4: EXPORT-ORIENTED DIRECT FUNDS**

##### **Program 29: TURQUALITY Brand Promotion Incentive Program**

According to the complainant, this export-dependent program consists of a grant program that supports Turkish brands in international markets. It is governed by Communiqué No. 2006/4 on “Overseas Branding of Turkish Products, Promotion of Turkish Product Image and Supporting Turquality”.<sup>125</sup> This program is a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and the program confers a benefit to the recipient equal to the amount of the grant.

##### **Program 30: Support to Offset Costs Related to Trade-Remedy Investigations**

According to the complainant, this program is operated by the Turkish Steel Exporters’ Association (TSEA), to provide financial support to its members in connection to trade remedy proceedings. Upon meeting eligibility criteria, companies can receive up to 50% of their legal fees expended in anti-dumping, countervailing and safeguard cases, up to a maximum of \$100,000 USD. Despite being a private legal entity, the complainant argues that the TSEA qualifies as a public body. In this regard, the complainant claims that steel exporters are obligated by law to become a member of the TSEA, and that the TSEA carries out government directives. This program is a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and the program confers a benefit to the recipient equal to the amount of the grant.

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<sup>124</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; pp 78-79

<sup>125</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 439-440

**Program 31: Export Freight Supports**

According to the complainant, there are two types of export freight support. The first is direct funding for freight costs based on export performance. This program is provided under Decree No. 2016/6 on “Provision of Freight Support for Exports Transactions”. This program is a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and the program confers a benefit to the recipient equal to the amount of the grant. The second is an exemption from the *Special Consumption Tax* and *Value Added Tax* imposed on diesel consumed in the transportation of export products. It is argued that these taxes together contribute to more than 50% of diesel prices in Turkey. This program is considered to be 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 amounts of the reductions and exemptions.

**CATEGORY 5: GOODS PROVIDED BY THE GOVERNMENT OF TURKEY AT LESS THAN ADEQUATE REMUNERATION**

**Program 32: Provision of Input (e.g. Hot-rolled Steel or Cold-rolled Steel, Coal) at Less than Adequate Remuneration**

The complainant alleges that the GOT may be providing substrate (hot-rolled steel or cold rolled steel) to Turkish COR producers through Erdemir and Isdemir for less than adequate remuneration. *Goods/Services provided by the GOT at Less Than Fair Market Value* are potentially actionable as financial contributions pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure. The potential benefit is equal to the difference between the price paid for the goods or services and the price that would be applicable in the open market. Erdemir is a major Turkish flat-rolled producer that produces COR and also substrate used by other COR producers.

The allegation is based on US DOC’s conclusions in *Large Diameter Welded Pipe and Circular Welded Carbon Steel Pipe and Tubes from Turkey*. The complainant alleged that in these investigations, the US DOC determined that Erdemir and Isdemir were public bodies because the GOT exercised meaningful control over each. In this regard, it is said that the controlling shareholder of these companies is the Turkish military pension fund OYAK, and that the GOT exercised significant control over OYAK. In this regard, the complainant argues that:

- i. Erdemir’s performance, policies and aims and goals, as reported in its annual report, specifically align with the GOT’s stated policy in its 2012-2014 Medium Term Programme to improve Turkey’s balance of payments;
- ii. The Turkish Privatization Administration had veto power over any decisions related to the closedown, sale, de merger, merger, or liquidation of both Erdemir and Isdemir.
- iii. The Turkish Privatization Administration had veto power over any decisions on reductions in capacity of Erdemir and Isdemir’s integrated steel production facilities and mining facilities; and
- iv. OYAK and the Turkish Privatization Administration both had members on Erdemir’s Board of Directors.

