CANADA BORDER SERVICES AGENCY

PUBLIC COMPLAINT

The Dumping of Certain Oil Country Tubular Goods Originating in or Exported From Chinese Taipei, India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine, and Vietnam and the Subsidizing of Certain Oil Country Tubular Goods Originating in or Exported from India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine, and Vietnam

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7-B-142	Green Finance Portal, "Green Finance Products: Policy Insurance"	Public
7-B-143	Framework Act on Low Carbon, Green Growth	Public

7-B-144	United States Department of Commerce, *Corrosion Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 76 FR 3613, (January 20, 2011), and accompanying *Issues and Decision Memorandum*	Public
7-B-145	United States Department of Commerce, *Coated Free Sheet Paper from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 72 FR 17507, (October 25, 2007) and accompanying *Issues and Decision Memorandum*	Public
7-C-1	CPS Corporate & Public Strategy Advisory Group, "EU Acquis Guide Related to Steel Sector"	Public
7-C-2	MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013)	Confidential
7-C-3	Commission of the European Communities, "Turkey 2008 Progress Report," (November 5, 2008)	Public
7-C-4	Commission of the European Communities, "Turkey 2010 Progress Report," (November 9, 2010)	Public
7-C-5	ArcelorMittal, "ArcelorMittal and Borusan announce $500 million investment in new hot strip mill in Turkey," (October 22, 2007)	Public
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7-C-7	Turkish Hot-Rolled Steel Producers' Raw Steel Capacity	Public
7-C-8	Isdemir, "About Us"	Public
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7-C-10	Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012)	Public
7-C-11	United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*	Public
7-C-12	Government of Turkey Investment Support and Promotion Agency, "Special Investment Zones"	Public
7-C-13	Borusan Mannesmann, "Our Plants"	Public
7-C-14	Cayirova Boru, "About"	Public
7-C-15	European Union, "Member states of the EU"	Public
7-C-16	Turk Eximbank, "Annual Report 2011"	Public
7-C-17	WTO Secretariat, *Trade Policy Review: Turkey* (Excerpts),	Public
7-C-18	Response of Boursan Mannesmann Boru Sanayi ve Ticaret A.S. and the Borusan Group in the 2011 Administrative Review of *Certain Welded Carbon Steel Standard Pipe from Turkey*	Public
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7-C-22	Turk Eximbank, "Post Shipment Rediscount Credit Program"	Public
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7-C-24	Isdemir, "Investment Projects"	Public
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7-C-26	Republic of Turkey, Ministry of Industry and Trade, "Turkish Industrial Strategy Document, 2011-2014 (Towards EU Membership)" (2010)	Public
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7-C-29	Government of Turkey, Official Gazette (selected dates, 2000 – 2013)	Public
7-C-30	Hurriyet Daily News, "Borusan reveals ambitious investment targets" (March 10, 2010)	Public
7-C-31	Botas, "About Us"	Public
7-C-32	Turkish Weekly, "Compliance with EU Regulations and the BOTAS Liberalization Process" (October 11, 2012)	Public
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7-C-34	Deloitte, "Turkey's Natural Gas Market: Expectations and Developments 2012" (April 2012)	Public
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7-C-36	The US Central Intelligence Agency, The World Factbook: Government of Turkey	Public
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7-D-4	Thailand Board of Investment, "Types, Sizes and Conditions of Activities Eligible for Promotion"	Public
7-D-5	Thailand Board of Investment, "Section 2: Mining Ceramics and Basis Metals"	Public
7-D-6	The Nation, "BoI to assess protest impact" (7 May 2010)	Public
7-D-7	National News Bureau of Thailand Public Relations Department, "BoI approves aid to 19 investment projects" (7 May 2010)	Public
7-D-8	Thailand Board of Investment, "BOI Promoted Company Profile: WSP Pipe Co. Ltd."	Public
7-D-9	Thailand Board of Investment, "BOI Promoted Company Profile: Mei Lan (Thailand) Co., Ltd."	Public

7-D-10	Thailand Revenue Department, "Corporate Income Tax"	Public
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7-E-3	MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013)	Confidential
7-E-4	Bloomberg, "Vietnam to Reduce Corporate Income Tax Rate to Help Businesses"	Public
7-E-5	Decree No. 164/2003/N7-D-CP of December 22 2003 detailing the Implementation of the Law of Enterprise Income Tax	Public
7-E-6	United States Department of Commerce, *Certain Frozen Warmwater Shrimp from Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387, (August 19, 2013), and accompanying *Issues and Decision Memorandum*	Public
7-E-7	Excerpts from Vietnamese OCTG Producer Websites	Public
7-E-8	Decree No. 24/2007/N7-D-CP Detailing the Implementation of the Law on Enterprise Income Tax	Public
7-E-9	Decree No. 108/2006/N7-D-CP Detailing and Guiding the Implementation of a Number of Articles of the Investment Law	Public
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7-E-11	Decree No. 24/2000/N7-D-CP of July 31, 2000 detailing the Implementation of the Law on Foreign Investment in Vietnam	Public
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7-E-16	State Bank of Vietnam Circular No. 02/2009/TT-NHNN Stipulating in Detail the Provision of the Interest Rate Support for Organizations and Individuals Borrowing Bank Loans for Their Production and Business	Public
7-E-17	State Bank of Vietnam Circular No. 05/2009/TT-NHNN Providing in Details for the Implementation of Giving Interest Rate Support to Organizations, Individuals that Borrow Medium, Long Term Loans from Banks to Make New Investments for Production and Business Development	Public

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7-F-03	"Chinese metal pipe manufacturing firm to expand Clark unit," Philistar (18 December 2010)	Public
7-F-04	Republic of Philippines Department of Finance, Department Order No. 3-08, at SEC. 3(d)	Public
7-F-05	"Clark: Your Economic Haven in the Asia Pacific"	Public
7-F-06	Clark Freeport Zone Investor's Guide	Public
7-F-07	Philippine Economic Zone Authority (PEZ), "Special Economic zones in Philippines"	Public
7-F-08	Invest Philippines, "Clark Development Corporation,"	Public
7-F-09	Bases Conversion and Development Authority, "Welcome to the Official BCDA Website"	Public
7-F-10	Clark Development Corporation, "Frequently Asked Questions"	Public
7-F-11	Primer on Doing Business in the Philippines, Board of Investments (2010)	Public
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7-F-13	About Us, HLD Clark Steel Pipe Co., Ltd.	Public
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7-F-15	Investor's Guide - 03: Allowable Deductions by Industry, Clark Freeport Zone	Public
7-F-16	South Korean Investment Reach $3.8B, Manila Bulletin (October 30, 2013)	Public
7-F-17	Clark September Export Volume Up by 15%, Manila Bulletin (October 14, 2013)	Public
7-F-18	Customs Clark Cites Top Exporters, Revenue Contributors, Philippines News Agency (March 12, 2013)	Public
7-F-19	Executive Order No. 528, Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by the Board of Investments Registered New and Expanding Enterprises, The President of the Philippines (May 12, 2006)	Public
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7-F-21	Application Form for the Importation of Capital Equipment, Spare Parts and Accessories Under E.O. 70, Board of Investment	Public

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7-F-23	CDC, Steel Pipe Manufacturer Sign Pact for Expansion Project, Philippines News Agency (December 15, 2010)	Public
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7-F-26	Competitiveness in the Philippine Steel Industry, M. Garcia & S. Vicente,	Public
7-F-27	Clark is it! Your Gateway to the World and Your Home Away from Home, Locator and Investor Guide, Global Gateway Logistics City	Public
7-F-28	Steel Pipe Maker Expands Operation in Clark Freeport, Pampanga Sun Star (December 16, 2010),	Public
7-F-29	HLD Pipe, "About Us"	Public
7-F-30	PhilStar, "Chinese metal pipe manufacturing firm to expand Clark Unit"	Public
7-F-31	HLD Clark, "About Us"	Public
7-G-1	Interpipe Limited, 2012 Consolidated Financial Statement	Public
7-G-2	Forbes, The World's Billionaires, (March 2013)	Public
7-G-3	The Economist, Face Value: Oligarch Agonistes (December 16, 2004)	Public
7-G-4	Pravda, "Ukraine's Privatization of Nikopol Steel Factory Illegal," (January 20, 2006)	Public
7-G-5	Ukraine Gateway, State Property Fund of Ukraine	Public
7-G-6	Wikileaks, "Ukraine: Struggle for Nikopol Ferroalloy Works Nearing Endgame?," (May 10, 2007)	Public
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7-G-8	Nikopol Ferroalloy Plant, "The Ukraine & Russia: Current Production Levels, Capacities & Outlook for the Future," (June 2003)	Public
7-G-9	Kyiv Post, "Nikopol Sale Halted Over Price Dispute," (April 2, 2003)	Public
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7-G-12	U.S. Department of State, Ukraine: Principal U.S. Embassy Officials	Public
7-G-13	Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013)	Public

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7-G-17	Bloomberg, "Interpipe Opens New $700 Million Steel Mill in Ukraine," (October 4, 2012)	Public
7-G-18	Invest Ukraine, "Metals and Mining in Ukraine," (March 13, 2013)	Public
7-G-19	Steel Guru, "Interpipe Presents New Electric Steel Smelting Complex Interpipe Steel," (October 13, 2010)	Public
7-G-20	A. Price & S. Nance, "Report to the Raw Materials Committee of the Organization for Economic Cooperation and Development, Export Barriers and Global Trade in Raw Materials: The Steel Industry Experience," (October 30, 2009)	Public
7-G-21	Cabinet Ministers of Ukraine, Memorandum of Understanding between the Cabinet of Ministers of Ukraine and the Enterprises of Mining and Metallurgical Complex of Ukraine, (June 1, 2013)	Public
7-G-22	Interpipe, Interpipe Steel: A State-of-the-art Project	Public
7-G-23	Interpipe, Interpipe Steel Opening – for the workers, the city, and society	Public
7-G-24	"Why do Metallurgists Need Government Support?" (17 March 2010)	Public
7-G-25	Decree of the Cabinet of Ministers of Ukraine on State Program for Enhancement of Economic Development in 2013-2014, (February 27, 2013)	Public
7-G-26	MetalBulletin, *The Five Year Outlook for the Global OCTG Industry*, (Excerpts) (April 1, 2013)	Confidential
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7-H-2	Kabil Integrated Industrial Estate, "Celebration of the 30th Anniversary of Citra Tubindo"	Public
7-H-3	United States Department of Commerce, *Monosodium Glutamate from Indonesia: Preliminary Negative Countervailing Duty Determination*, 79 FR 13614, (March 11, 2014), and accompanying *Issues and Decision Memorandum*	Public
7-H-4	Kabil Integrated Industrial Estate, "Investment Incentives and Attractions in Batam"	Public
7-H-5	China Go Abroad, "Kabil Industrial Estate"	Public
7-H-6	Bakrie & Brothers, 2006 Annual Report	Public
7-H-7	Embassy of Indonesia in Ottawa, "Tax Holidays Becomes Available to Investors"	Public
7-H-8	Indonesia Investment Coordinating Board, "Investment Incentives"	Public
7-H-9	*Regulation of the Minister of Finance of the Republic of Indonesia Number 144/PMK.011/2012 Concerning Facilitation of Income*	Public

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7-H-11	Bakrie & Brothers, 2012 Annual Report	Public
7-H-12	Indonesia Stock Exchange, 2012 Annual Report	Public
7-H-13	World Bank, New Businesses Registered	Public
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1. Identification of the Complainants

1. There are two domestic producers bringing this Complaint, who, together, comprise a large majority of the domestic production of like goods in Canada: Tenaris Canada (and affiliates), and EVRAZ Inc. NA Canada ("Evraz"),

2. Contact information for Tenaris Canada (and affiliates) is as follows:

Tenaris Canada
Tenaris Global Services Inc.
Algoma Tubes Inc.
Prudential Steel Inc.
Hydril Canadian Company LP
530 8 Ave SW, Suite 400
Calgary, AB T2P 3S8
Tel: (403) 767-0199
Fax: (403) 261-0397
E-mail: dmchattie@tenaris.com
Contact: David McHattie, Institutional Relations Director, Canada

3. Tenaris Canada ("TC") manufactures oil country tubular goods ("OCTG") in Canada at its Algoma Tubes ("ATI") facility in Sault Ste Marie, Ontario, using the seamless process and at its Prudential ("PSI") facility in Calgary using the electric resistance welding ("ERW") process. Hydril Canadian Company LP ("Tenaris Hydril") produces specialized premium connections. Tenaris Global Services Inc. ("TGS") acts as commercial agent for Tenaris sales in Canada.

4. Contact information for Evraz is as follows:

EVRAZ Inc. NA Canada
P.O. Box 1670, 100 Armour Road
Regina, SK S4P 3C7
Tel: (403) 543-8000
Fax: (403) 543-8008
E-mail Address: kelly.smith@evrazna.com
Contact: Kelly Smith, VP Sales & Business Development – OCTG - TPG

5. Evraz operates ERW OCTG manufacturing facilities in Regina, Saskatchewan; Calgary, Alberta; and Red Deer, Alberta. The EVRAZ North America group of companies also owns Canadian National Steel Corporation ("CNSC"), which operates an ERW OCTG manufacturing

facility in Camrose, Alberta. CNSC's financials have been separately provided and are included in the consolidated domestic industry financial performance data included in this Complaint.

6. There are two other significant domestic producers of OCTG in Canada, EnergeX Tube ("Energex"), and Welded Tube of Canada Corp. ("WTC"). Both Energex and WTC support this Complaint. See **Public Exhibit 1-1** and **Public Exhibit 1-2**. In March 2014, Energex idled the operations of its Welland plant due to pressures in the market from unfair offshore competition. However, up to that point in time, the company produced like goods from 2" outside diameter ("OD") and above – i.e., throughout the period covered by this Complaint.

2. Imported Goods

A. Product Description

7. The goods subject of this Complaint are defined as:

> Oil Country Tubular Goods ("OCTG") originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine, and Vietnam made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter between 2 ⅜ inches (60.33 mm) and 13 ⅜ inches (339.73 mm), meeting or supplied to meet American Petroleum Institute ("API") specification 5CT or equivalent and/or enhanced proprietary standards, in all grades.

8. For greater certainty, the product definition includes:

(a) unfinished tubing, casing and other tubular products (including upgradable OCTG that may or may not already be tested, inspected, and/or certified) originating in a Subject Country and imported for use in the production or finishing of OCTG meeting final specifications, including grade and connection, required for use downhole (all variations of such unfinished tubular products being referred to in this Complaint as "green tubes"); and

(b) non-prime and secondary pipes ("limited service products").

9. For greater certainty, the product definition excludes: drill pipe, coupling stock, and casing or tubing, including green tubes, containing 10.5 percent or more by weight of chromium (i.e. stainless steel products).

B. Product Use

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

11. Subject OCTG may be manufactured by the seamless or welded process. Typical casing and tubing end finishes include: plain end, beveled, external upset ends, threaded, or threaded and coupled (including proprietary premium connections).

12. Subject OCTG are supplied to meet API specification 5CT, in all grades including and not limited to, H40, J55, K55, M65, N80, L80, L80 HC, L80 LT, L80 SS, C90, C95, C110, P110, P110 HC, P110 LT, T95, T95 HC, and Q125, or proprietary grades manufactured as substitutes for, or enhancements to, these specifications. The grade numbers define the minimum yield strength required of the grade in kilograms per square inch ("ksi"). Together, the Complainants make or have the capability to manufacture casing and tubing in all of these grades.

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

14. Heat-treated grades are more sophisticated grades of pipes used in horizontal applications, deeper wells, and more severe environments such as low temperature services, sour service, heavy oil recovery, etc. These grades are made beginning with the use of a specific chemistry in the steel (either in billet for the seamless process or the steel coil in the ERW process) and are further processed with heat treatment to attain certain combinations of mechanical properties and/or resistance to corrosion and environmental cracking; for example, maximum strength (N80, P110, Q125), high-strength with low ductility (normally proprietary enhancements of API grades), or high-strength combined with resistance to corrosion and environmental cracking (L80, C90, C95, C110, T95 and proprietary enhancements).

15. Subject Goods include green tubes. Tubes that still require heat treatment to meet the API 5CT specification are referred to in the industry as a "green tubes," as are tubes that require further finishing before they can be used down well. A green tube for a higher strength grade can have a chemistry that meets a lower grade like H40 or J55 that does not require heat treatment, and could just be tested and threaded to meet the lower grade.

C. Production Process

16. OCTG casing and tubing are made on the same production equipment. Production may be by either the seamless or the welded process.

17. The seamless process for producing OCTG begins with the formation of a central cavity in a solid steel billet to create a shell. The shell is then rolled on a retained mandrel and reduced in a stretch reduction mill to produce the finished size before cooling on a walking beam cooling bed.

18. ATI employs this production process, starting with its purchase in Canada or imports from sister companies of steel bars.[1] The steel bar is cut into a billet and then loaded into the rotary furnace to be heated and ready for the Hot Rolling Mill ("HRM"). Once the HRM has transformed the billet into a tube and the stretch reduction/sizing mill has produced the final dimensions, the pipe is put into inventory where it waits to for the next process. Depending on the grade desired, the next process may involve heat treatment. Finishing operations may include one or more of heat treatment, threading and coupling, and testing. All OCTG produced by ATI are green tube before they are finished. While ATI has its own threading, coupling, and heat-treating capability, some product of ATI is threaded (and coupling/protector applied) at the Tenaris Hydril facility in Alberta with an OCTG premium connection. These are reported as sales by ATI.

19. ATI produces casing in diameters ranging from 4.5 to 9.875 inches to API and proprietary grades. ATI has been producing OCTG for over 30 years.

20. ERW OCTG is produced by slitting flat hot-rolled steel in coil form of a pre-determined thickness (skelp) to the proper width required to produce the desired diameter of pipe. The skelp is then sent through a series of forming rolls that bend it into a tubular shape. As the edges of the

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[1] [ ].

skelp come together under pressure in the final forming rolls, an electric current is passed between them. The resistance to the current heats the edges of the skelp to the welding temperature, and the weld is formed as the two edges are pressed together.

21. Evraz, Prudential, and WTC all essentially employ this production process.

22. Evraz produces ERW OCTG in Canada at four separate facilities. Evraz's Calgary mill has been producing API OCTG since 1983. It welds API casing from 4.5 to 13.375 inches. It also finishes (upsetting, threading, and testing) tubing of [ ] inches. The mill has API threading and coupling capabilities. The mill has heat-treating capabilities for casing from [ ] inches. Evraz's Red Deer mill has been producing API OCTG since 1983. The mill welds API casing from 4.5 to 13.375 inches. Evraz Red Deer also welds API Tubing of 2.375 to 3.5 inches. [ ]. The Red Deer mill has threading and coupling capabilities, including two dedicated premium connection threading lines which were commissioned in 2011 and 2013, respectively.[2] Evraz's Regina mill has been producing API OCTG since 1980 on one production line. The mill welds tubing of 2.375 and 2.875 inches. [ ]. Evraz's Camrose mill is capable of welding casing from 4.5 to 13.375 inches. Camrose had been producing casing products since 1960 [ ]. Camrose casing products are [ ].

23. Prudential, located in Calgary, has been producing ERW steel pipes since 1966. It produces OCTG casing and tubing in diameters ranging from 2.375 inches to 11.75 inches, primarily in grades H40 and J55, but also in proprietary higher strength grades. The mill has threading, coupling, and testing facilities but does not heat-treat goods. Higher strength proprietary grades are produced using skelp with the required chemistry. Prudential produces API and proprietary premium connections, but some product is threaded (and coupling/protector applied) at the Tenaris Hydril facility in Alberta with an OCTG premium connection. These sales are reported as sales by Prudential.

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[2] [ ].

24. WTC produces API casing for the Canadian market at its Concord plant, [ ].[3] It produces OCTG in outside diameters ranging from 4.5 to 9.625 inches in a variety of wall thicknesses. WTC's Port Colborne plant [ ]. WTC's Welland facility [ ]. WTC commenced production of OCTG at each of its Canadian facilities as follows: Concord, 2005; Port Colborne, 2007; and Welland, 2011.

25. ERW OCTG is also produced by the stretch-reduction method, where the key difference is that outside diameter and wall thickness is achieved after the tube is formed. Specifically, a formed tube is heated to approximately 1850 degrees Fahrenheit and passed through a series of stretch reduction roll stands until the final outside diameter and wall thickness is achieved. Energex employs this production process. Throughout the POI, Energex produced both casing and tubing at the Welland plant, both API and non-API products. The size ranges for tubing are from 1.66 to 3.5 inches, and for casing from 1.66 to 4.5 inches. The Welland plant has no threading, coupling, or heat-treating capability. The company had been producing the like goods at the Welland plant for over 20 years. Energex Tube, Welland, Ontario, formerly Lakeside Steel Inc., is the Canadian operating division of JMC Steel Group Inc., headquartered in Chicago. JMC Steel acquired the assets of Lakeside Steel in April 2012 and changed its name to Energex Tube. Throughout the Complaint period until its operations were idled in March 2014, Energex and Lakeside produced OCTG using this ERW process. The company contracted out end-finishing and heat-treating from its facility or sold casing to its customers as plain end.[4]

26. Tube formed by either the seamless or the ERW methods is then cut to length. Depending on the API specifications required, OCTG may also be heat-treated at this point. The product is then sent to the finishing line where it is beveled and threaded on both ends. Tubing undergoes a separate process of upsetting and normalizing prior to threading. Finally, a coupling and coupling protector are applied to one end of the pipe and a thread protector is applied to the other end before

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[3] [ ].

[4] [ ].

it is ready for shipment. Finishing operations also include cooling, straightening, facing, testing, coating, and/or bundling.

D. Tariff Classification

27. The Subject Goods are normally imported under the following tariff codes for OCTG (*Customs Tariff* – 2014):

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

28. The Subject Goods, particularly in the form of green tubes, may also be imported under the following tariff codes (*Customs Tariff* – 2014):

7304.39.00.10	7306.50.00.90
7304.59.00.10	7306.90.00.10
7306.30.00.29	7306.90.00.20
7306.30.00.39	

E. Countries of Export

29. The Subject Goods are generally both produced in and exported from Chinese Taipei, India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine, and Vietnam.

30. A significant volume of OCTG originating in the Subject Countries is exported from the United States. Specifically, Canadian import data show the origin of OCTG to be declared as India, Korea, the Philippines, Chinese Taipei, Thailand, Turkey, Ukraine, Indonesia, and/or Vietnam, whereas the country of export is shown to have been declared as the United States. See **Public Exhibit 2-4**. For all such imports, the Agency should examine whether, and to what extent, SIMA s. 30(2) applies.

F. Known Exporters

31. The companies known to be Subject Country producers or exporters of Subject Goods are listed in **Confidential Exhibit 2-1**. Detailed descriptions of the production facilities of a number of the producer-exporters are contained in the Simdex Steel Tube Manufacturers Worldwide Guide; relevant excerpts are attached in **Confidential Exhibit 2-2**.

G. Known Canadian Importers

32. The importers that are listed in **Confidential Exhibit 2-3** are believed to account for the majority of Subject Goods imported from the Subject Countries (which include distributors, brokers, and traders). These importers generally handle products from more than one country of origin and have offices in Calgary, Toronto, or Vancouver.

H. Marketing and Distribution

33. There is no one model of marketing and distribution, but generally, both domestically produced and imported Subject Goods are sold to oilfield supply distributors that, in turn, sell the products to end users. Some sales are made directly to large volume end users (oil and gas operating companies) without passing through a distributor. Shipments of OCTG are made primarily from stockyards or stock points that are situated throughout the major petroleum exploration regions. These stock points are generally owned and maintained by independent oilfield hauling companies that use the inventory in their yards as the basis for their hauling business. Either the manufacturer, trader, or distributor may own the inventory and, for some projects, the pipes are delivered directly from the manufacturer to the project location rather than from stock on the ground in stockyards.

34. When Subject Goods are imported from outside North America, they are generally sold through agents, brokers, or trading companies to distributors who then market them to end users. In this supply chain, the material may not always be paid for upon receipt, but rather may be sold on consignment and billed only when the material is shipped out to an end user by the distributor.

35. There are many distributors selling Subject Goods. These companies are well financed and range from smaller enterprises to large multi-national publicly traded firms. These distributors

of imported material may follow one of two strategies when making their purchases. One strategy involves the distributor purchasing quantities of a very few common items that they will stock for re-sale and market aggressively to end users or other distributors based on price. This strategy aims to undercut market prices of those producers and distributors who carry a more complete product assortment of items. The longer the distributor holds these items, the more aggressively they market based on price. Another strategy involves the distributor purchasing the goods in a wide range of specifications, sizes, and gauges, stocking the product for re-sale, and distributing the goods to end users. A distributor would order this assortment based either on the drilling forecast of a main end user or on historical sales trends. Often, the volume for one customer is increased on speculation of gaining other customers with this base volume. Thus, the loss of an end user account to a distributor who is selling dumped and subsidized OCTG may also lead to further losses of sales of like goods in lower volume specifications in the spot market.

36. It is a common practice in the industry for distributors of OCTG to bundle goods, that is, to respond to bids on packages of material that may include seamless and welded product, and that may extend to casing, tubing, and even line pipe.

3. Domestic Like Goods

37. The domestic industry produces the whole range of seamless and welded products included in the scope of the Complaint as Subject Goods. The domestic industry produces or is able to produce OCTG in sizes up to 16 inches (406.4 mm) outside diameter.

38. The Complainants produce seamless and ERW tubing and casing in substantially the same manner as the producer-exporters as described above in Section 2.C.

39. Product literature from each of the Complainants for the Subject Goods is attached as **Public Exhibit 3-1**.

4. Single Class of Like Goods

40. The Canadian International Trade Tribunal has consistently determined that welded and seamless OCTG are like goods, and that high-strength and low-strength products are not separate classes of goods, nor are green tubes. The conclusions of the Tribunal may be found in the Reasons for Decision in *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* NQ-2007-001 and RR-

2012-002, in *Oil Country Tubular Goods* NQ-2009-004, as well as in *Oil and Gas Well Casing* RR-2000-001.

41. OCTG casing and tubing are all made to the same API 5CT specifications and/or to proprietary equivalent/enhanced specifications, and are all used downwell. All are produced on the same equipment and have the same channels of distribution. In addition, the Tribunal has accepted that green tubes are part of this same singular class of like goods.[5]

5. <u>The Canadian Industry</u>

42. The Complainants represent a large majority of the production in Canada of like goods. Together with Energex and WTC, the Complainants constitute the vast majority of OCTG production in Canada.

43. See **Confidential Exhibit 5-1** for the consolidated industry results and actual total Canadian production of like goods, and **Confidential Exhibit 5-2** for supporting documentation. **Confidential Exhibit 5-1** shows, in particular, the total volume and value of domestic industry production of like goods for the last four fiscal years.

44. There may be some small operations importing or purchasing green tubes for heat treatment and other finishing processes. However, these would comprise a very small percentage of the production of the Complainants. There are no other Canadian producers of like goods known to the Complainants.

45. There are no associations of producers of like goods in Canada.

46. In terms of Canadian producers related to exporters or importers of OCTG, TGS acts as the commercial agent responsible for sales of Tenaris products ("strip distributor"), including those from ATI, PSI, and other Tenaris manufacturers. TGS does not import Subject Goods from any of the Subject Countries. TGS, however, is the importer of record for all OCTG imported from related

[5] *Oil Country Tubular Goods*, NQ-2009-004 at s. 78 ("On the other hand, the casing and tubing covered by this inquiry are sufficiently alike as to constitute a single class of goods. They are made to the same API specifications, have the same or similar appearance and composition, are generally substitutable for one another, are both used downhole to extract oil and gas, and are sold through the same distribution channels. The Tribunal accepts that green tubes are part of the same class of goods because there was no dispute that they constitute intermediate products that can be further processed to meet a higher API grade. It notes that casing and tubing include some grades that are not heat-treated either.")

Tenaris companies in Argentina, Mexico, Italy, Romania, Japan, the United States, and Colombia. This arrangement was developed to allow centralized purchasing of the full range of Tenaris products for Canadian customers. TC sales of OCTG from imports are almost entirely comprised of seamless products.

47. Evraz does not import Subject Goods from any of the Subject Countries. Evraz imports seamless OCTG, in relatively small amounts, from its affiliate EVRAZ Inc. NA. These seamless OCTG are produced at the EVRAZ Inc. NA mill in Pueblo, Colorado.

48. Energex does not import Subject Goods from any of the Subject Countries but does import small quantities of OCTG from the United States.

49. WTC does not import Subject Goods from any of the Subject Countries.

6. <u>Dumping</u>

A. Normal value

50. Home market pricing data for the purposes of estimating normal values under s. 15 of the *SIMA* was not publicly available for any of the Subject Countries.

51. In the absence of comprehensive information on domestic selling prices in the Subject Countries, the Complainants estimated normal values based on s. 19. In addition, for Vietnam, normal values should be determined based on s. 20 of *SIMA*, for the reasons discussed in **Annex A**.

i. Section 19 Methodology

52. Section 19 normal values were determined for all Subject Countries based on the combined average costs of production of Tenaris and of Evraz. Both companies sell competitively in several international markets; accordingly, this cost structure is considered to reflect those in other competitive markets. It was assumed that similar cost structures, other than labour cost (including the labour components of overhead and GS&A), would prevail in those countries. The Complainants are of the view that s. 20 of *SIMA* should be applied in respect of goods from Vietnam, and the reasons for this view are discussed in **Annex A**. Nevertheless, an estimate of

Vietnamese normal values under s. 19 was made, and the methodology for doing so is included in this Section.

53. Since normal values were being estimated for 2013, using Canadian producer cost data for the full year 2013, an attempt was made to obtain the most recent publicly available information on profitability of OCTG production for the Subject Countries. Where specific 2013 profit data for subject goods was not available, recourse was made to goods of the same general category in the country of export. All profit rates were calculated as a percentage of total costs (or gains) before tax.

54. For Turkey, profitability was estimated based upon the publicly reported net profit of 12.76% for the large Turkish steel producing Erdemir group for fiscal 2013. As a percentage of costs, this was 14.63%. Erdemir is a large integrated Turkish steel manufacturer that produces a range of steel products including tubular goods and skelp for the production of subject goods. Its profitability numbers are publicly available. No information was available for a Turkish producer of subject goods. **Public Exhibit 6-1** provides supporting documentation.

55. For Korea, the profitability was estimated based upon profitability for SeAH in 2013, a Korean producer of subject goods. The publicly reported aggregate operating profit was 7.12% as a percentage of costs. **Public Exhibit 6-2** provides supporting documentation.

56. In the case of Chinese Taipei, there was publicly available information as of Q3 2013 for China Steel Corporation, showing overall profitability of 7.21% as a percent of total costs. China Steel is the largest integrated steel maker in Chinese Taipei, and produces a wide range of steel products. China Steel owns Chung Hung, a producer of subject goods in Chinese Taipei. Its operations are included in China Steel's financial statements. **Public Exhibit 6-3** provides supporting documentation.

57. For Vietnam, the calendar year 2012 Annual Report for Petrovietnam, which produces OCTG through its subsidiary PVD Offshore Services Company Ltd., shows a profit margin of 11.6%, or 13.13% expressed as a percentage of costs. **Public Exhibit 6-14** provides supporting documentation.

58. For Indonesia, section 19 supporting information has been provided as a convenience to the CBSA, though section 15 was actually used to determine normal values. For Indonesian profitability there was public information on 2013 results for Hunting PLC, which operates in Indonesia through its subsidiary PT Hunting Energy Asia. Net profit was 10.12%, or 11.26% when measured against total cost. Supporting documentation is attached at **Public Exhibit 6-16**.

59. In Thailand, 2013 results for Pacific Pipe Public Company showed profitability of 7.26% measured against total cost. Supporting documentation is attached at **Public Exhibit 6-15**.

60. There was no public information available on profitability of any tubular producer in the Philippines. In the absence of other data, the profit margins used for the Asian Subject Countries (Chinese Taipei, India, Indonesia, South Korea, Thailand, and Vietnam) were averaged. This yielded a profit (simple average) of 10.74%. This is a conservative estimate; it is noted that Tata Steel has operation in the Philippines, and as discussed below, use of Tata data would have yielded a profit factor of 29.13%.

61. For India, steel industry profitability was estimated at 17.91% as a percentage of costs, based on the Q3 2013 year-to-date operating results of Ratnamani Metals and Tubes Ltd., a producer of subject goods in India. It is noted that this is a conservative estimate: the giant Indian steel producer, Tata Steel reported corporate profit of 22.56% (or 29.13% as a percent of costs) for the first two quarters of fiscal 2013. Supporting documentation is attached at **Public Exhibit 6-4**.

62. For the Ukraine, there was no publically available information on profitable sales of OCTG in 2013. For 2013, however, Metinvest showed a profit of 6.35%, as a percentage of cost of goods sold, on line pipe, which are in the same general category of goods sold as OCTG. Supporting documentation for Ukraine profitability is attached at **Public Exhibit 6-5**.

63. Eleven models were selected for normal value estimation. The range of products extends to both seamless and ERW production methods, including two tubing and nine casing specifications. The selection also covers six low strength and five high strength specifications. A separate estimate was also made in respect of a premium connection on one of the selected specifications. These products represent more than [ ]% of total sales dollars of Tenaris Canadian produced like goods in 2012, and [ ]% of the total volume by weight. See **Confidential Exhibit**

6-6. In the case of Evráz, these products represent more than [ ]% of total sales dollars of Evraz Canadian produced like goods in 2012, and [ ]% of the total volume by weight. See **Confidential Exhibit 6-7**. These percentages are similar for 2013.

64. The costs of production for each of these selected models may be found in **Confidential Exhibit 6-8**. Actual costs for Tenaris and Evraz in 2013 were used, in accordance with their normal accounting practices. No distinction was made between seamless and welded product as these have been found to be like goods, and import pricing of these goods shows them to be directly competitive, regardless of production process.

65. To arrive at the labour cost component of OCTG in 2013 for the purposes of this Complaint, labour costs were separately identified for direct labour, the labour component of overhead expenses, and the labour costs associated with selling, general and administrative ("SG&A").

66. SG&A expenses for use in determining normal values were estimated using SG&A costs incurred by Evraz and Tenaris per tonne in 2013. Tenaris financial expenses were attributed in the same manner, while Evraz financial expenses were attributed on a value basis in accordance with the normal accounting practices of each company. The labour costs components of SG&A expenses were separated from Evraz costs. In the case of Tenaris, all SG&A costs attributed to the Tenaris Canada operation were considered as labour costs due to the difficulty in breaking out non-labour components. This means that the labour adjustment to reflect lower personnel costs in other jurisdictions is a conservative estimate.

67. An adjustment was made to all labour costs for each of the Subject Countries to reflect the lower wage rates paid in those countries compared to Canada. Those adjustments were made based on the most recent available comparable data. For Korea, the most recent available comparable data were the 2011 average annual wages reported to the Organisation for Economic Co-operation and Development (OECD) (i.e. 32,152,716 won), converted into Canadian dollars based on the Bank of Canada's average 2011 annual exchange rate (i.e. yielding $28,712.38). That Korean wage amount, converted to Canadian dollars, was then compared to the 2011 average annual wages for Canada (i.e. $55,376).

68. For Turkey, Thailand, and Ukraine, the best available data were the 2009 average monthly nominal wages (i.e., 1,938 new lira, 8,694 baht, and 1,906 hryvnia, respectively) reported to the International Labour Organization ("ILO"), converted into Canadian dollars (i.e., $1,421.14, $288.81, and $278.88, respectively). For Turkey and Thailand, the conversion to Canadian dollars was based on the Bank of Canada's average 2009 annual exchange rate. No Bank of Canada exchange rate was available for Ukraine, so the conversion to Canadian dollars was based on the World Bank's average 2009 annual exchange rate using the U.S. dollar as an intermediary converter.

69. India, Indonesia, and Vietnam were calculated in the same manner as for Turkey and Thailand, but using 2008 average monthly nominal wages reported to the ILO as the best available data (i.e. 8,466 rupee, 1,092,075 rupiah, and 1,427,180 dong, respectively), converted into Canadian dollars using the Bank of Canada's 2008 average annual exchange rates (i.e. $208.09, $121.22, and $92.77, respectively).

70. For Chinese Taipei and the Philippines, the best available data were the 2009 hourly compensation costs in U.S. dollars reported to the ILO (i.e. 6.20 USD and 1.17 USD, respectively). As the values for Chinese Taipei and the Philippines and the comparable Canadian value (i.e. 26.40 USD) were in U.S. dollars, no conversion to Canadian dollars was necessary to derive a reduction rate.

71. The resulting reduction in labour costs by country was:

- India by 94%;
- Korea by 48%;
- Turkey by 60%;
- Philippines by 96%;
- Thailand by 92%;
- Ukraine by 92%;
- Chinese Taipei by 77%;
- Vietnam by 97%; and

- Indonesia by 96.5%.

72. Supporting documentation for all of these calculations can be found at **Public Exhibit 6-9** and **Public Exhibit 6-10**.

73. These factors were used to deflate direct labour, overhead labour, and SG&A labour. **Confidential Exhibit 6-11** provides the normal values determined in this manner.

ii. Section 20 Analysis for Vietnam

74. Vietnam operates as a non-market economy in the steel sector, including in the production of OCTG. Because of the absence of a free market economy in this sector, normal values should be determined under s. 20 of the *SIMA*.

75. Section 20(1)(a) states that where goods are sold to Canada from a prescribed country where, "in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market," normal values are to be determined in accordance with s. 20(c) or (d) as appropriate.[6] The "customs territory of the Socialist Republic of Vietnam" is a prescribed country pursuant to s. 17.2(1) of the *SIMR*.[7]

76. The Complainants have provided the basis for initiation of a s. 20 inquiry in **Annex A**.

B. Export prices

77. Generally, export prices were taken from Statistics Canada data for imports of goods under HS Codes 7304.29 and 7306.29 for 2013, broken out by tubing and casing sizes, and by high-strength versus low-strength. It is noted that Statistics Canada data are intended to be reported as value for duty ("VFD") without freight costs and other charges related to the export of the goods from the point of direct shipment to Canada. Accordingly, it provides an estimate of the export price for shipments from all Subject Countries except Korea, Ukraine, Thailand, and Indonesia. See **Public Exhibit 6-13**.

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[6] *Special Import Measures Act*, RSC 1985, c S-15, s. 20(1)(a).
[7] *Special Import Measures Regulations*, SOR/84-927, s. 17.2(1).

78. For Korean goods, there is a significant discrepancy in the data reported as VFD in the Statistics Canada data, and the available data on exports from the Korean Customs Service for, e.g., HS Code 7306.29. See **Public Exhibit 6-19**. The amount of this differential, even using annual average exchange rates, is in the range of the costs one would expect to be associated with CIF charges. The evidence therefore indicates that these data have likely been reported on Canadian customs documents on a delivered basis rather than FOB Korea point of direct shipment. Accordingly, the estimated export price for Korea was based upon Statistics Canada unit VFD's, less movement costs of approximately $260 per tonne, calculated based on representative freight quotes that the Complainants have secured. See **Confidential Exhibit 6-12** for supporting documentation.

79. Similarly, export data from the Customs Department of Thailand shows the FOB value of sales of OCTG to Canada in 2013 at substantially lower prices than reported in Statistics Canada VFD data. Using the most beneficial single exchange rate (for an exporter) during the course of 2013, the average Canadian dollar price of OCTG from Thailand was $1,234 per tonne, well below the average price of $1,621 per tonne reported as VFD in the Statistics Canada data. Accordingly, Statistics Canada import prices were reduced to account for ocean freight to Canada, using the same data as was provided for the analysis with respect to Korea. This is a conservative estimate since the additional distance and the lower shipping volumes generally from Thailand, as compared to Korea, means the Korea number would understate actual freight costs for shipments from Thailand. In addition, low-strength tubing prices from Thailand were reported to be significantly higher than for high-strength. This is not a rational result, since high-strength steel costs substantially more to produce and process. Accordingly, for the purposes of this Complaint, overall average tubing costs were used to estimate export prices for Thailand. There are a number of other concerns with the data for Thai imports that warrant the Agency's attention.[8] For the

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[8] Export data from the Customs Department of Thailand indicates that the average FOB Thailand value of OCTG shipments to Canada was 111.6 million baht. Given the fluctuation of the baht over the course of the year, in Canadian dollars, this value would range from $1,109/tonne to a maximum possible high of $1,234/tonne. Statistics Canada ("StatsCan") data reported an average value for duty of $1,623/tonne. Accordingly, Thai export statistics indicate pricing of Thai OCTG exports ranging from $387 per tonne to $513 per tonne below the values reported in Canada for customs purposes. This evidence indicates that Thai goods may have been declared for Canadian customs purposes on a delivered basis. It is noted, however, that the value of the baht was highest in mid-year, while 95% of Thai imports were recorded in either Q1 or Q4 of 2014. During those two quarters, the value of the Thai currency averaged about 30 baht to the dollar, which would yield an average Canadian dollar value, based on the Thai export statistics, of $1,147 per metric tonne.

purposes of estimating margins of dumping, however, these additional concerns were not accounted for; and the dumping estimates for Thailand are therefore conservative. See **Public Exhibit 6-18** for supporting documentation.

80. The Complainants also have specific information on pricing for particular shipments of Subject Goods from Indonesia and Ukraine that reflect delivered pricing at levels below those reported in import data as VFD. Accordingly, actual Indonesia and Ukraine market quotes for sales of OCTG to Canada were used. See **Confidential Exhibit 6-17** (excerpt from supporting materials found in **Confidential Exhibit 8-3**) and **Confidential Exhibit 8-2 (Attachment C)**. Adjustments were made to those Ukraine market quotes to deduct certain freight costs. See **Confidential Exhibit 6-12** for supporting documentation. Because the Indonesia quotes were made on an FOB basis, no adjustment was made for delivery costs. It is noted that the Statistics Canada Q4 2013 data for Indonesia are very close to the documentary evidence of quoted prices. This suggests the inclusion of freight in reporting VFD on prior shipments.

81. The Complainants, at this time, do not have information on particular shipments of Subject Goods from any other subject country where this might be an issue, and accordingly have not made any adjustment to export prices for this factor, other than for Korea, Ukraine, Thailand, and Indonesia, for the reasons given above. The Complainants would ask that the Agency take this concern into consideration in its investigation.

82. Commercial intelligence indicates that imported goods reflect little or no premium for different product sizes. Price premiums are seen for high strength grades compared to low strength grades (e.g. J55 vs. L80), and for tubing sizes compared to casing, but otherwise not for different pipe diameters. Accordingly, where possible with Statistics Canada data, four general categories

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In addition, Thai export data were available for HS Code 7304.29, representing seamless casing and tubing. StatsCan data report imports of welded OCTG from Thailand in 2013; there are no welded producers in Thailand that have an API 5CT designation. See **Public Exhibit 6-18**. Accordingly, the data suggest that these goods may have been misclassified. Canadian import data for Thai goods indicates that 83% of all shipments from Thailand entered Canada through a port in one of the three Prairie Provinces, and primarily through Alberta. This evidence would suggest that there were additional land transportation costs that may also have been included in the purchase price. The extent of the price differential between the StatsCan data and the Thai customs data would seem to bear out this conclusion since the value differential is substantially higher than one would expect from ocean freight costs alone. Based on this information, the amount of dumping from Thailand estimated in the text of the Complaint is a very conservative estimate.

of export prices were determined, with each of casing and tubing broken down by high strength and low strength specifications. For Indonesia, available evidence suggests that imports into Canada are of OCTG products with premium connections, which can yield a price premium. Accordingly, a premium connection product category of export prices (and normal values) was established for Indonesia.

83. The export prices determined in this manner are shown in **Confidential Appendix 6-11**.

C. Margins of dumping

84. Based upon the s. 19 analysis discussed above, all goods from the Subject Countries were found to have been dumped at margins of dumping ranging from 4% to 61%; all subject imports found to have been dumped. **Confidential Exhibit 6-11** provides a detailed breakdown of the margins of dumping calculated for each specification and from each of the Subject Countries, with ranges of margins by country as follows:

- India – 4% - 15%;
- Vietnam – 13% - 26%;
- Turkey – 24% - 28%;
- Korea – 27% - 47%;
- Chinese Taipei – 15% - 16%;
- Philippines – 13% - 19%;
- Thailand – 6% - 18%;
- Ukraine – 5% - 24%; and
- Indonesia – 80 - 89%.

7. Subsidization

85. In recent years, there have been a growing number of cases increasingly demonstrating subsidization of goods from within the group of Subject Countries. It is submitted that the evidence indicates that subsidies received by producers and exporters of Subject Goods in India, Korea, the

Philippines, Turkey, Thailand, Ukraine, Vietnam, and Indonesia are well in excess of the WTO standard of insignificance.

86. The Complainants have provided an extensive listing in **Annex B** of subsidy programs in each of these countries. Each listed subsidy allegation is supported by evidence demonstrating the existence of both a financial contribution by a government and of a benefit thereby conferred onto the recipient in accordance with the definition of "subsidy" in s. 2(1) of the *SIMA*. Each allegation is also supported by evidence demonstrating that the subsidy is specific within the meaning of s. 2(7.2) and 2(7.3) of the *SIMA* and is used or is available for use by OCTG producers and exporters in each country.

87. On this basis, and for the reasons set out in more detail in in **Annex B**, the Complainants request that the Agency initiate an investigation against injurious subsidies conferred upon OCTG producers by governments and government entities in India, Korea, the Philippines, Turkey, Thailand, Ukraine, Vietnam, and Indonesia.

8. Demonstrating Injury

A. Injury

88. The domestic industry has suffered material injury in the form of lost sales, price depression, price suppression, lost revenues, reduced gross margins, reduced profitability, loss of market share, underutilization of capacity, loss of employment, and negative effects on the ability to raise capital. The domestic industry is further threatened with material injury through these same factors, and through a significant risk of diversion of Subject Goods into the Canadian market in the event of affirmative final antidumping and countervailing duty proceedings affecting sales of Subject Goods to the United States.

i. Apparent Canadian Market

89. **Confidential Exhibit 8-1** provides the apparent Canadian market, showing consolidated shipments (i.e. sales from "Canadian production") of the domestic industry, as well as imports by major import source. Canadian sales data are taken from **Confidential Exhibit 5-1**. Import volumes were taken from Statistics Canada import data.

ii. Volume of Dumped and Subsidized Subject Country Imports

90. **Confidential Exhibit 8-1** demonstrates that the apparent Canadian market fell from 1.19 million tonnes in 2011 to 1.16 million tonnes in 2012. In 2013, the apparent market fell by 13% to 1.01 million tonnes. Canadian shipments suffered even more than the overall market in 2013, falling by 16%, while subject imports declined by only 6%. Subject Country imports quadrupled in volume from insignificant levels in 2009 to over 40 thousand tonnes in 2010, and then more than doubled in volume again by 2011, representing a 759% between 2009 and 2011. From 2011 onward, imports from Subject Countries increased by more than 22% from 90 thousand tonnes in 2011 to over 110 thousand tonnes in 2013. By 2013, it is clear that dumped and subsidized imports from the Subject Countries have collectively become an important source of imported subject OCTG in Canada creating adverse pricing effects in the market as described in more detail below.

91. In 2011, the Subject Countries had a market share of 7.6%. That share increased every year through 2013 when it reached 10.9%.

iii. Price Effect of Dumped and Subsidized Imports

92. The evidence in this Complaint, particularly in the analysis of account-specific allegations, demonstrates that pricing of dumped and subsidized from Subject Countries' goods has caused injury to Canadian production by significantly undercutting the price of Canadian goods, preventing price increases that would otherwise likely have occurred, and more recently, depressing the price of competing Canadian produced goods. **Confidential Exhibits 8-2, 8-3, 8-4,** provide account-specific information from the Canadian domestic industry that attests to the causal nexus between dumped and subsidized Subject Country imports and injury to production in Canada of like goods.

93. Average pricing data since the beginning of 2011 demonstrates a pattern of consistent and significant underselling of OCTG from Subject Countries, as demonstrated in the table below. In 2010, imports from Subject Countries were at pricing, on average, no less than 23% below other imports of OCTG. The underselling relative to other imports rose to 27% in 2011 and 31% in 2012. In 2013, the underselling of imports of OCTG from the Subject Countries remained, on average, 26% below the VFD reported for non-Subject Countries.

94. Over the period beginning in 2011, the average prices of OCTG imports from Subject Countries have ranged from 7% to 22% below average domestic pricing. In particular, at the time of cost escalation of steel inputs in 2011, the average price of imports from the Subject Countries actually declined by nearly 5%, and on average were 22% below the average pricing of domestic sales of OCTG. The margin of underselling by imports from Subject Countries fell to about 7% in 2013 largely because Canadian producers' prices fell on average by over 8%.

Table 1: Comparison of Non-Subject Country and Subject Country OCTG Imports to Domestic Shipments
Source: Statistics Canada Import Data, VFD, CDN$/tonne

CDN$/tonne	2011	2012	2013
Domestic Shipments	$1,742	$1,739	$1,583
Imports: Non-subject Imports	$1,866	$2,103	$1,997
Imports: All Subject Countries	$1,368	$1,458	$1,473
TOTAL APPARENT MARKET	$1,767	$1,861	$1,745

iv. Injury and Causation: Account-Specific Allegations

95. Account-specific allegations provide evidence of material injury through lost sales, price suppression, and price depression. This information also underlines the causal connection between material injury and dumped and subsidized Subject Country imports, since it demonstrates a direct relationship between offers of dumped and subsidized Subject Country goods and the commercial impact on Canadian producers. A lost sale results in lost volumes and reduced capacity utilization. All three pricing factors may result in lost revenues, reduced profitability, and the consequent reduction in available funds for investment in the future.

96. Because domestic producers of OCTG make many of their sales through distributors, direct information on specific imports and lost sales can be difficult to obtain. Nevertheless, the Complainants have identified some examples of lost sales and lost revenues. These can be found in **Confidential Exhibits 8-2, 8-3, 8-4.**[9]

[9] Please note that references to "tons" in certain supporting documentation may relate to metric tons (or "tonnes") not short (i.e. imperial) tons. The use of the expression "tons" remains a practice in the Canadian industry, though it

v. Impact of Subject Goods on the State of the Domestic Industry

97. **Confidential Exhibit 5-1** and **Confidential Exhibit 8-1** contain Canadian consolidated industry data for the domestic industry. These data demonstrate the significant injury caused by Subject Country imports, beginning in 2011 and escalating into 2013.

98. Sales revenue of the Canadian industry declined by [ ]% between 2011 and 2012 at the same time as the value of the total apparent market grew nearly [ ]%. In 2013, Canadian industry sales revenues declined by nearly [ ]% as compared to 2012, while the value of the total apparent market declined by just over 18%. By comparison, the value of subject imports declined by just over 4% during this period of a significantly weakening market.

99. Canadian industry sales volumes of OCTG fell by 4% in a market that declined by only 2% from 2011 to 2012. Canadian industry sales volumes fell by a further 16% in 2013 compared to 2012.

100. Canadian industry market share declined from just over 49% and fell to just under 47% in 2013. Subject imports, on the other hand, increased their market share from over 7% in 2011 to over 10% in 2012 and nearly 11% in 2013.

101. The domestic industry has experienced a decline in gross margins and net profits as the presence of dumped and subsidized subject imports has increased in the Canadian market. Gross margins declined as a percentage of net sales from just over [ ]% in 2011 to just under [ ]% in 2011, befre falling to [ ]% in 2013. Falling margins at the gross margin level reflect the presence of subject imports in Canada.

102. The same pattern of injury can be seen at the net margin level, with profitability declining from [ ]% of sales in 2011 to [ ]% in 2012 before falling to [ ]% in 2013.

103. Capacity utilization of the domestic industry declined from just under [ ]% in 2011 to just over [ ]% in 2013. See **Confidential Exhibit 8-6**.[10] This represents a decline of nearly 20 percentage points in capacity utilization for the domestic industry. Declines occurred in every

[10] Because [ ], it is more meaningful to look at changes in industry capacity utilization over time using industry data that exclude [ ].

year of the period, with the largest decline (11 percentage points) occurring in 2013. Unsold Subject Country goods in inventory continue to hold back recovery in capacity utilization.

104. Total employment in the Canadian OCTG industry has risen slightly from [ ] in 2010 to [ ] in 2013. See **Confidential Exhibit 8-7.**[11] While there were slight increases in overall employment in both 2011 and 2012, there was a significant drop of just over 11% in 2013 as domestic producers tried to reduce their labour costs in the face of intense competition from dumped and subsidized imports from Subject Countries. While there have been attempts to maintain skilled employees through work-sharing programs, the need to lay off employees due to lack of orders, caused by low-priced Subject Country goods, will have ongoing consequences. Invariably, some employees who have been laid off will find other opportunities. This will occasion significant training requirements for new employees that will impair the ability of the Canadian industry to rapidly re-establish production to accommodate any increase in market demand.

105. Low-priced Subject Country goods have also made it increasingly difficult for the domestic industry to raise capital and make necessary investments. For example, on January 25, 2013, EVRAZ North America publicly announced the EVRAZ Group board approval of a plan to expand heat treat and threading capacity at Evraz's Calgary tubular facility. The multimillion-dollar project includes expanding heat treat capacity by over 150 percent and threading capacity by about 40 percent. See **Public Exhibit 8-8**. At the time of filing of this complaint, [ ]. See **Confidential Exhibit 8-9**. Another example is WTC OCTG related investments. [ ]. These very objective and rationale for these substantial investments

[11] Because [ ], it is more meaningful to look at the trends in total industry results over time excluding the employment [ ].

is now in jeopardy and returns on these investments have been put at significant risk in light of the increase in imports of Subject Goods and their adverse price impact in the domestic market.

vi. Summary

106. The information discussed above demonstrates that unfairly priced Subject Country OCTG has caused significant injury to production in Canada of like goods. There has been a significant increase in volume of the Subject Country goods, both in absolute terms and relative to the production and consumption of the like goods in Canada. The consolidated results of the domestic industry demonstrates negative effects on Canadian output, sales, market share, gross margins, profits, utilization of capacity and employment. Furthermore, significant investment decisions by the domestic industry have been in the face of injurious dumped and subsidized imports of OCTG. In addition, the Complainants have provided information on an account-specific basis that demonstrate injury to the domestic industry through lost sales, price depression and price suppression, and which further demonstrate a causal connection between the unfairly priced Subject Country imports and injury suffered by Canadian producers.

B. Threat of Injury

107. The dumping and subsidization of Subject Country OCTG also poses an imminent and foreseeable threat of injury to the domestic industry. This threat is evident in a number of ways, over the next 12–18 months and beyond, including:

- the likelihood that the significant increase in imports of dumped and subsidized Subject Country OCTG into Canada, and the corresponding reduction of domestic industry market share, is going to continue;
- the combined export orientation and demonstrable capacity of Subject Country OCTG producers and their corresponding ability to sustain and accelerate the increase in imports of dumped and subsidized Subject Country OCTG into Canada;
- the negative price effects caused by imports of Subject Goods and the likelihood that significant price undercutting of domestic OCTG will continue, as will further price depression and suppression caused by dumped and subsidized Subject Country OCTG; and
- the injury already manifest and taking root in the domestic industry.

108. An independent, imminent, and foreseeable threat of material injury to the domestic industry is also posed by the recently initiated dumping and countervailing duty investigations in the United States on OCTG from largely the same group of Subject Countries ("U.S. OCTG Case").[12] Diversion to Canada of Subject Country OCTG exports destined for the U.S. market in the event of a successful U.S. OCTG Case has the potential, in and of itself, to cripple the Canadian domestic industry in the absence of Canadian antidumping and countervailing duties. In the case of countries and exporters that received zero margins in the U.S. Department of Commerce's Preliminary Affirmative Determination, the Complainants believe that these exporters, particularly from Korea, are supplying vast quantities of green tube into the United States and are driving the proliferation of U.S.-based threading operations that further export to Canada. The threat posed by these threading operations only stands to grow if the U.S. Department of Commerce maintains its findings in its final determination. Thus, the imminent threat of injury to the Canadian industry is clear regardless of the ultimate outcome of the U.S. case.

i. Significant Rate of Increase of Dumped/Subsidized Goods

109. Section 8.A.ii., above, discusses the significant rate of increase of Subject Goods into the Canadian market, both in absolute terms and relative to consumption in Canada of like goods. To recap, total Canadian consumption of OCTG fell from 1.19 million tonnes in 2011 to 1.16 million tonnes in 2012. In that same period, however, imports of Subject Goods increased by over 29% from over 90 thousand tonnes to over 116 thousand tonnes. That represents a market share increase from 7.6% to 10.0%. In 2013, the overall domestic market further contracted by 13%, but imports from Subject Countries fell by only 6%, increasing their market share by 0.9 percentage points.

110. A similar escalation was seen in exports of OCTG from the Subject Countries to the United States in the 2010 to 2012 period. In particular, as found by the USITC in its Preliminary

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[12] *Certain OCTG from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam,* USITC Investigation Nos. 701-TA-499-500 and 731-TA-1215-1223. The Subject Goods in these investigations are defined as "certain oil country tubular goods (''OCTG''), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigations also covers OCTG coupling stock: U.S. Department of Commerce, *Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam* Determinations, **Public Exhibit 8-11.**

Determination in the U.S. OCTG Case, the volume of OCTG imports from the Subject Countries more than doubled between 2010 and 2012, from 850,000 short tons to 1.8 million short tons.[13]

111. Absent antidumping and countervailing duty protection, there is no reason to believe that the trend of rapidly increasing imports of Subject Goods will not continue over the coming 12–18 months, and, as discussed below, Subject Country producers have ample capacity to sustain or accelerate this increase in import volume. Moreover, as is also discussed below, since consumption of OCTG in Canada is projected to increase only modestly until 2020,[14] there is every reason to believe that these increases in imports of Subject Goods will continue to take market share from the domestic industry, in continuation of the trends discussed more fully in Section 8.A.ii, above.

ii. Freely Disposable Capacity

112. The available data demonstrate that the existing and growing capacity for OCTG production in the Subject Countries can easily sustain and indeed accelerate the rate of increase in imports of Subject Goods into Canada.

113. Based on factory-by-factory capacity data compiled by Metal Bulletin Research's publication "The Five Year Outlook for the Global OCTG Industry" (the "MBR 5 Year Outlook"), total OCTG capacity in eight of the nine Subject Countries in 2012 is rated at roughly 3.35 million tonnes. See **Table 2**. The MBR 5 Year Outlook did not include unreported production capacity or any capacity data for producers in Indonesia. Based on shipment data also included in the same publication, the weighted average utilization rate in the Subject Countries in 2012 is 53%. For 2013, the projected utilization rate in the Subject Countries was 63%, meaning there was (and is) freely disposable capacity in the Subject Countries in the range of 1.23 million tonnes, which is more than the entire Canadian market demand for OCTG.

[13] U.S. Department of Commerce, *Notice of Initiation*, (July 22, 2013) at 29, **Public Exhibit 8-11.**
[14] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013), **Confidential Exhibit 8-10.**

Table 2 Subject Country Capacity Based on Metal Bulletin 5-Year Outlook at 106, 152, 224.

		Existing Capacity (000's of tonnes)	Shipments (000's tonnes)				Utilization Rates			
			2012	2013	2014	2015	2012	2013	2014	2015
India	Total	710	245	275	326	363	34.5%	38.7%	45.9%	37.8%
Korea	Total	960	782	843	758	710	81.5%	87.8%	79.0%	74.0%
Philippines	Total	150	60	100	105	130	40.0%	66.7%	70.0%	86.7%
Taiwan	Total	370	108	100	105	75	29.2%	27.0%	28.4%	20.3%
Thailand	Total	180	5	175	205	220	2.8%	46.1%	53.9%	57.9%
Vietnam	Total	270	185	205	235	255	68.5%	75.9%	87.0%	94.4%
Turkey	Total	260	100	95	55	40	38.5%	36.5%	21.2%	15.4%
Ukraine	Total	450	290	318	340	350	64.4%	70.7%	75.6%	77.8%
		3350	1775	2111	2129	2143	53.0%	63.0%	63.6%	64.0%
							Utilization rate (weighted average)			

Assumptions:
1. The Boasteel mill in Thailand will come online during 2013.
2. The Vizag Steel mill will come online in 2015 (and 250,000 tonnes capacity will be dedicated to OCTG).

114. Furthermore, new and significant OCTG production capacity in the Subject Countries is planned in the next 12–18 months. For example, the MBR 5 Year Outlook notes as follows:

> The state-owned Indian Vizag Steel confirmed its intention to enter the seamless market by 2015 with a new U.S. $420m seamless mill. The new 400,000 tpy {tonnes per year} mill will be located in Vishakhapatnam, India and will be covering pipe 5 ½ - 18" OD with a substantial capacity being dedicated to OCTG.
>
> Chinese producer Baosteel has confirmed it is mulling building a seamless mill in Thailand in 2013. The {200,000 tpy} mill is to be dedicated to OCTG up to 13.375" OD and is primarily designed to serve local export markets. However, it is allegedly to be destined for export to the USA to circumvent U.S. trade restrictions imposed on Chinese OCTG.[15] (Emphasis added.)

115. Accordingly, depending on the extent to which the Vizag Steel operation in India will be dedicated to OCTG production, the result is a 17–30% increase in Subject Country OCTG

[15] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 228, **Confidential Exhibit 8-10**. See also: SteelGuru, "Baosteel Thai subsidiary Baoli Pipe starts seamless pipe production," (February 7, 2013), **Public Exhibit 8-12**.

production capacity in the next two years. It is highly unlikely that this significant excess capacity could be entirely, or even partly, absorbed by other markets in the next 12–18 months.

116. For example, the United States is by far the largest consumer of OCTG globally, and while U.S. consumption is expected to grow by roughly 800,000 tonnes between 2013 and 2015, imports are expected to decline over that same period on sharply rising domestic production.[16] This is the case even without the impact that the U.S. OCTG Case is likely to have on U.S. imports of OCTG from the Subject Countries. China, for its part, is the second largest consumer of OCTG. There, imports are forecast to continue to play a negligible and even decreasing role.[17]

117. While imports are projected to grow in some other markets, such as Africa, these markets are comparatively small.

118. The net result, as reflected in **Table 2**, is that utilization rates will remain on a weighted average basis around 60% between now and 2015. In other words, based on all of the available information, the MBR 5 Year Outlook does not project that any other markets will fully absorb the existing and growing excess capacity in the Subject Countries in the coming two years.

119. Finally, it is apparent that only an additional 40,000 to 50,000 tonnes per year would be needed to sustain the existing trend in the growth of Subject Goods imports into Canada. With those modest proportions in mind, it is even more apparent that the freely disposable capacity in the Subject Countries will be more than sufficient to accelerate the growth of imports of dumped OCTG into Canada for the foreseeable future.

120. Again, the reported freely disposable capacity of Subject Country producers is significantly more than enough to supply the entire Canadian market for OCTG.

iii. Potential Impact of the Subject Goods on the Prices of the Like Goods

121. The very aggressive pricing of the Subject Goods has, and will continue to exert a very strong downward pressure on the pricing of like goods. As discussed in Sections 8.A.iii and 8.A.iv,

[16] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 75, **Confidential Exhibit 8-10**.
[17] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 219, **Confidential Exhibit 8-10**.

above, Subject Goods have been significantly undercutting the Complainants' pricing in Canada for OCTG and there are clear instances of sales accounts that have been lost based on price in favour of dumped and subsidized Subject OCTG.

122. The dumping and subsidizing has led to considerable price depression, as evidenced by the decline in gross margins and EBIT. It is also made clear by the numerous instances where the domestic industry was forced to drop their quoted pricing in order to meet the dumped or subsidized pricing quoted by Subject Country exporters. These price effects are extremely serious and there is no doubt that these effects will only increase in the future as imports of dumped and subsidized Subject Goods into Canada increase, and as offers for dumped and subsidized OCTG continue to be made.

iv. Canadian Demand Parameters and the Potential Impact of the Subject Goods on the Domestic Industry

123. Canadian consumption of OCTG fell by 2% in 2012, but fell by a further 13% in 2013.[18] The leading drilling forecast for Canada projects no significant increases in drilling activity or increases in average well depth in Canada, meaning increases in OCTG consumption, if any, are likely to be modest in the next 12–18 months.[19] This is consistent with the forecast of the MBR 5 Year Outlook that annual "consumption {of OCTG in Canada will} grow slowly over the forecast period at an average rate of 2.9%, reaching 1.35M tonnes by 2020."[20] In short, Canadian demand for OCTG is forecast to remain relatively stagnant.[21]

124. As discussed in Section 8.A.iii. above, Subject Goods are gaining market share at the expense of the domestic industry. For example, in 2012, when Canadian consumption in fact contracted by 2%, imports of Subject Goods, in contrast, increased by 29%. The same trend has continued into 2013: although consumption is down 13% compared to 2012, imports of Subject Goods have held up comparatively well, down only 6%.[22]

[18] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 67, **Confidential Exhibit 8-10.** See also: Apparent Market Table, **Confidential Exhibit 8-1.**
[19] PSAC, "2014 Canadian Drilling Activity Forecast," (October 30, 2013), **Confidential Exhibit 8-13.**
[20] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 77, **Confidential Exhibit 8-10.**
[21] Apparent Market Table, **Confidential Exhibit 8-1.**
[22] Apparent Market Table, **Confidential Exhibit 8-1.**

125. The result is that the overall market share of the domestic industry has dropped from just over 49% in 2011 to roughly 47% in 2013. Subject import market share, on the other hand, has increased from just over 7% to nearly 11% over that same period. Non subject-country market share remained nearly unchanged throughout this same period.[23]

126. Corresponding to this loss in market share is the impact on the domestic industry's financial performance. As discussed above in Section 8.A.v, the financial situation of the domestic industry deteriorated dramatically in 2013. Indeed, in 2013, the domestic industry's combined net income before taxes fell to [ ]. Such financial strain necessarily translates into negative impact on the domestic industry's product development and overall OCTG production efforts.

127. As discussed above, the domestic industry has already suffered material injury because of imports of the Subject Goods. There is no reason to believe that this injury will not continue into the next 12–18 months in the face of stagnant demand for OCTG in Canada and the growing presence of dumped and subsidized goods in the Canadian market.

v. The Imposition of Antidumping or Countervailing Measures by the Authorities of a Country other than Canada

128. On July 2, 2013, the U.S. Department of Commerce received antidumping duty petitions concerning imports of OCTG from India, South Korea, the Philippines, Saudi Arabia, Chinese Taipei, Thailand, Turkey, Ukraine, and Vietnam, along with two countervailing duty petitions concerning OCTG from India and Turkey. On July 22, 2013, the U.S. Department of Commerce initiated its investigations into both the alleged dumping and subsidizing of OCTG from these countries. On August 16, 2013, the USITC found after its preliminary investigation that there was a reasonable indication that the dumping and subsidization of OCTG from the Subject Countries was materially injuring the domestic industry, and commenced the final phase of its investigations.[24]

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[23] Apparent Market Table, **Confidential Exhibit 8-1**.
[24] United States International Trade Commission, "Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam, Preliminary Determinations, (August 2013), **Public Exhibit 8-14**.

129. The U.S. Department of Commerce recently imposed preliminary antidumping and countervailing duties on OCTG from largely the same group of Subject Countries.[25] On December 17, 2013, the U.S. Department of Commerce announced its affirmative preliminary determination of countervailable subsidies against India and imposed margins ranging from 0.97% to 3.50%. While the U.S. Department of Commerce initially made a negative preliminary countervailing duty determination vis-à-vis Turkey, it found countervailable subsidies in a post-preliminary decision on April 18, 2014, and levied margins of 1.67% to 25.76%.[26] On February 14, 2014, the U.S. Department of Commerce found dumping margins ranging from 2.65% to 118.32%. While Korean exporters were preliminarily accorded a zero percent dumping margin, as described above, there are Korean exporters that supply vast quantities of green tube for further threading to U.S. processors, who then export finished OCTG to Canada. Diversion remains a serious risk from the high dumping margins and the absence of protection against imports of Subject Country OCTG threaded in the United States.

130. Significant antidumping duties have also been imposed and recently extended on Ukrainian OCTG by the EU, further increasing the attractiveness of and/or necessity to export to the Canadian market:

> The EU imposed anti-dumping duties on seamless tubes (including OCTG) from Russia, Croatia and Ukraine from July 2006. Anti-dumping duties were extended for Russia and Ukraine in mid-2012, dismissing ones for Croatia on the grounds of insignificant share of deliveries into the EU from the country. ... In Ukraine, Dnepropetrovsk pays 12.3%; NikoTube and Nizhnedneprovsky {i.e. Interpipe} 25.1%; and all others 25.7%.[27]

131. Lastly, it has been reported that the Eurasian Economic Commission, the regulatory authority of the Russia-Belarus-Kazakhstan customs union, announced preliminary antidumping duties ranging from 19.7 to 67.7% in late 2013 against Ukrainian OCTG exports by Interpipe.[28]

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[25] U.S. Department of Commerce, Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam Determinations, **Public Exhibit 8-11;** .
[26] U.S. Department of Commerce, Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam Determinations, **Public Exhibit 8-11;** .
[27] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 146, **Confidential Exhibit 8-10.**
[28] Platts, "SBB World Steel Review," (Excerpts) (19 February 2014), **Confidential Exhibit 8-16.**

vi. The Magnitude of the Dumping

132. As set out in Section 6.C and its accompanying appendices, exporters and importers of Subject Goods result to substantial dumping margins in order to secure orders for OCTG in Canada. Based on the magnitude of these margins, the threat posed by the dumped Subject Goods is real and imminent.

vii. Inventories

133. The Complainants do not have access to detailed data regarding Canadian importer inventories of Subject Goods. However, it is nearly certain that the increase in Subject Country imports into Canada in Q4 2013 has resulted in an inventory overhang that will weigh heavily on this market for some time to come, especially in terms of its impact on market pricing. As a result of these inventories, domestic producers are likely to lose significant sales volumes and revenues over the coming months. Domestic producers will have to lower prices in order to compete with the dumped and subsidized pricing of Subject Country OCTG that is already in inventory.

134. The Complainants do have access to data regarding the inventories of Subject Country producers from the responses to questionnaires in the preliminary investigation in the U.S. OCTG Case. The data compiled by the USITC shows that inventories of Subject Goods have risen dramatically between 2010 and 2012, and especially in interim 2013 as compared with interim 2012. Moreover, U.S. inventories of Subject Goods have followed a similar steep climb (in short tons):

Table 3 U.S. Inventories of Subject Goods. As reported in responses to questionnaires in the USITC preliminary investigation.

	Calendar Year			Jan - Mar	
	2010	**2011**	**2012**	**2012**	**2013**
End-of-period inventories of Subject Country producers	74,683	77,959	111,867	81,960	113,564
End-of-period inventories of U.S. importers of Subject Goods	143,927	190,730	323,088	252,892	349,916

135. Moreover, based on the projections in the MBR 5 Year Outlook, the increase in inventories in the Subject Countries seen in interim 2013 – 38% greater than in interim 2012 – nowhere near corresponds in magnitude to increases in projected global demand in 2013 or 2014,

which stand at only 6% and 7%, respectively.[29] Nor does the increase in U.S. importer inventories in interim 2013 – 38% greater than in 2012 – correspond to projected increases in U.S. demand in 2013 and 2014, which are estimated to be only 4% and 6%, respectively.

136. In short, there is every indication that inventories of Subject Goods are increasing at a rate far outstripping the modest projected increases in demand in the Canadian market over the next 12–18 months, and therefore contribute to the clearly foreseeable and imminent threat facing the domestic industry.

viii. Global Demand and Production Flows

137. Finally, the above factors must be considered in the context of the overall global OCTG production and consumption, especially in light of the pending U.S. OCTG Case.

138. The NAFTA region and China are by far the two largest consumer regions of OCTG, consuming a forecasted 7.4 million and 4.4 million tonnes in 2013, respectively. This collectively represents nearly two thirds of global OCTG consumption.[30] Perhaps not surprisingly, the NAFTA region is also the largest net importer of OCTG, with net imports of 2.4 million tonnes in 2012.[31] However, despite its vast consumption, China is also the largest net exporter of OCTG, with net exports of just over 2 million tonnes in 2012.[32] The result is a large net outflow of OCTG away from China and other net exporting regions primarily toward the NAFTA market. Further shaping this context are the antidumping and countervailing duties in place in Canada, the United States, Mexico, the EU, Brazil, and Columbia against Chinese OCTG.[33] Faced with the presence of diverted Chinese production in nearly every market in the world, the Subject Country exporters

[29] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 27 and 266, **Confidential Exhibit 8-10**.
[30] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 27, **Confidential Exhibit 8-10**.
[31] Canada is projected to be a net importer of 225MT in 2013: Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 77, **Confidential Exhibit 8-10**.
[32] Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 19, **Confidential Exhibit 8-10**.
[33] The orders in place in Mexico, the EU, and Columbia apply only to seamless OCTG, but China produces very little welded OCTG: Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 219, **Confidential Exhibit 8-10**.

must focus their export orientation towards the United States, Canada, and other large net importing jurisdictions that have antidumping and countervailing duty protection in place.

139. Indeed, the MBR 5 Year Outlook confirms that most of the Subject Countries are export-oriented and export-dependent, having been significant net exporters of OCTG in 2012; that all but India will be net exporters in 2013; and that all of the Subject Countries will be net exporters by 2014.[34] In this landscape, it is not surprising that Canada will become a natural and attractive target market for exporters in all the Subject Countries and see a continued increase of imports from Subject Goods, notwithstanding relatively stagnant demand.[35]

140. Moreover, several Subject Country producers have publicly expressed their export ambitions for Canada. For example, DP Jindal (Maharasthra Seamless Limited) in its 2012-2013 Annual Report reports that "The Company is thrusting {sic} on export business in view of conducive market conditions overseas specially {sic} in South America and Canada."[36] Similarly, Sujia/Wuxi (Fastube Steel Pipe Group) boasts on its website of its "1,200,000 metric ton" annual tubular capacity, and that:

> In order to establish a well-covered sales net work {sic}, we have now successively set up sales offices and representatives ... in some strategic cities, such as Beijing of China, Houston of USA, Edmonton and Toronto of Canada, Lima of Peru, Saigon of Vietnam and Dubai of UAE.[37]

[34] According to the MetalBulletin 5 Year Outlook, in the year 2012: **Ukraine** was a **net exporter** of 252K tonnes (at 117); **Turkey** was a **net exporter** of 57K tonnes (at 161); **India** was a **net exporter** of 12K tonnes (at 236); **South Korea** was a **net exporter** of 778K tonnes (at 238), and 98% of its exports went the USA; **Chinese Taipei** was a **net exporter** of 106K tonnes (at 242); **Vietnam** was a **net exporter** of 136K tonnes (at 243); **The Philippines** was a **net exporter** of 58K tonnes (at 245); and only **Thailand** (123K tonnes) was a **net importers** of OCTG. See also Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 157 and 245, **Confidential Exhibit 8-10**.

[35] Canada's net imports are projected to grow from 201MT in 2012 to 450MT by 2020. See Metal Bulletin Research, "The Five Year Outlook for the Global OCTG Industry," (April 1, 2013) at 67 and 77, **Confidential Exhibit 8-10**.

[36] DP Jindal, *2012-13 Annual Report* at 21, **Public Exhibit 8-15**.

[37] Wuxi Corporation Information, **Public Exhibit 8-5**.

ix. Conclusion

141. For all of the reasons noted above, the Complainants submit that dumped and subsidized Subject OCTG from the Subject Countries constitutes a foreseeable and imminent threat to the production in Canada of like goods.

9. Conclusion

142. Subject imports from the Subject Countries at dumped and subsidized prices have caused injury to the domestic industry. The domestic industry has suffered lost sales, price depression and price suppression, lost revenues, reduced gross margins, reduced profitability, loss of market share, loss of employment, reduced returns on investment, and underutilization of capacity.

143. Production in Canada is further threatened with material injury. This threat is based on: evidence of the significant rate of increase of dumped and subsidized imports; the substantial increase in freely disposable capacity in the Subject Countries and its impact on other markets; the significantly lower Subject Country prices; existing inventories in Canada; the substantial margin of dumping and subsidization; and the number of trade cases against Subject Country OCTG, in other jurisdictions, particularly the United States.

144. The Complainants therefore submit that the dumping of Subject OCTG originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine, and Vietnam, and the subsidizing of Subject OCTG from India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine, and Vietnam has caused material injury to domestic production of like goods, and further threatens to cause additional material injury if not remedied.

145. Accordingly, the Complainants hereby request that the President of the Agency initiate an investigation into the injurious dumping of these Subject Goods originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine, and Vietnam, and the subsidizing of these goods from Indonesia, India, the Philippines, South Korea, Turkey, Thailand, Ukraine, and Vietnam.

ANNEX A: *SIMA* s. 20 Allegation Concerning Vietnam

146. There are a number of factors considered by the President in determining whether domestic prices may be substantially determined by the government of an exporting country under investigation. In particular, the President will consider whether:

- the government or a government body sets minimum and/or maximum price levels;
- the government of a government body sets absolute pricing;
- the government or a government body sets recommended or guidance pricing at which it is expected that sellers will adhere to within a margin of appreciation;
- government or regulatory bodies establish prices levels and regulate and enforce price levels; and,
- government-owned or controlled enterprises set the price of their goods in consultation with the government or as a result of government-mandated pricing policies and, because of their market share or dominance, become price-leaders in the domestic market.[38]

147. Additionally, the President will consider whether the government indirectly determines pricing through mechanisms involving the supply or price of inputs used in the production of the Subject Goods or by influencing the supply of Subject Goods in order to affect their price. In particular, the President will consider whether:

- the government controls import and export levels through licensing, quotas, duties, or taxes to maintain domestic prices at a certain level;
- the government subsidizes producers by providing direct financial subsidies or low-priced inputs in order to maintain selling price;
- the government purchases goods in sufficient quantities to raise the domestic price of the goods or sells stockpiled good to put downward pressure on prices;
- the government uses taxation or other policies to regulate the level of profits that a company can earn, which will affect selling prices; and,

[38] *Certain Steel Piling Pipe Originating in or Exported from the People's Republic of China*, (November 15, 2012) at para. 57.

- o the government regulates or controls production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.[39]

148. While the Complainants are limited by the lack of English language information on s. 20 conditions in Vietnam, information reasonably available to the Complainants show that there are a number of these factors are present in the Vietnam steel sector, including OCTG.

A. GOV Industrial Policies

149. The GOV remains heavily involved in the steel industry, including the OCTG sector. To that effect, the GOV has passed Decree No. 145/2007/QD-TTg, its "Steel Master Plan" for 2007-2015.[40] Mr. Trinh Dinh Thang, Deputy Director of International Cooperation Department in the Ministry of Industry and Trade of Vietnam, in a presentation to the OCED Steel Committee on July 1st, 2013, summarized the Steel Master Plan's four main goals:

- o To develop Vietnam's steel industry in compliance with the national master plan and local plans on socio-economic and industrial development as well as roadmap for integration of Vietnam;

- o To build and develop Vientiane's steel industry into an important industry, ensuring stability and sustainability of industrial development, minimizing the imbalance in manufacturing between pig iron, steel billet and finished products, as well as between long and flat steel products;

- o To build Vietnam's steel industry with advanced and rational technologies, using domestic resources in a thrifty and efficient manner, ensuring harmonization with eco-environment protection in localities of manufacturing. Step by step to reject the small factories with out of date technology.

- o To value and encourage domestic economic sectors and enterprises to cooperate with foreign counterparts in investing and producing pig iron, steel billet, finished production, steel metallurgical-rolling equipment at international standards. To set up the priority investment policies for steel high-quality producing from iron ore with large-scale projects.[41]

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[39] *Certain Steel Piling Pipe Originating in or Exported from the People's Republic of China*, (November 15, 2012), at para. 58.
[40] Decision No. 145/2007/QD-TTg, *Decision Approving the Master Plan on the Development of Vietnam's Steel Industry in the 2007-2015 Period, with the 2025 Vision Taken into Consideration*, (4 September 2007), **Public Exhibit 6-A-1**.
[41] "Vietnam's Economy and the Development of Steel Industry," (1 July 2013), **Public Exhibit 6-A-2**.

150. The Master Steel Plan also sets a number of "development objectives," which amount to production targets for Vietnamese steel producers. Of most relevance, the Master Steel Plan set the goal of:

> By 2010, 6.3-6.5 million tons of finished steel products (1.8-2.0 million tons of flat steel products); by 2015, 11-12 million tons (6.5-7.0 million tons of flat steel products); by 2020, 15-18 million tons (8-12 million tons of flat steel products); and by 2025, around 19-22 million tons (11-13 million tons of flat steel produces and 0.2 million tons of special steel) will be manufactured.[42]

151. To accomplish these significant goals, the Master Steel Plan outlines a number of government initiatives to encourage investment, manage pricing, and ensure a balance between different steel products. The first such program is the provision of investment and infrastructure. The Master Steel Plan lists over 25 investment initiatives from 2007 to 2025 that will receive government support. The projects range from iron ore mine complexes to mills. The second program is to "protect the domestic market through lawful technical barriers and quality and environmental standards."[43] Such intervention has the effect of controlling the domestic prices for steel. The third policy, controlled by the Ministry of Finance, is "fiscal policies as well as import tax and export tax policies in order to step up investment in the development and restructuring of the steel industry."[44] Lastly, the Ministry of Natural Resources and Environment is charged with "closely managing iron ore resources and fluxing materials."[45]

152. The Master Steel Plan shows that the GOV has an active interest in managing the development of the steel industry and utilizes a number of policy measures and government actions to affect pricing and incentivize investment. Indeed, as discussed in more detail below, the GOV

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[42] Decision No. 145/2007/QD-TTg, *Decision Approving the Master Plan on the Development of Vietnam's Steel Industry in the 2007-2015 Period, with the 2025 Vision Taken into Consideration*, (4 September 2007), **Public Exhibit 6-A-1**.
[43] Decision No. 145/2007/QD-TTg, *Decision Approving the Master Plan on the Development of Vietnam's Steel Industry in the 2007-2015 Period, with the 2025 Vision Taken into Consideration*, (4 September 2007), **Public Exhibit 6-A-1**.
[44] Decision No. 145/2007/QD-TTg, *Decision Approving the Master Plan on the Development of Vietnam's Steel Industry in the 2007-2015 Period, with the 2025 Vision Taken into Consideration*, (4 September 2007), **Public Exhibit 6-A-1**.
[45] Decision No. 145/2007/QD-TTg, *Decision Approving the Master Plan on the Development of Vietnam's Steel Industry in the 2007-2015 Period, with the 2025 Vision Taken into Consideration*, (4 September 2007), **Public Exhibit 6-A-1**.

has a number of very specific programs and interventions in the steel industry, no doubt to fulfill the lofty goals of the Steel Master Plan.

B. GOV Intervention in the Steel Sector

153. As noted above, the GOV intervenes regularly in the steel industry, with the result that the prices are substantially determined by the GOV. The GOV uses a diverse number of measures in order to accomplish this goal.

154. First, the GOV has historically set rules on the quantity of inputs producers may use in their production to control output and, correspondingly, pricing. As recently as April 2010, government agencies used "rules about how many tons of ore, steel billet, coal and how many kilowatt-hours of power are to be used for making a ton of steel" and "send notes to businesses asking them to reduce input costs" in light of these edicts.[46] Indeed, it was reported, "the department will take action against steel makers, especially those who have raised their prices by 20% over the last 15 days."[47] Such price stabilization practices, through GOV input supply regulations, are a clear example of the GOVs willingness to intervene in market behavior.

155. Second, the GOV controls imports of steel in order to control supply, demand, and pricing. This is the most clearly with the GOV's actions in 2013 in the face of increased imports of low-priced steel products (both input and final) from China. In response to this situation, the GOV is "working on a decree to tighten control over imported steel. As per the decree, related agencies will take imported steel sample for testing of quality."[48]

156. Third, in order to manage demand, and in turn the domestic prices, the GOV will start, stop, and restart construction projects. For example, in December 2008 that "the government has also restarted some construction projects to boost steel demand."[49] Additionally, as recently as 2012, the GOV froze the real estate market.[50]

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[46] "Vietnam steel produces manipulating prices," (9 April 2010), **Public Exhibit 6-A-3**.
[47] "Vietnam steel produces manipulating prices," (9 April 2010), **Public Exhibit 6-A-3**.
[48] "Steel sector sees positive signs in 2013," (19 April 2013), **Public Exhibit 6-A-4**.
[49] Megawati Wijaya, "Vietnam's Nov Long steel sales up 250% on speculation," *American Metal Market*, (10 December 2008), cited in "Comments Concerning the Proposed United States- Trans-Pacific Partnership Trade Agreement," (25 January 2010) at 8, fn 15, **Public Exhibit 6-A-5**.
[50] "Steel industry needs government support to revive," (28 January 2013), **Public Exhibit 6-A-6**.

157. Lastly, as noted above, the GOV has substantial control of investment in the steel industry, which helps it control supply and demand. In addition to investing in projects to boost supply where necessary, the GOV will also refuse to authorize the licensing of investment in steel plants where there is oversupply. For example, in March 2013, the "Vietnamese government stepped out into a break of capacity investment for steel business. The government decided the plan not to authorize the license of new investment by iron and steel companies for now."[51]

158. The combined effect of these policies is the substantial control by the GOV of steel pricing in Vietnam.

C. GOV Ownership and Control of Suppliers

159. The GOV also controls pricing though the state-owned steel manufacturer Vietnam Steel Corporation ("VNSteel") and its subsidiaries. VNSteel is an integrated steel producer producing flat steel products, long steel products, and finished steel products such as steel pipe and OCTG.[52] While VNSteel was equitized in late 2012, the GOV retained a 65 percent controlling share in the company.[53] VNSteel is a significant steel producer in Vietnam, carrying 50-60% of the domestic market share for steel products.[54]

160. The GOV regularly exploits its ownership share in VNSteel and VNSteel's market share to influence the price of steel. For example, in mid-2008 in the face of rising prices, the GOV "asked" VNSteel to keep prices unchanged for as long as possible.[55] VNSteel's Investment and Development Director acknowledged, "We have to keep to the government ceiling price strictly but, at this rate, our profits will be hurt."[56] Furthermore, in an IPO update from Ho Chi Minh City

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[51] Japan Metal Bulletin, "Vietnamese Government to Control Iron and Steel Capacity Investment," (13 March 2013), **Public Exhibit 6-A-7**.
[52] Ho Chi Minh City Securities Corporation, "VNSteel," (11 June 2011), **Public Exhibit 6-A-8**; Viet Nam News, "VN steel pipe under investigation," (25 July 2013), **Public Exhibit 6-A-9**.
[53] Vietnam Breaking News, "Vietnam PM Approves VNSteel equitization plan," (23 October 2012), **Public Exhibit 6-A-10**.
[54] "Steel giant reports large losses in first half," (14 July 2013), **Public Exhibit 6-A-11.** Ho Chi Minh City Securities Corporation, "VNSteel," (11 June 2011), **Public Exhibit 6-A-8**; Viet Nam News, "VN steel pipe under investigation," (25 July 2013), **Public Exhibit 6-A-9**.
[55] Dionne Thompson, "Vietnam may raise billet export tax," American Metal Markets, June 23, 2008, cited in "Comments Concerning the Proposed United States- Trans-Pacific Partnership Trade Agreement," (25 January 2010) at 8, **Public Exhibit 6-A-5**.
[56] Dionne Thompson, "Vietnam may raise billet export tax," American Metal Markets, June 23, 2008, cited in "Comments Concerning the Proposed United States- Trans-Pacific Partnership Trade Agreement," (25 January 2010) at 8, **Public Exhibit 6-A-5**.

Securities Corporation ("HSC") around the time of VNSteel's privatization, HSC warned investors "VNSteel does not enjoy much pricing power for many of VNSteel finished steel products are regulated by the state."[57] VNSteel "is inefficient and suffers from price controls giving it a disadvantage against private sector players in terms of margins."[58] Indeed, HSC reported, "although they have 50% of the market, average selling prices are lower than other companies' prices by between VND 500,000 – 1,000,000 per ton."[59]

161. As such, VNSteel significant market share has the ability to affect domestic pricing for steel products, including OCTG, and the GOV imposes price ceilings and floors for VNSteel in order to control steel pricing in the wider market.

D. GOV Export Controls

162. The GOV's primary mechanism for controlling steel prices in Vietnam is through steel export taxes. To manage demand for steel products, the GOV frequently manipulates export tax rates to combat inflation, jumpstart the economy, or increase or decrease imports, exports or re-exports. For example, from August 2007 to April 2009, the GOV changed the export tax rates no less than five times and changed the import duties no less than four times.[60] More recently, in August 2013, the GOV Ministry of Finance doubled the steel export duty from 10% to 20%, then in November 2013 returned the rate to 10% after pressure from the Ministry of Industry and Trade, then in February 2014, reduced the export tax to 5%.[61] The maintenance of import and export levels through these duties and taxes allows the GOV to maintain domestic prices at desired levels and outside of typical market conditions.

E. Domestic Price Analysis

163. Sufficient information with respect to world market prices for OCTG is available for comparison with Vietnamese domestic OCTG prices. The Complainants have gathered the best information available on Vietnamese OCTG prices. Domestic pricing is not readily available nor

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[57] Ho Chi Minh City Securities Corporation, "VNSteel," (11 June 2011), **Public Exhibit 6-A-8**.
[58] Ho Chi Minh City Securities Corporation, "VNSteel," (11 June 2011), **Public Exhibit 6-A-8**.
[59] Ho Chi Minh City Securities Corporation, "VNSteel," (11 June 2011), **Public Exhibit 6-A-8**.
[60] "Comments Concerning the Proposed United States- Trans-Pacific Partnership Trade Agreement," (25 January 2010) at 9, **Public Exhibit 6-A-5**.
[61] "Vietnam's Steel Export Tax Cut by Half," (6 February 2014), **Public Exhibit 6-A-12**.

is it indexed in any public format. Nevertheless, the Complainants have gathered quotes from two Vietnamese OCTG producers:

- "API Pipe for Oil and Gas Industry" from Huu Lien Asia Corporation at USD 800-850/MT.
- "API 5ct Erw Tubing for OCTG" from Lida Pipe(Vietnam)Co., Ltd at USD 867/short ton or approximately USD 955.67/MT.[62]

164. These quotes represent the best available evidence of home market pricing in Vietnam.

165. To verify this information, the Complainants also obtained OCTG export data from Korea to Vietnam. The selling prices to Vietnam would reflect the general market pricing in Vietnam and therefore be a good indicator of the level of OCTG market pricing in Vietnam more generally. The Complainants pulled data for HS 7306291000 ("Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel; Other; Casing) for 2013. There were two entries valued at $777.79 USD/MT and 826.09 USD/MT, respectively.[63]

166. Thus, based on information reasonably available to the Complainants, domestic pricing of OCTG in Vietnam ranges from 777.79 USD/MT to 955.67 USD/MT.

167. Comparing these data to a number of publically available OCTG pricing reports, these prices are in almost every instance lower than others. For example, MetalBulletin publishes historic annual OCTG prices in its publication, "The Five Year Outlook for the Global OCTG Industry. In that publication, MetalBulletin reported OCTG prices in USD per metric tonne in 2012 (and partially forecasted for 2013 at the time of publication) for USA, Western Europe, Eastern Europe, China, Japan, and the Middle East. These values are replicated in **Table 4**.

Table 4 MetalBulletin OCTG Prices in USD per MT[64]

Year	USA			W. Europe	E. Europe		China		Japan		Middle East
	J/K 55	N80 Q	ERW	J/K 55	N80	J/K 55	J/K 55	N80 Q	J/K 55	N 80 Q	J/K 55
2012	[										

[62] Price Quotes for OCTG in Vietnam, **Public Exhibit 6-A-13.**
[63] Export Statistics for HS 730629100 from Korea, **Public Exhibit 6-A-14.**
[64] MetalBulletin, "The Five Year Outlook for the Global OCTG Industry" (Excerpts), (April 1, 2013), **Confidential Exhibit 6-A-15.**

2013											]

168. No matter what grade is used and whether seamless or ERW, the Vietnam home market pricing data is lower than pricing from the United States, Western Europe, Eastern Europe, Japan, and the Middle East in both 2012 and 2013. Moreover, the Vietnam home market pricing is either in line with or lower than pricing from China, a country already designated as a non-market economy by the Agency in respect of OCTG.[65]

169. MetalBulletin also publishes monthly data for seamless tubes and pipes called the "Seamless Steel Tube and Pipe Market Tracker." Using the monthly reports from January and February, the data show that all Vietnamese home market price quotes for which it is unclear that the product is seamless or welded is generally lower than the pricing in the United States, Western Europe, Eastern Europe, Japan, and the Middle East, regardless of grade. Moreover, this data also shows Vietnam pricing in line with that of China. See **Table 5**.

Table 5 Metal Bulletin Seamless Steel Tube and Pipe Market Tracker OCTG Prices[66]

Country	Grade	Jan 2013	Feb 2013
USA	J/K 55	[	
	N80 Q		
Western Europe	J/K55		
	N80 Q		
	L80		
Eastern Europe	J/K 55		
	N80 Q		
China export	J/K55		
	N80 Q		
	L80		
Japan	J/K55		
	N80 Q		
	L80		
Middle East	J/K 55		
	N80 Q		]

170. PipeLogix has recent December 2013 and January 2014 OCTG pricing for distributor selling prices to end users in the United States. Again, home market pricing from Vietnam,

[65] *Certain Oil Country Tubular Goods* (9 March 2010), at para. 82.
[66] MetalBulletin, "Seamless Steel Tube and Pipe Market Tracker," **Confidential Exhibit 6-A-16.**

regardless of the diameter, weight, grade, or type (seamless versus welded), is significantly lower than that reported for OCTG pricing in the United States. **Table 6** takes the lowest price reported by PipeLogix in December 2013 and January 2014. As the data show, the quotes from Vietnam are lower by anywhere from USD [ ] to USD [ ].

Table 6 PipeLogix OCTG Pricing Data[67]

Date	Diameter	Weight	Grade	Tube	Connection	USD/MT
Dec 2013	8.625	24	J55	ERW	ST&C	[ ]
Jan 2014	8.625	24	J55	ERW	ST&C	[ ]

171. Based on this analysis, the Complainants allege that there is reason to believe that domestic OCTG prices in Vietnam are not substantially the same as they would be if they were determined in a competitive market.