Further, the complainant also alleged that a Turkish government entity, Turkish Hard Coal Institution (TTK), provides Erdemir, and perhaps other producers, with subsidized coal.<sup>126</sup> The complainant alleged that TTK's 2018 Hard Coal Industry Report explicitly provides detailed information on pricing to Erdemir. In this regard, Erdemir's average purchase price of hard coal from TTK was allegedly USD 126/ton in 2018, as compared with the 2018 average international coking coal price of USD 200/ton. It is also alleged that TTK's average production cost was about USD 360/ton in 2018, while its average price was about USD 80/ton, with the Turkish treasury compensating the loss as TTK is a state economic entity. A report stated, for perspective, that coal represents 25% of Erdemir's cost of goods sold in the first quarter of 2019.<sup>127</sup>

It is noted that in *Certain Oil Country Tubular Goods* (OCTG), the complainant in that case also provided comments to the CBSA concerning the alleged provision of hot-rolled coil at less than fair market value by the GOT in respect of sales of hot-rolled sheet through steel producer Erdemir to producers of OCTG in Turkey. In response, the CBSA stated that "[a] review of the information available on the record and the results of verification with Erdemir, OYAK and the Government of Turkey indicate that Erdemir appears to operate and function according to commercial principles, consistent with the behaviour expected of a profit-driven steel company, responsible to its public shareholders. [...] The evidence does not disclose that OYAK is exercising any government function or directing Erdemir to operate in any manner inconsistent with normal commercial operations."<sup>128</sup> In addition, in that case, the CBSA concluded that the cooperative producer did not receive preferential prices through Erdemir/Isdemir.<sup>129</sup>

Subsequently, on December 18, 2018, in DS523 - *United States – Countervailing Measures on Certain Pipe and Tube Products from Turkey - Report of the Panel*, the WTO panel addressed the US DOC's determination with respect to the GOT's control of Erdemir and Isdemir. On this matter, the report noted:

"7.48. Based on our review above, we therefore find that the USDOC failed to establish based on evidence on the record that OYAK is under the meaningful control of the GOT, or that OYAK is part of the GOT in either the broad sense or the narrow sense. We are therefore not persuaded that OYAK's control over Erdemir and Isdemir justifies attributing the actions of those entities to the GOT."<sup>130</sup>

The complainant, however, argued that the Panel's finding in *Certain Pipe and Tube Products* was based on the US DOC's conclusions not being supported by adequate information on the record. The complainant argued that the subsequent US DOC determination in *Large Diameter Welded Pipe from Turkey* stands on its own as separate a proceeding.

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<sup>126</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 489

<sup>127</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 43

<sup>128</sup> CBSA, *Statement of Reasons – Preliminary determination, Certain Oil Country Tubular Goods*, December 18, 2014, page 61

<sup>129</sup> *Ibid.*

<sup>130</sup> WT/DS523/R - *United States – Countervailing Measures On Certain Pipe And Tube Products From Turkey – Report of the Panel*; December 18, 2018

In *Certain Carbon Steel Welded Pipe 3* (CSWP3), on the basis of the information on the record, the CBSA again stated that there was insufficient evidence to determine that Erdemir and Isdemir were state-owned or state-controlled enterprises. The CBSA noted that a public body within the meaning of Article 1.1.(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority. Further, based on the hot-rolled coil data on hand in the CSWP3 investigation, the CBSA found no evidence that Turkish producers were benefitting from production inputs or processing services that do not reflect market-based costs.<sup>131</sup> However, considering the evolving economic and political environments in Turkey, the CBSA finds that evidence provided by the complainant justifies re-examining this matter.

## **CATEGORY 6: R&D PROGRAMS**

### **Program 33: Incentives for R&D Operations and Investments**

According to the complainant, Turkey operates a number of R&D Operations and Investment Programs that support R&D activities by providing a range of tax and premium deductions, including:<sup>132</sup>

- i. R&D allowance that permit the deduction of R&D expense from income tax
- ii. Exemption of withhold tax from R&D employees
- iii. Social Security Insurance Premium Support, and
- iv. Stamp tax deductions.

The program is governed by Law No. 5746 on Supporting R&D and Design Activities.

This program is considered to be 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 reductions and exemptions. The complainant believes that the program is specific due to its discretionary nature.