F. Conclusions

172. The wide range of measures used by the GOV in the steel sector and the material nature of the measures has resulted in significant influence on the Vietnamese steel industry including the OCTG sector. The conditions described in s. 20(1)(a) of the *SIMA* exist in the sector and domestic prices are substantially determined by the GOV. The domestic selling prices, of OCTG, therefore, are not substantially the same as it would be in a competitive market As such, the Agency should calculate normal values using the methodology in s. 20 of the *SIMA*.

[67] Pipe Logix OCTG Spot Market Price, **Confidential Exhibit 6-A-17**.

ANNEX B: Subsidy Allegations

A. OCTG from India are Being Subsidized

i. Various Countervailable Subsides are Provided within the Special Economic Zones ("SEZs")

173. India's SEZs Policy "was announced in April 2000 with the objective of making the Special Economic Zones an engine for economic growth, supported by quality infrastructure and an attractive fiscal package both at the Central and State level."[68] The main objectives of the *SEZ Act* are to:

- Generate additional economic activity;
- Promote exports of goods and services;
- Promote investment from domestic and foreign sources;
- Create employment opportunities; and
- Develop infrastructure facilities.[69]

174. As detailed below, several programs conducted under the SEZs regime provide countervailable benefits and have been found countervailable in previous Agency and United States Department of Commerce investigations.

175. The list of active SEZs is lengthy and ever growing. As recently noted by India's Department of Commerce, "577 formal approvals have been granted for setting up of Special Economic Zones, out of which 385 SEZs have been notified and are in various stages of operation. A total of 166 SEZs are exporting."[70] The evidence available to the Complainants indicates that there is at least a reasonable indication that one or more producers or exporters of OCTG receive benefits under the SEZ regime. For example, Indian Seamless Metal Tubes and Maharashtra

[68] Government of India, Department of Commerce, Annual Report 2012 – 2013, Chapter 7: "Centres of Export Oriented Production: SEZs and EOUs (Export Oriented Units)," at 169, **Public Exhibit 7-A-1**.
[69] Government of India, Department of Commerce, Annual Report 2012 – 2013, Chapter 7: "Centres of Export Oriented Production: SEZs and EOUs (Export Oriented Units)," at 169, **Public Exhibit 7-A-1**.
[70] Government of India, Department of Commerce, Annual Report 2012 – 2013, Chapter 7: "Centres of Export Oriented Production: SEZs and EOUs (Export Oriented Units)," at 170-171, **Public Exhibit 7-A-1**.

Seamless (DP Jindal) have mills in Maharashtra, and according to the Government of India ("GOI") there are 102 approved SEZs in Maharashtra.[71]

176. The Complainants therefore request that the Agency request from the GOI the most up-to-date listing of SEZs, and from respondent producers and exporters information regarding their operations in SEZs.

1) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material

177. Companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts and packing material duty-free in exchange for committing to export all of the products it produces, excluding rejects and certain domestic sales.[72] The GOI does not appear to have in place, and does not apply a system that is reasonable and effective for the purposes intended, to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts. As such, there is a reasonable indication that this program does not meet the exception to the definition of "subsidy" in s. 2(1) of the *SIMA* as a duty or internal tax imposed by the government on goods that, because of their exportation, are relieved by means of remission, refund, or drawback.

178. The program provides a financial contribution within the meaning of *SIMA* s. 2(1.6)(b) in that amounts otherwise owing are not collected, and a corresponding benefit within the meaning of *SIMR* s. 35.01(1) is the amount of duties saved. To the extent that duty-free imports are in fact consumed in the production of, or incorporated into exported goods and the importer only remains contingently liable for the duties until the SEZ authority confirms the export requirement, a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) and benefit within the meaning of

[71] MetalBulletin, "The Five Year Outlook for the Global OCTG Industry" (Excerpts), (April 1, 2013), at 224, **Confidential Exhibit 7-A-2**; State-wise Distribution of Approved SEZs, **Public Exhibit 7-A-3**.
[72] United States Department of Commerce, *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 20, 2011) and accompanying *Issues and Decision Memorandum* at 14, **Public Exhibit 7-A-4**.

SIMR s. 28 is conferred in the form of an interest-free loan.[73] The program is specific under *SIMA* s. 2(7.2)(a) and (b) because it is export-contingent and geographically specific to SEZs within India.

179. The Agency has previously countervailed this program in Certain Carbon Steel Welded Pipe.[74]

2) Income Tax Exemption on Export Income under S. 10AA of the *Income Tax Act*

180. Firms operating in an SEZ benefit from "100% Income Tax exemption on export income ... for first 5 years, 50% for next 5 years thereafter, and 50% of the ploughed back export profit for next 5 years."[75]

181. The program provides a financial contribution under *SIMA* s. 2(1.6)(b) in that amounts otherwise owing are not collected; is specific under *SIMA* s. 2(7.2) (a) and (b) because the benefits are contingent upon export performance, and also because it is regionally specific to SEZs; and provides a benefit in the amount of income tax saved under *SIMR* s. 32.

182. This program was also found countervailable by the Agency in *Certain Carbon Steel Welded Pipe* and by the United States Department of Commerce in *PET Film from India*.[76]

3) Exemption from Minimum Alternate Tax under Section 11JB of the *Income Tax Act*

183. Firms operating in an SEZ benefit from an "exemption from minimum alternate tax under s. 115JB of the *Income Tax Act*."[77]

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[73] United States Department of Commerce, *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 20, 2011) and accompanying *Issues and Decision Memorandum* at 15, **Public Exhibit 7-A-4**.
[74] *Certain Carbon Steel Welded Pipe Originating in or Exported From Chinese Taipei, The Republic of India, The Sultanate of Oman, the Republic of Korea, Thailand, The Republic of Turkey and the United Arab Emirates* (26, November 2012), **Public Exhibit 7-A-11**.
[75] SEZ India, "Facilities and Incentives," **Public Exhibit 7-A-5**.
[76] United States Department of Commerce, *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 20, 2011) and accompanying *Issues and Decision Memorandum* at 18, **Public Exhibit 7-A-4**.
[77] SEZ India, "Facilities and Incentives," **Public Exhibit 7-A-5**.

184. This income tax exemption is a countervailable subsidy under the *SIMA*. The program provides a financial contribution within the meaning of *SIMA* s. 2(1.6)(b) in the form of amounts otherwise owing are not collected. It is specific under *SIMA* s. 2(7.2)(a) as it is regionally specific to SEZs. The program provides a benefit in the amount of tax saved under *SIMR* s. 27.1(2).

185. This program was also found countervailable by the Agency in *Certain Carbon Steel Welded Pipe*.

4) Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material

186. Firms operating in an SEZ benefit from an "exemption from Central Sales Tax," which is currently 2%.[78]

187. This sales tax exemption is a countervailable subsidy under the *SIMA*. The program provides a financial contribution in the form of amounts otherwise owing are not collected within the meaning of *SIMA* s. 2(1.6)(b); it is specific under *SIMA* s. 2(7.2)(a), as it is regionally specific to SEZs; and provides a benefit in the amount of tax saved within the meaning of *SIMR* s. 27.1(2).

188. This program was found countervailable by the Agency in *Certain Carbon Steel Welded Pipe* and by the United States Department of Commerce in *PET Film from India*.[79]

5) Exemption from Service Tax

189. Firms operating in an SEZ benefit from an "exemption from Service Tax (s. 7, 26 and Second Schedule of the *SEZ Act*)."[80] Service Tax is currently 12.36% and is generally collected by

[78] SEZ India, "Facilities and Incentives," **Public Exhibit 7-A-5**; Government of India, Department of Revenue, "Introduction (Central Sales Tax)," **Public Exhibit 7-A-6**.
[79] United States Department of Commerce, *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 20, 2011) and accompanying *Issues and Decision Memorandum* at 16, **Public Exhibit 7-A-4**.
[80] SEZ India, "Facilities and Incentives," **Public Exhibit 7-A-5**.

the service provider.[81] As of July 1, 2012, Service Tax applies in respect of all services unless a service is specified in a negative list, which currently stands at 17 services.[82]

190. This Services Tax exemption is a countervailable subsidy under the *SIMA*. The program provides a financial contribution within the meaning of *SIMA* s. 2(1.6)(b) in amounts otherwise owing are not collected; is specific within the meaning of *SIMA* s. 2(7.2)(a), as it is regionally specific to SEZs; and provides a benefit in the amount of services tax saved, or alternatively in the amount saved by OCTG producers or exporters on the cost of services falling under the exemption, which savings can be reasonably expected in economic terms, within the meaning of *SIMR* s. 27.1(2).

191. This program was found countervailable by the Agency in *Certain Carbon Steel Welded Pipe*.

6) Discounted Land Fees and Leases

192. Indian State Governments that maintain control of SEZ Units' land lease has provided one-time concession of 75% of a lease premium to firms operating in those SEZs.[83]

193. This form of preferential land or lease arrangement is a countervailable subsidy under the *SIMA* because it is geographically specific under *SIMA* s. 2(7.2)(a), involves the provision of land at less than market value under *SIMA* s. 2(1.6)(c), and confers a benefit in the amount saved compared to market values of land and/or rent within the meaning of *SIMR* s. 36.

194. This special arrangement was found countervailable by the Agency in *Certain Carbon Steel Welded Pipe*. The Complainants therefore request that the Agency request information from the respondents as to their land and rental arrangements with SEZ authorities.

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[81] India Directorate General of Service Tax, "3. Existing scheme for levy, assessment & collection of Service Tax in India" at 11, **Public Exhibit 7-A-7**; Government of India, Ministry of Finance, Department of Revenue, "Service Tax," **Public Exhibit 7-A-8**.

[82] India Directorate General of Service Tax, "3. Existing scheme for levy, assessment & collection of Service Tax in India" at 11, **Public Exhibit 7-A-7**.

[83] United States Department of Commerce, *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 20, 2011) and accompanying *Issues and Decision Memorandum* at 18, **Public Exhibit 7-A-4**.

7) Discounted Electricity Rates

195. According to the SEZ Rules:

> 5.(5) Before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavour that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely:—
>
> …
>
> (b) exemption from electricity duty or taxes on sale, of self generated or purchased electric power for use in the processing area of a Special Economic Zone…[84]

196. Several Indian state governments have these exemptions in place, including those where SEZs involving OCTG producers are located, such as Gujarat (Welspun).[85] The states of Andhra Pradesh, Uttar Pradesh, and Maharashtra, which are likewise home to several producers and exporters of OCTG (including Oil Country Tubular Ltd., Bhushan Steel Limited, ISMT Limited, and United Drilling Tools Limited), also produce these exemptions for their SEZs.[86]

197. In particular, the program is regionally specific under *SIMA* s. 2(7.2)(a), provides a financial contribution under *SIMA* s. 2(1.6)(b) in that amounts otherwise owing are not collected, and provides a benefit under *SIMR* s. 27.1(2) equal to the amount of electricity duty or taxes that would otherwise be payable.

198. The Agency has previously found this program countervailable in *Certain Carbon Steel Welded Pipe.*

8) Exemption from State Sales Tax and Other Levies as Extended by State Governments

199. Firms operating in SEZs enjoy such "{e}xemption{s} from State sales tax and other levies as {may be} extended by the respective State Governments."[87] In just one example, the

[84] Government of India Ministry of Commerce and Industry (Department of Commerce), *The Special Economic Zone Rules, 2006*, s. 5(5)(b), **Public Exhibit 7-A-9**.
[85] *Gujarat Special Economic Zone Act, 2004*, s. 15, **Public Exhibit 7-A-12**.
[86] The Times of India, "Industries in SEZ exempted from electricity duty," (February 13, 2013), **Public Exhibit 7-A-13**.
[87] SEZ India, "Facilities and Incentives," **Public Exhibit 7-A-5**.

Maharashtra's "State Government Policy Regarding Setting Up of Special Economic Zones in Maharashtra" states that:

> Developers of SEZs, and industrial units and other establishments within the SEZs will be exempted from all State and local taxes and levies, including Sales Tax, Purchase Tax, Octroi (a duty levied on goods entering a town or city), Cess (a type of tax/levy), etc. in respect of all transactions made between units/establishments within the SEZs, and in respect of the supply of goods and services from the Domestic Tariff Area to units/establishments. If due to tax system constraints, it is not advisable to grant direct exemption to the transactions, the State taxes paid would be fully reimbursed.[88]

200. This Services Tax exemption provides a countervailable subsidy under the *SIMA*. The program is specific under *SIMA* s. 2(7.2)(a), in that it is regionally specific to SEZs; provides a financial contribution under *SIMA* s. 2(1.6)(b) in that amounts otherwise owing are not collected; and provides a benefit under *SIMR* s. 27.1(2) in the amount of the taxes saved.

201. The Agency has previously countervailed this program in Certain Carbon Steel Welded Pipe.

ii. Government of India Provides Various Subsidies to the Companies Designated as Export Oriented Units ("EOUs")

202. According to India's Department of Commerce "The Export Oriented Units (EOUs) scheme introduced in early 1981, is complementary to the SEZ scheme.[89] It adopts the same production regime but offers a wide option in locations with reference to factors like source of raw materials, ports of export, hinterland facilities, availability of technological skills, existence of an industrial base and the need for a larger area of land for the project. India's Foreign Trade Policy describes export-oriented units as "Units undertaking to export their entire production of goods and services."[90]

[88] Government of Maharashtra, *State Government's Policy regarding setting up of Special Economic Zones in Maharashtra*, **Public Exhibit 7-A-10**.
[89] Government of India, Department of Commerce, Annual Report 2012 – 2013, Chapter 7: "Centres of Export Oriented Production: SEZs and EOUs (Export Oriented Units)," at 177, **Public Exhibit 7-A-1**.
[90] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 6.1, **Public Exhibit 7-A-14**.

203. As at 31 March 2012, 2373 units are in operation under the EOU scheme. As at March 31, 2012, there were 361 "Functional EOUs" in Maharashtra, 266 in Gujarat, and 258 in Andhra Pradesh.[91] There is reason to believe that OCTG producers are operating EOUs that benefit from the subsidies provided under the EOU scheme. For example, OCTG producer Jindal SAW Ltd. has received a number of awards from the GOI's Export Promotion Council for EOUs and SEZs including the "Best EOU – Other than MSME" award in 2009 and the Best EOU for "Engineering and Metallurgical Products" in 2010.[92]

204. OCTG producers and exporters qualified as EOUs likely benefited from the programs described below:

1) Duty-Free Import of All Types of Goods

205. An EOU is allowed to import all types of goods for its activities, including capital goods and raw materials, on a duty free basis.[93] EOU's, however, are entitled to sell some goods domestically.[94] Thus, it is possible that the exemption from duties on inputs exceeds the respective amount of duty-free inputs used in the production of exports.

206. Duty exemptions provide a financial contribution under *SIMA* s. 2(1.6)(b) in the form of amounts otherwise owing to the government that are exempted. It provides a benefit under *SIMR* s. 35.01 in the amount that is exempted. This program is specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

207. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe* and the United States Department of Commerce found this program countervailable in *Circular Welded Carbon Quality Steel Pipe from India.*

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[91] Government of India, Department of Commerce, Annual Report 2012 – 2013, Chapter 7: "Centres of Export Oriented Production: SEZs and EOUs (Export Oriented Units)," at 177, **Public Exhibit 7-A-1**.
[92] Export Promotion Council for EOUs & SEZs, List of EPECES Export Award Winners, **Public Exhibit 7-A-15**.
[93] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 6.2(b), **Public Exhibit 7-A-14**.
[94] United States Department of Commerce, *Circular Welded Carbon-Quality Steel Pipe: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying *Issues and Decision Memorandum* at 12, **Public Exhibit 7-A-11**.

2) Reimbursement of Central Sales Tax ("CST")

208. EOUs are reimbursed for Central Sales Tax on goods manufactured domestically, including CST paid on domestically procured raw materials and capital goods.[95] EOUs are also entitled to full reimbursement of CST paid by them on purchases made from the Domestic Tariff Area for production of goods and services.

209. Reimbursement of Central Sales Tax provides a financial contribution in the form of a direct transfer of funds under *SIMA* s. 2(1.6)(a). It provides a benefit in the amount that is reimbursed under *SIMR* s. 27.1(1). This program is specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

210. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe* and the United States Department of Commerce found this program countervailable in *Circular Welded Carbon Quality Steel Pipe from India.*[96]

3) Duty Drawback on Fuel Procured from Domestic Oil Companies

211. Under the GOI's Foreign Trade Policy, EOUs are entitled to reimbursement on fuel procured from domestic oil companies.[97] Reimbursement of additional taxes and excise duty levied on fuel under the *Finance Act* is also permitted.

212. This program provides countervailable subsidies under the *SIMA*. In particular, it is specific under *SIMA* s. 2(7.2)(b) because it is export-contingent; provides a financial contribution in that amounts otherwise owing are not collected under *SIMA* s. 2(1.6)(b); and provides a benefit in the amount not collected under *SIMR* s. 35.01.

[95] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 6.11, **Public Exhibit 7-A-14**.
[96] United States Department of Commerce, *Circular Welded Carbon-Quality Steel Pipe: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying *Issues and Decision Memorandum* at 13, **Public Exhibit 7-A-11**.
[97] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 6.11(c)(iii), **Public Exhibit 7-A-14**.

213. The Agency has previously found this program to be countervailable in *Carbon Steel Welded Pipe*. Moreover, the United States Department of Commerce found this program countervailable in *Circular Welded Carbon Quality Steel Pipe from India.*

4) Credit for Paid Service Tax

214. Under Article 6.11(c)(iv) of the GOI's Foreign Trade Policy, EOU's are entitled to a credit for service tax that was paid on input services received by a manufacturer.[98] The effective standard rate of Service Tax is 12.36 percent.[99]

215. Credit for Paid Service Tax provides a financial contribution in the form of a direct transfer of funds under *SIMA* s. 2(1.6)(a). It provides a benefit under *SIMA* s. 27.1(1) in the amount that is exempted. This program is specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

216. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe.*

5) Exemption from Income Tax under Section 10A and 10B of *Income Tax Act*

217. Under Article 6.12(a) of India's Foreign Trade Policy, EOU's are exempt from income tax as per s. 10A and 10B of the *Income Tax Act.*[100] For assessment year 2012-2013 and 2013-2014, the corporate income tax rate is 33% for domestic companies and 40% for foreign companies.

218. Tax exemptions provide a financial contribution under *SIMA* s. 2(1.6)(a) in the form of amounts otherwise owing to the government that are exempted. It provides a benefit in the amount that is exempted under *SIMR* s. 32. This program is specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

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[98] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 6.11(c)(iv), **Public Exhibit-7-A-14.**

[99] India Directorate General of Service Tax, "3. Existing scheme for levy, assessment & collection of Service Tax in India" at 11, **Public Exhibit 7-A-7.**

[100] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 6.12(a), **Public Exhibit 7-A-14.**

219. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe*.

iii. Assistance to States for Developing Export Infrastructure and Allied Activities

220. Under the Assistance to States for Developing Export Infrastructure and Allied Activities ("ASIDE") Program, State Governments participate in funding infrastructure critical for growth of exports by providing export performance linked financial assistance.[101] To be eligible, the infrastructure project must have "overwhelming export content." Projects eligible for financing include:

- The creation of new Export Promotion Industrial Parks/Zones (SEZs/Agri. Business Zones) and augmenting facilities in the existing ones;
- Setting up of electronics and other related infrastructure in export conclave;
- Equity participation in infrastructure projects including the setting up of SEZs;
- Meeting requirements of capital outlay of EPIPs/EPZs/SEZs;
- Development of complementary infrastructure such as, roads connecting the production centers with the ports, setting up of Inland Container Depots and Container Freight Stations;
- Stabilizing power supply through additional transformers and islanding of export production centre etc.;
- Development of minor ports and jetties to serve export purpose;
- Assistance for setting up Common Effluent Treatment facilities; and,
- Any other activity as may be notified by DoC.

221. OCTG producers likely received benefits under this scheme. For example, Welspun reported receiving "export benefits" in the amount of Rs 483,770,000 in 2011-2012 and Jotrindra Steel and Tubes reported receiving Rs. 16,768,7803 in "export incentives."[102]

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[101] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 3.1, **Public Exhibit 7-A-14**.
[102] Welspun Corp. Ltd., "17th Annual Report 2011-12," 118, **Public Exhibit 7-A-21**; Jotindra Steel and Tubes Ltd., "Statement of Profit or Loss for the Year Ended 31st March, 2012," **Public Exhibit 7-A-22**.

222. Financial assistance under the ASIDE Program is a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) as a direct transfer of funds. A benefit is conferred in the amount of the grant under *SIMR* s. 27. The program is contingent upon export and therefore specific as a prohibited subsidy under *SIMA* s. 2(7.2)(b).

223. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe*.

iv. Market Access Initiative

224. Pursuant to the Foreign Trade Policy of India, the Market Access Initiative ("MAI") provides funding for export promotion activities on a focus country, focus product basis.[103] Through the MAI, the GOI funds a number of activities including market studies/surveys; setting up showrooms/warehouses; participation in international trade fairs; brand promotion; testing charges for engineering products abroad; and assistance for contesting antidumping litigations. Each of these export promotion activities can receive financial assistance from the VOI ranging from 25% to 100% of the total cost of the activity. OCTG producers likely use this program, particularly since MAI grants cover testing charges for producers seeking to obtain certification from the American Petroleum Institute to produce OCTF to the API 5CT Specification.

225. The MAI Scheme grants is a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) as a direct transfer of funds. A benefit within the meaning of *SIMR* s. 27 is conferred in the amount of the grant. The program is contingent upon export and therefore specific as a prohibited subsidy under *SIMA* s. 2(7.2)(b).

226. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe*.

[103] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 3.2, **Public Exhibit 7-A-14**.

v. Market Development Assistance

227. The GOI has indicated that export promotion is a "major thrust area" for the government.[104] To this end, the GOI has created the Market Development Assistance Scheme ("MDA Scheme"), which provides grants-in-aid to companies through approved organizations such as trading houses and Export Promotion Councils. All Indian exports qualify for assistance under the MDA Scheme. There is evidence demonstrating that OCTG producers likely benefit from this program. The Export Promotion Council responsible for distributing funds to the Steel industry is the Engineering Export Promotion Council and their membership includes APL Apollo Tubes Ltd., Jindal SAW Ltd., and Welspun.[105]

228. The MDA Scheme grants is a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) as a direct transfer of funds. A benefit is conferred within the meaning of *SIMR* s. 27 in the amount of the grant. The program is contingent upon export and therefore specific as a prohibited subsidy under *SIMA* s. 2(7.2)(b).

229. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe*.

vi. Brand Promotion and Quality

230. Under Article 3.6 of the GOI's Foreign Trade Policy, the Government of India provides funds for capacity building, up-gradation of quality, organizing training programs for skill improvement of exports for quality upgradation, reduction in rejection, and product improvement.[106] The goal of the program is to promote India as a business opportunity by creating positive economic perceptions of India globally as well as presenting the India business partnerships in a globalised market-place. OCTG producers likely received benefits under this scheme. As noted above with respect to the MAI Scheme, OCTG producers reported receiving extensive "export benefits" and export incentives.

[104] Government of India, Department of Commerce, "Market Development Assistance (MDA) Scheme, **Public Exhibit 7-A-18**; Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 3.3, **Public Exhibit 7-A-14**.
[105] EEPC India, "MDA Scheme," **Public Exhibit 7-A-19**.
[106] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 3.6, **Public Exhibit 7-A-14**.

231. The Brand Promotion and Quality Scheme grants is a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) as a direct transfer of funds. A benefit within the meaning of *SIMR* s. 27 is conferred in the amount of the grant. The program is contingent upon export and therefore specific as a prohibited subsidy under *SIMA* s. 2(7.2)(b).

232. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe*.

vii. Focus Product Scheme

233. The GOI in the Foreign Trade Policy states that the objective of the Focus Product Scheme ("FPS") is to "promote export of products which have high export intensity/employment potential, so as to offset infrastructural inefficiencies and other associated costs involved in marketing these products."[107] The FPS entitles exporters of specific products to receive a duty credit scrip payout equivalent to 2% or 5% of the FOB value of exports. Exports of "Steel Tubes/Pipes" are entitled to a 2% credit scrip payout.[108] OCTG producers likely received benefits under this scheme. For example, Welspun reported receiving "export benefits" in the amount of Rs 483,770,000 in 2011-2012 and Jotrindra Steel and Tubes reported receiving Rs. 16,768,7803 in "export incentives."[109]

234. The FPS Scheme and duty credit scrip is a financial contribution under *SIMA* s. 2(1.6)(a) in the form of a direct transfer of funds. A benefit within the meaning of *SIMR* s. 27 is provided equal to the value of the Duty Credit Scrip obtained under the program. The program is contingent upon export and therefore specific as a prohibited subsidy under *SIMA* s. 2(7.2)(b).

235. The Agency has previously found this program to be countervailable *in Certain Carbon Steel Welded Pipe*.

[107] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 3.15, **Public Exhibit 7-A-14**.
[108] Government of India, *Handbook of Procedures (Vol. 1) Appendix 37D* at 363, **Public Exhibit 7-A-20**.
[109] Welspun Corp. Ltd., "17th Annual Report 2011-12" at 118, **Public Exhibit 7-A-21**; Jotindra Steel and Tubes Ltd., "Statement of Profit or Loss for the Year Ended 31st March, 2012," **Public Exhibit 7-A-22**.

viii. Pre-Shipment, Post-Shipment and Other Preferential Financing

236. The GOI directs Indian banks to extend pre-shipment working capital loans at ceiling rates set by the Reserve Bank of India and are directed to extend loans to exporters at celling rates set by the Reserve Bank of India for the period from the shipment of the exported goods until the date of realization of export proceeds.[110] They are also directed to provide post-shipment export financing consisting of loans in the form of discounted trade bills or advances by commercial banks. These cover the period from the date of shipment of the goods to the date of realization of proceeds from the sale to overseas customer. Additionally, the Master Circular on Rupee/Foreign Currency Export Credit & Customer Service to Exporters, the GOI provides a 2% additional subvention to commercial banks on top of the already controlled interest rates for rupee export credit in specific categories including engineering products. OCTG producers and exporters have likely received financing under this program. The GOI has specifically identified seamless and welded steel pipes and tubes as "engineering products" eligible for the most preferential financing rates.[111]

237. The provision of financing constitutes a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) as a direct transfer of funds in the form of loans. A benefit is conferred within the meaning of *SIMR* s. 28 to the extent that the interest rates charged on the loans are lower than interest rates for comparable commercial loans. The program is contingent upon export and therefore specific as a prohibited subsidy under *SIMA* s. 2(7.2)(b).

238. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe.*

ix. Export Promotion Capital Goods ("EPGC") Scheme

239. The EPGC scheme allows exporters to import capital equipment and components at reduced or nil rates of import duty.[112] There are two preferential import duty programs available under this program. The first is zero duty which allows for the import of capital goods for

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[110] Reserve Bank of India, *Master Circular – Rupee / Foreign Currency Export Credit and Customer Service to Exporters*, **Public Exhibit 7-A-17**.
[111] Government of India, "Industry & Services: Light Engineering Industry," **Public Exhibit 7-A-16.**
[112] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 5.1, **Public Exhibit 7-A-14.**

preproduction, production and post-production at zero customs duty, subject to an export obligation equivalent to six times of duty saved on capital goods imported, to be fulfilled in six years. Those who are ineligible for this first program may apply for a concessional 3%, subject to an export obligation of 8 times the duty saved to be fulfilled in eight years. The GOI has identified various steel products, including both seamless and welded steel pipes and tubes and eligible engineering products.[113] As such, it is likely that Indian OCTG producers are users of the EPCGS.

240. This program provides a financial contribution under *SIMA* s. 2(1.6)(b) as amounts otherwise owing that are exempted. A benefit is provided in two ways. The conditional waiver on duties on imports of capital equipment for which a recipient has not yet met the scheme's export requirements is effectively a contingent interest-free loan (a financial contribution under *SIMA* s. 2(1.6)(a)) within the meaning of *SIMR* s. 28 . Second, the waiver of duties when the export requirements are met is a grant (a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) as a direct transfer of funds) and a benefit is conferred within the meaning of *SIMR* s. 27. The program is export contingent and therefore specific as a prohibited subsidy under *SIMA* s. 2(7.2)(b).

241. The Agency has previously found this program to be countervailable in *Certain Carbon Steel Welded Pipe.*

x. Duty Exemption/Remission Schemes

242. The GOI has established a number of programs that Indian companies, including OCTG producers, may use to import inputs required for their export production on a duty free basis. These programs include the Advance Authorization Scheme and the Duty-free Import Authorization Scheme. The Advance Authorization Scheme provides exemptions from import duties for various input products, including fuel, oil, energy, and catalysts, used in the production of goods for export from India.[114] The Duty Free Import Authorization Scheme allows for duty free imports of inputs, fuel, oil, energy sources, and catalysts, which are required for the production of an export

[113] Government of India, "Industry & Services: Light Engineering Industry," **Public Exhibit 7-A-16.**
[114] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 4.1.3.1, **Public Exhibit 7-A-14.**

product.[115] Additionally, under the Duty Entitlement Passbook Scheme, the GOI remits import duties upon export of an associated product.[116] Exporter are eligible to earn credits on a post-export basis which can then be applied to the subsequent import of materials regardless of whether they are used in the production of an exported product or another product that is sold domestically.

243. The evidence suggests that OCTG producers have received "export incentives" or "export benefits," which reasonably include benefits under these programs. As noted above both Welspun and Jotindra Steel and Rubes reported receiving such export benefits/incentives.[117]

244. These programs provide a financial contribution under *SIMA* s. 2(1.6)(b) because it exempts the recipients from the payment of import duties that would otherwise be due. A benefit exists under *SIMR* s. 35 in the amount of the duties exempted. The programs are a prohibited export-contingent program and therefore specific under *SIMA* s. 2(7.2)(b).

245. The Agency has previously countervailed each of these programs in Certain Carbon Steel Welded Pipe.

xi. Goods/Services Provided by the Government of India at Less Than Fair Market Value

1) <u>Provision of Captive Mining Rights for Minerals Including Iron Ore and Coal</u>

246. Captive mining rights are the rights of a company to extract minerals from government-owned land for use in the company's own production process. Under the *Mines and Minerals Development and Regulation Act of 1957* and the *Mineral Concession Rule of 1960*, the GOI grants captive mining rights for certain minerals to eligible applicants. Iron ore is in the First Schedule of the MMDR, which lists the minerals whose mining rights are solely under GOI control.[118] OCTG

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[115] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 4.2.1, **Public Exhibit 7-A-14.**

[116] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 4.3, **Public Exhibit 7-A-14.**

[117] Welspun Corp. Ltd., "17th Annual Report 2011-12" at 118, **Public Exhibit 7-A-21**; Jotindra Steel and Tubes Ltd., "Statement of Profit or Loss for the Year Ended 31st March, 2012," **Public Exhibit 7-A-22.**

[118] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, s. II.A.8, **Public Exhibit 7-A-23.**

producers such as SAIL, have been provided with captive mining rights for iron ore by the GOI.[119] SAIL produces OCTG in its Rourkela Pipe Plant, which is located within the Rourkela Steel Plan. SAIL reports that the Rourkela Steel Plant is an integrated steel plant with the ability to create "high quality pipes for the oil & gas sector."[120]

247. The provision of captive mining rights is a financial contribution under *SIMA* s. 2(1.6)(c) in the form of providing a good at less than fair market value. This confers a benefit under *SIMR* s. 36 equal to the difference between the price paid and the fair market value for the mining rights. The benefit is specific under *SIMA* s. 2(7.2)(a) as it is only available to producers who mine minerals and ore.

248. The Agency has previously investigated and countervailed this subsidy program in Certain Carbon Steel Welded Pipe.

2) Purchase of Iron Ore From State-owned Enterprises for Less Than Fair Market Value

249. The National Mineral Development Corporation ("NMDC") is a state-owned enterprise and is the largest producer and exporter of iron ore in India.[121] The Government of India reserves all but a small fraction of the NMDC's production of iron ore exclusive for use by India's domestic steelmakers.[122] The GOI's various policies such as export restraints and directions to provide facilitation / assistance result in the provision of iron ore to Indian steel producers for less than fair market value.[123] In particular, NMDC reports Welspun as one if its key domestic customers in 2012. Welspun is an integrated steel producer, producing all of its products at its facility in Anjar, Gujarat.[124]

[119] SAIL, "Annual Report 2011-2012" at 10, **Public Exhibit 7-A-24.**
[120] Steel Authority of India, "About Rourkela Steel Plant," **Public Exhibit 7-A-25.**
[121] NMDC Limited, "NMDC at a glance," **Public Exhibit 7-A-26.**
[122] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, s. II.A.12, **Public Exhibit 7-A-23.**
[123] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, s. II.A.12, **Public Exhibit 7-A-23.**
[124] Welspun Steel Ltd., "Welspun Steel Ltd.," **Public Exhibit 7-A-27.**

250. Purchases of iron ore from state-owned enterprises at less than fair market value is a financial contribution under *SIMA* s. 2(1.6)(c) in the form of providing a good at less than fair market value. This confers a benefit under *SIMR* s. 36 equal to the difference between the price paid and the fair market value for the mining rights. The benefit is specific under *SIMA* s. 2(7.2)(a) as it is only available to producers who purchase iron ore.

251. The Agency has previously investigated and countervailed this subsidy program in Certain Carbon Steel Welded Pipe.

3) Purchase of Hot-rolled Steel and Billets From State-owned Enterprises for Less Than Fair Market Value

252. The GOI, through the Ministry of Steel, owns approximately 80% of the Steel Authority of India ("SAIL"), making it a public sector undertaking.[125] SAIL is the largest producer in India with over 20% of the market share. Considering SAIL's dominance within the Indian production of domestic steel, the likelihood of the respondent Indian OCTG producers procuring hot-rolled steel sheet and billet from SAIL is serious. There is also evidence that SAIL provides inputs at less than fair market value to its customers, including OCTG producers. Indeed, SAIL declined to increase prices of its hot-rolled steel despite strong demand, a rise in international prices, and price increases by other steel producers to "keep prices in check."[126]

253. Furthermore, OCTG producers who purchase hot-rolled steel from private hot-rolled steel producers benefit from upstream subsidies. The heavy involvement of NMDC and its provision of inputs at less than fair market value to hot-rolled steel producers creates a situation where the various GOI export restraints create a situation where the price for hot-rolled steel and billets is well below the world price. For example, NMDC reported that for January through November 2012, the price it charged for high grade iron ore was just $77.80 USD per metric ton, far below the world market price that ranged from $166.68 to $260.68 metric tonnes.[127]

[125] Steel Authority of India, "About Us," **Public Exhibit 7-A-28**; Motilal Oswal, "Steel Authority of India," **Public Exhibit 7-A-29**.
[126] Steel Business Briefing, "India's Sail says 'no change' to most April base prices," (April 5, 2012), **Public Exhibit 7-A-30**; Steel Business Briefing, "Special Report: Indian HRC market wary on most price rises," (April 4, 2012), **Public Exhibit 7-A-31**.
[127] NMDC Corporate Investor Presentation (Nov. 2012) at 20, **Public Exhibit 7-A-65**; Steel Business Briefing, "Australian Export Prices for Iron Ore Lumps and Fines, January – October 2012," **Public Exhibit 7-A-66**.

Correspondingly, the price of hot-rolled steel and billets is reduced by the subsidization of the major input – iron ore – and is passed through to OCTG producers who use these inputs in the production of OCTG.

254. The provision of steel constitutes a financial contribution under *SIMA* s. 2(1.6)(c) in the form of providing a good at less than fair market value. This confers a benefit under *SIMR* s. 36 in the amount of the difference between the price actually paid by OCTG producers and the fair market value. The benefit is specific under *SIMA* s. 2(7.2)(a)as it is only available to producers who use hot-rolled sheet in their production, such as the Indian producers of OCTG.

255. The Agency has previously investigated and countervailed this subsidy program in relation to hot-rolled steel in Certain Carbon Steel Welded Pipe.

xii. Status Certificate Program

256. Pursuant to the Foreign Trade Policy (2009), the GOI has established a Status Certificate Program. This program recognizes established exporters and provides them with support, marketing infrastructure and expertise required for export promotion. Depending on their level of exports, a company will be classified as an Export House, Star Export House, Star Trading House, or Premier Trading House.[128] In particular, companies are eligible for a number of privileges including exemptions from compulsory negotiation of documents through banks; 100% retention of foreign exchange in an Exchange Earner's Foreign Currency account; enhancement in the normal repatriation period for foreign exchange from 180 to 360 days; and, exemption from furnishing bank guarantees in schemes under the Foreign Trade Policy.[129]

257. Indeed, APL Apollo Tubes and Jindal Saw, both Indian producers of OCTG, are confirmed holders of the status certificates based on the information reasonably available.[130]

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[128] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 3.10.2, **Public Exhibit 7-A-14**.

[129] Government of India, *Foreign Trade Policy 27th August 2009 – 31st March 2014*, s. 3.10.4, **Public Exhibit 7-A-14**.

[130] Director General of Foreign Trade, Ministry of Commerce & Industry, Government of India, "List of Status Holders CLA," **Public Exhibit 7-A-32**;

258. Status certificate program and various preferential benefits under this program constitute a financial contribution under *SIMA* s. 2(1.6), although the particular financial contribution will vary depending on the privilege used. The benefit will also vary in this respect. The subsidies are specific under *SIMA* s. 2(7.2)(b) as they are a prohibited, export contingent subsidy.

259. The United States Department of Commerce has previously found this program countervailable.[131]

xiii. Income Deduction Program ("80-IB Tax Program")

260. Under the *Income Tax Act* of 1961, as amended by the *Finance Act, 2007*, Chapter VIA, 80-IB(4), Indian companies who have industrial undertakings in industrially backward regions may reduce their tax burden by up to 100 percent of profits earned from those production facilities for the first five years, and then by 30 percent for the next five years.[132] At least one Indian OCTG producer is located in the "industrially backward" area, Welspun in an "industrially backward" area of Kutch in Gujarat.[133]

261. The income deduction program provides a financial benefit as described in *SIMA* s. 2(1.6)(b) as amounts that would otherwise be owing or due to the government are exempted. A benefit under *SIMR* s. 27.1(2) is provided in the amount exempted. The subsidy is specific pursuant to *SIMA* s. 2(7.2)(a) as it is limited to certain enterprises within the jurisdiction of the granting authority, that is they must be located in "industrially backward" areas.

262. The United States Department of Commerce has previously found this program countervailable.[134]

[131] United States Department of Commerce, *Circular Welded Carbon-Quality Steel Pipe: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying *Issues and Decision Memorandum* at 20, **Public Exhibit 7-A-11**.

[132] *Income Tax Act* s. 8o-IB, **Public Exhibit 7-A-33**; United States Department of Commerce, *Certain Lined Paper Products: Final Results of Countervailing Duty Administrative Review*, 74 FR 6573, (February 10, 2009), and accompanying *Issues and Decision Memorandum* at 9, **Public Exhibit 7-A-34**.

[133] India Ministry of Commerce & Industry, "Report on the Role of Incentives in the Development of Industrially Backward States at 27-29, **Public Exhibit 7-A-35**; Location information for Producers in Gujarat, **Public Exhibit 7-A-36**.

[134] *Income Tax Act* s. 8o-IB, **Public Exhibit 7-A-33**; United States Department of Commerce, *Certain Lined Paper Products: Final Results of Countervailing Duty Administrative Review*, 74 FR 6573, (February 10, 2009), and accompanying *Issues and Decision Memorandum* at 9, **Public Exhibit 7-A-34.**

xiv. 80-IA Income Tax Deduction Program

263. Under the *Income Tax Act* of 1961, as amended by the *Finance Act 2007*, Chapter VIA, 80-IA, Indian companies are entitled to a 10-year tax holiday for infrastructure projects.[135] The provision essentially allows a deduction equal to 100% of the profits and gains derived from an infrastructure facility developed and constructed in whole or in part by the Indian company. Infrastructure facilities include roads, bridges, rail, highway projects including housing, water supply projects, water treatment systems, irrigation projects, sanitation and sewage systems, or solid waste management systems, ports, airports, inland waterways, and any undertaking related to telecommunications. To the extent that any OCTG producers have made such investments in the past 15 years, they would qualify for benefits under this program.

264. The 80-IA tax program provides a financial benefit as described in *SIMA* s. 2(1.6)(b) as amounts that would otherwise be owing or due to the government are exempted. A benefit is provided under *SIMR* s. 27.1(2) in the amount exempted. The subsidy is specific pursuant to *SIMA* s. 2(7.3)(a) as it is likely exclusively used by a limited enterprises, (i.e. those enterprises that make infrastructure investments).

xv. Steel Development Fund Loans

265. Established in 1978, the Steel Development Fund provides financial assistance to the Indian steel industry for technological upgrade, measures connected with pollution control, and activities related to research and development through long-term loans at below market rates.[136] The GOI, through the Ministry of Steel, controls the disbursement of financial assistance.

266. The loans constitute a financial contribution under s. 2(1.6)(a) of *SIMA* as a direct transfer of funds. A benefit under *SIMR* s. 28 is conferred is the difference between the interest actually paid and the interest on a comparable non-guaranteed commercial loan. The program is specific under *SIMA* s. 2(7.2)(a) as it is limited to a particular industry within the jurisdiction of the authority granting the subsidy, that is the Indian steel industry.

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[135] *Income Tax Act*, s. 80-IA, **Public Exhibit 7-A-67**.

[136] United States Department of Commerce, *Circular Welded Carbon-Quality Steel Pipe: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-11**.

267. The United States Department of Commerce has previously found this program countervailable.[137]

xvi. Steel Development Fund R&D Grants

268. In addition to loans, the Steel Development Fund also provides funds to the steel sector "in order to augment R&D initiatives and to step up investment for the steel sector."[138] The government of India set up the program in 1997 and funds the program using the interest proceeds of the Steel Development Fund. Under the program, financial assistance is provided after the evaluation of the R&D proposal. From 2008 to September 2013, the GOI invested approximately 65 Rs. Crore in over 80 R&D projects.

269. R&D grant is a financial contribution under *SIMA* s. 2(1.6)(a) as a direct transfer of funds from the government. A benefit under *SIMR* s. 27.1(1) is conferred in the amount of the funds transferred. The program is specific under *SIMA* s. 2(7.2)(a) as it is limited to certain industries – the steel industry.

xvii. State Government of Maharashtra Subsidies Programs

270. In *Certain Carbon Steel Welded Pipe*, the Agency has previously determined that the State Government of Maharashtra ("SGOM") provides a number of countervailable benefits to producers and exporters located within its jurisdiction, including steel producers. Furthermore, the United States Department of Commerce has made similar findings in the subsidy investigation of Circular Welded Carbon-Quality Steel Pipe from India.[139] Indian OCTG producers such as APL Apollo Tubes Ltd., ISMT Limited, and Jindal Saw Limited are located in Maharashtra.[140] The Complainants believe that these producers benefit from the following subsidy programs set out in detail below.

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[137] United States Department of Commerce, *Circular Welded Carbon-Quality Steel Pipe: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying *Issues and Decision Memorandum* at 20, **Public Exhibit 7-A-11**.

[138] Government of India Ministry of Steel, "Research & Development in Iron & Steel Sector," **Public Exhibit 7-A-68**.

[139] United States Department of Commerce, *Circular Welded Carbon-Quality Steel Pipe: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-11**.

[140] Location information for Producers in Maharashtra, **Public Exhibit 7-A-37**.

1) Exemption from Electricity Duty

271. Under the SGOM Package Scheme of Incentives, eligible enterprises located in specified areas (identified as "Groups C, D, and D+" areas) are exempted from paying the state's electricity duty for 15 years.[141] In addition, in all other parts of the state, export-oriented units are exempted from paying the duty for 10 years. Producers and exporters of OCTG appear to have benefited from this program. For example, ISMT Limited is located in the Group C, D, and D+ area of Ahmedngar, and would qualify for the 15-year exemption.[142] Additionally, any OCTG producers or exporters classified as an export-oriented unit will qualify for the 10-year exemption. Jindal SAW reported using this program in its 2012-2013 Annual Report.[143]

272. The electricity duty exemption provides a financial contribution under *SIMA* 2(1.6)(c) in the form of provision of goods. A benefit under *SIMR* s. 36 conferred is the difference between the electricity rate and the fair market value of such electricity. The electricity duty exemption afforded to the companies within Groups C, D and D+ areas is specific under *SIMA* s. 2(7.2)(a) as they are limited to particular enterprises within the jurisdiction of the granting authority, i.e. companies located in designated areas of Maharashtra. The electricity duty exemptions afforded to the export-oriented-units are specific under *SIMA* s. 2(7.2)(b) because the exemption is contingent upon a company being designated as "export-oriented-unit" based on its export performance.

273. The Agency has previously investigated and countervailed this subsidy program in Certain Carbon Steel Welded Pipe.

2) Refund of Octroi duty or entry tax (in lieu of Octroi)

274. The 2007 Package Scheme of Incentives allows eligible enterprises located in specified areas (i.e. Group A, B, C, D, and D+ areas) to obtain a refund of the Octroi duty (a local consumption tax), account based cess or other levies charged in lieu or instead of Octroi duties on

[141] Government of Maharashtra Industries, Energy and Labour Department, "Package Scheme of Incentives 2013" at Annexure I, **Public Exhibit 7-A-38**.
[142] Government of Maharashtra Industries, Energy and Labour Department, "Package Scheme of Incentives 2013" at s. 5.3, **Public Exhibit 7-A-38**.; Location information for Producers in Maharashtra, **Public Exhibit 7-A-37**.
[143] Jindal Saw Ltd., "Annual Report 2013-2013," at 33, **Public Exhibit 7-A-39**.

imported items acquired by the enterprise.[144] The incentive is admissible in the form of a grant and is limited to 100% of the fixed capital investment over a specified period. As noted above, OCTG producers such as ISMT are located in eligible areas of Maharashtra.

275. Refunds of duties or taxes constitute a financial contribution under *SIMA* s. 2(1.6) as direct transfer of funds or amounts otherwise owing and due to the government which are not collected, depending on the actual form of the receipt. A benefit is conferred under *SIMR* s. 27.1(2) in the amount otherwise due to the government. The refunds are specific under *SIMA* s. 2(7.2)(a) as they are limited to particular enterprises within the jurisdiction of the granting authority, i.e. companies located in designated areas of Maharashtra.

276. The Agency has previously investigated and countervailed this subsidy program in Certain Carbon Steel Welded Pipe.

3) Special Incentives for Mega Projects

277. Under both the 2007 and 2013 iterations of this program, the High Power Committee and the Infrastructure Committee have the power to customize and offer special/extra incentives for prestigious Mega Projects on a case-by-case basis.[145] The OCTG producer ISMT reported in its 2006-2007 Annual Report that it qualified for benefits from mega project status in connection with an expansion project.[146] Additionally, Jindal SAW reported that it received "Mega Project Status" by the SGOM.[147]

278. Mega Projects subsidies constitute a financial contribution under *SIMA* s. 2(1.6), although the particular financial contribution will vary depending on the customized "special/extra" incentive. The benefit will also vary in this respect. The subsidies are specific under *SIMA* s. 2(7.3)(a) because they are provided to a limited number of enterprises undertaking the so-called "mega projects" as determined by the SGOM.