### **Program 34: TUBITAK Industrial R&D Projects Grant**

The complainant alleges that industrial for-profit entities are eligible to receive a direct grant for R&D activities pursuant to Law No. 278 on Technology and Innovation Support Programme. The complainant stated that the program reportedly supports R&D projects with the goal of developing new or improved products, developing new production techniques to lower production costs or raise the quality of products, and developing new production technologies. The grants reportedly covers around 40-50% of the expenses of the approval R&D projects.<sup>133</sup>

This program is a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and the program confers a benefit to the recipient equal to the amount of the grant. The complainant believes that the program is specific due to its discretionary nature.

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<sup>131</sup> CBSA – *Statement of Reasons – Final Determination – Certain Carbon Steel Welded Pipe*, January 31, 2019, paragraph 117

<sup>132</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 484-486

<sup>133</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph. 487

## **CATEGORY 7: OTHERS**

### **Program 35: Social Security Premium Incentive (Employer's Share)**

According to the complainant, Law No. 6486, the Social Security Premium Incentive, provides eligible companies an exemption from paying the employer's share of long term social security insurance premiums. In Rebar, the CBSA determined that this program was not specific and therefore not countervailable. However, the complainant requests that the CBSA reconsiders this position. The complainant alleges that the program is specific because it accords benefits based on geographical location.<sup>134</sup> In this regard, a report provided in the complaint suggests that additional support is provided under the program if an employer is operating in specified provinces determined by the President.<sup>135</sup>

The program is governed by Article 81 of the Law No.5510 on Social Security and General Health Insurance and the Law No. 6486 on Social Security Premium Incentives.<sup>136</sup>

This program is considered to be 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 amounts of the reductions and exemptions.

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<sup>134</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 482-483;

<sup>135</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), Public Attachment 47; page 94.

<sup>136</sup> Ibid., page. 94 and its annex III.24

## United Arab Emirates

### Summary of the United Arab Emirates Subsidies to be Investigated

#### **Program 1: Import Duty and VAT Exemption in Free Trade Zone**

The complainant alleged that COR producers located in free-trade zones in the United Arab Emirates are exempt from paying a 5% import duty and 5% VAT on the importation of machinery, equipment and other capital used in their production of COR. The allegation is based on online publications by the United Arab Emirates government and by Deloitte. The complainant also alleged that at least two of the four known COR producers in the UAE are located in a Free-Trade Zone.<sup>137</sup>

The CBSA notes that with respect to the allegations of VAT exemption in the Free Trade Zone, information from the CBSA's research indicates that a 5% VAT only became applicable in the UAE starting in 2018 or 2019.<sup>138</sup> Thus, machinery and equipment imported prior to this period would not have benefited from an exemption, while machinery and equipment imported after that period are unlikely to have been used in the production of subject goods. The CBSA acknowledge that an exemption of the 5% customs duty for some exporters may have provided a countervailable subsidy to exporters of COR, if used to import equipment, machinery and other capital used in the production of COR, or input used in the production of goods sold domestically.

The complainant maintains that this relief provides a beneficial financial contribution in the form of revenue foregone by government and that the benefit is specific because it is only available to enterprise located in such free-trade zones.<sup>139</sup>

#### **Program 2: Preferential Export Financing or Export Credit Insurance**

Exporters of COR in the United Arab Emirates may have benefited from preferential export financing or export credit insurance from the GOU, in particular from the Etihad Credit Insurance (ECI). The ECI is a Public Joint Stock Company owned by the United Arab Emirates Federal Government and the Government of the Emirate of Abu Dhabi, the Government of the Emirate of Dubai, the Government of the Emirate of Ajman, the Government of the Emirate of Ras Al Khaimah and the Government of the Emirate of Fujairah.<sup>140</sup> Its website says it is a “specialized state institution to support the export and re-export of United Arab Emirates goods, works, services, and the foreign investments of United Arab Emirates companies, through the provision of a range of export credit, financing and investment insurance products.” Services offered also include “Post-shipment financing of exports through bills discounting with the commercial banks **at concessional interest rates**

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<sup>137</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 491-493

<sup>138</sup> Doing Business in the United Arab Emirates, Baker, McKenzie Habib Al Mulla, 2017, page 8

<sup>139</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraphs 491-493

<sup>140</sup> Exh 003, CBSA Supporting Documents, page 39

[emphasis added]; and Pre-shipment financing facilities for exporters through commercial banks against guarantees issued by ECI for working capital requirements, so as to meet and enhance the opportunity for their export sales”.

The subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) in the form of amounts that involve a direct transfer of funds, and the program confers a benefit equal to the difference between the interest payable on a commercial loan and the interest payable on the preferential loan provided by the government.

The provision of preferential loans is limited to export oriented enterprises, benefits under this program are a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

### **Program 3: Export Assistance Program**

The CBSA has also identified an “Export Assistance Program” offered by the Dubai Export Development Corporation (Dubai Exports), believed to be the export promotion agency of the government of Dubai.<sup>141</sup> Under the program, according to the agency’s website, “companies can apply for reimbursement on the eligible export promotion activities such as market visits and participation in exhibitions.” Its website also refer to the program as “...an invaluable means to access funding for their export operations.”

This program may constitute 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. Given that the grant appears limited to export oriented enterprises, benefits under this program are a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

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<sup>141</sup> Exh 003, CBSA Supporting Documents, page 36

## Vietnam

### Summary of the Vietnamese Subsidies to be Investigated

Due to the similarity of the programs, the following seven programs will be grouped into one program to be investigated: **Exemptions of Import Duty**

- Program 1:** Import duty exemptions for imported fixed assets of investment projects
- Program 2:** Import duty exemptions for raw materials, supplies and components that cannot be domestically manufactured and are imported to serve manufacturing activities of investment projects
- Program 3:** Import duty exemptions for goods manufactured, processed, recycled or assembled in a free trade zone without using imported raw materials or components
- Program 4:** Import duty exemption for goods imported for further processing and processed exports under processing contracts
- Program 5:** Import duty exemption on equipment and machinery imported to create fixed assets in designated geographic areas
- Program 6:** Import Duty Exemption Equipment and Machinery Imported to Create Fixed Assets
- Program 7:** Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets

The programs of import duty exemptions are made available pursuant to the *Law No. 107/2016/QH13*<sup>142</sup> dated April 6, 2016, on export and import duties (*Law No. 107*) and *Decree No. 134/2016/ND-CP*<sup>143</sup> dated September 1, 2016, on guidelines for the law on export and import duties (*Decree No. 134*). The complainant notes that *Law No. 107* replaced the *Law on Export and Import Tax No. 45/2005/QH11*<sup>144</sup> dated June 14, 2005, on detailing a number of articles of the law on export and import duties (*Law No. 45*). Decree 134 replaced *Decree No. 87/2010/ND-CP*<sup>145</sup> dated August 13, 2010, guiding the implementation of a number of articles of the Law on Export Tax and Import Tax (*Decree No. 87*).

Duty exemption is stipulated in Article 16 of *Law No. 107* and specified in Article 5 to 29 of *Decree No. 134*. These programs were provided by the GOV.

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<sup>142</sup> Exh 003, Law No 107-2016-QH13

<sup>143</sup> Exh 003, Decree 134-2016-ND-CP

<sup>144</sup> Exh 003, WTO 45-2005-QH11

<sup>145</sup> Exh 003, Decree No 87-2010-ND-CP



This program is considered to be 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 amounts of the reductions and exemptions.

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to either enterprises in certain geographic areas or investment projects specified in Appendix 1 and Appendix 2 of *Decree No. 118/2015/ND-CP*<sup>146</sup> dated November 12, 2015, guiding the implementation of a number of articles of the law on investment.