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[144] Government of Maharashtra Industries, Energy and Labour Department, "Package Scheme of Incentives 2007" at 5.6.1, **Public Exhibit 7-A-40**.
[145] Government of Maharashtra Industries, Energy and Labour Department, "Package Scheme of Incentives 2007" at 5.10, **Public Exhibit 7-A-40**; Government of Maharashtra Industries, Energy and Labour Department, "Package Scheme of Incentives 2013," at 5, **Public Exhibit 7-A-38**.
[146] ISMT Limited, "Annual Report 2006-07," at 5, **Public Exhibit 7-A-41**.
[147] Jindal Saw Ltd., "Annual Report 2013-2013," at 33, **Public Exhibit 7-A-39**.

279. The Agency has previously investigated and countervailed this subsidy program in Certain Carbon Steel Welded Pipe.

4) <u>Exemption from Sales Tax and Other Levies</u>

280. The SGOM offers a number of exemptions from sales tax and other levies as set out in the Package Scheme of Incentives. In particular, both the 2007 and 2013 Package Scheme of Incentives offers sales tax exemptions, sales tax deferrals, and sales tax loans to companies located or invested in certain areas, including Group B, C, D and D+ areas.[148] Similarly, the incentive schemes offer an exemption from stamp duty. As noted above, OCTG producers such as ISMT are located in eligible areas of Maharashtra. Additionally, Jindal SAW reported in its 2012-2013 Annual Report receiving an exemption for CAT and CST payable to the SGOM.[149]

281. Sales tax exemptions constitute a financial contribution under *SIMA* s. 2(1.6)(b) as amounts otherwise owing and due to the government which are not collected. A benefit is conferred under *SIMR* s. 27.1(2) in the amount otherwise due to the government. The exemptions are specific under *SIMA* s. 2(7.2)(a) as they are limited to particular enterprises within the jurisdiction of the granting authority, i.e. companies located in designated areas of Maharashtra.

282. The Agency has previously investigated and countervailed this subsidy program in Certain Carbon Steel Welded Pipe.

xviii. State Government of Andhra Pradesh Subsidies Programs

283. The State Government of Andhra Pradesh ("SGOAP") provides a number of subsidies to producers and exporters located in the state. The United States Department of Commerce has found a number of these to be countervailable.[150] Indian OCTG producers and exporters such as Oil

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[148] Government of Maharashtra Industries, Energy and Labour Department, "Package Scheme of Incentives 200,7" at s 5.4, **Public Exhibit 7-A-40**; Government of Maharashtra Industries, Energy and Labour Department, "Package Scheme of Incentives 2013," at s. 4.7, **Public Exhibit 7-A-38**.
[149] Jindal Saw Ltd., "Annual Report 2013-2013," at 343, **Public Exhibit 7-A-39**.
[150] See, e.g. United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488, (July 26, 2010), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-23**; United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-42.**

Country Tubular Ltd., and United Seamless Tubulaar Pvt. Ltd. are located in the SGOAP's territory and would be eligible for these benefits.[151]

1) <u>Subsidies under the SGOAP Industrial Investment Promotion Policy</u>

284. The SGOAP provides a number of subsidy programs under the Industrial Investment Promotion Policy 2010-2015 ("IIPP").[152] This iteration of the IIPP is essentially an extension of the subsidy programs offered under the predecessor Industrial Investment Promotion Policy 2005-2010. Under the IIPP, a company that establishes a "new industrial enterprise" or a "project involving substantial expansion/diversification of existing industries" may receive a range of subsidies, provided it is not located within Vijayawada, Visakhapatnam, or Hyderabad.[153]

285. Greater levels of subsidies are available to companies that can establish they are "large industries" by making investments in an amount between Rs. 100,000,000 and Rs. 2,500,000,000.[154] Even more government support is provided to the investments of plant machinery worth more than Rs. 2,500,000,000, which are designated to be "mega projects." Heavy engineering industries such as OCTG producers qualify for all the subsidies under the program, as they are not listed in the list of excepted industries contained in Annexure II or Annexure III. In particular, the Complainants urge the Agency to investigate this program for those companies that made investments that would qualify as "large" or "mega" investments, such as Oil Country Tublar Ltd., which reported that it invested Rs. 2,000,000,000 to develop machinery and production works at Narketpally in the Nalgonda region of Andhra Pradesh.[155]

286. Specific subsidies programs offered to the "large" and "mega" projects are described in detail below.

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[151] Location information for Producers in Andhra Pradesh, **Public Exhibit 7-A-43.**

[152] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)*, **Public Exhibit 7-A-44.**

[153] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 5, **Public Exhibit 7-A-44.**

[154] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.2.0, **Public Exhibit 7-A-44.**

[155] Oil Country Tubular Ltd., "Twenty Sixth Annual Report 2011-2012" at 2, 6, 28, **Public Exhibit 7-A-45.**

a) Grant under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas

287. The IIPP allows a reimbursement of 25% of the land cost to companies building or expanding existing industrial enterprises who begin commercial production on or after April 1, 2005.[156]

288. The 25% reimbursement is a financial contribution under *SIMA* 2(1.6)(a) as a direct transfer of funds. A benefit is conferred under *SIMR* s. 27.1(1) in the amount of the funds transferred. The subsidy is specific under *SIMA* s. 2(7.2)(a) as it is limited to certain enterprises that make the requisite level of investments in plant and machinery .

289. This program's predecessor has been found to be countervailable by the United States Department of Commerce.[157]

b) Grant under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit

290. The IIPP provides a fixed power charge ceiling of Rs. 075 per energy unit for all new or expanding eligible industrial enterprises.[158] The reimbursement lasts for the first five years from when production commences at the enterprise.

291. This reimbursement of power charges constitutes a financial contribution under *SIMA* s. 2(1.6) as it is a direct transfer of funds. The program confers a benefit under *SIMR* s. 27.1(1) in the amount of the transfer of funds. The reimbursement program is specific under *SIMA* s. 2(7.2)(a) as it is limited to certain enterprises that make the requisite level of investments in plant and machinery.

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[156] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.2.3, **Exhibit 7-A-44**; *Operational Guidelines for Implementation of Industrial Investment Promotion Policy (IIPP) – 2010-2015* at paras. 5.2.2-5.2.3, **Public Exhibit 7-A-46.**

[157] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.1, **Public Exhibit 7-A-42.**

[158] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.1.18, **Public Exhibit 7-A-44.**

292. This program's predecessor has been found to be countervailable by the United States Department of Commerce.[159]

c) *Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification*

293. The IIPP provides a 50% reimbursement on the expenses incurred for obtaining quality certification of new facilities or substantially expanded existing facilities.[160] The quality certification subsidy is available for quality certifications that are obtained from entities located both within India and abroad.[161] OCTG producers likely use this program as they are required to obtain certifications from API to produce OCTG destined to North America to API 5CT specification.

294. The reimbursement for the cost of quality certification is a financial contribution under *SIMA* s. 2(1.6)(a) as a direct transfer of funds from the government. A benefit under *SIMR* s. 27.1(1) is conferred in the amount of the funds transferred. The program is specific under *SIMA* s. 2(7.2)(a) as it is limited to certain enterprises that make the requisite level of investments in plant and machinery.

295. This program's predecessor has been found to be countervailable by the United States Department of Commerce.[162]

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[159] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.2, **Public Exhibit 7-A-42.**

[160] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.2.5(v), **Public Exhibit 7-A-44.**

[161] *Operational Guidelines for Implementation of Industrial Investment Promotion Policy (IIPP) – 2010-2015* at para. 5.8.3, **Public Exhibit 7-A-46.**

[162] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.3, **Public Exhibit 7-A-42.**

d) Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration

296. The IIPP provides a 50% reimbursement of expenses incurred for patent registration for either new facilities or existing facilities that have been substantially expanded.[163] The amount of benefit is limited to Rs. 2.00 lakhs.

297. Reimbursement of expenses for patent registration constitute a financial contribution under *SIMA* s. 2(1.6)(a) as a direct transfer of funds. A benefit is under *SIMR* s. 27.1(1) provided in the amount of expenses reimbursed. The reimbursement is specific under *SIMA* s. 2(7.2)(a) as it is limited to certain enterprises that make the requisite level of investments in plant and machinery.

298. This program's predecessor has been found to be countervailable by the United States Department of Commerce.[164]

e) Grant under the Industrial Investment Promotion Policy: 25 Percent Subsidy on Cleaner Production Measures

299. Under the IIPP, eligible companies may be provided with 25% of the cost of capital equipment purchased for the purpose of implementing certain cleaner production measures.[165] The eligible cleaner production measures are the adoption of cleaner technologies and techniques that reduces and avoids pollution and waste in the entire production cycle.[166] OCTG producer and exporter SAIL made investments that would qualify under this program. During the 2012-2013 fiscal year, SAIL made Rs. 120,000,000,000 in capital investments including those for "eliminating technological obsolescence, achieving energy savings ... {and} reducing pollution."[167]

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[163] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.2.8, **Public Exhibit 7-A-44.**
[164] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.5, **Public Exhibit 7-A-42.**
[165] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 5.9.2, **Public Exhibit 7-A-44.**
[166] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 5.9.3, **Public Exhibit 7-A-44.**
[167] SteelOrbis, "SAIL targets a capital expenditure of INR 120 billion for FY 2012-13" (24 September 2012), **Public Exhibit 7-A-47.**

300. This program constitutes a financial contribution under *SIMA* s. 2(1.6)(a) as it is a direct transfer of funds and confers benefit under *SIMR* s. 27.1(1) in the amount of the transfer of funds. The subsidy is specific under *SIMA* s. 2(7.2)(a) because it is limited to certain eligible enterprises and industries that make the requisite level of investments in plant and machinery.

301. This program predecessor has been found to be countervailable by the United States Department of Commerce.[168]

f) Grants under the Industrial Investment Promotion Policy: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and Obtaining Financial Deeds and Mortgages

302. Pursuant to the IIPP, eligible new industrial enterprises and expansion projects may receive a 100% reimbursement of stamp duty and transfer duty for the purchase of land meant for the purpose of industrial use.[169] It also provides reimbursement for leases of land/shed/buildings and mortgages and hypothecations deeds. The Complainants believe that OCTG producer and exporter SAIL may have qualified under this program as it entered into a deal in 2012 to acquire Brahamni Steel's land in Andhra Pradesh for the construction of a steel plant.[170]

303. The reimbursement of stamp duty and transfer duty constitutes a financial contribution under *SIMA* s. 2(1.6)(b) as direct transfer of funds. A benefit under *SIMR* s. 27.1(1) is provided in the amount of duty reimbursed. The reimbursement is specific under *SIMA* s. 2(7.2)(a) as the subsidy is limited to enterprises that make the requisite level of investments in plant and machinery.

304. This program's predecessor has been found to be countervailable by the United States Department of Commerce.[171]

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[168] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.4, **Public Exhibit 7-A-42**.

[169] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.1.6, **Public Exhibit 7-A-44**.

[170] The Hindu Business Line, "SAIL offers to acquire Brahmani Steel in Andhra Pradesh" (March 22, 2012), **Public Exhibit 7-A-48**.

[171] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.6, **Public Exhibit 7-A-42**.

g) Grants under the Industrial Investment Promotion Policy: 25 Percent Reimbursement on Value Added Tax, CST, and State Goods and Services Tax

305. Under the IIPP, companies deemed to be in "large industries" or "mega projects" may receive reimbursement of 25% of total amount the company paid for VAT, CST, and State Goods and Services Tax.[172] Companies are eligible to receive this benefit for a five-year period beginning on the date of commencement of the new or expanded undertaking.

306. The reimbursement of taxes constitutes a financial contribution under *SIMA* s. 2(1.6)(a) as direct transfer of funds. A benefit under *SIMR* s. 27.1(1) exists in the amount of the 25% of the reimbursement. The program is specific under *SIMA* s. 2(7.2)(a) as it is limited to enterprises and industries making the request level of investments in plant and machinery.

307. The United States Department of Commerce has previously found this program's predecessor to be countervailable.[173]

h) Provision of Goods and Services for Less Than Fair Market Value: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas

308. Under the IIPP, infrastructure such as roads, power and water are provided at doorstep of the industry for standalone enterprises/industries by contributing 50% of the cost of infrastructure from the Industrial Infrastructure Development Fund, subject to a ceiling of Rs. 1.00 Crore.[174] The provision of this infrastructure is contingent on the location of the enterprise/industry being beyond 10 kms from the existing industrial estate or industrial development area.[175]

309. The provision of infrastructure constitutes a financial contribution pursuant to *SIMA* s. 2(1.6)(c) as the provision or goods and services, other than general infrastructure. A benefit is provided under *SIMR* s. 36 to the extent that the price charged for the infrastructure is less than the

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[172] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.7, **Public Exhibit 7-A-44.**
[173] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.7, **Public Exhibit 7-A-42.**
[174] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.1.4, **Public Exhibit 7-A-44.**
[175] *Operational Guidelines for Implementation of Industrial Investment Promotion Policy (IIPP) – 2010-2015* at para. 7.5.2, **Public Exhibit 7-A-46.**

market price. The program is specific within the meaning of *SIMA* s. 2(7.2)(a) as it is limited to certain enterprises/industries within the jurisdiction of the granting authority – i.e. those areas outside of the cities of Vijayawada, Visakhapatnam, and Hyderabad.

310. The United States Department of Commerce has previously found this program's predecessor to be countervailable.[176]

i) Countervailable Subsidies in Various Forms for the Mega Projects

311. As mentioned above, under SGAP IIP 2010-2015 Article 4.7.0, projects with Rs. 250 Crores and above are classified as a mega project and are considered for tailor-made benefits on case-to-case basis.[177] To the extent that any OCTG manufacturers have made investments of this magnitude, the Complainants request that the Agency investigate what "tailor-made" benefits are provided and whether they constitute countervailable subsidies.

2) <u>Subsidies Provided by the Andhra Pradesh Industrial Infrastructure Corporation ("APIIC")</u>

312. The APIIC is a SGOAP undertaking charged with "providing industrial infrastructure through the development of industrial areas."[178] It has as its objectives, "{t}o implement schemes of incentives (financial and otherwise), subsidies and the like formulated by the Government of Andhra Pradesh, Government of India or other authorities or institutions and to administer such schemes in incentives as may be devised by the company from time to time in the interest of the establishment and development of industries and commerce in the State of Andhra Pradesh."[179]

313. The Complainants believe that the OCTG producers in the jurisdiction of the SGOAP benefitted from the APIIC administered programs, including but are not limited to the following two programs that were found based on the information reasonably available.

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[176] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, at s. II.D.8, **Public Exhibit 7-A-42**.

[177] *Andhra Pradesh Industrial Investment Promotion Policy (IIPP 2010-15)* at para. 4.7.0, **Public Exhibit 7-A-44**.

[178] Andhra Pradesh Industrial Infrastructure Corporation, "About Us," **Public Exhibit 7-A-49**.

[179] Andhra Pradesh Industrial Infrastructure Corporation Ltd., "Objectives," **Public Exhibit 7-A-50**.

a) Andhra Pradesh Industrial Investment's Allotment of Land for Less than Fair Market Value

314. The APIIC is vested with the objective of providing industrial infrastructure through the development of industrial areas.[180] One of the vehicles at the disposal of the APIIC to accomplish this objective is through allotments of land. Land allotments, especially when they are made in a private negotiation with the government such as through a Memorandums of Understanding, are often made at concessional rates.[181] As noted above, the APIIC only provides these allotments to industrial zones. To the extent that any OCTG producers in Andhra Pradesh received an allotment of land, they would qualify under this program.

315. The APIIC's allotment of land at concessional rates is a financial contributions under *SIMA* s. 2(1.6)(c) as a provision of a good. It provides a benefit under *SIMR* s. 36 in the difference between the fair market value of comparable land and the concessional rate. The program is specific as land use rights provided at an industrial park located within the jurisdiction of a local government sellers is limited to certain enterprises within the jurisdiction of the granting authority under *SIMA* s. 2(7.2)(a)

b) Andhra Pradesh Industrial Investment's Provision of Infrastructure

316. The APIIC provides support for developing infrastructure facilities. In particular, it is mandated to "formulate, promote, finance, aid, assist, establish, manage and control schemes, projects or programmers, to provide and develop infrastructure facilities" in Andhra Pradesh.[182] To accomplish this, the APIIC has an Engineering Wing to undertake construction projects for developing Industrial Parks and deposit works. In 2010-2011, the APIIC reported that it performed Rs. 1,690,188,000 worth of construction under this program, with "deposit works" accounting for Rs. 576,987,000 of that total.[183] OCTG producers and exporters in Andhra Pradesh appear to have

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[180] Andhra Pradesh Industrial Infrastructure Corporation, "About Us," **Public Exhibit 7-A-49.**

[181] *APIIC Industrial Parks Allotment Regulations 2012* at para. 33, **Public Exhibit 7-A-51.**

[182] Andhra Pradesh Industrial Infrastructure Corporation Ltd., "Objectives," **Public Exhibit 7-A-50.**

[183] Andhra Pradesh Industrial Infrastructure Corporation Ltd., "38th Annual Report 2010-2011" at 8, **Public Exhibit 7-A-52.**

benefited from this subsidy. For example, APIIC reported that it provided "deposit works" to OCTG exporter and producer SAIL in the APIIC industrial park in Visakhapatnam.[184]

317. The APIIC's construction and provision of infrastructure, including deposit works, constitute a financial contribution within the meaning of *SIMA* s. 2(1.6)(c) as the provision of goods or services. A benefit is provided under *SIMR* s. 36 in the amount of the construction and infrastructures provided. These subsidies are specific under *SIMA* s. 2(7.2)(a) as they are limited to particular enterprises within the jurisdiction of the authority granting the subsidy, i.e. the companies located within the designated industrial estates where APIIC has undertaken construction or deposit work provisions.

xix. State Government of Gujarat Subsidies Programs

318. The State Government of Gujarat ("SGOG") provides a number of subsidies to producers and exporters located in the state. The United States Department of Commerce has found a number of these to be countervailable.[185] Indian OCTG producers and exporters such as Remi Metal Gujarat Ltd., Mars Forge Pvt., and Welspun Group are located in Gujarat.[186]

1) <u>The State Government of Gujarat's Exemptions and Deferrals on Sales Tax for Purchases of Goods</u>

319. The SGOG provides countervailable tax exemptions and deferrals to companies that locate or invest in specific "disadvantaged" areas in the State.[187] These incentives vary based on the level of investments made by a company and include sales tax exemptions for companies on purchase of raw materials, consumable stores, packing materials, and processing materials. The incentives also include exemption or deferral of sales tax and turnover tax that are levied on the

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[184] Andhra Pradesh Industrial Infrastructure Corporation Ltd., "38th Annual Report 2010-2011" at 9, **Public Exhibit 7-A-52.**

[185] See, e.g. United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488, (July 26, 2010), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-23**; United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-42.**

[186] Location information for Producers in Gujarat, **Public Exhibit 7-A-36.**

[187] Ministry of Finance, Government of India, "Public Private Partnerships in India: Gujarat," **Public Exhibit 7-A-53.**

sale of intermediate products, by-products, and scrap. For those OCTG producers located in these disadvantaged areas, they would likely benefit under this program.

320. The exemptions and deferrals of sales tax provide a financial contribution under *SIMA* s. 2(1.6)(b) as amounts that would otherwise be owing and due to the government that are not collected. In case of tax exemptions, the program provides a benefit under *SIMR* s. 27.1(2) in the amount of the unpaid sales tax. In the case of tax deferrals, the benefit under *SIMR* s. 27.1(2) is the interest earned (or deemed earned) by the company between when the tax payable became due and when it was actually paid. The exemptions and deferrals are provided only to companies making investments in specified disadvantaged areas in Gujarat and are therefore specific under *SIMA* s. 2(7.2(a).

321. This program has been previously found countervailable by the United States Department of Commerce.[188]

2) <u>The State Government of Gujarat's VAT Remission Scheme</u>

322. Under this program, the SGOG remits VAT payments to firms holding unutilized tax incentive credits from other schemes under the Tax Policy.[189] There are two remission schemes. For purchases, the company pays the full amount of the VAT to the vendor and the company then receives an input tax credit back. For sales, the company collects the tax from the customer but the tax collected can then be retained through a remission order. VAT on iron and steel products is 4%.[190] OCTG producers likely benefited from this program. For example, Welspun reported receiving Rs. 670,300,000 in "value added tax incentive" in its 2011-2012 Annual Report.[191]

323. The remission of taxes constitutes a financial contribution under *SIMA* s. 2(1.6)(a) as direct transfer of funds. A benefit exists under *SIMR* s. 27.1(1) in the amount remitted by the

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[188] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-23**.
[189] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-23**.
[190] Government of Gujarat, "Goods, the Sales or Purchase of Which is Subject to Tax and the Rate of Tax" at 43, **Public Exhibit 7-A-54**.
[191] Welspun Corp. Ltd, "17th Annual Report 2011-12" at 118, **Public Exhibit 7-A-55**.

SGOG. The remissions are provided only to companies making investments in specified disadvantaged areas in Gujarat and are therefore specific under *SIMA* s. 2(7.2(a).

324. This program has been previously found countervailable by the United States Department of Commerce.[192]

3) <u>The State Government of Gujarat's Critical Infrastructure Project</u>

325. The SGOG has established the Assistance to Critical Infrastructure Projects scheme, which operates from February 27, 2009 to February 26, 2014.[193] The goal of this program is to create adequate provisions to upgrade and improve the status of infrastructure of the State. To accomplish this goal, the Government provides financial assistance to any companies undertaking a "large project / industry house." The "financial assistance" is a State contribution of up to 60% of the project cost. OCTG producers likely benefit from this program. For example, Welspun operates an industrial estate called Welspun City located on more than 100 hectares in Anjar, Gujarat.[194]

326. The Critical Infrastructure Project provides a financial contribution within the meaning of *SIMA* s. 2(1.6)(a) as a direct transfer of funds from the government. A benefit is provided under *SIMR* s. 27.1(1) in the amount of funds received. This scheme is specific under *SIMA* s. 2(7.2)(a) as it is limited to particular enterprises within the jurisdiction of the authority granting the subsidy, i.e. entities classified as "large project/industrial house."

4) <u>The State Government of Gujarat's Scheme for Assistance to Industrial Parks/Industrial Estates Set Up by Private Institutions</u>

327. The SGOG has established the Financial Assistance to Industrial Estates / Parks in Public Private Partnership (PPP) Mode.[195] The period of operation of this program is from February 27, 2009 to February 26, 2014. Under the program, the Government will provide up to a total of Rs.

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[192] United States Department of Commerce, *Certain Hot-Rolled Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295, (July 14, 2008), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-A-23**.
[193] Government of Gujarat Industries Commissionerate, "Assistance to Critical Infrastructure Projects," **Public Exhibit 7-A-56.**
[194] Welspun, "Welspun City," **Public Exhibit 7-A-57**.
[195] Government of Gujarat Industries Commissionerate, "Improving Industrial Infrastructure," **Public Exhibit 7-A-58.**

10 corers for infrastructure.[196] Furthermore, the company is eligible for an exemption from the payment of stamp duty on the purchase of land at a rate of 50% of the duty.[197] OCTG producers in Gujarat likely benefit from this program. As noted above, Welspun operates in an industrial estate known as "Welspun City."

328. This scheme provides a financial contribution in the form of a direct transfer of funds, as described by *SIMA* s. 2(1.6)(a). The stamp duty provides a further financial contribution in the form of amounts otherwise owed to the government that are not collected under *SIMA* s. 2(1.6)(b). A benefit is provided under *SIMR* s. 27.1(1) in the amount of funds received and under 27.1(2) in the amount of stamp duty not collected. This scheme is specific under *SIMA* s. 2(7.2)(a) as it is limited to particular enterprises within the jurisdiction of the authority granting the subsidy, i.e. entities classified as "large project/industrial house."

xx. State Government of Haryana Subsidies Program

329. The State Government of Haryana ("SGOH") provides a number of subsides to producers and exporters located within the SGOH's territory, including OCTG producers. In particular, the following producers/exporters of OCTG are located in the SGOH's territory: D.P. Jindal Group of Industries, Jotindra Steel & Tubes Ltd., Botil Oil Tools India Pvt., Casewell Drilling Services Pvt. Ltd., and Sledgehammer Oil Tools Pvt., Ltd.[198]

1) Reduced VAT Rates for Inputs and Raw Materials

330. Pursuant to the SGOH's Industrial and Investment Policy 2011, the VAT on industrial inputs and packaging materials is limited to 4%. Eligible industrial inputs and packaging materials include raw materials used in the production of steel for OCTG such as iron ore, manganese, and sulfur.[199] In the ordinary course, VAT is as high as 10 percent.[200] Integrated OCTG producers would qualify for benefits under this program as it uses the raw materials covered by this scheme.

[196] Government of Gjurat, Industries and Mines Department, "Addendum No: BJT/1008/626/Part-I/G" at 3.4, **Public Exhibit 7-A-59**.
[197] Government of Gjurat, Industries and Mines Department, "Addendum No: BJT/1008/626/Part-I/G" at 3.4, **Public Exhibit 7-A-59**.
[198] Location information for Producers in Haryana, **Public Exhibit 7-A-60**.
[199] Haryana Excise and Taxation Department, Schedule C, **Public Exhibit 7-A-61**.
[200] *Haryana Value Added Tax Act* at s. 7(1)(a)(iii), **Public Exhibit 7-A-62**.

In addition, this program is limited to the steel, chemical/pharmaceutical, and electronics industries.[201]

331. Reduced VAT rates constitute a financial contribution under *SIMA* s. 2.(1.6)(b) as amounts otherwise be owing and due to the government. They provide a benefit under s. 27.1(2) in the amount of the difference between the VAT that would normally be due and the VAT that participating firms pay under the scheme. The subsidy is specific under s. 2(7.2)(a) as being limited to a particular enterprise within the jurisdiction of the granting authority, that is steel, chemical/pharmaceutical, and electronics industries.[202]

2) Subsidies to Companies Located in Industrial Estates: Preferential Loans for Large Scale Industries

332. The Haryana State Industrial & Infrastructure Development Corporation ("HSIIDC") is a government of Haryana undertaking.[203] The Corporation provides loans to SME and "Large Scale Set-ups" in an amount up to Rs. 2,500,000,000 at a preferable interest rate of 13.5% with a further rebate of 1% on timely payments of installments and interest.[204] OCTG producers and exporters are likely to qualify for the preferential loans from HSIDC. Casewell Drilling Services, for example, recently purchased land in another industrial estate to build a new production facility in addition to its existing facility being eligible for funding.[205]

333. Financing from the HSIIDC is a financial contribution under s. 2(1.6)(a) of *SIMA* as a direct transfer of funds from the government. The financings provide a benefit under *SIMR* s. 28 equal to the amount of the interest the recipient paid on the loan and the amount of the interest on a comparable commercial loan. The provision of preferential financing by the SGOH is restricted to companies located in industrial states and is therefore specific under *SIMA* s. 2(7.2)(a) as it is

[201] Haryana Excise and Taxation Department, Schedule C, **Public Exhibit 7-A-61**.
[202] Haryana Excise and Taxation Department, Schedule C, **Public Exhibit 7-A-61**.
[203] Haryana State Industrial & Infrastructure Development Corporation LTD., "Financial Services," **Public Exhibit 7-A-63**.
[204] Haryana State Industrial & Infrastructure Development Corporation LTD., "Financial Services," **Public Exhibit 7-A-63**.
[205] Ihar News, "HSIIDC Allotts Industrial Plots to 51 Companies to Fetch Rs 3000 Crores (July 13, 2013), **Public Exhibit 7-A-64**.

limited to particular enterprises within the jurisdiction of the authority that is granting that is subsidy.

B. OCTG from Korea are Being Subsidized

i. Sale of Assets of Hanbo Steel to Hyundai Hysco and its Sister Company

334. Hyundai Hysco is a producer and suspected exporter of Subject Goods to Canada.[206] It is also an OCTG producing subsidiary of Hyundai companies, which has a vertically integrated OCTG production process, whereby hot-rolled steel, a major input into OCTG production, is supplied to Hysco by an affiliated sister company, Hyundai Steel.[207] Based on information reasonably available to the Complainants, Hysco likely received an enormous amount of subsidy benefits through the Hysco and Hyundai Steel purchase from the Government of Korea ("GOK") the plants and facilities formerly owned by Hanbo Iron & Steel Co., Ltd. ("Hanbo"), as described further below.

335. Hanbo was Korea's second largest steel maker until it collapsed in January 1997 under a debt burden of more than USD $6 billion, most of which was associated with a single capital project called "Dangjin Works Facility," or the Dangjin Plant.[208] The Dangjin Plant was Hanbo's most ambitious and capital-intensive project, and once completed, it would have been Hanbo's "crown jewel – one of the world's largest and most technologically advanced steelworks."[209]

336. At the time of Hanbo's collapse, the Dangjin Plant was composed of the following assets as set out in **Table 7**.[210]

Table 7 Hanbo Danjing Assets

District	Production Facilities	Products	Production Capacity (MT)
District A (approximately 150 hectares)	Steel bar production	Re-bar	1.2 million
	Hot-rolling mill #1	Hot-rolled coil	1.8 million

[206] Hyundai Hysco, 2012 Business Report at 14, **Public Exhibit 7-B-1**. Regarding pipes and tubing business segment, Hysco predicts that its business would grow due to the increased demand in North America.
[207] Hyundai Hysco, 2012 Business Report at 17, 79, **Public Exhibit 7-B-1**. See also Hyundai Steel, 2012 Business Report at 22, **Public Exhibit 7-B-2**, which sets out that during 2012, almost a quarter of Hyundai Steel's revenue was made from its sales to Hyundai Hysco.
[208] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 628, **Public Exhibit 7-B-3**.
[209] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 630, **Public Exhibit 7-B-3**.
[210] Daewoo Securities, *Special Report on Steel and Iron* (November 25, 2011), at 58, **Public Exhibit 7-B-4**.

District B (approximately 240 hectares)	COREX	Molten iron	1.5 million
	Steelmaking	Slab	2.18 million
	Hot-rolling mill #2	Hot-rolled coil	2.1 million
	Cold-rolling mill	Cold-rolled coil	2 million

337. Among the Dangjin Plant facilities, the facilities located in District A were operating as early as in 1999, while the construction of facilities in District B had not yet been completed at that time.[211] By the end of 1999, Hanbo's business report valued its assets under construction in Dangjin at almost KRW 3.5 trillion (an amount that would not include District A given that construction of District A facilities was reportedly already completed by the end of 1999).[212]

338. Immediately after Hanbo's bankruptcy, the Bankruptcy Division of Seoul Central District Court struck a Representative Creditor Board ("Creditor Board"), ostensibly led the private Korea First Bank, to oversee the bankruptcy proceeding, and appointed a trustee to act as a liaison between the Court and the Creditor Board.[213] From 1997 to 1999, the Creditor Board received at least two bids to purchase Hanbo's Dangjin Plant. The first reported bid was made by a consortium of POSCO and Dongkuk Steel Mill Co. Ltd. ("Dongkuk Steel") for KRW 2 trillion.[214] However, the creditors refused the KRW 2 trillion bid because the price was considered too low.[215] Subsequently, Dongkuk Steel on its own submitted another bid to purchase the Dangjin Plant for KRW 1.7 trillion, but the creditors again refused due to the price bid being too low.[216]

339. Beginning in 1999, however, the composition of the Creditor Board changed from being largely privately controlled to being entirely government-controlled. Specifically, the Korean Asset Management Corporation ("KAMCO") began acquiring trillions of dollars of non-performing loans issued to Hanbo from the creditor banks, including loans issued by Korea First Bank.[217] As a result of these transactions, KAMCO became Hanbo's largest creditor and thereby

[211] Sisa Journal, "Who will fuse the light again in Hanbo Steel's blast furnace?" (February 4, 1999), **Public Exhibit 7-B-5**.
[212] Hanbo Steel, 1999 Audited Financial Statement, **Public Exhibit 7-B-6**.
[213] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 630-631, **Public Exhibit 7-B-3**.
[214] Munhwa Daily, "POSCO-Donkuk Steel submits bids to acquire Hanbo Steel," (July 29, 1997), **Public Exhibit 7-B-7**.
[215] Sisa Journal, "Who will fuse the light again in Hanbo Steel's blast furnace?" (February 4, 1999), **Public Exhibit 7-B-5**.
[216] Sisa Journal, "Who will fuse the light again in Hanbo Steel's blast furnace?" (February 4, 1999), **Public Exhibit 7-B-5**.
[217] Government of Korea Archives, "Bankruptcy of Hanbo Steel," (December 1, 2006), **Public Exhibit 7-B-8**.

the "primary representative" on the Creditor Board struck to oversee Hanbo's bankruptcy. In this capacity, "KAMCO executive sat at the chair of the Joint Management Committee, a subcommittee of the Board comprising Hanbo's eleven largest creditors."[218] In addition, a KAMCO employee served as chief of the "Sales Bureau," which was created in 2001 by the Joint Management Committee and the Trustee to implement the Joint Management Committee's directives and to oversee the day-to-day activities relating to the disposition of Hanbo's assets."[219] Indeed, based on a full review of facts relating to the bankruptcy, a U.S. court determined in 2005 that "KAMCO was effectively the creditors' representative."[220]

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[218] According to *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at footnote 5, **Public Exhibit 7-B-3**, Hanbo's eleven largest creditors in the Joint Management Committee included: KAMCO, the Korea Development Bank, Chohung Bank, Korea Exchange Bank, Woori (Hanvit) Bank, Hana (Seoul) Bank, Allianz Life Insurance, Seoul Guarantee Insurance, Daewoo Securities, Korea Development Bank Capital, and Korea Development Leasing Corporation. During 2004, when the sale of Hanbo's assets to Hyundai Hysco and Hyundai Steel was approved, the following Hanbo's creditor banks sitting in the Joint Management Committee were owned by the government of Korea:

(1) Woori Bank: According to Woori Financial Holding Company's 2004 Business Report at 88, **Public Exhibit 7-B-9**, it held 100% of Woori Bank in 2004 and was in turn 86.8% and 78.9% owned by Korea Deposit Insurance Corporation at the beginning and end of 2004 respectively;

(2) Seoul Guarantee Insurance: According to the company's 2004 Audited Financial Statement at 36, 2004 Audited Financial Statement **Public Exhibit 7-B-10**, it was 93.85% owned by Korea Deposit Insurance Corporation at the beginning and end of 2004;

(3) Daewoo Securities: According to the company's 2004 Business Report at 133, **Public Exhibit 7-B-11**, it is 39.09% owned by Korea Development Bank at the beginning and end of 2004;

(4) Korea Development Bank Capital: According to the company's 2004 Business Report at 97, **Public Exhibit 7-B-12**, it is 97.49% owned by the Korea Development Bank at the beginning and end of 2004; and

(5) Korea Deposit Insurance Corporation: In turn, Korea Deposit Insurance Corporation, a major shareholder of a number of the banks listed above, is a government agency created by the *Deposit Protection Act*, whose mandate includes supporting financial institutions in hardship. See International Association of Deposit Insurers, "Member Profile: Korea Deposit Insurance Corporation (KDIC), A Founding Member of IADI" at 1-2, **Public Exhibit 7-B-13**.

In addition, the following Hanbo's creditor banks sitting in the Joint Management Committee were government policy banks or agencies: KAMCO for the reasons specified above; Korea Development Bank for the reasons specified below.

As a result, the Joint Management Committee was in fact government-controlled decision-making body, which in turn controlled Hanbo's bankruptcy and liquidation processes.

[219] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 634, **Public Exhibit 7-B-3**.

[220] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 634, **Public Exhibit 7-B-3**.

340. KAMCO, for its part, is an agency of the GOK, created in 1962 under the *Korea Development Bank Act.*[221] In terms of its governmental nature, the GOK has already conceded in the context of a U.S. countervailing duty investigation on Bottom Mount Combination Refrigerator-Freezers that KAMCO is a government agency; the United States Department of Commerce in the same context similarly found that KAMCO is "a government special purpose institution... a government authority carrying out GOK functions."[222]

341. More relevantly, KAMCO was reorganized in the wake of Hanbo's collapse in 1997 and was given the objective of acquiring and disposing of Hanbo's non-performing loans pursuant to the *Act on Efficient Disposal of Non-Performing Assets of Financial Institutions and Establishment of Korea Asset Management Corporation.*[223] For this purpose, the GOK established a "Non-Performing Loan Resolution Fund" through the issuance of government-guaranteed bonds to provide KAMCO with KRW 21.6 trillion in funds with which to acquire non-performing loans.[224]

342. Given the magnitude of its acquisitions, KAMCO is and has always been "supervised by the Korean Financial Supervisory Commission, an agency of the Korean government, which itself reports directly to the President of Korea."[225] At the same time, KAMCO has also always been supervised by the Public Fund Oversight Committee of the Ministry of Finance and Economy and subject to annual inspection and special investigation by Korea's National Assembly.[226]

343. After acquiring Hanbo non-performing loans, KAMCO held on to Hanbo's Dangjin Plant for approximately six years. In July of 2004, the Plant was sold to a consortium of Hyundai companies, namely Hyundai Hysco and Hyundai Steel, for KRW 877 billion.[227] This price is less

[221] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 631, **Public Exhibit 7-B-3.**

[222] *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17410, (March 26, 2012), **Public Exhibit 7-B-14.**

[223] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 631, **Public Exhibit 7-B-3.**

[224] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 631, **Public Exhibit 7-B-3.**

[225] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 633, **Public Exhibit 7-B-3.**

[226] *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 633, **Public Exhibit 7-B-3.**

[227] Ministry of Finance and Economy, "White Paper on Public Fund Management: August 2006," at 214, **Public Exhibit 7-B-15.**

than half of KRW 2 trillion offer rejected earlier by the Creditor Board composed of the private banks, and even less than Hanbo's reported decrease in the book value of tangible assets from 2003 to 2004.[228]

344. Moreover, at the time of the sale, KAMCO had assumed contingent liability of KRW 2.6 trillion originating from a pending lawsuit, according to the National Assembly's Inspection of the Administration.[229] As a result, KAMCO designated more than 40% of the sales price, KRW 387 billion, as a reserve for contingent liability.[230] A member of the Korean National Assembly Kim Hyun-Mi criticized the sale as being "forced," and warned that there was a real risk of the sale resulting in a net loss for the GOK.[231] It is telling that all creditor banks opposed KAMCO's decision to assume the contingent liability in a sale of the Dangjin Plant to the Hyundai companies.[232]

345. The specifics of the sale are as follows:

- of the KRW 877 billion, Hysco contributed KRW 181 billion and acquired the cold-rolling mill, 24 hectares of land, and residential apartments built to accommodate plant employees;
- the remaining assets were acquired by Hyundai Steel for KRW 679 billion.[233]

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[228] Hanbo Steel, 2004 Business Report, **Public Exhibit 7-B-16**.
[229] Government of Korea, *Transcript of 2004 National Assembly's Inspection of the Administration*, (October 8, 2004), at 70, **Public Exhibit 7-B-17**.
[230] Government of Korea, *Transcript of 2004 National Assembly's Inspection of the Administration*, (October 8, 2004), at 69, **Public Exhibit 7-B-17**.
[231] Government of Korea, *Transcript of 2004 National Assembly's Inspection of the Administration*, (October 8, 2004), at 70, **Public Exhibit 7-B-17**.
[232] Financial News, "Confrontation Between KAMCO and Creditors with Respect to the Contingent Liability Stemming from AK Capital Law Suit – Sale of Hanbo Steel Begins," (September 19, 2004), **Public Exhibit 7-B-18**.There were two other subsequent offers to purchase the Dangjin Plant at less price. However, these offers were: (1) effectively private offers; (2) criticized as being inadequate ("dirt-cheap" is the terms used by media to describe the offers); (3) and made by the same person, whose representative was prosecuted, and who himself has been accused of defrauding the politicians for matters related to acquiring the Dangjin Plant.
For supporting materials for (1), see Ministry of Finance and Economy, "White Paper on Public Fund Management: August 2006," at 210, **Public Exhibit 7-B-15** and *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 634-638, **Public Exhibit 7-B-3**.
For supporting materials for (2), see The Dong-A Ilbo, "Hanbo Steel, Criticism of Dirt-Cheap Price Sale," (December 13, 2002), **Public Exhibit 7-B-19.**
For supporting materials for (3), see Segye Daily, "A Broker in 60s Arrested for Hanbo Steel Acquisition Lobbying Activities," (September 12, 2008), **Public Exhibit 7-B-20.**
[233] Daewoo Securities, *Special Report on Steel and Iron* (November 25, 2004), at 59 and 65, **Public Exhibit 7-B-4**. It is noted that the purchase price reported by the government of Korea, KRW 877 billion, is slightly higher than the amount reported by Daewoo Securities' analyst report (which reported that Hysco paid KRW 181 billion and

346. According to the analyst reports during the time of the deal, Hysco, as a primary buyer of hot-rolled coils to be produced by Hyundai Steel's newly acquired Dangjin Plant, stood to gain the most by avoiding the acquisition and investments expenses needing to be incurred for the hot-rolled facilities.[234] In fact, Hysco's return on investment is reported to be around 17%, triple of Hyundai Steel's 4.9%, precisely because Hysco is reported to buy its hot-rolled coils from Hyundai Steel at a discounted price.[235]

1) KAMCO's Sale of Hanbo Steel Assets to Hyundai Hysco Constitutes a Countervailable Subsidy

347. The sale by KAMCO of portions of Hanbo's Dangjin Plant to Hyundai Hysco constitutes government provision of goods within the meaning of *SIMA* s. 2(1.6)(c). The sale confers benefits to Hyundai Hysco because those portions of the Dangjin Plant were sold for substantially less than fair market value. KAMCO Act Article 6 provides that KAMCO's objective is to "accelerate the resolution of non-performing assets held by financial institutions, and to efficiently support the management normalization, etc. of the enterprises showing signs of insolvency."[236] KAMCO's dealings with the Hanbo assets are, in this context, specific by definition under *SIMA* s. 2(7.3)(a) because KAMCO's subsequent provision of assets was company-specific to Hyundai Hysco and Hyundai Steel.

348. In terms of subsidy benefit allocation and amortization, in the case of KAMCO's sale of Hanbo's assets to Hyundai Hysco, the subsidy at issue is the GOK provision of portions of Hanbo's Dangjin Plant at less fair market value. As such, Hysco's use of the subsidy is realized through its acquisition of those portions of the Dangjin Plant that it acquired directly. In addition, the subsidy is non-recurring in nature and is sufficiently large in absolute terms to be amortized. Because the subsidy is on tangible assets it therefore confers benefits directly to Hysco for the length of the

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Hyundai Steel paid KRW 679 billion, sum of which is KRW 860 billion). As a conservative approach, the government report of KRW 877 billion is assumed to be a true number.

234 Hanwha Securities, "Steel Industry: Benefits and Costs to the Steel Producers as a Result of Hanbo Steel Acquisition," (June 17, 2004), at 10-11, **Public Exhibit 7-B-21**.

235 Korean Economy, "Hyundai Steel and Hyundai Hysco Merges to Become a Vertically Integrated Steel Giant," (October 16, 2013), **Public Exhibit 7-B-22**.

236 *John M. Murphy, et al., v. Korea Asset Management Corp., et al.*, [2005] 421 F. Supp. 2d 627 at 631, **Public Exhibit 7-B-3**.

assets' useful life. In consideration of all of the above, the subsidy should be amortized over the Danjin Plant's useful life.

349. To this end, although the precise anticipated useful life of the Dangjin Plant is unknown, Hysco's financial statement states that its tangible assets are amortized over three to forty years. In addition, it is noteworthy that the American class life of depreciable assets related to "exploration for and production of petroleum and natural gas deposits" is 14 years, which is what the United States Department of Commerce uses as a subsidy allocation period.[237] As such, it is likely that subsidized Hanbo's assets continue to confer benefits to Hysco.

2) KAMCO's Sale of Hanbo Steel Assets to Hyundai Steel Constitutes an Indirect (Upstream) Countervailable Subsidy to Hyundai Hysco

350. The sale by KAMCO of the remaining portion of Hanbo's Dangjin Plant to Hyundai Steel constitutes government provision of goods within the meaning of *SIMA* s. 2(1.6). The sale confers benefits to Hyundai Steel because the assets were provided for less than fair market value. Again, KAMCO's sale of Hanbo's assets are specific *SIMA* s. 2(7.3)(a) because KAMCO granted these assets to Hyundai Hysco and Hyundai Steel specifically

351. Regarding allocation of the subsidy, although the precise anticipated useful life of the Dangjin Plant is unknown, Hyundai Steel's financial statement states that its tangible assets are amortized over five to fifty years. Again, the American class life of depreciable assets related to "exploration for and production of petroleum and natural gas deposits" is 14 years, which is what the United States Department of Commerce uses as a subsidy allocation period.[238] As such, it is likely that subsidized Hanbo's assets continue to confer benefits to Hyundai Steel.

352. This direct subsidy to Hyundai Steel also represents an upstream subsidy attributable to Hysco as an associated downstream purchaser of hot-rolled coil. *SIMA* s. 2(1) defines "subsidized goods" as encompassing "goods... of which a subsidy has been... provided, directly or indirectly."

[237] U.S. Internal Revenue Service Publication 946 (2012), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods, **Public Exhibit 7-B-23**; United States Department of Commerce, "Preamble to the Final Rules of Countervailing Duty Methodology," 63 FR 65348 at 65395, **Public Exhibit 7-B-24**.

[238] U.S. Internal Revenue Service Publication 946 (2012), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods, **Public Exhibit 7-B-23**; United States Department of Commerce, "Preamble to the Final Rules of Countervailing Duty Methodology," 63 FR 65348 at 65395, **Public Exhibit 7-B-24.**

The Act further specifies that subsidized goods include "any goods in which... {subsidized goods} are incorporated, consumed, used or otherwise employed."

353. Established Agency policy recognizes that in cases of indirect subsidies, the definition of "subsidized goods" calls for an investigation into whether the exporter of the goods under investigation has received a subsidy in respect of the price paid for upstream products. In the case of KAMCO's sale of Hanbo assets to Hyundai Steel, publicly available reports indicate clearly that Hyundai Hysco purchases hot-rolled coils from Hyundai Steel at discounted prices.[239]

354. In addition, Agency policy is clear that in the case of associated persons, an upstream subsidy will be presumed to have been passed-through to the downstream purchaser in its entirety, and that the amount of the subsidy that has been received by the downstream purchaser is the total amount of the subsidy that is attributable to the upstream product. Hyundai Hysco and Hyundai Steel are both subsidiaries of Hyundai Motors. According to Hyundai Motor's "Disclosure of Status of Large Corporation Groups," a disclosure of which is mandated by Korea's Fair Trade Commission for the group of companies that are effectively controlled by the same person, Hyundai Motor directly and indirectly controls 22.5% of Hyundai Steel and 45.87% of Hyundai Hysco.[240]

355. In consideration of the foregoing, the entire amount of subsidies provided by KAMCO to Hyundai Steel should be considered to have been received by the downstream purchaser, Hyundai Hysco in respect of its purchases of hot-rolled coil and other OCTG inputs.

ii. The Sale of SPP Steel Pipes to SeAh Steel

356. SeAH Steel is a producer and likely exporter of subject OCTG to Canada.[241] Based on information reasonably available to the Complainants, SeAH Steel benefited enormously when it

[239] Korean Economy, "Hyundai Steel and Hyundai Hysco Merges to Become a Vertically Integrated Steel Giant," (October 16, 2013), **Public Exhibit 7-B-22.**

[240] Hyundai Motor Company, "Disclosure of Status of Large Corporation Groups," (August 30, 2013), **Public Exhibit 7-B-25.**

[241] SeAH Steel, 2012 Business Report, at 23, **Public Exhibit 7-B-26.** Regarding the pipes and tubing business segment, SeAH Steel states that its 2012 export quantity increased by 30% compared to 2011, from 1,710,000 MT to 2,230,000 MT. See also SeAH Steel, 2012 Business Report at 11, **Public Exhibit 7-B-26**, which identifies SeAH Steel America as SeAH Steel's export sales subsidiary in charge of sales in North America.

too purchased from KAMCO the plants and facilities of the former SPP Steel Pipes ("SPP"), as described below.

357. SPP was a wholly owned subsidiary of SPP Resources, and had recently completed constructing its roll-bending, press-bending, and spiral lines in 2010.[242] In and around the same period, SPP Resources and its affiliated companies also entered into a restructuring agreement with its primary creditor bank, Woori Bank.[243] The agreement stipulated, among other things, disposition of certain SPP companies and/or assets.[244]

358. Woori Bank is in fact owned and controlled by the GOK through a majority shareholding of the Korea Deposit Insurance Corporation ("KDIC").[245] As an example of the effective control that the GOK has over Woori Bank, the KDIC appoints the executives and board members of the Bank in its capacity as a majority shareholder.[246] Furthermore, the scope of Woori Bank's operations is restricted to those operations approved by the Korean Financial Services Commission pursuant to the Article 36(5) of *Depositor Protection Act*.[247]

359. In March 2012, SPP and its almost-brand-new pipe and tubing lines were sold to SeAh Steel as part of the restructuring agreement with Woori Bank.[248] Based on information reasonably available to the Complainants, it appears that there was no public auction or any competitive bid process established for the same. Instead, at the time of the sale, it appears that SeAh Steel was in private negotiations with Woori Bank.[249]

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[242] SPP Resources 2011 Audited Financial Report at 18, **Public Exhibit 7-B-27**; EBN Steel News, "SPP Steel Pipes to Start Heavy Wall Steel Pipe Production in April," (March 19, 2010), **Public Exhibit 7-B-28**.
[243] SPP Resources 2011 Audited Financial Report at 46, **Public Exhibit 7-B-27**. See also pages 35-36, which shows Woori Bank as the only unaffiliated creditor to SPP Resources with outstanding long-term debts, holding 38% of the total long-term debts.
[244] SPP Resources 2011 Audited Financial Report at 46, **Public Exhibit 7-B-27**.
[245] Woori Bank, 2012 Business Report, at 11, **Public Exhibit 7-B-29** shows that Woori Financial Holding Company to be the 100% owner of Woori Bank's shares. In turn, Woori Financial Holding Company, 2012 Business Report, at 278, **Public Exhibit 7-B-29** shows that KDIC owns almost 57% of Woori Financial Holding Company.
[246] Korean Financial Services Commission, "Press Release: Disclosure Regarding the Result of Reappointment Process for the Agencies under the Authority of the Financial Services Commission," (May 7, 2008), **Public Exhibit 7-B-30**.
[247] *Depositor Protection Act*, **Public Exhibit 7-B-31**.
[248] EBN Steel News, "SeAh Steel Acquires SPP Steel Pipes at KRW 126 Billion," (March 12, 2012), **Public Exhibit 7-B-32**.
[249] EBN Steel News, "SPP Group Tries to Sell SPP Steel Pipes and SeAh Steel is the Likely Winner," (January 4, 2012), **Public Exhibit 7-B-33**.

360. Not surprisingly, given the opaque nature of a sales process involving a de facto government-controlled policy bank, SPP was sold to SeAh Steel for a mere KRW 5.8 billion. Although SeAh Steel assumed SPP's outstanding debt of KRW 121 billion, the purchase price of KRW 5.8 billion very clearly constituted less than fair market price given that SPP had assets of KRW 163 billion at the end of 2011 was more than enough to cover those outstanding liabilities.[250] Indeed, reports leading up to the sale tellingly estimated the market value of SPP to be about KRW 40 billion, representing the difference between the value of SPP's assets of KRW 160 billion and debts of KRW 120 billion.[251]

361. The sale of SPP by KAMCO to SeAh Steel constitutes government provision of goods within the meaning of *SIMA* s. 2(1.6).The sale confers benefits to Hyundai Steel because they are provided for less than fair market value. Woori Bank's sale of SPP is company-specific under *SIMA* s. 2(7.3) because it was made exclusively to SeAh Steel.

iii. National and Local Governments of Korea Provide Subsidies to the Companies Located in Specially Designated Industrial Complexes

1) <u>Government of North Jeonla Province Subsidies for the Relocation of Iljin Steel</u>

362. Iljin Steel is yet another Korean producer and likely exporter of subject OCTG to Canada.[252] Based on the information reasonably available to the Complainants, Iljin Steel received an enormous amount of subsidy benefits from the GOK in the context of its establishment of its plant in 2011, as described in further detail below.

363. In December 2009, Iljin Steel entered into an investment contract with North Jeonla Province.[253] The contract stipulated that Iljin Steel would initially invest KRW 142 billion for relocating its carbon and alloy seamless pipe manufacturing plant in Imsil Agriculture and

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[250] EBN Steel News, "SeAh Steel Acquires SPP Steel Pipes at KRW 126 Billion," (March 12, 2012), **Public Exhibit 7-B-32**; SPP Resources, 2011 Audited Financial Report, at 19, **Public Exhibit 7-B-27**.
[251] EBN Steel News, "SPP Group Tries to Sell SPP Steel Pipes and SeAh Steel is the Likely Winner," (January 4, 2012), **Public Exhibit 7-B-33**. See also EBN Steel News, "SeAh Steel Enters into its Final Due Diligence to Acquire SPP Steel Pipes," (February 8, 2012), **Public Exhibit 7-B-34**.
[252] MK News, "Iljin Steel Succeeds in Domestication of Seamless Pipes and the First Export to the United States," (September 4, 2012), **Public Exhibit 7-B-35**.
[253] Jeonmin Daily, "Imsil County and local economy are on a roll for hosting new manufacturing investments and creating new jobs," (December 26, 2012), **Public Exhibit 7-B-36**.

Manufacturing Industrial Complex.[254] The plan for the initial investment was to start construction of a seamless manufacturing plant in January 2011 and to begin test producing in May 2011.[255]

364. From the beginning, there was no question that Iljin Steel would receive government support for its investments. Indeed, a County official is reported as stating, "we will provide unprecedented incentives and tax breaks, as well as state-of-the-art administrative services from the start-up to stabilization for Iljin Steel and companies moving into phase two of the Agriculture and Manufacturing Industrial Complex."[256]

365. Examples of subsidies likely to have been provided to Iljin Steel by North Jeonla Province are published on Imsil County's website and are as follows in **Table 8**.[257]

Table 8 Subsidies Likely to Have Been Provided to Iljin Steel by North Jeonla Province

Programs		Support	Limit	Eligible Companies
For companies relocating from areas surrounding the capital[258]	Relocation support	Within 60% of land sales price, fair market price, or fair market rent	KRW 20 billion per company	Companies relocating from areas surrounding the capital region after 3 years of operations; must employ 30 or more full-time employees after relocation.
	Facilities investment support	Within 10% of construction cost, equipment cost, or basic infrastructure installation cost		
	Training support	KRW 600,000 per new full-time employees exceeding 10 employees; within 6 months	KRW 1 billion	
For new companies or expansions	Facilities investment support	Within 15% of facilities investment	Government funding of KRW 6 billion	- Where planned business is within the regional strategic business, regional encouraged business, or specialized business
				- operation for at least 3 years, employs 10 or more full-time

[254] Jeonmin Daily, "Imsil County and local economy are on a roll for hosting new manufacturing investments and creating new jobs," (December 26, 2012), **Public Exhibit 7-B-36**.
[255] Jeonmin Daily, "Imsil County and local economy are on a roll for hosting new manufacturing investments and creating new jobs," (December 26, 2012), **Public Exhibit 7-B-36**.
[256] Jeonmin Daily, "Imsil County and local economy are on a roll for hosting new manufacturing investments and creating new jobs," (December 26, 2012), **Public Exhibit 7-B-36**.
[257] Imsil County, "Investment Fact Sheet," **Public Exhibit 7-B-37**.
[258] Iljin Steel relocated its headquarters from Anyang City of Gyeong-gi Province to Imsil County. See News1, "Iljin Steel's Imsil Plant Starts Producing Seamless Pipes Beginning June," (June 10, 2012), **Public Exhibit 7-B-38**, which describes that Iljin Steel relocated from Anyang to Imsil, and Iljin Steel, "Anyang Plant Information," **Public Exhibit 7-B-39**, which describes that Anyang is located in Gyeong-gi Province. According to the Korea National Tax Service, "Questions and Answers," (April 13, 2006), **Public Exhibit 7-B-40**, "areas surrounding the capital" include Seoul City, Incheon City, and Geong-gi Province.

				- New investment amount over KRW 1 billion
	Training support	Within KRW 600,000 per employee; within 6 months		- Create 10% or more new employment
For large investments	Investment support (for relocating companies)	Within 5% of investments of land cost, construction cost, equipment cost, or basic infrastructure installation cost	Up to KRW 10 billion per distinct plant	Investment amount over KRW 20 billion and full-time employment over 100 employees
	Investment support (for new or existing companies)	Within 2% of investments of land cost, construction cost, equipment cost, or basic infrastructure installation cost	KRW 5 billion per company	
Support for employment		KRW 500,000 per full-time local resident employed exceeding 15 local resident employees; within 6 months	KRW 500 million per company	Companies relocating from another domestic location, large investments, and companies in tourism industry
Training support		KRW 500,000 per full-time local resident employed exceeding 15 local resident employees; where training is provided; within 6 months	KRW 500 million per company	

366. By the time the construction began, the amount of Iljin Steel's planned investment had increased to KRW 300 billion, with a plan for expansion in 2014.[259] However, this too appears to have come at a price – the Korea Industrial Complex Corp. ("KICC") reported that the ground breaking ceremony went forward only after the Province agreed to provide electricity, gas and other production-related infrastructure to Iljin Steel.[260] In fact, it appears that the Province constructed or caused the construction of a utility company dedicated to Iljin Steel—the two entities appear to be the only two companies moved into the Industrial Complex to date.[261]

[259] Company Movement & Investment Support System (Regional Investment Support Team of KICC), "Iljin Steel: the number one contributor to the economic growth of North Jeonla Province," **Public Exhibit 7-B-41**.

[260] KICC is an agency of government of Korea under the authority of Ministry of Trade, Industry and Energy, whose objectives include providing a centralized database of local subsidy programs through a website at <http://comis.go.kr/index.jsp>; Company Movement & Investment Support System (Regional Investment Support Team of KICC), "Iljin Steel: the number one contributor to the economic growth of North Jeonla Province," **Public Exhibit 7-B-41**.

[261] Imsil County, "Imsil Agriculture and Manufacturing Industrial Complex," (November 2011), **Public Exhibit 7-B-42**. The city website provides that there were only two companies in the Industrial Complex, Iljin Steel and Kunsan City Gas Corporation as of November 2011. KICC, "Industrial Complex Fact Sheet: Imsil Agriculture and Manufacturing Industrial Complex," (December 31, 2012), **Public Exhibit 7-B-43** shows that there were still only two companies in the Industrial Complex as of the end of 2012 and that Kunsan City Gas Corporation was the energy-supplier of the Industrial Complex.

367. Provision of "unprecedented incentives" and "tax breaks," including but not limited to the relocation, investment, expansion, employment, and training related grants specified above, constitute direct transfer of funds and/or amounts that are owing and due to the government that are deducted, exempted, forgiven or not collected. These financial contributions confer benefits to Iljin Steel within the meaning of *SIMR* s. 27.1(2) to the extent of the amount given or deducted, exempted, forgiven or not collected. The provision of "unprecedented incentives" and "tax breaks" are specific under *SIMA* s. 2(7.2)(a) as they are provided to the companies located in the Imsil Agriculture and Manufacturing Industrial Complex, which is a limited designated area within the jurisdiction of the granting authority, North Jeonla Province. In addition, the Industrial Complex appears to have been created and operating for Iljin Steel only. As such, all subsidies ostensibly granted to the "companies" located in the Industrial Complex are in fact specific under *SIMA* s. 2 (7.3)(a) to Iljin Steel.

2) Establishment of Kunsan City Gas in Imsil Agriculture and Manufacturing Industrial Complex

368. Reports provide that Kunsan City Gas Corporation was established in Imsil Agriculture and Manufacturing Industrial Complex for the sole purpose of serving Iljin Steel. To the extent that the government of North Jeonla Province established or cause to establish Kunsan City Gas Corporation, and to the extent it supplies Iljin Steel, there is government provision of goods or government-directed provision of goods under *SIMA* s. 2(1.6)(c).

369. The establishment of Kunsan City Gas Corporation and the utility services it provides to Iljin Steel do not constitute the provision of general infrastructure. Rather, the utility is provided intentionally and exclusively to Iljin Steel. To this point, established Agency policy provides that infrastructure whose access is intentionally limited, and which has been specially constructed to address the particular needs of certain industries, does not constitute "general infrastructure." Pursuant to *SIMR* s. 36, Iljin Steel benefits from the provision of utility, to the extent that it pays less than the fair market value of the utility. The fair market benchmark in this instance should reflect the fact that Kunsan City Gas Corporation was established solely for the purpose of serving Iljin Steel. As such, the fair market value should be gathered from private utility provider in Korea, where it establishes a customer-dedicated plant. The Establishment of Kunsan City Gas Corporation and the utility services it provides are provided to Iljin Steel alone in the designated

Imsil Agriculture and Manufacturing Industrial Complex. As such, they are specific under *SIMA* s. 2(7.3)(a) to Iljin Steel.

3) Subsidies to Other Korean OCTG Producers Located within Industrial Complexes

370. The GOK and Korean provincial governments provide various types of subsidies for the enterprises that are located within so-called "Industrial Complexes" within provincial jurisdiction. The OCTG producers found to be located within one of the industrial complexes, and the subsidy programs that they likely benefit from include those set out in **Table 9**.

Table 9 Subsidy Programs to Other Korean OCTG Producers Located within Industrial Complexes

OCTG Producers	Location	Subsidy Measures
SeAh Steel, former SPP Pipe plant	Yool Chon Industrial Complex[262]	Tax benefits[263] 1. 100% reduction of income and corporate tax for 3 years, followed by 50% reduction for the 2 subsequent years; 2. 100% reduction of acquisition and property tax for 15 years, followed by 50% reduction for the 15 subsequent years
Hyundai Hysco	Mipo National Industrial Complex[264]	Tax benefits[265] 1. Exemption of all acquisition taxes; 2. Property taxes are reduced by 50% since the date of acquisition
Husteel, Asan plant	Asan National Industrial Complex[266]	Tax benefits[267] 1. Exemption of all acquisition taxes (must pay education and special agricultural tax); 2. Property taxes are reduced by 50% since the date of acquisition Additional tax benefits[268] Since 2005, Husteel reported to a media article that its corporate tax has been exempted (100% reduction) for the subsequent 6 years, followed by 5 more years of 50% reduction
Husteel, Daebul plant	Daebul Industrial Complex[269]	Tax benefits[270] 1. Exemption of all acquisition taxes; 2. Property taxes are reduced by 50% since the date of acquisition
Dongbu Steel	Incheon Industrial Complex[271]	Tax benefits[272] 1. Exemption of all local taxes in the case of new construction or expansion
Nexteel, Pohang plant #1, 2 and 3	Pohang Steel Industrial Complex[273]	Tax benefits[274] 1. Exemption of all acquisition and registration tax; 2. 50% reduction of property and general land tax for 5 years since the date of acquisition

262 EBN, "SPP Pipe's Soon-cheon Plant Expected to Start Production in May," (January 13, 2010), **Public Exhibit 7-B-44**. The sale of SPP Pipe to SeAH Steel is described above.
263 KICC, Yool-cheon Industrial Complex No. 1, (December 31, 2012), **Public Exhibit 7-B-45**.
264 The National Library of Korea, "Information of Local Governments," **Public Exhibit 7-B-46**.
265 KICC, Ulsan and Mipo National Industrial Complex, (December 31, 2012), **Public Exhibit 7-B-47**.
266 Dangjin Epoch, "Husteel Dangjin Plant Reports Production of 60,000 MT during the First Quarter," (May 23, 2005), **Public Exhibit 7-B-48**.
267 KICC, Asan National Industrial Complex, (December 31, 2012), **Public Exhibit 7-B-49**.
268 Dangjin Epoch, "Husteel Dangjin Plant Reports Production of 60,000 MT during the First Quarter," (May 23, 2005), **Public Exhibit 7-B-48**.
269 Shinan Company, Corporate Organization Chart, **Public Exhibit 7-B-50**. (Shinan is the parent company of Husteel. See Husteel, 2012 Business Report, at 40-42, 45, **Public Exhibit 7-B-51**.).
270 KICC, Daebul National Industrial Complex, (December 31, 2012), **Public Exhibit 7-B-52**.
271 Incheon Industrial Complex, "List of Enterprises in the Industrial Complex," **Public Exhibit 7-B-53**.
272 KICC, "Incheon Ordinary Industrial Complex," (December 31, 2012), **Public Exhibit 7-B-54**.
273 Pohang Industrial Complex Management Corporation, "List of Enterprises in the Industrial Complex," **Public Exhibit 7-B-55**.
274 KICC, Pohang Ordinary Industrial Complex No. 4, (September 31, 2008), **Public Exhibit 7-B-56**.

OCTG Producers	Location	Subsidy Measures
Iljin Steel, Imsil plant	Imsil Agriculture and Manufacturing Industrial Complex[275]	Various Subsidies *As stated above Tax benefits[276] 1. 50% reduction of income and corporate tax for 5 years

371. Tax reductions for operation in regional and national industrial complexes have been found to be countervailable subsidies by the United States Department of Commerce in *Corrosion-resistant Carbon Steel Flat Products from the Republic of Korea*.[277] Notably, Hyundai Hysco, Dongbu Steel, and POSCO, all of which are also potentially subject to this investigation, have been found to have received countervailable subsidies under this program in the U.S. proceeding.[278]

372. Tax exemptions and reductions for the companies located in industrial complexes constitute financial contributions in the form of amounts that are owing and due to the government that are deducted, exempted, forgiven or not collected pursuant to the *SIMA* s. 2(1.6)(b). These programs confer benefits within the meaning of *SIMR* s. 27.1(2) to such companies to the extent of the amount deducted, exempted, forgiven, or not collected. Tax exemptions and reductions for the companies located in industrial complexes are specific under *SIMA* s. 2(7.2)(a) on a geographic basis, as the industrial complexes are clearly designated and defined.[279]

[275] Imsil County, "Imsil Agriculture and Manufacturing Industrial Complex," (November 2011), **Public Exhibit 7-B-42**.
[276] KICC, "Imsil Agriculture and Manufacturing Industrial Complex," (December 31, 2012), **Public Exhibit 7-B-43**.
[277] United States Department of Commerce, Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review. 78 FR 19210, (March 29, 2013), and accompanying Issues and Decision Memorandum, **Public Exhibit 7-B-57**.
[278] United States Department of Commerce, Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review. 78 FR 19210, (March 29, 2013), and accompanying Issues and Decision Memorandum, **Public Exhibit 7-B-57**. In the U.S. proceeding, the United States Department of Commerce found that Hyundai Hysco, POSCO, and Dongbu Steel received benefits less than 0.005% of *ad valorem* rate. However, the Complainants note that the plants identified in the U.S. proceeding appears to be incomplete. For example, the United States Department of Commerce determination does not identify Hyundai Hysco's Mipo plant or Dongbu Steel's Incheon plant. As such, the Complainants urge the Agency to fully investigate all the Korean OCTG producers, including Hyundai Hysco, POSCO Specialty Steel, and Dongbu Steel.
[279] *SIMA Handbook* at 487.

iv. Government of Korea Provided Subsidies to Dongbu Steel's Plants in Asan Bay

1) Discounted Land and Grants Disguised as Interest Payments to Dongbu Steel for Establishing its Plants in Asan Bay

373. According to the United States Department of Commerce investigation in Corrosion-resistant Carbon Steel Flat Products from the Republic of Korea, the GOK provided 10% discount for the price of land purchased by Dongbu Steel in Kodai Industrial Estate.[280] The United States Department of Commerce also found that the GOK provided further benefits to Dongbu Steel by paying interests on the pre-payment for the land purchase, which has not been paid to other companies.

374. Dongbu Steel has two plants in Asan bay area, both in Kodai County. One plant, completed in 2000, is a cold-rolled plant. The other, which took about two years to build from 2007 to 2009, is a hot-rolled plant, product of which is primary input of OCTG products.[281] Based on information reasonably available to the Complainants, OCTG products produced by Dongbu Steel are subsidized through the provision of Asan bay land at less than fair market value, as well as grants disguised as interest payments.

375. The provision of land at a discount constitutes a financial contribution within the meaning of *SIMA* s. 2(1.6)(c). The benefits conferred to Dongbu Steel exist within the meaning of *SIMR* s. 36 to the extent that there is a difference between the land price actually paid and the fair market value of the land.

376. The "interest payment" is in fact a grant, since the GOK was not found to have paid interest on any other comparable pre-payments. It constitutes financial contribution in the form of direct transfer of fund under the *SIMA* s. 2(1.6)(a). The benefit conferred under *SIMR* s. 27.1(1) is the amount of the payment.

377. Both subsidies are specific because they were granted only to Dongbu Steel.

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280 United States Department of Commerce, Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review. 78 FR 19210, (March 29, 2013), and accompanying Issues and Decision Memorandum, **Public Exhibit 7-B-57**.

281 Dongbu Steel, "Plants," **Public Exhibit 7-B-58**.

2) Excessive Exemption of Asan Bay Harbor Fee to Dongbu Steel

378. During the United States Department of Commerce investigation in Certain Cold-rolled Carbon Steel Flat Products from the Republic of Korea, the Department found that Dongbu Steel received excessive exemption from Asan Bay harbor fees under the Korean *Harbor Act*.[282] As recently as on March 29, 2013, the Department confirmed that this program constitutes a countervailing subsidy that continues to benefit Dongbu Steel.[283]

379. Under the *Harbor Act*, companies are allowed to build infrastructure facilities in port areas, but these facilities are deeded back to the GOK once the company has recovered the cost of construction. In the meantime, the GOK allows the companies to recover the construction cost by allowing free usage of the port and the right to collect fees from other users.

380. In the case of Dongbu Steel, the GOK was found to have provided fee-exempted period of 70 years, "which lasted longer than the useful life of the constructed assets."[284] 70-year of fee exempted period was unusually long, in fact only Dongbu Steel received such exemption period.[285]

381. Excessive exemption from harbor fees constitutes government amounts forgone and therefore is a financial contribution within the *SIMA* s. 2(1.6)(b). The benefit conferred to Dongbu Steel exists under *SIMR* s. 27.1(1) in the amount of exemption. This program is enterprise-specific under the *SIMA*, because the 70-year exemption period was given only to Dongbu Steel.

[282] United States Department of Commerce, *Certain Cold-Rolled Carbon Flat Steel Products: Final Affirmative Countervailing Duty Determination,* 67 FR 62102, (October 3, 2002), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-59**.
[283] United States Department of Commerce, Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review. 78 FR 19210, (March 29, 2013), and accompanying Issues and Decision Memorandum, **Public Exhibit 7-B-57**.
[284] United States Department of Commerce, Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review. 78 FR 19210, (March 29, 2013), and accompanying Issues and Decision Memorandum, **Public Exhibit 7-B-57**.
[285] United States Department of Commerce, Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review. 78 FR 19210, (March 29, 2013), and accompanying Issues and Decision Memorandum, **Public Exhibit 7-B-57**.

v. Korea Electric Power Corporation ("KEPCO") Provides Subsidies through Grants and Reduced Electricity Rates for Certain Selected Industries

1) Electricity Consumption Adjustment Subsidy Program

382. KEPCO is a government-owned monopoly electricity supplier, whose subsidy program that provides grants to the companies reducing electricity consumption has been under heavy criticism during the past several years.[286] There are two primary subsidy programs:

- Periodic Electricity Consumption Adjustment Subsidy Program: Under this program, companies enter into an agreement with KEPCO that stipulates reduced electricity consumption for a certain period. If the contracted company meets the threshold upon reduction (30% or 3,000 kW of hourly average electricity consumption), KEPCO pays the company KRW 112~136 per kW of reduction.
- Weekly Electricity Consumption Adjustment Subsidy Program: Under this program, KEPCO advertises certain period of time of the upcoming week, which it requires reduced electricity consumption. Interested companies may then enter into a contract with KEPCO, which stipulates payment of KRW 340~900 per kW for such companies that meet the threshold reduction (10%~20% reduction of half-hourly average electricity consumption).[287]

383. These programs are notoriously targeted at large steel and cement producers. According to a National Assembly member Park-Wan-Joo and information he provided during the 2012 National Assembly's Inspection of the Administration, steel and cement producers received KRW 150 billion out of KRW 240 billion total subsidy disbursed during the first half of 2012.[288] Another National Assembly Member Cho-Kyung-Taek during the same Inspection of the Administration reported that 90% of the subsidy was provided to the large corporations.[289]

384. The top-recipient in 2012 was Hyundai Steel, Hyundai Hysco's affiliated supplier of hot-rolled-coil. In the first half of 2012 alone, Hyundai Steel is reported to have received KRW 12.7 billion, almost 5% of the entire subsidy amount, and during the five years leading up to 2012, it

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[286] KEPCO, "Introduction" at 2, **Public Exhibit 7-B-60**, and KEPCO, 2012 Business Report, at 21, **Public Exhibit 7-B-61**.

[287] KEPCO, "Introduction to the Demand Control Program Designed for the Most Efficient Use of Electricity" at 4-7, **Public Exhibit 7-B-62**.

[288] Government of Korea, *Appendix to 2012 National Assembly's Inspection of the Administration: Documentary Questionnaires and Replies*, (October 17, 2012), at 18-19, **Public Exhibit 7-B-63**.

[289] Government of Korea, *Transcript of 2012 National Assembly's Inspection of the Administration*, (October 17, 2012), at 53, **Public Exhibit 7-B-64**.

received a total of KRW 77 billion.[290] In 2013, Hyundai Steel ranked second in terms of largest beneficiaries of KEPCO's subsidy program, while other steel producers such as POSCO, Dongkuk Steel, Dongbu Steel, and SeAh Besteel all ranked within the top 20 recipients. According to 2012 National Assembly's Inspection of the Administration, there were nine steel producers among the top ten recipients of the Electricity Consumption Adjustment Subsidy program in 2012.

385. KEPCO's Electricity Consumption Adjustment Subsidy Programs provide a financial contribution in the form of direct transfer of funds within the meaning of *SIMA* s. 2(1.6)(a). They confer benefits within the meaning of *SIMR* s. 27.1(1) to the recipient companies in the amount of the direct transfer made. Although KEPCO's Electricity Consumption Adjustment Subsidy Programs are ostensibly generally available on their face, reports indicate that large steel and cement producers receive disproportionally large amounts of the subsidy. As mentioned above, 26 out of 30 top-subsidy recipients in 2012 were steel and cement producers. Specifically, KRW 150 billion out of KRW 240 billion, about 63%, of the entire subsidy paid in the first half of 2012 were paid to the steel and cement producers. In contrast, GDP statistics of Korea show that only 5.8% of Korea's GDP are produced from steel and non-metallic mineral manufacturing industries.[291] Similarly, 2011 Statistics of Electric Power in Korea (the latest that is available to the Complainants), published by KEPCO itself, shows that only 12.76% of KEPCO's total electricity sales are made to the steel and ceramics industries.[292] Based on these data, it is clear that KEPCO provides subsidies to steel and cement industries that are disproportionately large, and the programs are therefore specific under *SIMA* s. 2(7.3)(c).

2) Provision of Discounted Electricity to the Korean Steel Industry

386. KEPCO provides discounted electricity to manufacturing and mining industries, in particular to the large corporations. According to an article from Korean Electricity Regulatory Commission, the purpose of providing electricity to the manufacturing industry at a discounted

[290] Government of Korea, *Transcript of 2012 National Assembly's Inspection of the Administration*, (October 17, 2012), at 18, **Public Exhibit 7-B-63**.
[291] Korean Statistical Information Service, "10.4.1.3 GDP and GNI per Economic Activities," **Public Exhibit 7-B-65**.
[292] KEPCO, *2011 Statistics of Electric Power in Korea* (June 2012) at 120-121, 127, **Public Exhibit 7-B-66**.

price is to "obtain export competitiveness by strengthening support for the manufacturing industry."[293]

387. Specifically, KEPCO's pricing scheme sets different prices for different end-uses, in which "industrial use" is afforded the second lowest price—second only to "agricultural use."[294]

Table 10 KEPCO Pricing Scheme

Type of Use	Price (KRW per kWh)
Residential	109.90
Ordinary	112.50
Educational	108.84
Agricultural	42.90
Street Lights	98.89
Subtotal (weighted average of the above)	109.38
Industrial	92.83

388. This represents a discount of more than 15% as compared to the weighted average electricity price charged to all other users.

389. The so-called "industrial use," despite the generality suggested by its title, applies only to manufacturing and mining industries as prescribed by the Korean Standard Industrial Classification ("KSIC").[295] Under the KSIC, there are 21 general categories of industries in Korea, only two of which are manufacturing and mining.[296]

390. It is no secret that KEPCO subsidizes a limited number of enterprises in the form of a discounted electricity rate. During the 2013 National Assembly's Inspection of the Administration, politicians from the both sides of the aisle heavily criticized KEPCO's preferential pricing scheme. Specifically, National Assembly member Hong-Ji-Man reported that large corporations pay only 90% of the cost of electricity.[297] In addition, member Chu-Mi-Ae shared her finding that benefits

[293] Electricity Regulatory Commission, "Frequently Asked Questions: Is the current electricity pricing system not unfair in that it provides industrial price scheme solely to the manufacturing sector?," **Public Exhibit 7-B-67**.
[294] KEPCO, "Main Electricity Pricing Policy," **Public Exhibit 7-B-68**.
[295] KEPCO, "Main Electricity Pricing Policy," **Public Exhibit 7-B-68**.
[296] Statistics Korea, "Korea Standard Industrial Classification," (December 9, 2009), **Public Exhibit 7-B-69**.
[297] Seoul Daily, "Highlight from National Assembly's Inspection of the Administration: top 100 corporations receive KRW 9.43 trillion benefits in electricity rate discount during the past ten years," (October 26, 2013), **Public Exhibit 7-B-70**. See also Small Enterprise Development Agency, "Korean Electricity Rate System, its Current Status, and Policy Issues," 8th edn., (2012), **Public Exhibit 7-B-71**.

conferred to the top 100 corporations during the past ten years amount to KRW 9.43 trillion.[298] Based on these figures, each of top 100 corporations received KRW 10 billion per year.

391. Most telling, however, is KEPCO's response to these criticisms. Cho-Hwan-Ik, the President of KEPCO, openly admitted, "it is true that we provide beneficial electricity rates to the companies in order to help them become more competitive."[299] He went on to add, "together with the government, we are reviewing the basic structure of the industrial use electricity rates."[300]

392. The provision by KEPCPO of electricity constitutes a government provision of goods within the meaning of *SIMA* s. 2(1.6). KEPCO provides electricity at below cost, and it is clear on this basis that KEPCO's electricity rate scheme provides benefits. The exact extent of the benefit amount within the meaning of *SIMR* s. 36 would be measured by the difference between the fair market value of the electricity and the rate charged to the subject producers. The discounted electricity rate at issue applies only to Korean manufacturing and mining industries, and therefore is electricity is industry-specific under *SIMA* s. 2(7.2).

vi. Government of Korea Subsidies Pursuant to Targeted Stimulus Policies

1) <u>National "Towards High-end Steel Products and Commercializing Know-hows of Steel Mill Constructions" Strategy</u>

393. In June 2011, the Ministry of Knowledge Economy had a high-level meeting with Korean steel producers, including Hyundai Hysco, Dongbu Steel, SeAH Steel, and POSCO, and announced a national-level policy called "Towards High-end Steel Products and Commercializing

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[298] Seoul Daily, "Highlight from National Assembly's Inspection of the Administration: top 100 corporations receive KRW 9.43 trillion benefits in electricity rate discount during the past ten years," (October 26, 2013), **Public Exhibit 7-B-70**. See also Small Enterprise Development Agency, "Korean Electricity Rate System, its Current Status, and Policy Issues," 8th edn., (2012), **Public Exhibit 7-B-71**.

[299] Seoul Daily, "Highlight from National Assembly's Inspection of the Administration: top 100 corporations receive KRW 9.43 trillion benefits in electricity rate discount during the past ten years," (October 26, 2013), **Public Exhibit 7-B-70**. See also Small Enterprise Development Agency, "Korean Electricity Rate System, its Current Status, and Policy Issues," 8th edn., (2012), **Public Exhibit 7-B-71**.

[300] Seoul Daily, "Highlight from National Assembly's Inspection of the Administration: top 100 corporations receive KRW 9.43 trillion benefits in electricity rate discount during the past ten years," (October 26, 2013), **Public Exhibit 7-B-70**. See also Small Enterprise Development Agency, "Korean Electricity Rate System, its Current Status, and Policy Issues," 8th edn., (2012), **Public Exhibit 7-B-71**.

Know-hows of Steel Mill Constructions."[301] This strategy has a number of export-oriented aggressive objectives as follows:

- Becoming the Sixth Global Steel Power: increase crude steel production from 66 million MT in 2011 to 88 million MT in 2020;
- Shifting to High-end Steel Products: increase the share of premium steel products from 47% in 2011 to 57% in 2020; and
- Strengthen Global Steel Supply Market Share: increase overseas supply from 36 million MT in 2011 to 64 million MT in 2020.[302]

394. The Ministry devised the following specific subsidies schemes, among others, in order to achieve its goals:

- Focused R&D for 30 Steel Products: Under this program, the Ministry planned to select three specific steel products in each year for ten years and provide R&D support. As a specific example, the Ministry identified eco-friendly smart-steel-plate in its 2011 press release and indicated that it will provide KRW 100 billion funding for its development.
- Green Steel Industry: Under this program, the Ministry planned to provide subsidies in developing certain eco-friendly steel-related technologies. One such technology named in the press release is "CO2 Free Steel Production Process," that uses hydrogen instead of coal as an input. The Ministry had a plan to commercialize this technology by 2020 and it planned to spend KRW 150 billion (54% of estimated total development costs) in support.
- Product Specialization through Strengthening the Relationship with the Consumers of Steel Products: Under this program, the Ministry planned to encourage R&D projects jointly conducted by the steel producers and consumers. To do so, the Ministry planned to provide "preferential government R&D financing."
- Support for Obtaining Stable Raw Materials: Under this program, the Ministry planned to "continue" providing loans for overseas development of resources for the purpose of obtaining raw materials to steel products, such as iron and coal. In addition, the Ministry planned that it would consider establishing additional funding schemes to support development of overseas resources. [303]

[301] Ministry of Knowledge Economy, *Press Release: Towards High-end Steel Products and Commercializing Know-hows of Steel Mill Constructions*, (June 10, 2011), **Public Exhibit 7-B-72**.
[302] Ministry of Knowledge Economy, *Press Release: Towards High-end Steel Products and Commercializing Know-hows of Steel Mill Constructions*, (June 10, 2011), **Public Exhibit 7-B-72**.
[303] Ministry of Knowledge Economy, *Press Release: Towards High-end Steel Products and Commercializing Know-hows of Steel Mill Constructions*, (June 10, 2011), **Public Exhibit 7-B-72**.

395. The "Towards High-end Steel Products and Commercializing Know-hows of Steel Mill Constructions" strategy provides for the direct transfer of funds within the meaning of *SIMA* s. 2(1.6)(a), whether the aforementioned support schemes are provided in the form of loans or grants. To the extent that steel producers received loans from the Ministry of Knowledge Economy for the purpose conducting enumerated R&D activities and/or investing in overseas resource development projects, a benefit is conferred in the amount of the difference between the interest charged on the government loan and a non-guaranteed commercial loan under *SIMR* s. 28. In case of grants, a benefit exists in the amount of the grant. Programs in the "Towards High-end Steel Products and Commercializing Know-hows of Steel Mill Constructions" strategy are specific to steel products and steel producers and, as such, are specific under *SIMA* s. 2(7.2)(a).

2) Corporate Bond Stabilization Policy

396. On July 8, 2013, Korean Financial Services Commission ("FSC") announced a rescue plan in an amount of KRW 6.4 trillion for certain companies having liquidity crisis.[304] According to the FSC, the policy is aimed at supporting the ability of corporations to raise funds through the issuance of bonds.[305]

397. Companies eligible to benefit from this program are selected by the Conversion Issue Qualification Review Committee ("CIQRC").[306] However, the policy states that supported industries are restricted to those that are deemed to be dictated by the business cycle, such as construction, shipbuilding, and shipping.[307] It was later reported that steel industry would also be included.[308]

398. Among the companies in the selected industries, FSC supports only those that are in temporary liquidity crisis as a large corporate bond repayment have become due, or those with

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304 Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
305 Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
306 Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
307 Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
308 KMJ News, "Steel Industry to be Included in Corporate Bond Support Policy," (July 26, 2013), **Public Exhibit 7-B-74**.

corporate bonds whose repayments are due from July 2013 to December 2014.[309] However, not all such companies are automatically eligible. CIQRC further narrows the eligible companies to those that are determined to be capable of stabilization with the government support.[310]

399. Once selected, Korea Development Bank ("KDB") would acquire 80% of the company's bonds. 10% of the acquired bonds are to be repackaged into a corporate stabilization fund, while the company's existing creditors are directed or entrusted to acquire 30%. Remaining 60% is further sugarcoated with government-backed guarantee, and repackaged into collateral bond obligations ("CBO") issued by Korea Credit Guarantee Fund ("KODIT").[311] As FSC puts it, the plan ultimately has the result of providing low credit rate or non-investment-grade company bonds with the benefits of "AAA" rated corporate bonds.[312]

400. In October, Dongbu Steel was reported to have applied to qualify under this program for the KRW 110 billion corporate bonds that are due in December.[313] On November 21, 2013, the KODIT approved Dongbu's application for the program, in an amount of KRW 105 billion.[314] At that time of the application, Dongbu Steel's corporate bonds are reported to be BBB grade, and the company recently failed to fully finance KRW 40 billion through the issuance of bonds with interest of 10%.[315] Without a doubt, Dongbu Steel would have to pay a stiff price, substantially above 10%, if it were to finance KRW 105 billion in a market on its own.

401. Furthermore, Dongbu Steel was known to be planning to apply for further support under the program in 2014 for KRW 450 billion worth of bonds that are due in 2014.[316]

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[309] Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
[310] Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
[311] Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
[312] Korean Financial Services Commission, Press Release on Corporate Bond Stabilization Policy, (July 8, 2013), **Public Exhibit 7-B-73**.
[313] Chosun Biz, "Dongbu Steel Asks the Government to Buy KRW 110 Billion in its Corporate Bond," (October 17, 2013), **Public Exhibit 7-B-75**.
[314] Korean Economy, "Dongbu Steel Succeeds in Re-funding KRW 105 Billion Worth of Bonds: Also Obtains Loan Repayment Deferral for Two Years," (November 22, 2013), **Public Exhibit 7-B-76**.
[315] Chosun Biz, "Dongbu Steel Asks the Government to Buy KRW 110 Billion in its Corporate Bond," (October 17, 2013), **Public Exhibit 7-B-75**.
[316] Chosun Biz, "Dongbu Steel Asks the Government to Buy KRW 110 Billion in its Corporate Bond," (October 17, 2013), **Public Exhibit 7-B-75**.

402. Purchase of Dongbu Steel's corporate bonds by the Government of Korea constitutes direct transfer of funds pursuant to the *SIMA* s. 2(1.6)(a). The benefit under *SIMR* s. 28 is the difference between the interest rate it pays on the government-guaranteed bonds and the interest rate it would have paid on a non-guaranteed commercial loan. The Corporate Bond Stabilization Policy is specific under *SIMA* s. 2(7.2)(a) as it is limited to the steel, construction, shipbuilding, and shipping industries as they are industries deemed to be sensitive to the business cycle.

3) Root Industry Promotion Plan

403. On January 30, 2013, the Ministry of Knowledge Economy ("MKE") announced that it would increase its support for the so-called "root industries" for 2013 to over KRW 791 billion from almost KRW 753 billion in 2012.[317] According to MKE, the root industries refer to the industries that are "root" of the Korean manufacturing sector, which are limited to casting, molding, metal forming, welding, heat treatment, and surface treatment.[318]

404. MKE's funding of over KRW 791 billion provides subsidies to the root industries in a number of areas. The first is R&D support of 260 selected research projects for over KRW 60 billion. Close to KRW 164 billion would go to the selected root industry companies as loans and loan guarantees for acquiring equipment. Over KRW 521 billion would be spent to provide export guarantees (KRW 260 billion), general loans and loan guarantees (KRW 50 billion), guarantee for new companies (KRW 146 billion), and infrastructures in three to five selected special zones.[319]

405. Korean OCTG producers are known to have benefitted from the program, as they are determined to be within the scope of root industries.[320]

[317] Ministry of Knowledge Economy, "Press Release: the Government Starts Promoting the Root Industries," (January 30, 2013), **Public Exhibit 7-B-77**. See also Korea National Ppuri Industry Centre, "Introduction to the root industries," **Public Exhibit 7-B-78**. ("Ppuri" in Korean means "root").
[318] Ministry of Knowledge Economy, "Press Release: the Government Starts Promoting the Root Industries," (January 30, 2013), **Public Exhibit 7-B-77**. See also Korea National Ppuri Industry Centre, "Introduction to the root industries," **Public Exhibit 7-B-78**. ("Ppuri" in Korean means "root").
[319] Ministry of Knowledge Economy, "Press Release: the Government Starts Promoting the Root Industries," (January 30, 2013), **Public Exhibit 7-B-77**. See also Korea National Ppuri Industry Centre, "Introduction to the root industries," **Public Exhibit 7-B-78**. ("Ppuri" in Korean means "root").
[320] Seoul Economy, "Small and Medium Enterprises Angry over the Government Support of Large and Large-Medium Companies with Revenue over KRW 1 Trillion," (August 19, 2013), **Public Exhibit 7-B-79**.

406. R&D support, either in grants or loans, and other loans, constitutes direct transfer of funds within the scope of *SIMA* s. 2(1.6)(a). Loan guarantees are government provision of service pursuant to *SIMA* s. 2(1.6)(c). That said, it is unclear based on the high-level document that constitutes the Complainants' best available information what the full extent and details of the "Root Industry Promotion Plan" are. For this reason, the Complainants request that the Agency investigate whether and what other subsidy programs operate under the "Root Industry Promotion Plan." Grants confer benefits in the amount of the grant. Loans confer benefits to the extent the interest rate charged is less than the interest rate charged on a non-guaranteed commercial loan pursuant to the *SIMR* s. 28. Loan guarantees confer benefits in the form of reduced interest and administrative fees on the loan pursuant to the *SIMR* s. 31.1.All the subsidy programs under the "Root Industry Promotion Plan" are specific under *SIMA* s. 2(7.2)(a) as they are limited to particular enterprises – the root industries – which are further restricted to the casting, molding, metal forming, welding, heat treatment, and surface treatment industries.

4) <u>Subsidies to Hyundai Hysco by Subsidizing its Affiliated Shipping Company Pursuant to the Global Top 10 Logistics Companies Promotion Plan</u>

407. Since June 2012, the Korean Ministry of Land, Transportation, and Maritime Affairs ("MOLIT") handpicked six logistics companies and announced that it would make them "global top 10 logistics companies" by 2020.[321] Six selected logistics companies include Hyundai Glovis, a Hyundai group company that derives almost 90% of its business from transporting goods manufactured by Hyundai affiliates including Hyundai Hysco.[322] In addition, another Hyundai affiliate logistics company, Hyundai Logistics, was also among the six selected companies.[323]

408. According to MOLIT, the support consists of loan assistance by KEXIM for foreign investments, and preferential assistance for projects encouraged by MOLIT, such as workforce

[321] Ministry of Land, Transportation, and Maritime Affairs, "Press Release: the Ministry Promotes Global Top 10 Logistics Companies by 2020," (June 15, 2010), **Public Exhibit 7-B-80**.
[322] Chosun Biz, "Ministry of Land, Transportation, and Maritime Affairs Supports Chaebol Families while it Ostensibly Plans to Create Korean Version of DHL," (June 18, 2012), **Public Exhibit 7-B-81**.
[323] Ministry of Land, Transportation, and Maritime Affairs, "Press Release: the Ministry Promotes Global Top 10 Logistics Companies by 2020," (June 15, 2010), **Public Exhibit 7-B-80**.

training.[324] MOLIT also pronounced that it would expand the support to include providing funds for M&A and reduced insurance fees.

409. Loans, "preferential assistance," and "funds for M&A" constitute direct transfer of funds within the *SIMA* s. 2(1.6)(a). Provision of insurance at reduced rate constitutes revenue forgone or government provision of services. That said, it is unclear based on the high-level document that constitutes the Complainants' best available information what the full extent and details of the "Global Top 10 Logistics Companies Promotion Plan" are. For this reason, the Complainants encourage the Agency to fully investigate whether and what other subsidy programs operate under the "Global Top 10 Logistics Companies Promotion Plan." Grants confer benefits in the amount of the grant. Loans confer benefits to the extent the interest rate charged is less than the interest rate charged on a non-guaranteed commercial loan pursuant to the *SIMR* s. 28. Reduced insurance fees confer benefits in the amount of insurance fees reduced. All the subsidy programs under the "Global Top 10 Logistics Companies Promotion Plan" are specific under *SIMA* s. 2(7.2)(a) as they are limited to the logistics industry. In addition, all the "Global Top 10 Logistics Companies Promotion Plan" is also specific under *SIMA* s. 2(7.3)(a), since it is available only to the six selected companies.