**Program 8: Refund of import duties on goods that are initially imported for business operation but eventually used for manufacture of goods that have been exported into a foreign country or a free trade zone are refunded**

The import duty refund program is made available pursuant to the *Law No. 107/2016/QH13* dated April 6, 2016, on export and import duties (*Law No. 107*) and *Decree No. 134/2016/ND-CP* dated September 1, 2016, on guidelines for the law on export and import duties (*Decree No. 134*). The complainant notes that *Law No. 107* replaced the *Law on Export and Import Tax No. 45/2005/QH11* dated June 14, 2005, on detailing a number of articles of the law on export and import duties (*Law No. 45*). *Decree 134* replaced *Decree No. 87/2010/ND-CP* dated August 13, 2010, guiding the implementation of a number of articles of the *Law on Export Tax and Import Tax (Decree No. 87)*. Duty refund is stipulated in Article 19 of *Law No. 107* and specified in Article 33 to 37 of *Decree No. 134*. These programs were provided by the GOV.

This program is considered to be 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 amounts of the refund.

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to enterprises located in certain geographic areas or contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

**Program 9: Incentives on Non-agricultural land use tax**

Based on CBSA research, non-agricultural land use tax is regulated by *Law No. 48/2010/QH12*<sup>147</sup> dated June 17, 2010, on non-agricultural land use tax (*Law No. 48*); *Decree 53/2011/ND-CP*<sup>148</sup> dated July 1, 2011, guiding the implementation of this *Law No. 48*; and *Circular No. 153/2011/TT-BTC*<sup>149</sup> dated November 11, 2011, guiding on non-agricultural land use tax (*Circular No. 153*). Articles 9 and 10 of *Law No. 48* provide for tax exemption and reduction for non-agricultural land use. This program was provided by the GOV.

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<sup>146</sup> Exh 003, Decree 118-2015-ND-CP

<sup>147</sup> Exh 003, Decree No 48-2010-gh12

<sup>148</sup> Exh 003, Decree No 53-2011-nd-cp

<sup>149</sup> Exh 003, Decree No 153-2011-tt-btc

Appendix 1 of *Decree No. 118/2015/ND-CP* dated November 12, 2015, guiding the implementation of the Law on Investment (*Decree No. 118*), defines domains eligible for investment promotion and domains eligible for special investment preferences. Appendix 2 of *Decree No. 118* defines areas with extreme socio-economic difficulties and areas with socio-economic difficulties eligible for investment preferences.

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 the program confers a benefit to the recipient equal to the amount of the reduction/exemption.

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to industries located in the regions prescribed.

Due to the similarity of the programs, the following five programs will be grouped into one program to be investigated: **Exemptions/Reductions of Land Rent, Tax and Levy**

**Program 10: Land rent reduction/exemption for exporters and land use fees or leases exemptions/reductions**

**Program 11: Land-use levy exemption/reduction**

**Program 12: Land-rent exemption/reduction**

**Program 13: Land use tax exemptions/reductions**

**Program 14: Preferences related to land use tax, land use levy, land rent and water surface rent**

Land used for production and business purposes is governed by *Law No. 45/2013/QH13*<sup>150</sup> dated June 21, 2013, on Land (*Law No. 45*); *Decree No. 46/2014/ND-CP*<sup>151</sup> dated May 15, 2014, on regulating the collection of land rents and water surface rents (*Decree No. 46*); *Circular No. 77/2014/TT-BTC*<sup>152</sup> dated June 16, 2014, guiding *Decree No. 46/2014/ND-CP*; and *Circular No. 333/2016/TT-BTC* dated December 26, 2016, amending and supplementing a number of articles of *Circular No. 77/2014/TT-BTC*. Land rent exemption and reduction in land rent are provided in Articles 19 and 20 of *Decree No. 46*. These programs were provided by the GOV.