410. Hyundai Hysco is the actual recipient of the subsidies provided pursuant to the Global Top 10 Logistics Companies Promotion Plan. As stated above, Hyundai Glovis derives almost 90% of its logistics business from transporting Hyundai affiliates' goods. As such, subsidization of Hyundai Glovis is in fact subsidization of its affiliate companies whose goods are handled by Hyundai Glovis. More specifically, subsidies to Hyundai Glovis result in lower transportation costs to Hyundai affiliate companies, which in turn has an effect of lowering the final prices of the goods to the purchasers, including importers or end-users in Canada. In these considerations, the Complainants urge the Agency to find that Hyundai Hysco (among other Hyundai affiliates using Hyundai Glovis for transportation) is the actual recipient of the subsidy despite the fact that the legal recipient is Hyundai Glovis.[325]

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[324] Ministry of Land, Transportation, and Maritime Affairs, "Press Release: the Ministry Promotes Global Top 10 Logistics Companies by 2020," (June 15, 2010), **Public Exhibit 7-B-80**.
[325] *SIMA Handbook* at 563.

vii. Government Owned Banks Provide Subsidies through Various Preferential Export-Contingent Assistance

411. KEXIM is an official government-owned, GOK export credit agency that provides comprehensive trade financing products to South Korean exporters.[326] The bank primarily extends export loans, trade financing, and guarantees to bolster export competitiveness.[327]

412. Although reasonably available information does not allow the Complainants to identify specific KEXIM program used by the Korean OCTG producers and exporters, the following information affirms that KEXIM indeed financed such companies in one way or another:

- Hyundai Hysco's 2012 Business Report shows more than KRW 218 billion in loans obtained from KEXIM;[328]
- SeAH Steel's 2012 Business Report does not identify its debtors. However, it identifies loan guarantees SeAH Steel made for its subsidiaries, which shows that KEXIM provided loans to SeAH Steel Vina Corp. (SeAH Steel's Vietnamese subsidiary) and SeAH Steel UAE, LLC (SeAH Steel's United Arab Emirate subsidiary);[329]
- Husteel's 2012 Business Report identifies that it has a general export financing agreement in the amount of KRW 20 billion with KEXIM;[330]
- Kumkang Ind. Co., Ltd.'s 2012 Business Report shows that on June 25, 2012, its board has approved a general export financing agreement with KEXIM;[331]
- Aju Besteel's 2012 Audited Financial Statement shows that it has a short-term export financing of KRW 16 billion with KEXIM at 2.86% interest rate at the end of 2012, payable on February 15, 2013. In addition, Aju Besteel has a long-term export financing of KRW 7.12 billion with KEXIM at 5.59% interest rate at the end of 2012, payable on October 13, 2015;[332] and
- Dongbu Steel's 2013 third quarter quarterly report shows that its subsidiary, Dongbu Specialty Pipes, has a loan facility for maximum of USD $40 million and import usance related loan for USD $15 million with KEXIM.[333]

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[326] KEXIM, "Overview," **Public Exhibit 7-B-82.**
[327] KEXIM, "Overview," **Public Exhibit 7-B-82.**
[328] Hyundai Hysco, 2012 Business Report at 72, **Public Exhibit 7-B-1.**
[329] SeAH Steel, 2012 Business Report at 107, **Public Exhibit 7-B-26.**
[330] Husteel, 2012 Business Report at 55, **Public Exhibit 7-B-51.**
[331] Kumkang Ind. Co., Ltd., 2012 Business Report at 71, **Public Exhibit 7-B-83.**
[332] Aju Besteel, 2012 Audited Financial Statement at 39, 40, **Public Exhibit 7-B-84.**
[333] Dongbu Steel, 2013 Q3 Quarterly Report at 99, **Public Exhibit 7-B-85.**

413. Korea Development Bank ("KDB") and Industrial Bank of Korea ("IBK") are GOK-owned policy banks that provides various financing to the Korean OCTG producers and exporters. Although reasonably available information does not allow the Complainants to identify specific KDB and IBK program used by the Korean OCTG producers and exporters, the following information affirms that the policy-banks indeed financed such companies in one way or another:

- Hyundai Hysco's 2012 Business Report shows an outstanding short-term loan of KRW 600 billion at the end of 2012 with KDB. It also shows that Hyundai Hysco USA, Inc, a subsidiary of Hyundai Hysco, had a loan of USD $5 million with IBK, which expired by the end of 2012;[334]

- Nexteel's 2012 Audited Financial Statement shows that KRW 2 billion short-term loan and KRW 14.9 billion long-term loan with KDB at the end of 2012. It also shows that the company had KRW 1 billion loan with IBK at the end of 2011;[335]

- Husteel's 2012 Business Report shows that Husteel USA Inc., Husteel's subsidiary, has an import related financing agreement in the amount of USD $91 million with 7 banks, including KDB;[336]

- Iljin Steel's 2012 Audited Financial Report shows KRW 26 billion worth of short-term usance loan with KDB at the end of 2012, with interest rate ranging from 1.33% to 2.46%. It also shows long-term loans from KDB at the end of 2012 for over KRW 30 billion with interest rate ranging from 2.06% to 4.07%;[337]

- Kumkang Ind. Co., Ltd.'s 2012 Business Report shows that the company had paid back KRW 2.5 billion loan (bond) to KDB during 2011. It also shows that the board and the audit committee approved acquisition of various new loans from KDB on May 22, June 28, and November 19 of 2012;[338]

- Aju Besteel's 2012 Audited Financial Statement shows that the company has KRW 18 billion in short-term loans from KDB as of the end of 2012 at interest rate ranging from 4.22% to 6.12%. It also has over KRW 16 billion in long-term loans from KDB as of the end of 2012 at interest rate ranging from 1.50% to 5.83%. In addition, the company also reports that KDB provided commercial bill discount to Aju Besteel for KRW 2.8 billion, KDB provided export bond discount for USD $4.4 million, and IBK provided KRW 2 billion in trading finance loan. Lastly, Aju Besteel reports of using financing lease debts from IBK Capital and KDB Capital for KRW 1.2 billion;[339] and

[334] Hyundai Hysco, 2012 Business Report at 72, 89, **Public Exhibit 7-B-1.**
[335] Nexteel, 2012 Audited Financial Statement at 26, 27, **Public Exhibit 7-B-86.**
[336] Husteel, 2012 Business Report at 55, **Public Exhibit 7-B-51.**
[337] Iljin Steel, 2012 Audited Financial Report at 22, 23, **Public Exhibit 7-B-87.**
[338] Kumkang Ind. Co., Ltd., 2012 Business Report at 67, 73, **Public Exhibit 7-B-83.**
[339] Aju Besteel, 2012 Audited Financial Statement at 39, 40, 46, **Public Exhibit 7-B-84.**

- Dongbu Steel's 2012 Business Report shows that its subsidiary, Dongbu Specialty Steel, has a loan facility with a maximum of KRW 65 billion and import usance with a maximum of USD $33 million from KDB. Dongbu Steel has also entered into an interest rate swap transaction with KDB, by which KDB pays Dongbu Steel 8.2%, and Dongbu Steel pays KDB 3-month CD interest rate plus 5.17%.[340]

414. The Complainants believe that the Korean OCTG producers and exporters benefit from programs administered by these policy-banks, such as, but not limited to, the following.

1) Korea Export-Import Bank ("KEXIM") Short-Term Export Credit

415. KEXIM extends preferential, low-interest pre-shipment financing to exporters to cover the costs of production and the shipment of exported goods. Companies can borrow up to the full value of the export contract, less any amounts received, in either South Korean won or a foreign currency. The discount interest rate payable under the program is either fixed rate (base rate + margin), floating (base rate + margin), or a foreign currency rate (LIBOR (or swap rate) + margin). Loan repayment is required within 30 days from the last payment date under the export contract.[341]

416. The United States Department of Commerce has previously determined that KEXIM short-term trade financing is countervailable.[342]

417. The program represents a direct transfer of funds from government to exporters. As such, the program qualifies as a financial contribution under the *SIMA* s. 2(1.6)(a). A benefit within the meaning of the *SIMR* s. 28 is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loans as compared to what they would pay on a comparable non-guaranteed commercial loan. This program is specific within the meaning of the *SIMA* s. 2(7.2)(b) because trade financing from KEXIM is contingent in law upon export performance pursuant to the definition of "prohibited subsidy" prescribed under the *SIMA* s. 2(1).

[340] Dongbu Steel, 2013 Q4 Quarterly Report at 50, 99, **Public Exhibit 7-B-85.**
[341] KEXIM, "Short-term Trade Finance," **Public Exhibit 7-B-88.**
[342] United States Department of Commerce, *Corrosion-Resistant Carbon Flat Steel Products: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 FR 55745 (September 14, 2010), **Public Exhibit 7-B-89**; United States Department of Commerce, *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 2, 2002), **Public Exhibit 7-B-90;** United States Department of Commerce, *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determination: Certain Steel Products from Korea*, , 58 FR 37338 (July 9, 1993), **Public Exhibit 7-B-91.**

2) KEXIM Export Factoring

418. KEXIM export factoring is a form of trade finance whereby KEXIM provides short-term discounted loans against the trade receivables of South Korean exporters resulting from open-account transactions, including transactions on a Documents against Acceptance ("D/A") basis.[343] Open-account export transactions involve sales to foreign purchasers on credit, whereby shipping documents are dispatched to the foreign purchaser once the product is exported and the foreign purchaser remits payment directly to the exporter's account. The factoring loans are provided by KEXIM on a non-recourse basis, meaning that KEXIM, and not the exporter, assumes the risk of loss with respect to purchaser default.

419. KEXIM's export factoring program is made available for use by two groups of exporters: companies with experience of producing or exporting the export item for more than a year; or companies that have past transactions with the same foreign buyer.[344] KEXIM will provide financing for up to 80%-100% of the value of the trade bill at a discounted interest rate (LIBOR + spread) plus an import factoring fee.[345]

420. The United States Department of Commerce has previously determined that similar KEXIM short-term trade financing is countervailable.[346]

421. The program represents a direct transfer of funds from government to exporters. As such, the program qualifies as a financial contribution under the *SIMA* s. 2(1.6)(a). A benefit within the meaning of the *SIMR* s. 28 is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loans as compared to what they would pay on a comparable non-guaranteed commercial loan. This program is specific within the meaning of the *SIMA* s. 2(7.2)(b) because

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343 KEXIM, "Export Factoring," **Public Exhibit 7-B-92.**
344 KEXIM, "Export Factoring," **Public Exhibit 7-B-92.**
345 KEXIM, "Export Factoring," **Public Exhibit 7-B-92.**
346 United States Department of Commerce, *Corrosion-Resistant Carbon Flat Steel Products: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 FR 55745 (September 14, 2010), **Public Exhibit 7-B-89;** United States Department of Commerce, *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 2, 2002), **Exhibit 7-B-90;** United States Department of Commerce, *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determination: Certain Steel Products from Korea*, , 58 FR 37338 (July 9, 1993), **Exhibit 7-B-91.**

KEXIM export factoring is contingent in law upon export performance pursuant to the definition of "prohibited subsidy" prescribed under the *SIMA* s. 2(1).

3) KEXIM Export Loan Guarantees

422. KEXIM offers general financial guarantee support for export activity, whereby any default by a South Korean company on credit extended to it by South Korean or foreign commercial banks will be assumed by KEXIM with repayment of the entire principal and interest on the export-related commercial loans.[347]

423. KEXIM's general export guarantees are provided to South Korean commercial banks and foreign banks participating in export-related financings.[348] KEXIM charges a variable guarantee fee according to the risk of the underlying credit extension.[349] The guarantee fee charged by KEXIM will vary depending on the risk of the export transaction and the credit risk of the borrower.[350]

424. The program represents a potential direct transfer of funds and/or an assumption of liabilities and as such qualifies as a financial contribution under the *SIMA* s. 2(1.6)(a). A benefit within the meaning of the *SIMR* s. 31.1(1) is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loan, adjusted to take into account guarantee fees paid, as compared to what they would pay on a comparable commercial loan in the absence of the guarantee. This program is specific within the meaning of the *SIMA* s. 2(7.2)(b) because KEXIM loan guarantees are contingent in law upon export performance pursuant to the definition of "prohibited subsidy" prescribed under the *SIMA* s. 2(1).

4) KEXIM Trade Bill Rediscounting Program

425. Under this further KEXIM program, exporters first discount their D/A or export letter of credit ("L/C") with participant commercial banks.[351] Those banks, in turn, discount promissory

[347] KEXIM, "Financial Guarantees," **Exhibit 7-B-93**.
[348] KEXIM, "Financial Guarantees," **Exhibit 7-B-93**.
[349] KEXIM, "Financial Guarantees," **Exhibit 7-B-93**.
[350] KEXIM, "Financial Guarantees," **Exhibit 7-B-93**.
[351] KEXIM, "Rediscount on Trade Bills," **Public Exhibit 7-B-94**.

notes with KEXIM.[352] KEXIM, as a result, provides an indirect funding vehicle by which low-cost government loans are provided to exporters. Re-discounting eligible transactions will feature trade bills with a repayment period of 30 days or more on credit and lump sum repayment of the principal will occur on the maturity date.[353]

426. The United States Department of Commerce has previously determined that KEXIM's trade bill rediscounting program is countervailable and that it conferred benefits to Hyundai Hysco and Dongbu Steel.[354]

427. *SIMA* s. 2(1.6)(d) provides that a subsidy exists where "the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a)," which enumerates direct transfer of funds, "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."

428. The KEXIM rediscount ceiling provided to commercial banks is contingent on the commercial banks lending funds to South Korean exporters. These commercial bank loans involve direct transfers of funds to South Korean exporters within the meaning of the *SIMA*R s. 2(1.6)(a). The lending by commercial banks to South Korean exporters under this program therefore constitutes financing activity that would normally be vested in KEXIM or other GOK policy banks, and the lending practice involved under this program does not differ in substance from practices normally followed by the GOK including the various KEXIM export financing programs further described above.

429. A benefit within the meaning of the *SIMR* s. 28 is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the commercial bank loans subject to the KEXIM rediscounting program as compared to what they would pay on comparable commercial loans that are not subject to the KEXIM rediscounting program. This program is specific within the meaning of the *SIMA* s. 2(7.2)(b) because KEXIM trade bill rediscounting program is contingent in law

352 KEXIM, "Rediscount on Trade Bills," **Public Exhibit 7-B-94**.
353 KEXIM, "Rediscount on Trade Bills," **Public Exhibit 7-B-94**.
354 United States Department of Commerce, *Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 78 FR 19210, (March 29, 2013*), and accompanying Issues and Decision Memorandum* at 11-13, **Public Exhibit 7-B-57**.

upon export performance pursuant to the definition of "prohibited subsidy" prescribed under the *SIMA* s. 2(1).

5) Korea Development Bank ("KDB") and Industrial Bank of Korea ("IBK") Short-Term Discounted Loans for Export Receivables and Other Policy Loans

430. The KDB has offered corporate, investment, and international banking services to South Korean industry since 1954. Within KDB's international banking division, several export-related services are provided: advice on documentary credit, negotiation of bills of exchange, collection of bills of exchange, and re-negotiation.[355]

431. From the date of its creation until today, KDB has operated as a wholly state-owned institution. The bank's 2012 Annual Report summarizes its role as a "policy financial institution," and that "with its role as a market safety-net, {the bank} will make every effort to revitalize the Korean economy by supporting companies temporarily facing difficulties so they may rebound from their financial hardship.[356] Simply put, and according to KDB, "{n}o matter how or which direction the policy-finance system is rearranged by the government, KDB Financial Group will always remain the first option for the government's policy-finance scheme."[357]

432. The IBK is a leading state-run bank that offers a full suite of financial services.[358] Since its establishment in 1961, IBK's highest priority has been the health and sustainability of the country's SME sector.[359] The IBK's main offerings in this regard include:

- Loans for Designated Export-driven SMEs and MEs:[360]

[355] KDB, "International Banking: Trade Financing," **Public Exhibit 7-B-95**.
[356] KDB, 2012 Annual Report at 17, **Public Exhibit 7-B-96**.
[357] KDB, 2012 Annual Report at 17, **Public Exhibit 7-B-96**; There has been a failed plan to privatize KDB since 2009, but this plan was scrapped in August 2013, apparently because the President allegedly wants to "use the nation's biggest policy lender to channel more funds to companies." See Bloomberg, "Park Scraps Privatization Plan for Korea Development Bank," (August 27, 2013), **Public Exhibit 7-B-97**. This new plan is demonstrated in the Financial Services Commission's implementation blueprint, which lays out its plan to eliminate the current regulation stipulating the privatization of KDB, and merger of KDB with KoFC to create a mega-policy-bank. See Financial Services Commission, "Plans for Adjusting the Roles of the Policy Finance," (August, 2013) at slides 13-14, **Public Exhibit 7-B-98**.
[358] Industrial Bank of Korea, 2012 Annual Report at 2-3, **Public Exhibit 7-B-99**.
[359] Industrial Bank of Korea, 2012 Annual Report at 3, **Public Exhibit 7-B-99**.
[360] Industrial Bank of Korea, 2012 Annual Report at 31, **Public Exhibit 7-B-99**

- Under this program, IBK designates "500 export-driven and technologically strong hidden champions" to foster SMEs and MEs equipped with globally competitive technological prowess under "Export-driven and Technology-centric small giant loan." This program offers "beneficial conditions," such as "interest rate relief."

- Export and Import Financing and Services:[361]

- Under this program, "IBK played a leading role as a policy-based financial institution for export/import financing for SMEs and MEs, by further expanding its cooperative guarantee and insurance agreement products with {'}Korea Trade Insurance Corporation.{'}"

- IBK "also contributed to the expansion of Korea exports/imports and enjoyed a greater volume of foreign-exchange transactions by extending KRW 100 billion for export/import financing for SMEs and MEs.

- The "{b}ank also intensified its support for exporters by lowering the exchange commission rate, based on low-funding cost, resulting from IBK's higher credit ratings."

- IBK's support for exports has dramatically grown recently, as reported by the bank that "despite the nationwide 1.1% reduction in export/imports, IBK's exports/import operations increased 23.6%."

- Co-prosperity Loan:[362]

- This program was designed to fulfill the bank's "mission to facilitate partnership between large enterprises and SMEs." Under this program, the bank, together with selected large enterprises, established a fund and provided KRW 2.7 trillion in 2012.

433. Although information reasonably available to the Complainants does not indicate precisely which of these programs administered by KDB and IBK the Korean OCTG producers and exporters qualified for, there are evidences showing that the Korean OCTG producers and exporters are using services of these policy banks:

- Hyundai Hysco's 2012 Business Report shows the following:
  - that it had an outstanding short-term loan with KDB in an amount of KRW 600 billion at the end of 2012.[363]
  - the loan guarantee Hysco undertook in favor of its foreign subsidiaries for the loans from IBK decreased; specifically, it provides that the loan guarantee

[361] Industrial Bank of Korea, 2012 Annual Report at 31, **Public Exhibit 7-B-99**
[362] Industrial Bank of Korea, 2012 Annual Report at 30, **Public Exhibit 7-B-99**
[363] Hyundai Hysco, 2012 Business Report at 72, **Public Exhibit-1.**

contracts with IBK in an amount of USD $5 million each for loans to Hyundai Hysco USA, Inc. and Hysco America Company expired at the end of 2012.[364]

- Dongbu Steel's 2012 Business Report shows the following:
    - o that it has a credit facility agreement with KDB for general and import-related purposes. The maximum amount of the credit facility is reported to be, as of the end of 2012, KRW 2.19 trillion and USD $840 million.[365]
    - o that its subsidiary, Dongbu Specialty Pipe, has credit facilities with KDB and IBK Capital with loan limits of KRW 58 billion and KRW 20 billion respectively, and an import usance of USD $40 million.[366]
- Nexteel's 2012 Audited Financial Report shows that it has KRW 2 billion in short-term loan and almost KRW 15 billion in long-term loan from KDB.[367]
- Kumkang Ind. Co., Ltd.'s 2012 Business Report shows that its board has approved to obtain a number of loans from KDB.[368]
- Husteel's 2012 Business Report shows that, as of the end of 2012, the company has credit facilities with KDB and six other banks in an amount of USD $91 million and KRW 20 billion.[369]
- Iljin Steel's 2012 Audited Financial Report shows the following:
    - o that, as of the end of 2012, the company has a short-term loan from KDB in an amount of KRW 26 billion at an interest rate between 1.33% and 2.46%.[370]
    - o that, as of the end of 2012, the company has a long-term loan from KDB in an amount of KRW 28 billion at an interest rate between 3.68% and 4.07%.[371]
    - o that, as of the end of 2012, the company has a long-term loan in foreign currency from KDB in an amount of KRW 2.3 billion an interest of 2.06%.[372]
    - o that, as of the end of 2012, the company has a number of outstanding loans in pursuant to the credit facility it has with KDB.[373]

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[364] Hyundai Hysco, 2012 Business Report at 89, **Public Exhibit-1**.
[365] Dongbu Steel, 2012 Business Report at 147, **Public Exhibit 7-B-100**.
[366] Dongbu Steel, 2012 Business Report at 148, **Public Exhibit 7-B-100**.
[367] Nexteel, 2012 Audited Financial Statement at 26-27, **Public Exhibit 7-B-86**.
[368] Kumkang Ind. Co., Ltd., 2012 Business Report at 71-72, **Public Exhibit 7-B-83**.
[369] Husteel, 2012 Business Report at 55, **Public Exhibit 7-B-51**.
[370] Iljin Steel, 2012 Audited Financial Report at 22, **Public Exhibit 7-B-87**.
[371] Iljin Steel, 2012 Audited Financial Report at 22, **Public Exhibit 7-B-87**.
[372] Iljin Steel, 2012 Audited Financial Report at 23, **Public Exhibit 7-B-87**.
[373] Iljin Steel, 2012 Audited Financial Report at 34, **Public Exhibit 7-B-87**.

- Aju Besteel's 2012 Audited Financial Statement shows the following:
    - that, as of the end of 2012, the company has a short-term loan from KDB in an amount of KRW 18 billion at an interest rate between 4.22% and 6.12%.[374]
    - that, as of the end of 2012, the company has a long-term loan from KDB in an amount of KRW 16 billion at an interest rate between 1.5% and 5.83%.[375]
    - that, as of the end of 2012, the company has a number of outstanding loans in pursuant to the credit facility it has with KDB.[376]
- Media report shows that Hyundai Steel, Hysco's affiliated supplier of hot-rolled coil, has signed a memorandum of understandings with IBK to create a "Green Facilities Bridge Loan" program, which would be used to "support" Hyundai Steel's cooperative suppliers.[377]
- POSCO, believed to be an affiliated supplier of POSCO Specialty Steel, and also a major supplier of all the Korean OCTG producers and exporters, reports that it has created a "Co-prosperity" special fund with IBK in an amount of KRW 200 billion. This fund is created with contributions of KRW 100 billion by both POSCO and IBK, and is designed to be used to provide loans carrying lower-than-market interest rates to POSCO's suppliers.[378]

434. The United States Department of Commerce has previously determined that short-term export financing issued by KDB and IBK are countervailable.[379] That said, both of these policy banks offer a wide range of financing services geared towards exports and/or targeted recipients. To the extent that these policy banks are offering these services to the Korean OCTG producers and exporters, the Complainants request that the Agency fully investigate countervailability of such programs.

435. The program represents a direct transfer of funds from government to exporters. As such, the program qualifies as a financial contribution under the *SIMA* s. 2(1.6)(a). A benefit within the meaning of the *SIMR* s. 28 is conferred on the recipient to the extent that the recipient pays a lower

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[374] Aju Besteel, 2012 Audited Financial Statement at 39, **Public Exhibit 7-B-84**.
[375] Aju Besteel, 2012 Audited Financial Statement at 40, **Public Exhibit 7-B-84**.
[376] Aju Besteel, 2012 Audited Financial Statement at 46, **Public Exhibit 7-B-84**.
[377] Construction Economy News, "Construction and Facilities Supply Companies Getting Busy Before the Thanksgiving for Supporting Their Suppliers," (September 9, 2013), **Public Exhibit 7-B-101**.
[378] Weekly POSCO News, "POSCO and IBK Establish KRW 200 Billion Co-prosperity Fund," (August 29, 2013), **Public Exhibit 7-B-102**.
[379] United States Department of Commerce, Large Residential Washers from the Republic of Korea*: Final Determination in the Countervailing Duty Investigation*, 77 FR 75975, (December 26, 2012) and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-103**.

rate of interest on the loans as compared to what they would pay on a comparable non-guaranteed commercial loan. This program is specific within the meaning of the *SIMA* s. 2(7.2)(b) because discounted loans for export receivables are contingent in law upon export performance pursuant to the definition of "prohibited subsidy" prescribed under the *SIMA* s. 2(1).

viii. Korea Trade Insurance Corporation ("K-SURE") Export Insurance and Export Credit Guarantees

436. K-SURE was founded by the South Korean Government in 1992 to operate export and import insurance programs for the purpose of facilitating trade. In 2010, a statutory amendment increased the scope of K-SURE's ability to provide coverage for import, export, and overseas trade transactions.[380] As part of its current portfolio, K-SURE offers in particular short-term export insurance to South Korean exporters.

437. Reasonably available information confirms that the Korean OCTG producers and exporters indeed used programs administered by K-SURE, as demonstrated by the examples shown below:

- Nexteel's 2012 Audited Financial Statement reports that K-SURE insures KRW 2 million as of the end of 2012;[381] and
- Aju Besteel's 2012 Audited Financial Statement reports that K-SURE insures almost KRW 4.8 billion as of the end of 2012.[382]

1) <u>Short-Term Export Insurance</u>

438. K-SURE's "Short-Term Export Credit Insurance" insures against losses arising from default on export receivables.[383] The insurance protects against prescribed political and commercial risks where goods are shipped pursuant to an export agreement with a payment period

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[380] K-SURE, "Introduction to K-sure," **Public Exhibit 7-B-104**.
[381] Nexteel, 2012 Audited Financial Statement at 36, **Public Exhibit 7-B-86**. Note that the number is 2 million, but it appears unusually too small. The Complainants believe that the number might have been misstated due to missing reporting units, which, according to Nexteel's financial statement elsewhere, could be in thousands of KRWs, in which case the insured amount becomes KRW 2 billion.
[382] Aju Besteel, 2012 Audited Financial Statement at 47, **Public Exhibit 7-B-84**.
[383] K-SURE, "Short-term Export Credit Insurance (General)," **Public Exhibit 7-B-105**.

of less than two years. Short-Term Export Credit Insurance and other short-term products accounted for almost 88 percent of the total amount underwritten by K-SURE.[384]

439. In 2012, K-SURE recalls that "exports were sluggish in general with a record drop in July due to the European debt crisis and other factors ... Expecting poor export performance to continue, we {K-SURE} implemented a set of contingency measures for the first time at the end of October after opening up a window for intense support using our {K-SURE's} trade insurance programs in mid-August as we {K-SURE} saw attaining the USD 1 trillion mark in trade would not be feasible with more difficulties expected for exporters."[385] As a result, K-SURE utilized all its available resources in an amount of KRW 170 trillion by the end of October.[386] Once after it utilized all its resources for 2012, K-SURE continued its "all-out-support effort until the end of year," which resulted in the total amount undertaken in 2012 to be KRW 202 trillion, "a 5.3% year-on-year increase and the highest in the history of K-sure."[387] Not surprisingly, "{t}he government of Korea lauded K-sure for its role in turning exports around to positive" owing to K-SURE's "intense support" and "all-out-support."[388] K-SURE's outlook for 2013 as indicated in its 2012 Annual Report is no less ambitious. According to K-SURE, 2013 "is the time that Korea needs to leap forward towards USD 2 trillion in trade from the current 1 trillion mark," and that it "will strive to help exporters in resolving their problems, actively aid Korean businesses."[389]

440. The United States Department of Commerce previously determined that the K-SURE short-term export credit insurance program constitutes a countervailable subsidy.[390]

441. The provision of short-term export insurance involves the making of a financial contribution in the form of a potential direct transfer of funds or liabilities within the meaning of the *SIMA* s. 2(1.6)(a).

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[384] K-SURE, "Public Disclosures: Undertaking Statistics by Type," **Public Exhibit 7-B-106**. See also K-SURE, 2012 Annual Report at 21-25, **Public Exhibit 7-B-107**.
[385] K-SURE, 2012 Annual Report at 18, **Public Exhibit 7-B-107.**
[386] K-SURE, 2012 Annual Report at 18, **Public Exhibit 7-B-107.**
[387] K-SURE, 2012 Annual Report at 18, **Public Exhibit 7-B-107.**
[388] K-SURE, 2012 Annual Report at 18, **Public Exhibit 7-B-107.**
[389] K-SURE, 2012 Annual Report at 11, **Public Exhibit 7-B-107.**
[390] United States Department of Commerce, *Final Determination in the Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17410, (March 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-108.**

442. As the Agency stated in the *SIMA Handbook* at page 666, "{i}n the absence of a comparable insurance service being provided on a commercial basis," subsidies exist "if the premiums are inadequate to cover the firm's long-term operating costs and losses." Premiums charged by K-SURE fail to adequately cover the operating losses and long-term costs of the program, as is evident from following K-SURE income statement data for the past five years set out in **Table 11**.

Table 11 K-SURE Income Statement Data (Unit: KRW million)[391]

Account	2008	2009	2010	2011	2012
Operating Income	4,765,020	4,222,843	2,397,690	2,473,435	2,794,724
Operating Expenses	5,204,201	4,540,192	3,152,949	2,713,619	2,828,845
Operating Loss	439,181	317,348	755,258	240,187	34,121

443. In order to fund these losses stemming from policy-directed operations, the government is reported to have contributed KRW 60 billion, KRW 130 billion, KRW 260 billion, and KRW 25 billion in 2012, 2011, 2009, and 2008 respectively.[392] In light of this, the Complainants urge the Agency to find that allocated amounts of these government contributions to be the benefits conferred to the Korean producers of OCTG who used K-SURE short-term export insurance.[393]

444. In addition, this program is specific within the meaning of the *SIMA* s. 2(7.2)(b) because K-SURE short-term export insurance is contingent in law upon export performance pursuant to the definition of "prohibited subsidy" prescribed under the *SIMA* s. 2(1).

2) Export Credit Guarantees

445. K-SURE provides export guarantees to facilitate lending at both the pre-shipment and post-shipment phases. Pre-shipment guarantees encourage lending to manufacturers for the purposes of acquiring inputs and processing exported goods.[394] K-SURE's post-shipment

[391] K-SURE 2012 Annual Report at 47-48, **Public Exhibit 7-B-107**; K-SURE 2010 Annual Report, **Public Exhibit 7-B-109**; and K-SURE 2008 Annual Report, **Public Exhibit 7-B-110**.
[392] K-SURE 2012 Annual Report at 47-48, **Public Exhibit 7-B-107**; K-SURE 2010 Annual Report, **Public Exhibit 7-B-109**; and K-SURE 2008 Annual Report, **Public Exhibit 7-B-110**.
[393] *SIMA Handbook* at 667.
[394] K-SURE 2012 Annual Report at 26, **Public Exhibit 7-B-107.**

guarantees secure the payment of export proceeds in the event that the importer fails to perform by the contracted due date.[395]

446. The program represents a potential direct transfer of funds or liabilities and as such qualifies as a financial contribution under the *SIMA* s. 2(1.6)(a). A benefit within the meaning of the *SIMR* s. 31.1(1) is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loan, adjusted to take into account K-SURE guarantee fees paid, as compared to what they would pay on a comparable commercial loan in the absence of the guarantee. This program is specific within the meaning of the *SIMA* s. 2(7.2)(b) because K-SURE export guarantees are contingent in law upon export performance pursuant to the definition of "prohibited subsidy" prescribed under the *SIMA* s. 2(1).

ix. Targeted Tax Exemptions, Deductions, and Credits

447. Korean tax law notoriously biased in favor of the so-called "large corporations," or chaebols as they are commonly known. National Assembly member Choi-Jae-Sung reported that the effective tax rates for the top 100 largest corporations have been unfairly low, as low as 13% for the ten largest corporations in 2012.[396]

448. Such low effective tax rates were found to be primarily a product of three tax programs, which collectively accounted for 92.2% of all the corporate tax reduction realized by the top ten companies during the past five years.[397] These programs include investment tax benefits and "research and manpower development expenditures" tax benefits under the *Restriction of Special Taxation Act* ("RSTA"). Details of each program are discussed below, followed by a number of other preferential tax measures identified by the Complainants.

[395] K-SURE 2012 Annual Report at 26-27, **Public Exhibit 7-B-107**.
[396] National Assembly Member Choi-Jae-Sung, "Press Release: Top Ten Largest Companies Paid 13% Effective Tax Rates," (October 10, 2013), **Public Exhibit 7-B-111**.
[397] Seoul Finance, "2013 National Assembly's Inspection of the Administration: Top Ten Corporation Received KRW 8.6 Trillion in Main Tax Reductions During the Past Five Years," (October 17, 2013), **Public Exhibit 7-B-112**.

1) *Restriction of Special Taxation Act* Article 26

449. The government of Korea provides significant tax benefits for facilities investments under RSTA Article 26.[398] This tax benefits are restricted to the investments that are made within a clearly designated and defined geographic region, namely regions outside of the "overcrowd control zone near the capital."

450. The "overcrowd control zone near the capital" is defined in the *Enforcement Decree of the Seoul Metropolitan Readjustment Planning Act* to be designated areas within the Seoul Metropolitan Area, which includes Seoul Metropolitan City, Incheon Metropolitan City, and Gyeonggi Province.[399] Together, Seoul Metropolitan Area is a home for almost 25 million people, half of the entire Korean population.[400] Likewise, this area contributed 47% of Korea's entire GDP in 2011.[401]

451. The United States Department of Commerce has previously determined that Article 26 was countervailable.[402]

452. Tax reductions under Article 26 of the RSTA represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of the *SIMA* s. 2(1.6)(b). A benefit within the meaning of the *SIMR* s. 32 is conferred on the recipient of RSTA Article 26 tax reductions in the amount of the tax revenue foregone by the GOK. In addition, RSTA Article 26 is limited to the regions outside of the "overcrowd control zone near the capital," which accounts for half the economic activities in Korea and is therefore specific under *SIMA* s. 2(7.2)(a).

453. Although reasonably available information does not allow the Complainants to affirmatively confirm that the Korean OCTG producers received tax benefits under RSTA Article 26, locations of the producers indicate that they are eligible under Article 26. Specifically, **Table**

[398] *Restriction of Special Taxation Act*, Article 26, **Public Exhibit 7-B-113**.
[399] *Seoul Metropolitan Areas Readjustment Planning Act*, Articles 2(1) and 6, **Public Exhibit 7-B-114** and *Enforcement Decree of the Seoul Metropolitan Readjustment Planning Act*, Article 2, **Public Exhibit 7-B-115**.
[400] e-National Index Korea, "Population by Regions," **Public Exhibit 7-B-116**.
[401] e-National Index Korea, "GDP by Regions," **Public Exhibit 7-B-117**.
[402] United States Department of Commerce, *Large Residential Washers: Final Affirmative Countervailing Duty Determination*, 77 FR 75975, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-103.**

12 sets out the subject producers that are known to have investments in the locations that are outside of the "overcrowd control zone near the capital."

Table 12 Producers Known to Have Investments Outside of the "Overcrowd Control Zone Near the Capital.[403]

Company	Plant	City/Province	Outside of the Designated Zone?
Aju Besteel	Pohang Plant	Pohang City, North Gyeong-sang Province	Yes
Dongbu Steel	Dangjin Hot-rolled Plant	Dangjin, South Choong-chung Province	Yes
Dongbu Steel	Dangjin Cold-rolled Plant	Dangjin, South Choong-chung Province	Yes
Husteel	Dangjin Plant	Dangjin, South Choong-chung Province	Yes
Husteel	Daebul Plant	Daebul, South Jeonla Province	Yes
Hyundai Hysco	Dangjin Plant No. 1 and 2	Dangjin, South Choong-chung Province	Yes
Hyundai Hysco	Soon-chun Plant	Soon-chun, South Jeon-la Province	Yes
Hyundai Hysco	Ulsan Plant	Ulsan Metro City	Yes
Iljin Steel	Imsil Plant	Imsil, North Jeon-la Province	Yes
Kumkang Ind. Co. Ltd.	Eun-yang Plant	Ulsan Metro City	Yes
Nexteel	API Plant	Pohang City, North Gyeong-sang Province	Yes
Nexteel	Nexteel Q&T Heat Treatment Plant	Gyeong-ju City, North Gyeong-sang Province	Yes
SeAh Steel	Pohang Plant	Pohang City, North Gyeong-sang Province	Yes
SeAh Steel	Soon-chun Plant	Soon-chun, South Jeon-la Province	Yes
SeAh Steel	Koon-san Plant	Koon-san City, North Jeon-la Province	Yes
POSCO Specialty Steel	Changwon Plant	Changwon City, South Gyeong-sang Province	Yes

454. The Complainants were able to confirm, as described below, that the Korean OCTG producers invested in a number of the above-listed plants recently, which could have resulted in tax credits under Article 26:

[403] Korean OCTG Producers' Plant Locations from Producers' Websites, **Public Exhibit 7-B-118**.

- Hyundai Hysco's 2012 Business Report states that it has been constructing the Dangjin cold-rolled mill number 2 during and that it has had an ongoing investment in other cold-rolled facilities in Dangjin and Soon-chun between 2010 and 2012. In addition, it shows an ongoing pipe and tubing investment to expand production capacity from 2010 to 2013;[404]

- SeAH Steel's 2012 Business Report shows that it has invested in its pipe and tubing equipment in 2012. In addition, it also shows that the company has invested in construction and expansion of various production lines between 2012 and 2013, such as investments in "QT line," "JCOE," "heavy wall 200t JCO."[405]

- Nexteel's 2012 Audited Financial Statement shows that it has outstanding loans in the amount over KRW 30 billion that were provided for the purpose of "facilities";[406]

- Husteel's 2012 Business Report shows that it invested in its Dangjin and Daebul plants for equipment in 2011 and 2012;[407]

- Iljin Steel's 2012 Audited Financial Statement shows that its Imsil Plant construction was completed in the second half of 2012 and that the company has had ongoing additional investments in the Imsil Plant as of the end of 2012;[408]

- Kumkang Ind. Co., Ltd.'s 2012 Business Report shows that it had invested KRW 4.6 billion in its pipe and tubing line in December 2012;[409]

- Aju Besteel's 2012 Audited Financial Statement reports that the company is in the process of investing in its OCTG production line. In this regard, the company adds that it has spent KRW 14.8 billion during 2012, KRW 12 billion of which has been amortized as equipment;[410]

- Dongbu Steel's 2012 Business Report shows that it has invested KRW 15.9 billion in 2012 in various facilities. In addition, it also shows total investments planned for 2013 to be KRW 55 billion, KRW 25.5 of which is stated to be for Dongbu Steel's hot-rolled mill in Dangjin;[411] and

- POSCO Specialty Steel's 2012 Business Report shows that it has invested KRW 1.9 billion in the new steel-making facility and KRW 16.3 billion in the rolling mill in 2012. The company also reports that it will further invested KRW 23.9 billion into the rolling mill.[412]

[404] Hyundai Hysco, 2012 Business Report at 9, 21, **Public Exhibit 7-B-1.**
[405] SeAH Steel, 2012 Business Report at 29, 35, **Public Exhibit 7-B-26.**
[406] Nexteel, 2012 Audited Financial Statement at 27, **Public Exhibit 7-B-86.**
[407] Husteel, 2012 Business Report at 16, **Public Exhibit 7-B-51.**
[408] Iljin Steel, 2012 Audited Financial Statement at 20, **Public Exhibit 7-B-87.**
[409] Kumkang Ind. Co., Ltd, 2012 Business Report at 26, **Public Exhibit 7-B-83.**
[410] Aju Besteel, 2012 Audited Financial Statement at 33, **Public Exhibit 7-B-84.**
[411] Dongbu Steel, 2012 Business Report at 36, **Public Exhibit 7-B-100.**
[412] POSCO Specialty Steel, 2012 Business Report at 33, **Public Exhibit 7-B-119.**

2) Research, Supply or Workforce Development Expense Tax Deductions Under RSTA Art 10(1)(3)

455. Pursuant to RSTA Article 10(1)(3), the GOK provides reduction on tax payable of either 40% of "research and manpower development expenditures" ("R&MD") exceeding the average of such expenditures over the past four years, or a maximum of 6% of the same expenditures for the year. The text of the act as of 1 January 2010 provides as follows.

> Article 10 (Tax deduction on research and workforce development)
>
> Where a domestic individual has research or workforce development expenses in a taxation year, the sum of the following are deducted from the individual's business income tax or corporate tax. For the sub-provision 1 and 2, only the research or workforce development expenses until {2015 December 31st}[413] are eligible in this Article.
>
> 1. The amount calculated by: research and development expenses in the New Growth Engines areas as declared by the Presidential decree, to the extent they are incurred in the taxation year, multiplied by 20/100 (multiplied by 30/100 for small or medium enterprises),
>
> 2. The amount calculated by: research and development expenses for the purpose of obtaining the Core Technologies as declared by the Presidential decree, to the extent they are incurred in the taxation year, multiplied by 20/100 (multiplied by 30/100 for small or medium enterprises),
>
> 3. For the domestic individual for whom the sub-provisions 1 or 2 does not apply or who chooses not to use sub-provisions 1 or 2, any one of the applicable following among the research and workforce development expenditures (hereinafter "ordinary research and workforce development expenditures).
>
> > a) 40 of 100 (50 of 100 in cases of small and medium enterprises) of ordinary research and workforce development expenditures incurred during the current taxation year, to the extent that such amount exceeds the

[413] The January 1, 2010 version of the RSTA, the latest English version of the law that is publicly available, indicates that qualifying R&D expenditures under the Article 10 must be made before December 31, 2012. However, later version of the law, which is only available in English, shows that the end-date for qualifying R&D expenditures has been extended to December 31, 2015. See *Restriction of Special Taxation Act*, Article 10, **Public Exhibit 7-B-120**.

> average ordinary research and workforce development expenditures over the past four taxation years
>
> b) Ordinary research and workforce development expenditures incurred in the current taxation year multiplied by the rate calculated by the following formula (limit is 6 of 100, 25 of 100 for small and medium enterprises):
>
> 3 of 100 + share of research and workforce development cost against total earning during the current taxation year x 1 of 2"[414]

456. Based on information reasonably available, Article 10(1)(3) was originally implemented in 1998 when the former *Tax Reduction and Exemption Control Act* ("TERCL") was replaced in its entirety by the RSTA.

457. Although this program is neutral on its face, reasonably available information show a concentration in the use of, and receipt of benefits under, the provision. Based on this information, the Complainants believe that Article 10(1)(3) has been predominantly used by large enterprises, such as Hyundai Hysco, which is Korea's 40th largest corporation, and that such enterprises have benefited disproportionately under the program.[415]

458. Specifically, Korean media article reporting study by National Assembly member Hong-Jong-Hak, provides that in 2012, the so-called "large corporation" took 51.2% of total R&MD tax credits, or KRW 1.2 trillion out of total KRW 2.4 trillion tax credits.[416] This phenomenon is nothing new and R&MD tax credits have always been a major source of large Korean companies' competitiveness. Korean media articling reporting a Ministry of Finance and Economy study showed that the "Top Five" companies claimed as much as 45%, 46%, 63% and 65% of the total tax benefits conferred under this RSTA provision in 2000, 2001, 2002 and 2003 respectively.[417]

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[414] *Restriction of Special Taxation Act,* Article 10, **Public Exhibit 7-B-113**.
[415] Korean Economy Magazine, "2013 Korean Super Companies: 2013 Ranking of 100 Largest Korean Companies and Their CEOs," (June 14, 2013), **Public Exhibit 7-B-121**.
[416] News Tomato, "Democratic Party Wants Tax Reduction Fixed as Large Corporations Obtains Almost All the Benefits," (September 12, 2013), **Public Exhibit 7-B-122.**
[417] Herald Economy (12 July 2005), "R&D expense tax credit shows serious polarization," **Public Exhibit 7-B-123.**

459. The United States Department of Commerce already found this preferential tax program to be countervailable.[418]

460. Tax reductions under Article 10(1)(3) of the RSTA represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of the *SIMA* s. 2(1.6)(b). A benefit within the meaning of the *SIMR* s. 32 is conferred on the recipient of RSTA Article 10(1)(3) tax reductions in the amount of the tax revenue foregone by the GOK. In addition, RSTA Article 10(1)(3) is specific under the *SIMA* s. 2(7.3)(b) or (c), as it is predominantly used by "large corporations," or because it confers disproportionately large amounts of the subsidy to "large corporations."

3) Corporation Tax Exemption on Dividend Income from Investment in Overseas Resource Development

461. RSTA Article 22 provides an exemption for certain dividend income earned in or before the 2015 tax year.[419] Eligible dividends include dividends earned from foreign investments related to the development of mining resources, provided that the dividends are exempted from the tax of the host country of the investment.[420]

462. This program has been countervailed by the United States Department of Commerce as recently as on March 29, 2013.[421] During the investigation, POSCO reported that it had benefited from this program.

463. Dividend tax exemption under RSTA Article 22 constitutes financial contribution in the form of revenue foregone within the *SIMA* s. 2(1.6)(b). Benefit conferred to the recipients is the

[418] United States Department of Commerce, *Large Residential Washers: Final Affirmative Countervailing Duty Determination*, 77 FR 75975, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-103**.

[419] *Restriction of Special Taxation Act*, Article 22, **Public Exhibit 7-B-113**. The January 1, 2010 version of the RSTA, the latest English version of the law that is publicly available, indicates that qualifying dividend earnings under the Article 22 must be made before December 31, 2009. However, later version of the law, which is only available in English, shows that the end-date for qualifying dividend earnings has been extended to December 31, 2015. See *Restriction of Special Taxation Act*, Article 22, **Public Exhibit 7-B-124**.

[420] *Enforcement Rules of the Restriction of Special Taxation Act*, Article 19, **Public Exhibit, B-125**. In addition to mining, eligible investments include investments in agriculture, livestock, fishery, and forestry sectors.

[421] United States Department of Commerce, *Corrosion-Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*. 78 FR 19210, (March 29, 2013), and accompanying *Issues and Decision Memorandum* at 22, **Public Exhibit 7-B-57**.

amount of tax exempted pursuant to the *SIMR* s. 32. This program is specific within the meaning of the *SIMA* s. 2(7.2)(a), because it is limited to dividends earned on overseas investments in industries expressly stated in law.

x. Government of Korea Targeted "Stimulus" Subsidies

464. The GOK's response to the economic downturn has been remarkable in terms of both the magnitude and the targeted nature of the GOK's stimulus spending. On January 6, 2009, the GOK launched a "Green New Deal" package totaling approximately U.S.$38.1 billion, of which U.S.$30.7 billion (approximately 80 per cent) was allocated to "green" initiatives, such as renewable energies, energy efficient buildings, low carbon vehicles and water and waste management.[422]

465. Consistent with the targeted growth objectives of the "Green New Deal," the GOK has implemented a number of significant subsidy programs aimed at a limited number of defined "core technologies" and "new growth engines."