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<sup>150</sup> Exh 003, Law No 45-2013-QH13

<sup>151</sup> Exh 003, Decree 46-2014-ND-CP

<sup>152</sup> Exh 003, Circular 77-2014-tt-btc

The program land-use levy exemption/reduction was terminated on July 1, 2014, as the effective date of the *Law No. 45/2013/QH13* dated June 21, 2013, on Land (*Law No. 45*), replaced *Law No. 13*. Although this program was terminated on July 1, 2014, companies that were eligible for the program could have benefited from the subsidy while it was in effect. In particular, those exemptions/reductions could have pertained to land lease in which companies that were eligible under this program appeared to have an option of the lump sum payment for the entire period of land lease term. Depending on the length of the lease term and the timing of exemption on lump sum payments, the benefits could potentially be amortized over the following subsequent years.

This program is considered to be 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 amounts of the reductions and exemptions.

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to the List of domains entitled to investment incentives and the List of regions entitled to investment incentives as specified in Article 110 of the Law on Land 2013; Section II, Chapter II of *Decree No. 46*; and Appendix II of *Decree 118/2015/ND-CP*.

The following five programs will be grouped into one program to be initiated:

### **Export and Import Support in Forms of Preferential Loan, Guarantee and Factoring**

- Program 15: Interest rate support program under the State Bank of Vietnam**
- Program 16: Preferential Lending to Exporters**
- Program 17: Export Factoring**
- Program 18: Financial Guarantees by VietninBank and VietcomBank for Export Activity**
- Program 19: Export and Import Support in Forms of Preferential Loan, Guarantee and Factoring**

Investment credit and export credit are made available pursuant to *Decree No. 75/2011/ND-CP*<sup>153</sup> dated August 30, 2011, on state investment credit and export credit (*Decree No. 75*) and *Decree No. 151/2006/ND-CP*<sup>154</sup> dated December 20, 2006, on state investment credit and export credit (*Decree No. 151*). These programs were provided by the GOV.

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<sup>153</sup> Exh 003, Decree No 75-2011-ND-CP

<sup>154</sup> Exh 003, Decree No 51-2006-nd-cp

Investment credit is stipulated in Chapter II and Appendix I of *Decree No. 75* and in Chapter II and List of Eligible Projects for Investment Credit of *Decree No. 151*. Export credit is stipulated in Chapter III and Appendix II of *Decree No. 75* and in Chapter III and the List of Eligible projects for export credit of *Decree No. 151*. The regulation of guarantee operation was detailed in the *Circular 28/2012/TT-NHNN*<sup>155</sup> issued by the State Bank of Vietnam.

This program is considered to be 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. The potential benefit under this program is equal to the difference between the cost of the credit in the open market and the preferential rate provided by the government. The program may be considered specific pursuant to paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitute a prohibited subsidy as defined in subsection 2(1) of SIMA.

The following seven programs will be grouped into one program to be investigated under:  
**Enterprise Income Tax Preferences, Exemptions and Reductions**

- Program 20:** Enterprise Income Tax preferences, exemptions and reductions
- Program 21:** Enterprise Income Tax exemptions and reductions for business expansion and intensive investment
- Program 22:** Enterprise income tax and import duty preferences
- Program 23:** Tax preferences for investors producing and/or dealing in export goods
- Program 24:** Income Tax Preferences under Chapter V of Decree 24
- Program 25:** Income Tax Preferences under Chapter IV of Decree 124
- Program 26:** Tax Exemptions and Reductions for Foreign-Invested Enterprises

Corporate income tax and tax benefits are governed by *Law No. 14/2008/QH12*<sup>156</sup> dated June 3, 2008, on *Enterprise Income Tax 2008 (Law No. 14)*; *Law No. 32/2013/QH13*<sup>157</sup> dated June 19, 2013, on amending and supplementing a number of articles of *Law on Enterprise Income Tax 2008 (Income Tax 2008 Amending)*; *Law No. 71/2014/QH13*<sup>158</sup> dated December 8, 2014, on amending and supplementing a number of articles of the laws on taxes (Law No. 71); *Decree No. 218/2013/ND-CP* dated December 26, 2013, on detailing and guiding the implementation of law on corporate income tax (*Decree No. 218*) and *Decree No. 12/2015/ND-CP* dated February 12, 2015, on elaboration of the law on amendments to tax laws (*Decree No. 12*). Income tax rate preference is provided in Article 15 of

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<sup>155</sup> Exh 003, Circular 28-2012-tt-nhnn

<sup>156</sup> Exh 003, Law No 14-2008-qb12

<sup>157</sup> Exh 003, Law 32.2013.QH13

<sup>158</sup> Exh 003, Law No 71-2014-QH13

*Decree No. 218* and tax exemptions and reductions is provided in Article 16 of *Decree No. 218*. This program was provided by the GOV.

Article 20.2 of *Decree 218* allows the continuation of the application of corporate income tax preferences granted before the Decree's effective date as of February 15, 2014, if those preferences are more advantageous than those granted under Decree 218.

According to Article 15 of *Law No. 67/2014/QH13* dated November 26, 2014, on the Law on Investment (*Law No. 67*), corporate income tax preferences apply to: (1) Economic zone, high-tech zone established by Decision of the Prime Minister in area with difficult socio-economic conditions; (2) Industrial, processing zone established by Decision of the Prime Minister in areas with special difficult socio-economic conditions specified in Attachment II to *Decree No. 118/2015/ND-CP* dated November 12, 2015, on guidelines for some articles of the law on Investment (*Decree No. 118*).

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 program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to investment projects within certain eligible geographic areas as specified in Article 15 of *Law No. 67*.

The following two programs will be grouped into one program to be investigated:

### **Investment Support**

**Program 27: Investment support**

**Program 28: Infrastructure Development Investment Support**

The complaint listed these two programs which referred to the US DOC's final determination in *Certain Steel Nails*.<sup>159</sup>

The programs are made available pursuant to *Decree 108/2006/ND-CP* dated, September 22, 2006.<sup>160</sup> *Decree 108* details in which areas the government will support new investments. Appendix 1 of *Decree 108* lists manufacturer of high-quality steel, alloys, special metal, porous iron and steel billet as the domains entitled to investment preferences which COR manufacturers may fall under. This program was provided by the GOV.

This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts confer a benefit to the recipient equal to the amount of the extra support received from the government.

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<sup>159</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC), paragraph 521

<sup>160</sup> Corrosion-Resistant Steel Sheet 2 Complaint (NC),: Public Attachment 149

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to a list of sectors entitled to investment incentives and a list of geographical areas entitled to investment incentives as specified in Appendix I and II and of the Law.

**Program 29: Export Promotion Program**

The National Trade program was established by *Decision No. 279/2005/QĐ-TTg* of 3 November 2005. The Decision constituted the framework for state-funded trade promotion activities from 2006 to 2010. The state funding of these activities was derived from the Export Promotion Fund, established pursuant to *Prime Minister's Decision No. 195/1999/QĐ-TTg*. The *Decision 279* was amended and supplemented by *Prime Minister's Decision No. 80/2009/QĐ-TTg* of 21 May 2009 which made the program more flexible providing local businesses with an ability to seek approval for capital support.<sup>161</sup>

This program is a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and the program confers a benefit to the recipient equal to the amount of the grant.

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because Article 9 of Decision 279 specifies the types of trade promotion schemes that are eligible for support and Article 10 specifies the level of support that is available for each of the eligible schemes.

**Program 30: Accelerated Depreciation of Fixed Assets**

Accelerated depreciation of fixed assets is specified in *Circular 45/2013/TT-BTC*<sup>162</sup> dated April 25, 2013, provides guidance on the management regime, use, and depreciation of fixed assets (*Circular 45*). According to Article 1, *Circular No. 45* applies to enterprises established and operating in Vietnam under regulations of law. Enterprises are permitted to choose their preferred method of depreciation, period of depreciation of fixed assets according to *Circular No. 45* and must notify the tax authority before implementation. This program was provided by the GOV.