466. Specifically, in July 2009, the GOK announced two new targeted enhanced tax deduction programs for research and/or workforce development expenses. Under the first program, set out at subparagraph 1 of Article 10(1) of the RSTA, large corporations making research, supply or workforce development investments in a "new growth engine" technology would qualify for a tax deduction of 20 percent of such expenses in a taxation year, while SME's would qualify for a tax deduction at a rate of 30 percent.[423] The "new growth engine" investments are defined as investments relating to the 60 products or product-specific technologies set out in **Table 13.**[424]

Table 13 New Growth Engines Products or Product-Specific Technologies

1	Technology pertaining to manufacturing of high efficiency blue LED chips (450~470 nm)	**2**	Technology pertaining to manufacturing of high efficiency green LED chips (530 nm)
3	Technology pertaining to processing of packaging wafer-level chips	**4**	Technology pertaining to manufacturing of large capacity epitaxy equipment

[422] United Nations Environment Program (UNEP), "An Update for the G20 Pittsburgh Summit" at 2, 7, **Public Exhibit 7-B-126.**

[423] *Restriction of Special Taxation Act*, Article 10(1)(1), **Public Exhibit 7-B-113.**

[424] *Restriction of Special Taxation Regulations Defining New Growth Engines*, Annex 7, **Public Exhibit 7-B-127.**

5	Technology pertaining to manufacturing of performance/defect testing equipment for testing high-speed wafer-level	6	Technology pertaining manufacturing of defect testing or analysis equipment for packaged LED level
7	Technology pertaining to manufacturing of sensitivity based LED lighting equipment	8	Technology pertaining to LED light source modules for high efficiency/high color white LEDs
9	Technology pertaining to LED light source modules for high efficiency natural color LEDs	10	Technology pertaining to improving energy storage density for electric cars
11	Technology pertaining to high efficiency, super-clean small engines for cars	12	Technology pertaining to robots for super-clean manufacturing of semiconductors
13	Technology pertaining to robots for manufacturing of new generation solar cells, LEDs, and fuel cells	14	Technology pertaining to sensing surrounding environment for robots that performs monitoring functions
15	Technology pertaining to robot platforms for small rescue robots designed to break into extreme conditions and having an internal insulation capability	16	Technology pertaining to robots that provide housemaid services
17	Technology pertaining to education robots that could assist instructors in pre-schools and elementary schools	18	Technology pertaining to manufacturing or stabilization of gene delivery for gene treatment
19	Technology pertaining to developing or improving antibody treatments	20	Technology pertaining to development of cell treatment using adult stem cells
21	Technology pertaining to manufacturing or improvement of biosimilars	22	Technology pertaining to manufacturing or screening of protective antigens
23	Electrostimulation system for intelligent implant	24	Technology pertaining to providing diagnosis of microtissues and transduce for the use in real-time, 4-dimensional ultrasound imaging
25	Technology pertaining to molding of high-strength magnesium parts	26	Nano coating technology
27	Technology pertaining to macromolecular phase films	28	Technology pertaining to manufacturing of novolak resins for the use in photoresist
29	Technology pertaining to continuous processing and increasing efficiency of silicon and thin film (CIS type) for solar cells	30	Technology pertaining to core material based and large-surface-area modules for dye induction solar cells
31	Technology pertaining to manufacturing of fuel-cell specific parts	32	Technology pertaining to gasifying low-cost coals or turning low-cost coals into clean energy
33	Technology pertaining to gasification or liquefaction of waste materials	34	Technology pertaining to manufacturing or design of parts that transmits increased spin-speed to wind power-generators
35	Technology pertaining to manufacturing of wind power generators and inverters	36	Technology pertaining to storing and retrieving geothermal energy
37	Technology pertaining to generation of geothermal power	38	Technology pertaining to real time, high-trust-level authentication

39	Technology pertaining to analyzing weaknesses of software	40	Technology pertaining to embedded operating systems for embedded software
41	Technology pertaining to cloud computing platforms	42	Technology pertaining to voice interface software voice recognition and fusion of multiple languages/voice tones
43	Technology pertaining to multi-language tasking software for auto-translation (of conversations as well as documents) of contents with multiple languages	44	Technology pertaining to production of 3D imaging contents with HD or better quality and with multiple angles
45	Technology pertaining to production of 4D contents that stimulates all 5 human senses	46	Technology pertaining to production of digital hologram contents
47	Technology pertaining to collecting CO2 after combustion in a CO2 separation plant	48	Technology pertaining to collecting CO2 before combustion in a CO2 separation plant for coal gasification
49	Technology pertaining to large-scale, low cost manufacturing of oxygen, and oxyfuel combustion	50	Establishing database of and for technology pertaining to inland storage area and storage of CO2
51	Technology pertaining to transportation and storage of CO2	52	Technology pertaining to pre-treatment and processing of food without heating
53	Technology pertaining to analysis of bioactive substances for food and developing index bioactive substances	54	Membrane filtration material and module technologies for water treatment
55	Technology pertaining to sensors for sensing traffic around the car, control system using sensors, and control system using external information	56	Technology pertaining to manufacturing and post-manufacturing services of ships/carriers
57	Technology pertaining to intelligent naval navigation	58	Technology pertaining to intelligent real-time management of facilities and energy for buildings
59	Technology pertaining to intelligent equipment and auto-collaboration for intelligence manufacturing system	60	Technology pertaining to intelligent micro sensors

467. Under the second program, pursuant to subparagraph 2 of Article 10(1) of the RSTA, large corporations making research, supply and/or workforce development investments in a one of 18 specified "original technologies" would qualify for a tax deduction of 20 percent of total such expenses in a taxation year, while SME's would qualify for a tax deduction at a rate of 30 percent.[425] "Original technologies" are defined as the 49 product-specific technologies set out in **Table 14.**[426]

[425] *Restriction of Special Taxation Act*, Article 10(1)(2), **Public Exhibit 7-B-113.**
[426] *Restriction of Special Taxation Regulations Defining Core Technologies*, Annex 8, **Public Exhibit 7-B-128.**

Table 14 "Original technologies" Product-Specific Technologies

1	Technology pertaining to bio-friendly design and manufacturing of metal materials	2	Technology pertaining to reduction and retrieving valuable metal emission
3	Technology pertaining to design of large superalloy metal for high efficiency power generation	4	Technology pertaining to design and manufacturing of high strength, high performance metal for the use of API certified line pipes and anti-abrasion pipes
5	Technology pertaining to functionalization and weight reduction of metal frames	6	Technology pertaining to manufacturing of blades for the use in wind power generation
7	Technology pertaining to production facilities of new generation, high efficiency, and light weight radiant parts for the use in lighting	8	Technology pertaining to manufacturing of bio-fabric textile structures for use in medical areas
9	Technology pertaining to high-strength textile complex that are bio-degradable	10	High-technology digital fashion technology that have combined combat functions for strategic operations
11	Technology pertaining to manufacturing of light-weight, high-elasticity, and high-strength carbon textile	12	Technology pertaining to high-temperature fuel cells
13	Technology pertaining to new generation, high-performance lithium secondary battery	14	Technology pertaining to advanced treatment of complex crude oil derived from oil shell
15	Technology pertaining to compact gas-to-liquid processing for the gases on ships	16	Technology pertaining to development and manufacturing of gas hydrate
17	Technology pertaining to precise exploration of seismic waves in potential/suspected oil fields	18	Technology pertaining to design and manufacturing of smart grid
19	Technology pertaining to operating and advancing smart electricity distribution	20	Technology for designing reactor coolant pumps
21	Technology pertaining to insulated and corrosion resistant nuclear power raw materials	22	Technology pertaining to testing large-scale process system using nuclear radiation
23	Technology pertaining to standardized designing of advanced nuclear power reactor	24	Technology pertaining to development of core codes for nuclear power generation design
25	Technology pertaining to low-energy-consuming, high-speed, light weight encryption for information security infrastructures	26	Technology pertaining to prevention of and responding to attacks through subchannels for information security infrastructures
27	Technology pertaining to manufacturing of eco-friendly tires using urethane uni-materials	28	Technology pertaining to electric functional ink, capable of low-temperature heat treatment
29	Technology pertaining to development of manufacturing technology for ferrosilicon and pig iron using smelt slag	30	Technology pertaining to conversion process of complex materials derived from biomass
31	Technology pertaining to aromatizing heavy hydrocarbon fraction	32	Technology pertaining to manufacturing of high-value olefin derived from naphta catalyst
33	Technology pertaining to manufacturing of industrial adhesives that are resistant under high temperature	34	Technology pertaining to real time monitoring and management of energy use, using radio frequency identification technology
35	Technology pertaining to light-weight, low-energy-use radio frequency identification security platform for developing smart supply chain	36	Technology pertaining to computers embedded inside human bodies and computing technology that processes bodily information

37	Technology pertaining to cloud computing security	38	Technology pertaining to identifying materials expected to be new drugs
39	Technology pertaining to assessing human tests of new drugs	40	Technology pertaining to assessing utility from human tests of new drugs
41	Technology pertaining to development and manufacturing of revolutionary enhancement of drugs	42	Technology pertaining to development of parts for satellites
43	Technology pertaining to development of space launch vehicles	44	Technology pertaining to manufacturing of laser emitting materials for the use in large-screen AMOLED pixel manufacturing
45	Technology pertaining to atmospheric pressure plasma etching equipment for developing new materials to be used in display	46	Technology pertaining to LED backlight units for developing new materials to be used in display
47	Technology pertaining to indium-free and transparent conducting oxide materials for developing new materials to be used in display	48	Technology for developing precursor for the use in high-k dielectric, which is used for atomic layer deposition and chemical vapor deposition for semiconductors
49	Companders for ships/carriers for floating production storage offloading or transportation of liquefied natural gas		

468. Under Article 25(2) of the RSTA, the GOK also continues to maintain a tax deduction for investments made in "energy economizing facilities."[427]

469. Specific allegations regarding the status of each of the above tax deduction programs as countervailable subsidies are set out below.

1) <u>Research, Supply or Workforce Development Investment Tax Deductions for "New Growth Engines" Under RSTA Art 10(1)(1)</u>

470. Tax deductions for research, supply or workforce development expenses for "new growth engines" represent a foregoing or non-collection of revenue that is otherwise due to the GOK and as such qualify as a financial contribution within the meaning of the *SIMA* s. 2(1.6)(b). A benefit within the meaning of the *SIMR* s. 32 is conferred on the recipient of Art. 10(1)(1) RSTA tax deductions for research, supply or workforce development expenses in the amount of the tax revenue foregone by the GOK. Tax deductions under Art. 10(1)(1) of the RSTA is limited in law to particular enterprises to those that produce and/or utilize specific products and technologies in

[427] *Restriction of Special Taxation Act*, Article 25(2), **Public Exhibit 7-B-113.**

the list of the "new growth engines." It is notable that this program has been found to be specific by the U.S. Department of Commerce on multiple countervailing subsidy investigations.[428]

471. It is reported that Hyundai Hysco has been a recipient of one of the most celebrated new growth project related to the development of "hydrogen town" launched by Ulsan city.[429] The "hydrogen town" has an objective of commercializing hydrogen by-products from manufacturing facilities as energy stored in and used from fuel cells.[430] The project was estimate to cost KRW 8.8 billion, KRW 7 billion of which was funded by Korea Energy Management Corporation ("KEMCO") and local governments.[431] Hyundai Hysco was a member of the consortium that was awarded to carry out this project.[432]

472. Although reasonably available information does not allow the Complainants to identify other R&D projects that qualified under the RSTA Article 10(1)(1) with certainty, the Korean OCTG producers' financial statements certainly indicate that many have been part of government-supported R&D projects, which could be eligible for the RSTA Article 10(1)(1) tax deduction. Examples of these are provided in **Table 15**.

Table 15 Government-Supported R&D Projects That Would Qualify for RSTA Article 10(1)(1) Benefits

Korean OCTG Producers	Time when R&D Conducted	R&D Conducted
Hyundai Hysco[433]	2012 First Half	Government project regarding solar cell coating technology development; Government project regarding metal bipolar plate
Husteel[434]	2013 First Half	"Strategic technology development project" supported by the Ministry of Knowledge Economy (estimated R&D period of 3 years);

[428] United States Department of Commerce, *Large Residential Washers: Final Affirmative Countervailing Duty Determination*, 77 FR 75975, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-103**.
[429] Ulsan Techno Park advertised the "hydrogen town" project as one of key new-growth-engine projects it has undertaken during 2012. See Herald Economy, "Ulsan Techno Park Announces R&D Achievements and Boasts Leading New Material Development," (December 12, 2012), **Public Exhibit 7-B-129.**
[430] Korea Gas News, "Ulsan Builds the World's Largest Hydrogen Town," (July 18, 2013), **Public Exhibit 7-B-130.**
[431] Korea Gas News, "Ulsan Builds the World's Largest Hydrogen Town," (July 18, 2013), **Public Exhibit 7-B-130.**
[432] Korea Gas News, "Ulsan Builds the World's Largest Hydrogen Town," (July 18, 2013), **Public Exhibit 7-B-130.**
[433] Hyundai Hysco 2013 First Half Report at 28, **Public Exhibit 7-B-1.**
[434] Husteel 2013 First Half Report at 22, **Public Exhibit 7-B-131.**

Korean OCTG Producers	Time when R&D Conducted	R&D Conducted
		"Cross-industry core technology development project" supported by the Ministry of Knowledge Economy (estimated R&D period of 5 years)

2) Research, Supply or Workforce Development Expense Tax Deductions for "Original Technologies" Under RSTA Art 10(1)(2)

473. Tax deductions for research, supply or workforce development expenses for "original technologies" represent a foregoing or non-collection of revenue that is otherwise due to the GOK and as such qualify as a financial contribution within the meaning of the *SIMA* s. 2(1.6)(b). A benefit within the meaning of the *SIMR* s. 32 is conferred on the recipient of Art. 10(1)(2) RSTA tax deductions for research, supply or workforce development expenses in the amount of the tax revenue foregone by the GOK. Tax deductions under Art. 10(1)(1) of the RSTA is limited in law to particular enterprises to those that produce and/or utilize specific products and technologies in the list of the "original growth engines." It is notable that this program has been found to be specific by the U.S. Department of Commerce on multiple countervailing subsidy investigations.[435]

474. Although reasonably available information does not allow the Complainants to identify other R&D projects that qualified under the RSTA Article 10(1)(2) with certainty, the Korean OCTG producers' financial statements certainly indicate that many have been part of government-supported R&D projects, which could be eligible for the RSTA Article 10(1)(2) tax deduction. Examples of such R&D investments are identified above, including Husteel's participation in "{'}cross-industry core technology development project{'} supported by the Ministry of RSTA Art 25(2) Tax Deductions for Investments in Energy Economizing Facilities

475. Tax deductions for investments in energy economizing facilities pursuant to RSTA Article 25(2) represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of the *SIMA* s. 2(1.6)(b). A benefit within the meaning of the *SIMR* s. 32 is conferred on the recipient of GOK RSTA Article 25(2) tax

[435] United States Department of Commerce, *Large Residential Washers: Final Affirmative Countervailing Duty Determination*, 77 FR 75975, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-103.**

deductions/credits in the amount of the tax revenue foregone by the GOK. Given that eligibility and use of the RSTA Article 25(2) tax deduction is limited to investments in energy-economizing facilities, this program is specific both in law and in fact to an enterprise or industry.

476. Dongbu Steel has been designated as a "Green Company," for its role in "reducing pollution, reducing resources and energy spending, and implementing green-management."[436] Although there is no information as to what specific investments Dongbu Steel had to make in order to earn the "Green Company" designation, the Complainants submit that the same investments could very well have received a preferential tax treatment under the RSTA Article 25(2). As well, like Dongbu Steel, the Complainants submit that other Korean OCTG producers could also have qualified for the Article 25(2) tax deductions.

3) Targeted Facilities Subsidies through Korea Finance Corporation ("KoFC")

477. Korea Finance Corporation ("KoFC"), owned 100% by the GOK,[437] "was established on October 28, 2009 to supply and manage the funds necessary for Korea's economic advance, to promote job creation by securing growth potential, and to contribute to the sound growth of the finance industry and the national economy."[438] This public purpose carried out by KoFC is mandated by the statute that created KoFC, the *Korea Finance Corporation Act*.[439]

478. The statute also demonstrates that KoFC is entirely controlled by the government. For example, the eight-man steering committee, in charge of establishing KoFC's annual business plan, budget, operations manual, and articles of incorporation, is appointed by Ministers of various Ministries and Financial Services Commission.[440] In addition, the president of KoFC "shall be appointed by the President of the Republic of Korea," and "{d}irectors shall be appointed by the

[436] Dongbu Steel, Voluntary Disclosure Regarding Green Company Designation, (July 15, 2013), **Public Exhibit 7-B-132**.
[437] Korea Finance Corporation, 2012 Annual Report at 52, **Public Exhibit 7-B-133**. See also at 5, which states that "{t}he government maintains full ownership and managerial control of KoFC. Article 4 of the *Korea Finance Corporation Act* states that the Corporation's capital is to be contributed by the Korean government while Articles 10 and 13 describe the government's role in the organizational structure and the appointment of the Steering Committee and executives."
[438] Korea Finance Corporation, 2012 Annual Report at C2, **Public Exhibit 7-B-133**.
[439] *Korea Finance Corporation Act*, Article 1, **Public Exhibit 7-B-134**.
[440] *Korea Finance Corporation Act*, Articles 9-10, **Public Exhibit 7-B-134**.

Financial Services Commission."[441] In addition, KoFC is almost entirely funded by the GOK. According to KoFC's 2012 Annual Report, KoFC's total capital is approximately KRW 15 trillion, KRW 100 billion of which is KoFC's initial paid-in capital, and KRW 14.9 trillion of which is the GOK's non-cash contribution shares.[442]

479. KoFC carries out its public policy mandate by providing capital through loans and investments to the "new growth industries."[443] According to the Annual Report, "{s}ectors qualified to receive KoFC's support include 17 new growth businesses that have been designated by the National Science and Technology Commission, 10 next-generation growth engines designated by the Ministry of Knowledge Economy, and cutting-edge materials and components businesses."[444]

480. As clearly evidenced by its mandate, it is no secret that KoFC's main purpose is to provide benefits to the targeted and selected Korean businesses. Further details of the benefits provided by KoFC are specified on its website, describing the products it provides. Under the "integrated support unit for new growth industries" loan program, KoFC provides interest rate discount up to 20bp and 10bp to SMEs, and MEs and large corporations respectively.[445] Although the Complainants could not find details of other sub-programs (because the terms and conditions of many other programs are stated to be determined on a case-by-case basis), the Complainants believe that all programs administered by KoFC could potentially confer countervailable benefits, given its public-policy mandate.[446]

481. In addition, and not surprisingly, the fact that KoFC operates to provide benefits to the recipients as a government agent, as opposed to a profit-maximizing financier, is demonstrated by the losses it makes. KoFC's 2012 Annual Report shows that KoFC incurred an operating loss of

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[441] *Korea Finance Corporation Act*, Article 13, **Public Exhibit 7-B-134**.
[442] Korea Finance Corporation, 2012 Annual Report at 83, **Public Exhibit 7-B-133**.
[443] Korea Finance Corporation, 2012 Annual Report at 13-14, **Public Exhibit 7-B-133.**
[444] Korea Finance Corporation, 2012 Annual Report at 13, **Public Exhibit 7-B-133.**
[445] KoFC, "New Growth Industry (Other)," **Public Exhibit 7-B-135**.
[446] For example, see KoFC, "New Growth Industry (Loan)," **Public Exhibit 7-B-136**. Under this program, KoFC provides loans at interest rate that equal to benchmark rate + spread. The benchmark rate is stated to be KoFC bond yield, which is, according to KoFC, "safe because KoFC's net loss on the settlement of accounts is fully replenished by the Korean Government pursuant to the laws of the Republic of Korea." Spread is a variable that could change from one borrower to another. This is especially true based on the interest rate determination process indicated in KoFC, "New Growth Industry (Loan)," **Public Exhibit 7-B-136**. The benchmark rate used is a bond yield of a government-backed bond, which would command extremely low interest rates.

over KRW 380 billion and a net loss of over KRW 204 billion, or approximately 24 percent and 13 percent of KoFC's total operating revenues for 2012, respectively.[447] In fact, KoFC has made operating profit in only one of four years it was in operation, and the operating losses in 2009 and 2010 amounted to over KRW 442 billion and KRW 111 billion in 2010 and 2009 respectively.[448] Notably, pursuant to Article 31 of the *Korea Finance Corporation Act*, any annual deficit of KoFC not covered by KoFC reserves shall be replenished by the GOK.[449]

482. Most tellingly, the CEO of KoFC in the 2012 Annual Report confirms that KoFC, by its mandate, provides finances to the companies and/or projects that would otherwise not be able to receive finances from the private market:

> At the same time, KoFC financed the development of Korea's green and new growth industries, both of which are crucial to the sustainable growth of the economy, but are too high in risk for private participation.[450]

483. Loans made under the New Growth Engine Industry Fund constitute a direct transfer of funds and as such all qualify as a financial contribution under the *SIMA* s. 2(1.6)(a). A benefit within the meaning of the *SIMR* s. 28 is conferred on the recipient of loans to the extent that the recipient pays a lower rate of interest on the loan as compared to what the recipient would pay on a comparable commercial loan. Given that KoFC's stated key focus areas are specifically identified the GOK as described above, this program is specific to an enterprise or industry. In addition, according to a statement of the KoFC President & CEO in the 2012 KoFC Annual Report, one of the first goals of the organization, under mandate by the GOK, is to target "new growth industries":

> Now, KoFC is one of the leaders in Korea's policy-based finance, committed to support the country's vast and dynamic corporate sector including small and medium sized enterprises, new growth industries, infrastructure development, and overseas projects.[451]

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[447] Korea Finance Corporation, 2012 Annual Report at 46-47, **Public Exhibit 7-B-133**.
[448] Korea Finance Corporation, 2010 Annual Report at 63-64, **Public Exhibit 7-B-137.**
[449] *Korea Finance Corporation Act*, s. 31, **Public Exhibit 7-B-134**.
[450] Korea Finance Corporation, 2012 Annual Report at 5, **Public Exhibit 7-B-133**.
[451] Korea Finance Corporation, 2012 Annual Report at 2, **Public Exhibit 7-B-133**.

484. This statement further suggests that New Growth Engine Industry Fund subsidies are specific in law or fact.

485. Reasonably available information supports that KoFC may have provided countervailable benefits to the Korean OCTG producers and exporters as follows:

- Hyundai Hysco's 2012 Annual Report shows that, as of the end of 2012, the company has an outstanding syndicated loan from KoFC in an amount of KRW 115 billion;[452]
- Kumkang Ind. Co., Ltd.'s 2012 Business Report shows that its directors approved obtaining facilities and operation related funding from KoFC during 2012;[453]

486. In addition, as described in detail above, Hyundai Hysco was reported to have participated in a government-funded new-growth-engine project for the development of the "hydrogen town." In addition, other Korean OCTG producers have chosen to report their participation in the government-funded or led R&D projects.[454]

4) Government of Korea Green and New Growth Finance Subsidies

487. Another targeted stimulus subsidy program implemented in furtherance of the objectives of the "Green New Deal" has the GOK's announcement in July 2010 that it had set aside KRW 42 trillion for the establishment of a "Green and New Growth Finance" program, to be operated by KoFC and to be directed primarily toward "green" SMEs and MEs.[455] Specifically, Kim Young Joon, the head of investment finance division of KoFC, presented KoFC's initiative "Green Finance Promotion Implementation Plan in Relation to the Plan to Raise KRW 100 Trillion."[456] Under this plan, KoFC stated that it had planned to raise KRW 100 trillion by 2015, KRW 42 trillion of which will be used to finance green and new growth industries.[457]

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[452] Hyundai Hysco, 2012 Annual Report at 72, **Public Exhibit 7-B-1**.
[453] Kumkang Ind. Co., Ltd., 2012 Business Report at 71, **Public Exhibit 7-B-83**.
[454] See *infra*.
[455] ET News, "Government to Provide KRW 42 Trillion to Support Green and New Growth by 2015," (July 14, 2010), **Public Exhibit 7-B-138**.
[456] ET News, "Government to Provide KRW 42 Trillion to Support Green and New Growth by 2015," (July 14, 2010), **Public Exhibit 7-B-138**.
[457] ET News, "Government to Provide KRW 42 Trillion to Support Green and New Growth by 2015," (July 14, 2010), **Public Exhibit 7-B-138**.

488. In May 2012, the GOK expanded the green finance portion of the grand scheme even further. Specifically, the guarantees provided by the Korea Technology Finance Corporation ("KTFC") and KODIT were to be increased to KRW 7.8 trillion, along with maximum guarantee amount for the "green" companies.[458] The guarantee fees were also to be decreased by between 0.2% and 0.5%. In addition, additional funding was made to the following government ministries and agencies:

- o KoFC for KRW 3.17 trillion;
- o Green Industries Investment Company (itself to be administered by KoFC) for KRW 100 billion;
- o New Growth Fund under the Ministry of Knowledge Economy for KRW 1.11 trillion; and
- o Green New Growth Fund under the Small and Medium Businesses Administration ("SMBA") for KRW 790 billion.[459]

489. In addition, KoFC was to increase its Green Company Guarantee program to KRW 21.4 trillion, and the New Growth Industry Promotion Fund to KRW 3.8 trillion in 2012.[460]

490. Program-by-program descriptions and preferential benefits it provides to the targeted selected recipients are well-published on the GOK website on "Green Finance,"[461] which are summarized as follows:

- Policy Loans:
    - o These are loans provided by policy banks such as KEXIM (for exports), KDB, KDB Capital, KoFC, and government agencies such as Korea Energy Management Corporation ("KEMCO") and SMBA;
    - o These loans are provided to the companies in "green industries"; and

[458] Energy Economy, "Would This Round of Government Green Finance Scheme be Effective?," (May 9, 2012), **Public Exhibit 7-B-139**.
[459] Energy Economy, "Would This Round of Government Green Finance Scheme be Effective?," (May 9, 2012), **Public Exhibit 7-B-139**.
[460] Energy Economy, "Would This Round of Government Green Finance Scheme be Effective?," (May 9, 2012), **Public Exhibit 7-B-139**.
[461] Green Finance Portal, online at: <http://www.green-finance.or.kr>.

  - o The maximum loans amounts are larger than and the interest rates are more favorable than the loans that are provided by the private financing institutions.[462]

- Policy Guarantees:
  - o These are loan guarantees provided by government policy credit guarantee providers such as KEXIM (for exports), KTFC, and KODIT;
  - o The guarantees are provided for the loans provided for the use of "green technology," "green products," and "green companies"; and
  - o "Green" guarantees recipients qualify for larger amounts of loans guaranteed, higher guarantee ratio, and reduced guarantee fees.[463]

- Policy Insurance:
  - o These are insurance products provided by policy financing institutions such as K-SURE (for exports) and KODIT;
  - o The insurance products are provided to the "green" companies; and
  - o The insurance for the "green" companies are provided at lower insurance premiums than and have greater coverage than ordinary insurances.[464]

491. Legal authority for the creation of the Green Fund would appear to arise from the GOK's April 2010 *Framework Act on Low Carbon, Green Growth* (the "Framework Act"), article 28 of which provides that the GOK shall establish and enforce "financial measures" to facilitate low carbon, green growth, including "raising of financial resources for supporting green economy and green industries and financial support therefor" and "development of new financial products for supporting low carbon, green growth."[465]

492. Other relevant provisions in the Framework Act include:

> Article 26(1): "Facilitation of Research, Development and Commercialization of Green Technology": provides that the GOK may establish and enforce measures to facilitate research, development and commercialization of green technology, including "financial support for the facilitation of research, development and commercialization of green technology.

[462] Green Finance Portal, "Green Finance Products: Policy Loans," **Public Exhibit 7-B-140**.
[463] Green Finance Portal, "Green Finance Products: Policy Guarantees," **Public Exhibit 7-B-141**.
[464] Green Finance Portal, "Green Finance Products: Policy Insurance," **Public Exhibit 7-B-142**.
[465] *Framework Act on Low Carbon, Green Growth*, **Public Exhibit 7-B-143**.

> Article 26(2): provides that the GOK shall facilitate convergence of technology for information and communications and shall promote swift transformation into the low carbon, knowledge-based economy by securing intellectual property of green technology
>
> Article 30: provides that the GOK shall operate the State's tax system "in the direction of reducing goods and services that generate greenhouse gases and pollutants or that show low efficiency in the use of energy" and facilitating environmentally friendly goods.
>
> Article 31(1): provides that the GOK or any local government may provide support as may be necessary for green technology and green industries, "such as the payment of subsidies."
>
> Article 31(3): provides that the State or local government may support enterprises related to green technology and green industries by abating or exempting them from income tax, corporate tax, acquisition tax, property tax, registration tax, or other tax, as provided for by the Restriction of Special Taxation Act and the Local Tax Act.[466]

493. Article 32 of the Framework Act sets out a process for certification of "Green Company." Notably, as noted above, Dongbu Steel's recent voluntary disclosure reveals that the company has been a "Green Company" for some time.[467]

494. Various financing schemes under the "Green and New Growth Finance" program provides a direct transfer of funds (in the case of policy loans), potential direct transfer of funds or liabilities, (in the case of policy guarantees), and government services (in the case of policy insurance). As such, all such financing programs are financial contributions under the *SIMA* s. 2(1.6)(a).

495. Because these policy loans, guarantees, and insurance for targeted and selected "green" recipients are explicitly provided at more favorable terms than what the private provider would demand, the benefit within the meaning of the *SIMR* s. 28 is conferred. The Complainants would like to note that the financial viability assessment of an insurance program called for in the *SIMA*

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[466] *Framework Act on Low Carbon, Green Growth*, **Public Exhibit 7-B-143.**

[467] Dongbu Steel, Voluntary Disclosure Regarding Green Company Designation, (July 15, 2013), **Public Exhibit 7-B-132.**

Handbook in order to determine whether benefits were conferred is not relevant in this case, because the GOK explicitly provide that these policy insurance products are provided at reduced premiums compared to the comparable insurances.[468]

496. The Complainants believe, on the basis of information reasonably available to it, that various financing programs under the "Green and New Growth Finance" are specific both in law and in fact to an enterprise or industry. Specifically, policy loans are available only to the "green industry"; policy guarantees are available only for the loans provided for the use of "green technology," "green products," and "green companies; and policy insurance is available to the "green companies."[469] The United States Department of Commerce has in prior determinations found subsidies to be specific in law to an enterprise or industry where access to the subsidy is limited to companies or industries developing or promoting alternative energy.[470]

xi. Other Korean Subsidies Previously Found to Confer Countervailable Subsidies

497. A number of countervailable subsidy allegations have already been investigated by the United States Department of Commerce, and the following programs were found to be countervailable. To the extent that the Korean OCTG producers benefit from these programs, the Complainants urge the Agency to also investigate whether these programs confer countervailable subsidies to the subject producers.

1) Promotion of Specialized Enterprises for Parts and Materials

498. According to the United States Department of Commerce:

> Under the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials (Promotion of Specialized Enterprises Act), the GOK shares the costs of {R&D} projects with companies or research institutions. The goal of the program is to support technology development for core parts and

[468] Green Finance Portal, "Green Finance Products: Policy Insurance," **Public Exhibit 7-B-142.**

[469] Green Finance Portal, "Green Finance Products: Policy Loans," **Public Exhibit 7-B-140**; Green Finance Portal, "Green Finance Products: Policy Guarantees," **Public Exhibit 7-B-141;** Green Finance Portal, "Green Finance Products: Policy Insurance," **Public Exhibit 7-B-142.**

[470] United States Department of Commerce, *Corrosion-Resistant Carbon Flat Steel Products: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 FR 55745 (September 14, 2010), **Public Exhibit 7-B-89.**

> materials necessary for technological innovation and improvement in competitiveness. The program is administered by the {MKE} and Korea Evaluation Institute of Industrial Technology (KEIT).
>
> In accordance with Articles 3 and 4 of the Promotion of Specialized Enterprises Act, MKE prepares a base plan and a yearly execution plan for the development of the parts and materials industry. Under the execution plan, MKE announces to the public a detailed business plan for the development of parts and materials technology… After the selected application is finally approved by MKE, MKE and the participating companies enter into an R&D agreement and then MKE provides the grant. n15
>
> R&D project costs are shared by the GOK and companies or research institutions as follows: 1) When the group of companies involved in the research is made up of a ratio above two-thirds small to medium-sized companies, the GOK provides a grant up to 75 percent of the project cost; 2) When the group of companies involved in the research is made up of a ratio below two-thirds small to medium-sized companies, the GOK provides a grant up to one-half of the project cost.
>
> Upon completion of the project, if the GOK evaluates the project as "successful," the participating companies must repay 40 percent of the R&D grant to the GOK over five years. However, if the project is evaluated by the GOK as "not successful," the company does not have to repay any portion of the grant to the GOK. [471]

499. This program was recently countervailed in Corrosion-Resistant Carbon Steel Flat Products from Korea.[472] During the investigation, Hyundai Hysco reported, and the United States Department of Commerce found, that it participated in "two R&D projects under this program" and received benefits.

500. This program confers financial contribution to the recipients in the form of grant within the meaning of the *SIMA* s. 2(1.6)(a). Benefits conferred would vary depending whether the project is deemed "successful" by the GOK. In case of a "successful" project, the benefit conferred would be the outright grant, i.e. 60% of the initial government contribution, plus interest that the recipient

[471] United States Department of Commerce, *Corrosion Resistant Carbon Steel Flat Products: Final Results of Countervailing Duty Administrative Review*, 76 FR 3613, (January 20, 2011), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-B-144.**

[472] The United States Department of Commerce determined that this program was countervailable, but that Hyundai Hysco's use of the program resulted in benefits less than 0.005% of its sales.

was not liable to pay on the remaining 40% it has to repay. For "unsuccessful" projects, the benefit is the amount of the grant. In addition, this program is specific under *SIMA* s. 2(7.2)(a) to the companies engaged in "technology development for core parts and materials necessary for technological innovation and improvement in competitiveness."

2) Loans Under the Industrial Base Fund ("IBF")

501. According to the United States Department of Commerce:

> The IBF, managed by Ministry of Commerce, Industry, and Energy (MOCIE), provides policy loans to companies that expand their facilities and make investments in projects that strengthen the competitiveness and productivity of national industries. The IBF consists of eight separate parts, one of which, the Promotion of Industrial Parts and Material, provided loans to Namhan that were outstanding during the POI. The application that Namhan filed with MOCIE includes a section on the anticipated "effects" of the project, including the degree to which the project will promote exports and import substitution. Evidence collected at verification indicates that export and import substitution activities are one of several factors considered by MOCIE when providing loans under the Promotion of Industrial Parts and Material sub-program of the IBF. No other respondent received loans from the IBF.[473]

502. Information reasonably available to the Complainants does not allow them to assess whether or not the Korean OCTG producers used this program during the POI. However, to the extent any Korean OCTG producers are using this program, it provides financial contribution in the form of direct transfer of funds within the *SIMA* s. 2(1.6)(a). Any benefit conferred by this program is the difference between the interest actually paid and the interest that the recipient would have paid as set out under *SIMR* s. 28. In addition, to the extent the loans provided by the Korean OCTG producers are export contingent, these loans are specific pursuant to the *SIMA* s. 2(7.2)(b).

[473] United States Department of Commerce, *Coated Free Sheet Paper from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 72 FR 17507, (October 25, 2007) and accompanying *Issues and Decision Memorandum* at 15, **Public Exhibit 7-B-145**.

C. OCTG from Turkey are Being Subsidized

503. The Complainants have identified a large number of Turkish subsidy programs that benefit Turkish producers of OCTG. The identification of these programs is based on numerous documentary sources, including: Turkey's notification of active subsidy programs to the WTO, pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement, for the years of 2010 and 2011; the websites of the Government of Turkey's Ministry of Economy; the most recent final results from the U.S. subsidy administrative review regarding countervailing duties on Circular Welded Carbon Steel Pipes and Tubes From Turkey; the most recent results from the U.S. preliminary subsidy investigation regarding Certain Oil Country Tubular Goods from Turkey; and several other publicly-available sources regarding Turkish government subsidies.

504. The massive scale of Turkish subsidization of steel products, including OCTG, is best understood in the context of Turkey's "National Restructuring Plan" for the steel sector.

i. Massive Subsidization of Steel Production in Turkey – the National Restructuring Plan

505. Under an agreement between Turkey and the European Coal and Steel Community that entered into force in 1996, Turkey was granted a transition period to restructure and convert its steel industry, and for that purpose to grant subsidies to steel companies on a company-by-company basis.[474] This restructuring period was to last until August 2001. Turkish officials, however, applied to the EU in 2000 for an extension of five years. Consequently, the EU has required Turkey to prepare an adequate National Restructuring Programme or Plan ("NRP") which would provide detailed information and business plans for all of the companies that would be involved in the restructuring process. While drafts of the NRP were submitted in 2006 (when due) and subsequently, the European Commission did not accept them as complete and negotiations toward a final draft ensued.[475] The Complainants are not aware of any truly "final" or EC-accepted

[474] CPS Corporate & Public Strategy Advisory Group, "EU Acquis Guide Related to Steel Sector," **Public Exhibit 7-C-1**

[475] Republic of Turkey, Ministry of Industry and Trade, "Turkish Industrial Strategy Document, 2011-2014 (Towards EU Membership)" (2010) at 226, **Public Exhibit 7-C-26.**

versions of the NRP, nor does it appear that the company-by-company subsidization plans have ever been publically disclosed.

506. The aim of the NRP is to allow Turkish steel producers to receive massive government subsidies to help them convert their production capacities from lower-value long products to higher-value flat products (for which, in the early 2000's, Turkey was a net exporter and importer, respectively); increase their production quality; develop their product range to higher value-added products; reduce their production costs; and improve the viability and competitiveness of the sector as a whole.[476] Hot-rolled steel, of course, is the primary input for the production of welded OCTG, which is the type of OCTG produced in Turkey.[477]

507. The expected cost of the restructuring of the Turkish coal and steel sectors between 2006 and 2010 is USD 1 billion.[478] The Plan effectively amounts to a "bailout" plan and gives the Government of Turkey ("GOT") considerable control over the operations of the various steel participants.

508. The "2008 Progress Report" on Turkey's efforts to restructure its steel sector under the NRP, indicated:

> Some progress has been achieved as regards state aid in the steel sector. Following the transmission of new information in 2008, the Commission has an improved understanding of the state aid granted from 2001 until now. ..." {underlining added}.[479]

509. The "2010 Progress Report" indicates that:

> Little progress was made on State aid to the steel sector. State practices in support of this sector between 2001 and 2006 need to be finally assessed. No progress has been made in establishing institutions or a legal framework to regulate state aid in the transport or energy sector ... Formal verification of the steel

[476] Foreign Economic Relations Board (DEIK) (Turkey), Sector Brief for Foreign Companies – Iron and Steel Industry (December 2004) at 75, **Public Exhibit 7-C-25**; CPS Corporate & Public Strategy Advisory Group, "EU Acquis Guide Related to Steel Sector" at 63, **Public Exhibit 7-C-1**.
[477] MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013), **Confidential Exhibit 7-C-2**.
[478] CPS Corporate & Public Strategy Advisory Group, "EU Acquis Guide Related to Steel Sector" at 63, **Public Exhibit 7-C-1**.
[479] Commission of the European Communities, "Turkey 2008 Progress Report," (November 5, 2008) at 47, **Public Exhibit 7-C-3**.

> industry restructuring programme by the state aid monitoring authority is called for once that authority is established.[480]

510. Since the initial NRP submitted in 2006, there have been a number of significant investments by steel producers qualifying for support. These investments included the construction of a USD 500M hot strip mill at Gemlik announced in 2007 by a joint-venture between Borusan and ArcelorMittal, consistent with the stated intention of the NRP to convert Turkish production from long to flat products.[481] Another presumptively qualifying project is Tosyali Holding's USD 1B investment in a new integrated iron and steel facility located in the Osmaniye OIZ in 2009, which includes a hot sheet rolling mill.[482] Toysali has reported that it fabricates OCTG at that facility.[483] Similarly, Isdemir (further discussed below) has completed no less than 34 projects as "Modernization and Transformation Investments," whose aims – "transformation to flat product; eliminating the bottlenecks of existing plants; quantity and quality improvement; production cost reduction; and increasing production capacity" – are strikingly aligned with the GOT's NRP.[484]

511. It is against the backdrop of the NRP that the numerous other specific subsidy programs are most usefully and effectively to be reviewed.

1) <u>Subsidies to Vertically Integrated and Associated OCTG Producers under the National Restructuring Plan</u>

512. For vertically integrated OCTG producers with hot-rolled steel production capabilities, GOT subsidies under the NRP to flat product producers are direct subsidies to the integrated OCTG producers.

513. Non-vertically-integrated OCTG producers who source hot-rolled steel inputs from associated/affiliated suppliers also benefit under the NRP by way of GOT upstream subsidies to those affiliated suppliers of hot-rolled coil and other inputs. Agency policy of course already

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480 Commission of the European Communities, "Turkey 2010 Progress Report," (November 9, 2010) at 72, **Public Exhibit 7-C-4**.
481 ArcelorMittal, "ArcelorMIttal and Borusan announce $500 million investment in new hot strip mill in Turkey," (October 22, 2007), **Public Exhibit 7-C-5**.
482 Tosyali Holding, "Osmaniye Flat Steel Production Facilities," **Public Exhibit 7-C-6**.
483 Tosyali Holding, "Osmaniye Flat Steel Production Facilities," **Public Exhibit 7-C-6**.
484 Isdemir, "Investment Projects," **Public Exhibit 7-C-24**.

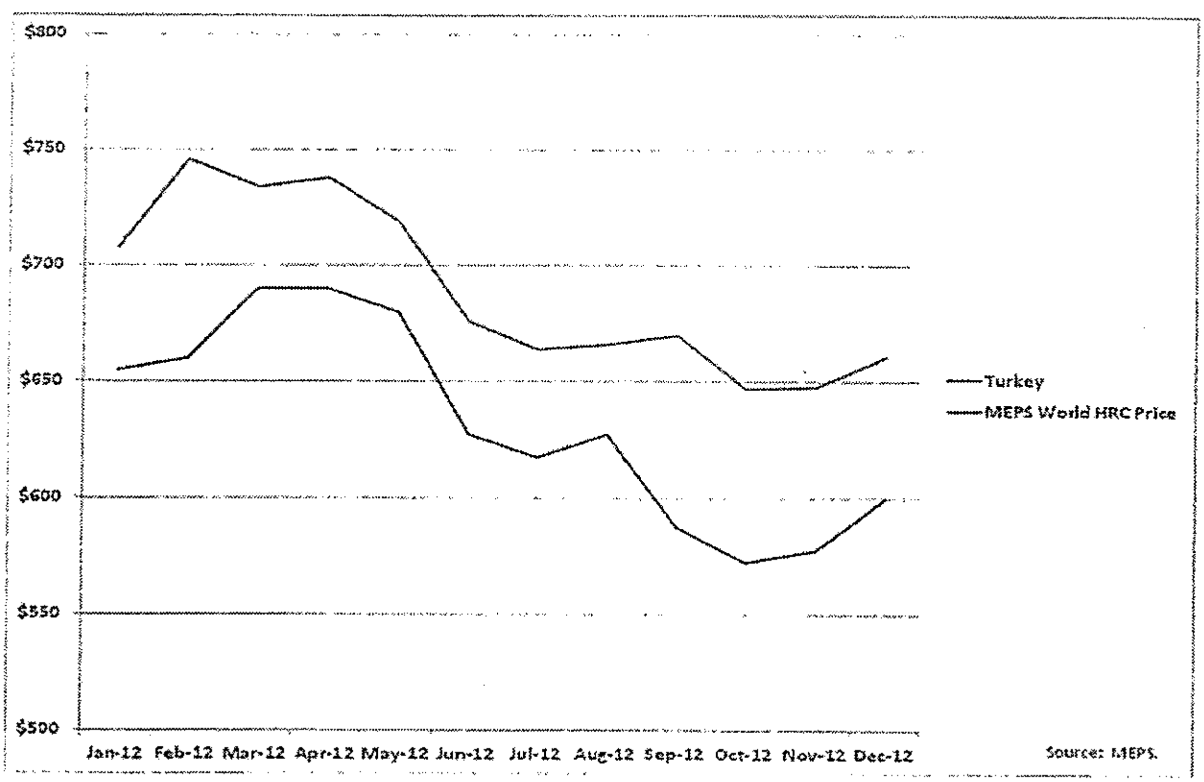
recognizes that subsidies to an input supplier prima facie benefit its associated, downstream producer (*SIMA Handbook* at p. 528).

514. The provision of grants and financing from the GOT is a financial contribution under *SIMA* s. 2(1.6)(a) in the form of a direct transfer of funds. These grants and other financing measures provide a benefit in the amount of the grant within the meaning of *SIMR* s. 27 or, in the case of financing, to the extent that below-market interest rates are charged within the meaning of *SIMR* s. 28. These subsidies are specific within the meaning of *SIMA* s. 2(7.2)(a) given that they are limited to the steel industry.

2) <u>The Provision of Hot-Rolled Steel for Less than Fair Market Value</u>

515. The result of the GOT's direct involvement in the Turkish hot-rolled steel industry has been the reduction of Turkish hot-rolled steel prices. Indeed, evidence suggests that Turkish hot-rolled prices have been consistently lower than world market prices.

<u>Turkish Hot-Rolled Prices versus Global Hot-Rolled Prices</u>



516. The overall effect of the subsidies is to distort the price of hot-rolled steel in Turkey, making these prices less than adequate and not reflective of fair market value.

517. In addition, however, two of Turkey's largest hot-rolled steel producers, who make up at least 54 percent of total steel capacity in Turkey – Erdemir and Isdemir –, are in effect state-owned enterprises.[485] Isdemir was acquired from the GOT by Erdemir on January 31, 2002, but nearly 50% of Erdemir is owned and controlled by Ordu Yardimlasma Kurum ("OYAK"), Turkey's military pension fund.[486] Pursuant to the Military Personnel Assistance {and Pension} Fund Law, OYAK is related to the Ministry of National Defence and its Representative Assembly must be comprised of units and establishments of the Turkish Armed Forces.[487]

518. Moreover, consistent with the considerable degree of retained control over Isdemir by the GOT through Erdemir, the GOT also made the sale of Isdemir contingent on the condition that the purchaser (Erdemir) transform Ismdemir's productive capabilities toward flat products in accordance with the NRP (which as described above is it is clearly doing).[488] This is effectively a direct requirement that Isdemir carry out GOT industrial policy. Indeed, compelling evidence that this policy-based stipulation amounts to residual GOT control is that there was "decreased interest for the bidding {for the purchase of Isdemir}."[489]

519. Turkish OCTG producers who do not have their own hot-rolled steel production, such as Cayirova Boru, likely purchase hot-rolled steel from Erdemir and Isdemir given the market share held by these government-controlled companies, and such purchases would by definition be made at less than fair market value, as noted above. Indeed, in the United States Department of Commerce's on-going investigation in Certain Oil Country Tubular Goods, both Borusan and Toscelik reported having purchased hot-rolled steel from Erdemir and Isdemir.[490]

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485 Turkish Hot-Rolled Steel Producers' Raw Steel Capacity, **Public Exhibit 7-C-7**.
486 Isdemir, "About Us," **Public Exhibit 7-C-8**.
487 *Military Personnel Assistance {and Pension} Fund Law*, art 3, **Public Exhibit 7-C-9**.
488 Mucteba Bekcan, "The Steel Sector: The Privatization of Erdemir," **Public Exhibit 7-C-27**.
489 Zehra Guner, "The Privatization in the Iron-Steel Sector in Turkey," (TMMOB Metalurji Muhendisleri Odasi 126) (2001), **Public Exhibit 7-C-28**.
490 United States Department of Commerce, *Certain Oil Country Tubular Goods: Negative Preliminary Determination in the Countervailing Duty Investigation of Turkey*, 78 FR 77420, (December 23, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-23**.