Article 35 of *Law No. 59/2005/QH11* dated November 29, 2005, on the Law on Investment (*Law No. 59*) provides for investment projects in investment incentive sectors and geographical areas and business projects with high economic efficiency to adopt accelerated depreciation of fixed assets.

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. While a recipient pays the same amount of tax over time, an earlier deduction of tax liabilities potentially allows the recipient to earn interest on the savings from a deferment of tax. Any amount of interest earned from a deferment of tax liabilities may reduce the total amount of tax payable to the government and hence the program confers a benefit to the recipient.

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<sup>161</sup> Exh 003, WTO s287\_e

<sup>162</sup> Exh 003, Circular 45-2013-TT-BTC

The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to a list of sectors, geographical areas and business projects as specified in Article 35 of *Law No. 59*.

**Program 31: Assistance to Enterprises Facing Difficulties due to Objective Reasons**

The GOV reported this subsidy program in its New and Full Notifications pursuant to Article 25 of the WTO Agreement on Subsidies and Countervailing Measures, dated, March 13, 2013. This program was provided by the GOV.

According to the GOV response, this program targets companies facing difficulties that arise as the result of unforeseen circumstances, such as: policy changes in terms of taxation; relocation of enterprises upon request of competent authorities; loss due to natural disaster, etc.

Depending on the form of benefit, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and the program confers a benefit to the recipient equal to the amount of the grant. This program may also be considered 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 program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to particular enterprises targeted by the GOV.

**Program 32: Preferential Provisions for Carry-Forward of Losses**

The complaint listed this program and referred to the CBSA's final determination in *Oil Country Tubular Goods II* (OCTG II). This program was initiated and reviewed in OCTG II, but neither the GOV nor any exporters in Vietnam provided sufficient subsidy information regarding the program. The complainant didn't provide any updated information about the subsidy program or evidence regarding the applicability of the subsidy program to producers of CRS.

Based on CBSA research, Article 14 of the *Law on Enterprise Income Tax, No.14/2008/QH12*, states that enterprises incurring losses are allowed to conduct loss carry forward to subsequent years. The amount of loss is used to offset taxable income in the subsequent years. The maximum duration of loss carry forward cannot exceed five years.

On the basis of the information currently available, the program appears to be generally available to all enterprises operating in Vietnam and no information available to the CBSA at this time suggests the specificity of the program. Therefore, the program was removed from the investigation for the initiation purposes.

**Program 33: Additional Income Tax Preferences for Exporters**

**Program 34: Excessive Duty Exemption for Imported Raw Materials for Exported Goods**

The complaint listed these two programs and referred to the CBSA's final determination in OCTG II. These programs were initiated and reviewed in OCTG II, but neither the GOV nor any exporters in Vietnam provided sufficient subsidy information regarding the program. The complainant didn't provide any updated information about the subsidy program or evidence regarding the applicability of the subsidy program to producers of COR.

Moreover, these programs are more likely to be covered by the previously discussed programs related to subsidy in income tax and import duty. Therefore, the program was removed from the investigation for the initiation purposes.

A summary of Vietnamese subsidy programs to be initiated is as follows:

***Relief from Duties and Taxes***

- Program 1 Exemptions of Import Duty
- Program 2 Refund of import duties on goods that are initially imported for business operation but eventually used for manufacture of goods that have been exported into a foreign country or a free trade zone
- Program 3 Incentives on non-agricultural Land Use Tax
- Program 4 Exemption/Reductions of Land Rent, Tax and Levy

***Preferential Loans and Loan Guarantees***

- Program 5 Export and Import Support in Forms of Preferential Loan, Guarantee and Factoring

***Preferential Tax Programs***

- Program 6 Enterprise Income Tax Preferences, Exemptions and Reductions
- Program 7 Accelerated Depreciation of Fixed Assets

***Grants and Grant Equivalents***

- Program 8 Investment Support
- Program 9 Export Promotion Program
- Program 10 Assistance to Enterprises Facing Difficulties due to Objective Reasons

\*Note – Programs are re-numbered and re-named