520. As state-owned or controlled enterprises, Erdemir and Isdemir's provision of hot-rolled steel is a financial contribution under *SIMA* s. 2(1.6)(c) in the form of the provision of goods by government. A benefit exists within the meaning of *SIMR* s. 36 to the extent that the price paid by OCTG producers is less than the fair market price, which, as indicated above, is the case by definition in Turkey. The program is specific under *SIMA* s. 2(7.2)(b) because the subsidy is limited to Turkish steel producers. Alternatively, in accordance with Agency policy, if Erdemir and Isdemir are not state-owned enterprises, the massive subsidies they receive (described throughout this Section) presumptively "pass through" to OCTG producers inasmuch as such producers benefit from the correspondingly low hot-rolled coil prices in Turkey.

521. The United States Department of Commerce in a post-preliminary decision in *Certain Oil Country Tubular Goods from Turkey* on April 18, 2014 determined that Erdemir is a state-owned or controlled enterprise , found this program to be countervailable, and levied margins of 1.67% to 25.76%, respectively.[491]

ii. Deduction from Taxable Income for Export Revenue

522. Under Addendum 4108 of Article 40 of Turkey's *Income Tax Law Number 193*, "all taxpayers may have an additional deduction of a lump sum amount from their gross income resulting from exports, construction, maintenance, assembly and transportation activities abroad ... not exceed{ing} 0.5 % of the proceeds they earned in foreign exchange from such activities."[492] There is every reason to believe that this export subsidy in the form of a tax deduction benefits the producers and exporters of OCTG in Turkey, who collectively exported between [ ] and [ ] MT of OCTG annually between 2010 and 2012.[493] Indeed, on October 30, 2013, the United States Department of Commerce found this program countervailable in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from*

[491] U.S. Department of Commerce, Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam Determinations, **Public Exhibit 8-11;** .

[492] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012), at II-4, **Public Exhibit 7-C-10**.

[493] MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013), 161, **Confidential Exhibit 7-C-2**.

Turkey. Specifically, the Department found that both Borusan and Toscelik, who are producers of OCTG, used and benefited from these countervailable subsidies.[494]

523. The program provides a financial contribution within the meaning of 2(1.6)(b) of the *SIMA* in the form of government revenue forgiven or not collected. A benefit exists under *SIMR* s. 32 in the amount of the income tax saved as a result of the deduction. Finally, the export-contingent nature of the program makes it a "prohibited subsidy" under the *SIMA* and therefore "specific" per se under s. 2(7.2)(b) of the *SIMA*.

iii. Preferential Benefits for Turkish OCTG Producers Located in "Free Zones"

524. The GOT's Investment Support and Promotion Agency describes "Free zones" as follows:

> {They are} special sites considered to be outside the customs area, although they are within the political borders of the country. These zones are designed to increase the number of export-focused investments. ... There are 20 FZs in Turkey (19 are operational) located close to the EU and Middle Eastern markets adjacent to major Turkish ports on the Mediterranean, Aegean, and Black Seas, with easy access to international trade routes.[495]

525. More specifically, the GOT has indicated that Kocaeli and Bursa were established as "Free Zones" in 2000.[496] Borusan's Gemlik Plant, where it produces ERW OCTG pipe, is located in Bursa.[497] Cayirova Boru's factory is located in Kocaeli.[498] Other Turkish OCTG producers and exporters are likewise likely to be located in Free Zones.

526. Details of specific Free Zone subsidy programs are as follows.

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[494] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[495] Government of Turkey Investment Support and Promotion Agency, "Special Investment Zones," **Public Exhibit 7-C-12**.
[496] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012) at II-106 and Exhibit 44, **Public Exhibit 7-C-10**.
[497] Borusan Mannesmann, "Our Plants," **Public Exhibit 7-C-13**.
[498] Cayirova Boru, "About," **Public Exhibit 7-C-14**.

1) Corporate Income Tax Exemption

527. According to Article 3 of the Free Zones Law number 3218, until the end of the fiscal year when Turkey officially joins the European Union, "the earnings of the manufacturer taxpayers" located in a Free Zone "are exempted from the {sic} income or corporate taxes."[499] To date, Turkey is not a member of the EU.[500] The GOT's Investment Support and Promotion Agency further states that one of the numerous advantages of locating in a Free Zone is a "100% exemption from corporate income tax for manufacturing companies."[501]

528. Under this program, a financial contribution as described in *SIMA* s. 2(1.6)(b) exists in the form of amounts otherwise owing and due being left uncollected, with a benefit existing under *SIMR* s. 27.1(2) in the amount of income or corporate tax otherwise due. Because the exemption is geographically limited to designated Free Zones, the subsidy is "limited to a particular enterprise within the jurisdiction of the authority that is granting the subsidy," within the meaning of *SIMA* s. 2(7.2)(a).

529. The United States Department of Commerce found this program countervailable in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from Turkey*.[502]

2) Income Tax Exemption for Workers of Certain Manufacturers

530. According to Article 3 of the Free Zones Law number 3218, until the end of the fiscal year when Turkey officially joins the European Union, "{t}he wages of the workers employed by the taxpayers that export at least 85 percent of the FOB value of the goods they produce in the free zones are excepted from income tax."[503]

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[499] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012) at II-103 and Exhibit 42, **Public Exhibit 7-C-10**.
[500] European Union, "Member states of the EU," **Public Exhibit 7-C-15**.
[501] Government of Turkey Investment Support and Promotion Agency, "Special Investment Zones," **Public Exhibit 7-C-12**.
[502] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum* at 15-16, **Public Exhibit 7-C-11**.
[503] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012) at II-103 and Exhibit

531. Information reasonably available to the Complainants does not allow for a precise assessment as to whether Cayirova Boru, Borusan, or any other producer or exporter of OCTG located in a Free Zone exported at least 85% of its production. However, according to the MBR 5 Year Outlook, Turkey produced [ ] MT of OCTG in 2010, 2011, and 2012, respectively.[504] Exports of OCTG over those years was [ ] MT, respectively. The Complainants therefore submit that information reasonably available to them indicate that the workers of Cayirova Boru, Borusan and any other manufacturer of OCTG located in a Free Zone likely received the above-mentioned income tax subsidy.[505]

532. Here too, a financial contribution as described in *SIMA* s. 2(1.6)(b) exists in the form of amounts otherwise owing and due being left uncollected. A benefit under *SIMR* s. 27.1(2) is conferred in the amount of the difference between the sum of the wages these firms would have to pay at regular worker taxation levels and the sum of the wages actually paid under the exemption. This is because the net pay to the worker remains unchanged, while the beneficiary OCTG producers incur less labour cost overall. This program is specific within the meaning of SIMA s. 2(7.2)(b), because it is contingent on the recipient's export performance. Specifically, the recipient is required by law to export at least 85% of its production in order to benefit from the exemption. In addition, this program is limited to the enterprise located in designated free zones within the jurisdiction of the authority that is granting the subsidy. As such, it is also geographically specific within the meaning of *SIMA* s. 2(7.2) and as elaborated by the *SIMA Handbook* at 486-487.

533. The United States Department of Commerce found this program countervailable in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from Turkey.*[506]

42, **Public Exhibit 7-C-10**. See also, Government of Turkey Investment Support and Promotion Agency, "Special Investment Zones," **Public Exhibit 7-C-12**.

[504] MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013), 161, **Confidential Exhibit 7-C-2**.

[505] Cayirova Boru, "About," **Public Exhibit 7-C-14**.

[506] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum* at 15-16, **Public Exhibit 7-C-11**.

iv. Provision of Natural Gas and Coal at Less than Fair Market Value

534. The GOT subsidizes OCTG by providing natural gas and coal at less than fair market value. Because energy is a significant input into the production of steel, OCTG producers benefit significantly from energy sources, such as natural gas and coal, provided at less than fair market value. Energy is of such importance to Turkish steel producers, that certain major OCTG producers own power plants.[507]

535. The GOT exercises effective control of the natural gas market through state owned Boru Hatlari ile Petrol Ta *SIMA* A.S. ("BOTAS"). BOTAS had an official monopoly on natural gas sales and pricing until May 2001.[508] While BOTAS no longer officially exercises that control, even by October 2012, BOTAS continued to have an effective monopoly in the natural gas market.[509] This gives the GOT effective control over the pricing of the natural gas market. BOTAS, acting under the direction of the Turkish Energy Ministry, sells natural gas at a loss by selling gas below the import price.[510] Under this model, BOTAS and GOT absorb the loss, while OCTG and other steel producers who consume significant amounts of energy from their natural gas based power plants benefit from this unfairly priced natural gas.

536. As the GOT provides natural gas at less than fair market value, it also subsidizes coal. Instead of natural gas based power plants, certain major OCTG producers, like Borusan, have invested in coal-based power plants.[511] The supply and pricing of both lignite and hard coal is controlled by state-owned entities (Turkish Coal Enterprises ("TKI") and Turkish Hard Coal Enterprises ("TTK") respectively).

537. The GOT significantly subsidizes hard coal prices through TTK. For example, in 2008, the cost of production of hard coal was U.S.$ 289, while the cost to steel producers was only U.S.$

[507] Hurriyet Daily News, "Borusan reveals ambitious investment targets" (March 10, 2010), **Public Exhibit 7-C-30**.
[508] Botas, "About Us," **Public Exhibit 7-C-31**.
[509] Turkish Weekly, "Compliance with EU Regulations and the BOTAS Liberalization Process" (October 11, 2012), **Public Exhibit 7-C-32**.
[510] Today's Zaman, "Poor Energy Policy, Pricing Model cost BOTAŞ Dearly" (August 2, 2012), **Public Exhibit 7-C-33**; See also Deloitte, "Turkey's Natural Gas Market: Expectations and Developments 2012" (April 2012), **Public Exhibit 7-C-34**.
[511] Hurriyet Daily News, "Borusan reveals ambitious investment targets" (March 10, 2010), **Public Exhibit 7-C-30**.

180 per tonne, providing a substantial subsidy to OCTG and other steel producers who rely on hard coal for energy.[512]

538. The provision of natural gas and coal at less than fair market value is a financial contribution within the meaning of *SIMA* s. 2(1.6)(c) as a provision of goods or services. A benefit exists within the meaning of *SIMR* s. 36 in the difference between the price paid for natural gas and coal from the GOT and the market price of natural gas and coal. The subsidy is specific as it is predominately used by the steel industry.

v. Regional Subsidies

1) Withholding of Income Tax on Wages and Salaries in Certain Provinces

539. The GOT, through the Ministry of Finance, administers the Withholding of Income Tax on Wages and Salaries Program pursuant to Articles 2 and 3 of Law 5084.[513] All enterprises or industries established in the 49 provinces which have a gross domestic product per capita equal to or less than $1,550 YSD or which have a negative socio-economic development index value can benefit from this program. There are two levels of withholding based on where the enterprise is established. If the enterprise is in an Organized Industrial Zone or an Industrial Zone, the enterprise can benefit from a 100% cancellation of income tax calculated on the wages of all workers. Companies whose premises are located in other areas are entitled to an 80% cancellation of income tax.

540. The United States Department of Commerce found this program countervailable in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from Turkey*, and specifically found that Toscelik used and benefited from this program.[514] Based on the information available to the Complainants, it appears that at least Toscelik and Umran

[512] International Energy Agency, "Turkey 2009 Review" (2010), **Public Exhibit 7-C-35**.
[513] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[514] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying Issues and Decision Memorandum, **Public Exhibit 7-C-11**.

Celik are located in an eligible province as described above and would therefore qualify for this program.[515]

541. The Withholding of Income Tax on Wages and Salaries Program provides a financial contribution as described in *SIMA* s. 2(1.6)(b) in that amounts otherwise owing and due are not collected and a benefit within the meaning of *SIMR* s. 27.1(2) in the amount of income tax saved. This program, while provided by the national government through the Ministry of Finance, is restricted to the enterprises located within the 49 designated provinces. Since the granting authority, the national GOT, has jurisdiction over all of Turkey's 81 provinces, and the program is limited to the enterprises located in the 49 provinces, the program constitutes a geographically specific subsidy within the meaning of SIMA s. 2(7.2) and as elaborated by the *SIMA Handbook* at 486-487.[516] In addition, the enterprises located within Organized Industrial Zones and Industrial Zones receive heightened benefits, *i.e.*, 100% cancellation of income tax, compared to 80% provided to the enterprises located elsewhere within the 49 provinces. As such, the program, to the extent it provides heightened benefits to particular enterprises located within the designated Zones, are additionally geographically specific within the meaning of SIMA s. 2(7.2).

2) Incentive for Employers' Share in Insurance Premiums

542. Pursuant to Article 2 and Article 4 of Law 5084, the GOT has set up the Employer's Share in Insurance Premiums Program.[517] The purpose of the program is to increase investments and employment opportunities in certain provinces by providing support for the employer's share of insurance premiums. As with the Withholding of Income Tax on Wages and Salaries Program, support is provided in the 49 provinces that have a GDP equal to or less than $1,500 USD or a negative socio-economic development index. Enterprises in Organized Industrial Zones or Industrial Zones located in those 49 provinces can benefit from a 100% cancellation while those in other areas receive an 80% cancellation. Support is provided if monthly premium and service

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[515] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012) at Exhibit 25, **Public Exhibit 7-C-10**.

[516] The US Central Intelligence Agency, The World Factbook: Government of Turkey, **Public Exhibit 7-C-36**.

[517] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.

documents are submitted to the Social Security Institution and if they pay the amounts corresponding to the employees' share in the insurance premiums.

543. Here again, the United States Department of Commerce found this program countervailable in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from Turkey*, and specifically found that Toscelik used and benefited under this program. Based on the information reasonably available to the Complainants, it appears that OCTG producers Toscelik and Umran Celik at a minimum are located in an eligible province as described above and would therefore qualify for this program.[518]

544. Insurance premium incentive provides a financial contribution as described in *SIMA* s. 2(1.6)(b) in the form of amounts (insurance premiums) otherwise owing and due but not collected and provides a benefit within the meaning of *SIMR* s. 27.1(2) in the amount of insurance premiums uncollected. This program is provided by the national government of Turkey, but is restricted to the enterprises located within the 49 provinces. Since the granting authority, the national GOT, has jurisdiction over all of Turkey's 81 provinces, and the program is limited to the enterprises located in the 49 designated provinces, the program constitutes a geographically specific subsidy within the meaning of SIMA s. 2(7.2) and as elaborated by the *SIMA Handbook* at 486-487.[519] In addition, the enterprises located within Organized Industrial Zones and Industrial Zones receive heightened benefits, i.e., 100% cancellation, compared to 80% provided to the enterprises located elsewhere within the 49 designated provinces. As such, the program, to the extent it provides heightened benefits to particular enterprises located within the designated Zones, are additionally geographically specific within the meaning of SIMA s. 2(7.2).

3) Provision of Free Land and Provision of Land at Less than Fair Market Value

545. All enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than $1,550 USD or have a negative socio-economic development index value that

[518] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012) at Exhibit 25, **Public Exhibit 7-C-10**.
[519] The US Central Intelligence Agency, The World Factbook: Government of Turkey, **Public Exhibit 7-C-36**.

are also located in an Organized Industrial Zone can benefit from free land allocation support pursuant to Article 1 of Law 5084.[520]

546. The United States Department of Commerce also found this program countervailable in in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from Turkey*, as well as in its investigation of *Certain Oil Country Tubular Goods from Turkey*, and specifically found in both that Toscelik used and benefited from this program.[521] Here again, based on information reasonably available to the Complainants, it appears that Toscelik and Umran Celik, both OCTG producers, are located in an eligible province as described above and would therefore qualify for this program.[522]

547. Provision of free and/or discounted land constitute a financial contribution in the form of a government provision of goods (land) under *SIMA* s. 2(1.6)(c), with the benefit under *SIMR* s. 36 being in the amount of the fair market value of the free land provided. Free land is provided by the national government of Turkey, but is restricted to the enterprises located within the Organized Industrial Zones in the 49 designated provinces. Since the granting authority, the national GOT, has jurisdiction over all of Turkey, and the program is limited to the enterprises located within the Organized Industrial Zones, the granting of free and/or discounted land constitutes a "geographically specific" subsidy within the meaning of SIMA s. 2(7.2) and as elaborated by the *SIMA Handbook* at 486-487.

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[520] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.

[521] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**; United States Department of Commerce, *Certain Oil Country Tubular Goods: Negative Preliminary Determination in the Countervailing Duty Investigation of Turkey*, 78 FR 77420, (December 23, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-23**.

[522] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012) at Exhibit 25, **Public Exhibit 7-C-10**.

4) Provision of Electricity at Less than Adequate Remuneration under the Energy Support Program

548. Pursuant to Articles 2 and 6 of Law 5084, the GOT administers the Energy Support Program.[523] As with the other Law 5084 programs, support is provided to those provinces under the GDP threshold or designated as having a negative socio-economic development index. The energy support is in the form of a grant measured at a rate that is between 20 and 30 percent of the electricity energy costs of the recipient, and varies depending upon the level of employment and new hires in a given year.

549. Here once again, the United States Department of Commerce found this program countervailable in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from Turkey*, and specifically found that Toscelik used and benefited from this program.[524]

550. The Energy Support Program constitutes a financial contribution through a direct transfer of funds under *SIMA* s. 2(1.6)(a), providing a benefit under *SIMA* s. 27.1(1) in the amount of the grant provided. This program is provided by the national government of Turkey, but is restricted to the enterprises located within the 49 designated provinces. Since the granting authority, the national GOT, has jurisdiction over all of Turkey's 81 provinces, and the program is limited to the enterprises located in the 49 designated provinces, the program constitutes a geographically specific subsidy within the meaning of SIMA s. 2(7.2) and as elaborated by the *SIMA Handbook* at 486-487.[525]

551. In addition, this program confers subsidies to the operations of the Turkish producers of OCTG in the form of lower electricity costs. Specifically, benefits flowing from lower electricity costs are constituted as lower costs of production, which materializes into artificially stronger competitiveness in the marketplace immediately when the subsidy is provided. In addition, the

[523] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[524] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[525] The US Central Intelligence Agency, The World Factbook: Government of Turkey, **Public Exhibit 7-C-36**.

design of the program provides that the Turkish OCTG producers would receive lower electricity costs from year to year as long as they meet the eligibility criteria. For these reasons, the benefits of reduced electricity costs should be treated as recurring benefits, all of which should be expensed during the period they were received.

5) Exemption from Property Tax

552. Pursuant to Article 4 of Law No. 3365, the GOT provides an exemption from property tax for the first five years following the completion date of the construction of buildings in an Organized Industrial Zone.[526]

553. The United States Department of Commerce also found this program countervailable in its most recent countervailing duty administrative review in *Circular Welded Carbon Steel Pipes and Tubes from Turkey*, and specifically found that Toscelik used and benefited under this program.[527] Based on the information reasonably available to the Complainants and the likely growing number of Organized Industrial Zones in Turkey, the possibility of other producers or exporters of OCTG being in an Organized Industrial Zone is real.[528] In light of this, the Complainants urge the Agency to investigate all producers and exporters of OCTG and request that the GOT provide the most up-to-date listing of Organized Industrial Zones in Turkey.

554. Under this program, a financial contribution within the meaning of *SIMA* s. 2(1.6)(b) exists in the form of amounts otherwise owing and due being left uncollected, with a benefit under *SIMR* s. 27.1(2) existing in the amount of property tax otherwise due. Because the exemption is geographically limited to Organized Industrial Zones, the subsidy is "limited to a particular enterprise within the jurisdiction of the authority that is granting the subsidy," within the meaning of *SIMA* s. 2(7.2)(a).

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[526] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[527] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[528] Government of Turkey, "Response of the Government of Turkey in the 2011 Countervailing Duty Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey," (July 30, 2012) at Exhibit 25, **Public Exhibit 7-C-10**.

vi. Investment Encouragement Program ("IEP"): Customs Duty Exemptions

555. The GOT provides IEPs (certificates) that allows qualified firms to import items duty free. Since January 1, 2009, the program is limited to firms making investments in excess of TL 50 million as well as to firms located in certain geographic regions.[529]

556. In the United States Department of Commerce's most recent countervailing duty administrative review in Circular Welded Carbon Steel Pipes and Tubes from Turkey, Toscelik reported having been issued Certificate 100814 B after the above-noted program changes came into effect. As a result, the Department found this program to be countervailable and specifically found that Toscelik used and benefited under this program.[530]

557. In the United States Department of Commerce's preliminary countervailing duty determination in *Certain Oil Country Tubular Goods*, Borusan and Toscelik reported having received benefits under this program after the above-noted changes came into effect and the Department found this program to be countervailable and specifically found that both companies used and benefited under this program.[531]

558. A financial contribution within the meaning of *SIMA* s. 2(1.6)(b) exists under this program in the form of amounts otherwise owing and due (duties on imports) that are forgiven or not collected, conferring a benefit under *SIMR* s. 27.1(2) in the amount of the duty that would have otherwise been collected. This program is specific within the meaning of *SIMA* s. 2(7.2)(a) because it is limited to certain enterprises in Turkey, both in terms of investment value and geographic location.

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[529] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[530] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.
[531] United States Department of Commerce, *Certain Oil Country Tubular Goods: Negative Preliminary Determination in the Countervailing Duty Investigation of Turkey*, 78 FR 77420, (December 23, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-23**.

vii. Export Credits, Loans and Insurance Provided by the Turk Eximbank

1) Pre-Shipment Export Credits

559. The Turk Eximbank is "a fully state-owned bank acting as the Turkish government's major export incentive instrument in Turkey's sustainable export strategy."[532] It provides short-term export loans to exporter through intermediary commercial banks. These pre-shipment export credits are "short-term credit facilities covering all sectors and providing financial support to exporters starting from the early stages of production."[533] Under the program, credits are extended either in TL or in foreign currency for a maximum maturity of 540 days and cover up to 100 percent of the FOB export value. The interest rate charged on these loans is established by the Eximbank.[534] The Complainants have evidence that receipt of these loans is contingent upon export performance and the interest paid on the loans is less than the amount the recipient would pay on comparable commercial loans.[535] Iron and steel manufacturers accounted for 9% of these credits in 2006, which strongly suggests that the Turk Eximbank has been a major financier of the Turkish steel industry, including OCTG producers.[536] Indeed, Boursan reported to the United States Department of Commerce that it paid interest against pre-shipment rediscount loans.[537]

560. Pre-shipment export credits constitute a financial contribution under *SIMA* s. 2(1.6)(a) in the form of a direct transfer of funds. A benefit is provided under *SIMR* s. 28 in the differential between the interest on the loan and the interest the recipient would pay on a comparable commercial loan. The program is export contingent and therefore a prohibited subsidy under *SIMA* s. 2(7.2)(b).

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[532] Turk Eximbank, "About Us," **Public Exhibit 7-C-20.**
[533] Turk Eximbank, "Annual Report 2011" at 21, **Public Exhibit 7-C-16.**
[534] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, at 5, **Public Exhibit 7-C-11.**
[535] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, at 5, **Public Exhibit 7-C-11.**
[536] WTO Secretariat, *Trade Policy Review: Turkey* (Excerpts), **Public Exhibit 7-C-17.**
[537] Response of Boursan Mannesmann Boru Sanayi ve Ticaret A.S. and the Borusan Group in the 2011 Administrative Review of *Certain Welded Carbon Steel Standard Pipe from Turkey* (excerpts), **Public Exhibit 7-C-18.**

2) Pre-Export Foreign Currency and Turkish Lira Credit

561. The Turk Eximbank offers a credit facility to all export-oriented manufacturers, manufacturer-exports, and exporters.[538] Credits are extended directly to exporters upon their 100% export commitment and provided for up to 540 days in foreign currency. OCTG producers likely use this program. For example, Borusan reported to the United States Department of Commerce that it paid interest in 2010 against pre-shipment loans.[539]

562. Pre-shipment export credits constitute a financial contribution under *SIMA* s. 2(1.6)(a) in the form of a direct transfer of funds. A benefit under s. 28 is provided in the amount of difference between the interest paid and the interest that would have been paid on a commercial loan. The export credits are export contingent and therefore specific, prohibited subsidies under *SIMA* s. 2(7.2)(b).

3) Short-Term Pre-Shipment Rediscount Program

563. The Short-Term Pre-Shipment Rediscount Program ("SPRP") provides loans to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters, and is contingent upon an export commitment. Specifically, "promissory notes issued by exporters on behalf of Türk Eximbank, which have the {avail} of banks possessing a short-term letter of guarantee limit with Türk Eximbank are discounted under this limit."[540]

564. In the United States Department of Commerce's most recent countervailing duty administrative review in Circular Welded Carbon Steel Pipes and Tubes from Turkey, Borusan and Toscelik reported having paid interest against pre-shipment rediscount export credit loans.[541] The United States Department of Commerce countervailed this program and specifically found that Borusan and Toscelik used and benefited from this program.

[538] Turk Eximbank, "Pre-Export Foreign Currency and Turkish Lira Credit," **Public Exhibit 7-C-19**.
[539] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, at 7, **Public Exhibit 7-C-11**.
[540] Turk Eximbank, "Short Term Pre-Shipment Rediscount Program," **Public Exhibit 7-C-21**.
[541] United States Department of Commerce, *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, (October 30, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-C-11**.

565. The program provides a financial contribution by the government as a direct transfer of funds within the meaning of s. 2(1.6)(a) of the *SIMA*, and there is a benefit under *SIMR* s. 28 conferred to manufacturers and exporters in the amount of the difference in interest that would have been paid on comparable commercial loans. Because the program is export-contingent, it is therefore a prohibited subsidy and deemed specific under *SIMA* under s. 2(7.2)(b).

4) Post-Shipment Rediscount Credit Program

566. Under this program, Turkish exporters are able to sell Turkish goods on deferred payment terms.[542] Export receivables subject to bankers' acceptances provided by commercial banks and/or irrevocable letters of credit and/or export receivables that were insured by Turk Eximbank Short-Term Export Credit Insurance policy are discounted by Turk Eximbank. Given that Turkish OCTG producers have received benefits under other Turk Eximbank export credit programs, it is likely they also received benefits under this program.

567. Here too, a financial contribution exists under this program in the form of a direct transfer of funds within the meaning of s. 2(1.6)(b) of the *SIMA*. A benefit exists under *SIMR* s. 28 in the difference between the interest made on the loans and the interest the company would have made on comparable commercial loans. The program is specific under *SIMR* s. 2(2.7)(b) as it is a prohibited export-contingent subsidy.

viii. Other Programs

568. A Government of Turkey, Ministry of Economy web publication confirms that several OCTG producers, Erdemir and Isdemir received various other subsidies in recent years.[543] These include:

- Erdemir Madencelik received vast subsidies on May 31, 2013, specifically a customs duty exemption, VAT refund, tax discount (90%), 50% contribution to the investment, coverage of seven years' worth of social security premiums, and interest support, in relation to a massive new mining investment costing USD $208,339,362;

[542] Turk Eximbank, "Post Shipment Rediscount Credit Program," **Public Exhibit 7-C-22**.
[543] Government of Turkey, Official Gazette (selected dates, 2000 – 2013), **Public Exhibit 7-C-29**.

- Izdemir Elektrik received customs duty and VAT exemptions on March11, 2011, in relation to a massive USD $239,160,000 investment in a 350MW electric power generation (thermal) plant or equipment;

- Borusan received customs duty and VAT exemptions, as well as an "Investment Discount Exemption 40%, in relation to a modernization investment, on June 4, 2002, and VAT and customs duty exemptions on February 2, 2012, for investments in unspecified devices or machines valued at USD $36,917,072;

- Umran Celik received VAT and customs duty exemptions on October 10, 2005, June 22, 2006, and December 25, 2008, for various investments; and

- Toscelik received:

    - VAT and customs duty exemptions, as well as a "Tax, Duty and Fee Exemption" and "Investment Discount Exemption 100%," in relation to a large pipe-related investment, on February 20, 2003;

    - VAT and customs duty exemptions, in relation to another large pipe-related investment, on November 9, 2005;

    - VAT and customs duty exemptions, as well as "interest support," in relation to a new investment, on November 30, 2007; and

    - VAT and customs duty exemptions, in relation to a massive USD 129,664,333 investment, on April 15, 2011.

- Çayirova Boru received VAT and customs duty exemptions, as well as a "Tax, Duty and Fee Exemption" and "Investment Discount Exemption 100%," in relation to an extension project, on November 9, 2000, and VAT and customs duty exemptions, in relation to a modernization investment, on January 26, 2011.

D. OCTG from Thailand are Being Subsidized

i. Benefits Under the *Investment Promotion Act*

569. Pursuant to the *Investment Promotion Act*, the Thailand Board of Investment ("BOI") is authorized to grant a number of incentives, guarantees, and protection to eligible companies.[544] In order to access these programs, the company seeking benefits must meet legislated criteria under the *Investment Promotion Act*, the BOI's internal rules and regulations, and must be approved by the BOI.[545]

570. Thai OCTG producers meet the criteria to access the benefits under this program. In particular, the BOI has established regulations to the effect that a number of "Mining, Ceramics and Basis Metals" activities are "activities ... eligible for promotion."[546] Within the category of "Metal Products, Machinery and Transport Equipment," the BOI has designated "Manufacture of steel pipes or stainless steel pipes" as activities eligible for promotion.[547]

571. More specifically, information reasonably available confirms that the BOI has granted access to the various programs under the *Investment Promotion Act* to at least two Thai OCTG producers. On May 7, 2010, the BOI approved aid in the amount of 1.75 billion Baht ($57 million CAD) to WSP Pipe Co. Ltd ("WSP"), a Thai OCTG producer.[548] Additionally, the BOI has identified Mei Lan (Thailand) Co., Ltd. ("Mei Lan"), another Thai OCTG producer as a "promoted company."[549]

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[544] *Investment Promotion Act*, B.E. 2520, **Public Exhibit 7-D-1**.
[545] See Thailand Board of Investment, "Criteria for Project Approval," **Public Exhibit 7-D-2**; Thailand Board of Investment, "Procedures for Obtaining Promotion Privileges," **Public Exhibit 7-D-3**.
[546] Thailand Board of Investment, "Types, Sizes and Conditions of Activities Eligible for Promotion," **Public Exhibit 7-D-4**.
[547] Thailand Board of Investment, "Section 2: Mining Ceramics and Basis Metals," **Public Exhibit 7-D-5**.
[548] The Nation, "BoI to assess protest impact" (7 May 2010), **Public Exhibit 7-D-6**; National News Bureau of Thailand Public Relations Department, "BoI approves aid to 19 investment projects" (7 May 2010), **Public Exhibit 7-D-7**; Thailand Board of Investment, "BOI Promoted Company Profile: WSP Pipe Co. Ltd.," **Public Exhibit 7-D-8**.
[549] Thailand Board of Investment, "BOI Promoted Company Profile: Mei Lan (Thailand) Co., Ltd.," **Public Exhibit 7-D-9**.

572. Benefits provided under the *Investment Promotion Act* are specific pursuant to *SIMA* s. 2(7.2)(a) as the instrument or document expressly limits access to benefits to certain enumerated industries.

573. Under the *Investment Promotion Act*, WSP and Mei Lan, and any other Thai producers of OCTG that have under the Act, would qualify for the following programs, which are each described in greater detail in the Sections below.

1) Exemption or Reduction of Duties on Imports of Machinery

574. Section 28 of the *Investment Promotion Act* provides for exemptions from duties on machinery imports. Under this provision, companies are entitled to the full exemption rate from payment of import duty on machinery as approved by the BOI of Thailand, provided that no machinery comparable in quality is being produced or assembled in Thailand.[550] Section 29 specifies that the full exemption rate is 50%.[551]

575. Import duty exceptions provide a financial contribution under *SIMA* s. 2(1.6)(b) in the form of exempted amounts otherwise due to the government. A benefit is provided under *SIMR* s. 27.1(2) equal to the amount exempted that would have otherwise been payable. In addition, this program is only available for the "promoted activities," defined in the eligibility criteria as activities pertaining to the listed industries, one of which includes "mining, ceramics, and basic metals."[552] As mentioned above, the BOI further defines "mining, ceramics, and basic metals," which explicitly includes "manufacture of steel pipes or stainless steel pipes," and in particular, singles out "the manufacture of seamless steel pipes" as a "priority activity."[553] As such, this program is *de jure* specific within the meaning of SIMA s. 2(7.2)(a).

2) Reduction of Import Duties for Raw or Essential Materials

576. Under s. 30 of the *Investment Promotion Act*, the Board may grant promoted persons a reduction of import duties not exceeding 90% of the normal rates imposed on raw or essential

[550] *Investment Promotion Act*, B.E. 2520, s. 28, **Public Exhibit 7-D-1**.
[551] *Investment Promotion Act*, B.E. 2520, s. 29, **Public Exhibit 7-D-1**.
[552] Thailand Board of Investment, "Types, Sizes and Conditions of Activities Eligible for Promotion," **Public Exhibit 7-D-4**.
[553] Thailand Board of Investment, "Section 2: Mining Ceramics and Basis Metals," **Public Exhibit 7-D-5.**

materials.[554] These imports must be for the purposes of producing, mixing, or assembling in the promoted activity and such raw or essential materials comparable in quality must not be produced in Thailand. The current duty rates in Thailand for flat hot-rolled steel, billets, and green tube are 15%, 10%, and 20%, respectively.[555]

577. Import duty exceptions provide a financial contribution under *SIMA* s. 2(1.6)(b) in the form of exempted amounts otherwise due to the government. A benefit is provided under *SIMR* s. 27.1(2) equal to the amount exempted that would have otherwise been payable. In addition, this program is only available for the "promoted activities," defined in the eligibility criteria as activities pertaining to the listed industries, one of which includes "mining, ceramics, and basic metals."[556] As mentioned above, the BOI further defines "mining, ceramics, and basic metals," which explicitly includes "manufacture of steel pipes or stainless steel pipes," and in particular, singles out "the manufacture of seamless steel pipes" as a "priority activity."[557] As such, this program is *de jure* specific within the meaning of SIMA s. 2(7.2)(a).

3) Exemption from Corporate Income Tax

578. Section 31 of the *Investment Promotion Act* provides for an exemption from the Thailand corporate income tax for a period of not more than eight years from the date income is first derived from such activity.[558] The corporate income tax rate varies as to whether the company is a small company or a company listed in the Stock Exchange of Thailand and the amount of net profit reported by the company. The rates range from 15% to 30%.[559]

579. This tax incentive provides a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are exempted. It provides a benefit under *SIMR* s. 27.1(2) equal to the amount exempted. In addition, this program is only available for the "promoted activities," defined in the eligibility criteria as activities pertaining to the listed industries, one of

[554] *Investment Promotion Act*, B.E. 2520, s. 31, **Public Exhibit 7-D-1**.
[555] Customs Duty Rates, **Public Exhibit 7-D-11**.
[556] Thailand Board of Investment, "Types, Sizes and Conditions of Activities Eligible for Promotion," **Public Exhibit 7-D-4**.
[557] Thailand Board of Investment, "Section 2: Mining Ceramics and Basis Metals," **Public Exhibit 7-D-5**.
[558] *Investment Promotion Act*, B.E. 2520, s. 31, **Public Exhibit 7-D-1**.
[559] Thailand Revenue Department, "Corporate Income Tax," **Public Exhibit 7-D-10**.

which includes "mining, ceramics, and basic metals."[560] As mentioned above, the BOI further defines "mining, ceramics, and basic metals," which explicitly includes "manufacture of steel pipes or stainless steel pipes," and in particular, singles out "the manufacture of seamless steel pipes" as a "priority activity."[561] As such, this program is *de jure* specific within the meaning of SIMA s. 2(7.2)(a).

ii. Subsidization of Thai Subsidiaries of Chinese OCTG Producers by the Government of China

580. The Complainants have evidence suggesting that WSP Pipe Co. Ltd. (Thailand) ("WSP Thailand") receives subsidized green tube from its affiliate in China, which it then heat treats and threads before exporting the product to Canada.

581. WSP Thailand is a subsidiary of WSP Holdings Ltd ("WSP Holdings").[562] Wuxi Seamless Oil Pipes Company Limited ("Wuxi") is the "core enterprise" of WSP Holdings and is a "leading manufacturer of OCTG."[563] Wuxi and WSP Thailand are therefore affiliates under the WSP Holdings umbrella.

582. WSP Holdings has moved away from purchasing third party green tube and instead produces all green tube in-house. In its 2012 Annual Report, WSP Holdings indicates: "Historically, we relied on third-party green pipe suppliers and subcontractors to supply us with green pipes for our production needs, which was subject to fluctuations in market supply. Starting from 2006, we have significantly reduced our reliance on green pipe suppliers by expanding our in-house manufacturing capabilities of green pipes."[564] Indeed, WSP discloses that another subsidiary, Wuxi Eastar Co. Ltd., is responsible for exporting Wuxi products to Thailand including "(i) raw materials, such as round steel bars, (ii) accessories, (iii) machinery and (iv) pipes."[565]

583. Tellingly, WSP Holdings recently announced a major expansion of WSP Thailand's threading line. In December 2012, WSP Thailand "completed the construction of a new threading

560 Thailand Board of Investment, "Types, Sizes and Conditions of Activities Eligible for Promotion," **Public Exhibit 7-D-4.**
561 Thailand Board of Investment, "Section 2: Mining Ceramics and Basis Metals," **Public Exhibit 7-D-5.**
562 WSP Pipe Co. Ltd., "About Us," **Public Exhibit 7-D-12.**
563 WSP Holdings Limited, "Overview," **Public Exhibit 7-D-13.**
564 WSP Holdings Limited, "2012 Annual Report" at 37, **Public Exhibit 7-D-14.**
565 WSP Holdings Limited, "2012 Annual Report" at 76, **Public Exhibit 7-D-14.**

line with an annual production capacity of 100,000 tonnes in Thailand."[566] Thus, there is reason to believe that WSP Thailand processes green tube sourced from associated suppliers in China. This allows Wuxi, a cooperative exporter in the Agency's 2007 Seamless Casing from China investigation but not in the Agency's 2009 OCTG from China investigation, to avoid dumping and countervailing duties resulting from both investigations.

584. As an established matter of policy, the Agency may deem the GOC subsidies to benefit associated OCTG operations in Thailand. The Agency has already found these to exist in respect of OCTG originating in or exported from China. These same subsidies are now helping the associated foreign operations of Chinese OCTG producers in Thailand circumvents the Agency's existing antidumping and countervailing duty findings on Chinese OCTG. OCTG goods and/or production inputs (e.g. green tube) currently being transferred from Chinese OCTG producers to associated operations in Thailand either "do" or "do not" undergo further processing sufficient to confer new country of origin for *SIMA* purposes. Where further processing is insufficient to confer new country of origin, it will be an enforcement matter for the Agency to address pursuant to existing findings against China. However, where further processing in those three countries is indeed sufficient to confer new origin for *SIMA* purposes, Agency policy already clearly provides for a deemed, full pass-through of Chinese subsidies to the associated firms to be countervailed notwithstanding that the OCTG may be Thai-originating goods for *SIMA* purposes.[567]

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[566] WSP Holdings Limited, "2012 Annual Report" at 37, **Public Exhibit 7-D-14**.
[567] *SIMA Handbook* at 715-718.

E. OCTG from Vietnam are Being Subsidized

i. Domestic Investment Promotion under Decree 51

585. Under its Domestic Investment Promotion Decree, Decree No. 51/1999/ND-CP ("Decree 51") the Government of Vietnam ("GOV") provides a series of benefits to preferred industries.[568] While Decree 51 has been subsequently supplanted by newer tax and investment schemes, companies who qualified for benefits while Decree 51 was in effect were allowed to keep their incentives.[569] It is the Complaints' understanding that this is the case with all subsequent amendments to the investment promotion and tax preference regimes. OCTG producers appear to qualify as preferred industries under a number of different criteria.

586. Decree 51 includes an Appendix setting out three lists of preferred investment projects covered by the scheme. These lists are List A, List B, and List C.

587. List A sets out "branches and trades eligible for investment preferences."[570] It further lists the enterprise types under seven different sections. Based on information reasonably available to the Complainants, OCTG producers likely fall under the Section III heading. This heading covers "Export goods production and trading" where the enterprises is "{p}roducing and trading in export goods and/or services with a value exceeding 30% of that of the goods and services produced and/or trade in by the enterprises in a fiscal year." While producer-specific information regarding exports is not publicly available, data concerning OCTG production and consumption of OCTG in Vietnam demonstrates that the OCTG industry as a whole is exporting well over 30% of the total goods and services produced or traded by those producers. For example, in 2012, Vietnamese OCTG producers had shipments of [ ] MT of OCTG.[571] Apparent consumption in Vietnam, which includes some imports, was estimated at [ ] MT.[572] Assuming

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568 Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), **Public Exhibit 7-E-1**.
569 See United States Department of Commerce, *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428, (April 1, 2010), and accompanying *Issues and Decision Memorandum*, at 6, **Public Exhibit 7-E-2**.
570 Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended) at Appendix, **Public Exhibit 7-E-1**.
571 MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013), **Confidential Exhibit 7-E-3**.
572 MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013), **Confidential Exhibit 7-E-3**.

conservatively that all domestic consumption was from domestic shipments, exports would still account for [ ] MT or [ ]% of shipments; well over the 30% necessary to fall within the preferred industry category.[573]

588. Decree 51 further specifies that investors in branches and trades identified in List A that employ at least 100 workers in urban areas, at least 20 in List B or List C areas, or at least 50 elsewhere are entitled to various preferences.[574] These are referred to as "Article 15" conditions elsewhere in the Decree. To the extent that the OCTG producers meet this threshold, they will be entitled to these additional benefits.

589. The following programs are details of specific preferential tax measures included in Decree 51.

1) <u>Land-Use Levy Exemption/Reduction under Article 17 of Decree 51</u>

590. Under Article 17 of Decree 51, investors assigned land by the State and paying a land-use levy are entitled to a 50% reduction of that land-use levy if the investment projects fall into branches, trades, and domains defined in List A.[575]

591. Exemption of rental payments constitutes a financial contribution under s. 2(1.6)(d) of the *SIMA* as a provision of a good from the government. The provision of goods provides a benefit under *SIMR* s. 36 equal to the difference between the subsidized rent paid and the rent that would be charged in a free market. The exemption/reduction is specific under s. 2(7.2)(a) of the *SIMA* as it is expressly limited by a legislative/regulatory instrument to particular enterprises within the jurisdiction of the authority granting the subsidy – that is, industries enumerated in List A. Furthermore, to the extent that the List A qualifying criteria is based on the "Export goods production and trading" section, the program is also specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

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[573] MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013), **Confidential Exhibit 7-E-3**.

[574] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 15, **Public Exhibit 7-E-1**.

[575] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 17, **Public Exhibit 7-E-1**.

2) Land Rent Exemption/Reduction under Article 18 of Decree 51

592. Under Article 18 of Decree 51, investors having investment projects defined in Article 15 of the Decree are entitled to a three-year exemption if they meet one of the Article 15 conditions and a six-year exemption if they meet two of them.[576]

593. A rental payment exemption is a financial contribution under s. 2(1.6)(d) of the *SIMA* as it is a provision of a good for less than fair market value. A benefit is conferred under *SIMR* s. 36 equal to the difference between the subsidized rent paid and the rent that would be charged in a free market. The reduction is specific under s. 2(7.2)(a) of the *SIMA* as it is limited to List A industries and therefore expressly limited by a legislative/regulatory instrument to particular enterprises. To the extent that the List A qualifying criteria is based on the "Export goods production and trading" section, the program is also specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

3) Enterprise Income Tax Preferences under Articles 20 and 21 of Decree 51

594. Under Article 21 of Decree 51, investment projects identified in various appendices may be exempted from income tax obligations. Normally, enterprises in Vietnam are subject to a 25% enterprise income tax.[577]

595. Furthermore, Article 21 provides additional exemptions and reductions from the income tax payable. Specifically, projects that meet one of the conditions in Article 15 are entitled to a two-year exemption and a 50% reduction of the payable tax rate for two subsequent years. Projects that meet two conditions prescribed in Article 15 are entitled to a two-year exemption and a 50% reduction of the payable tax amount for four subsequent years.[578]

596. Under *SIMA* s. 2(1.6)(b), income tax preferences and exemptions constitute amounts that would otherwise be owing and due to the government that are exemption to deducted and constitute

[576] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 18, **Public Exhibit 7-E-1**.
[577] Bloomberg, "Vietnam to Reduce Corporate Income Tax Rate to Help Businesses," **Public Exhibit 7-E-4**.
[578] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 21, **Public Exhibit 7-E-1**.

a financial contribution. The tax incentives confer a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amounts otherwise due to the government. The program is specific under s. 2(7.2)(a) of the *SIMA* as it is limited by a legislative/regulatory instrument to particular enterprises, i.e. List A enterprises. To the extent that the List A qualifying criteria is based on the "Export goods production and trading" section, the program is specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

4) Enterprise Income Tax Preferences under Article 23 of Decree 51

597. Under Article 23, tax preferences are provided for business expansion and intensive investment projects set out in the appendices.[579] In particular, projects on List A are exempted from income tax for one year and receive a 50% reduction of the payable tax amount for four subsequent years.

598. Tax exemptions are a financial contribution under *SIMA* s. 2(1.6)(b) as amounts otherwise owing to the government. They confer a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to these amounts otherwise owing. As discussed above, the program is specific as it is limited by a legislative/regulatory instrument to particular enterprises and is export contingent.

5) Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets under Article 26 of Decree 51

599. Article 26 of Decree 51 provides an exemption from the import tax for specialized equipment, machinery, and transport means that are imported to create fixed assets of enterprises, expand investment scales, or renew technologies.[580] In order to qualify, the equipment machinery and transport means cannot be produced in Vietnam or can be produced but do not meet quality standards. All List A projects qualify for this program.

600. Under *SIMA* s. 2(1.6)(b), amounts otherwise due to the government that are exempted constitute a financial contribution. The tax incentive confers a benefit under *SIMR* s. 35 (or

[579] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 23, **Public Exhibit 7-E-1**.
[580] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 26, **Public Exhibit 7-E-1**.

alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. As noted above, the exemptions are specific as they are limited by a legislative/regulatory instrument to particular enterprises and are export contingent.

6) Income Tax Preferences for Exporters under Article 27 of Decree 51

601. Under Article 27 of Decree 51, additional tax preferences are given to investors producing and/or dealing in export goods.[581] In addition to the enterprise income tax preferences, investors are also entitled to:

- A 50% rate reduction for income generated from:
  - exports on the first year conducted by direct export;
  - exports of new commodities with economic-technical as well as utility properties other than those of the commodities already exported; or
  - exports to new overseas markets or new territories other than former markets
- a 50% reduction of the payable income tax amount on additional income arising in a fiscal year where export turnover in the current year is greater than that in the previous year; and
- a 20% rate reduction from income from exports where:
  - export turnover accounts for more than 50% of the total turnover; and
  - export markets are stable in term of the volume or value of export goods for the three previous consecutive years.

602. Under *SIMA* s. 2(1.6)(b), amounts otherwise due to the government that are exempted constitute a financial contribution. The tax incentive confers a benefit *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. The exemptions are export contingent and therefore prohibited subsidies pursuant to *SIMA* s. 2(1) and 2(7.2)(b).

[581] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 27, **Public Exhibit 7-E-1**.

7) Investment Support under Article 30 of Decree 51

603. Under Article 30 of Decree 51, eligible investment promotion projects under List A are entitled, if engaged in export activities, for export support loans from the National Export Support Funds at preferential rates.[582] The loans are provided for up to 70% of the total credits to be used for the performance of the respective signed export contracts or considered for the guarantee of up to 80% of the total credits needed for the performance of such contracts.

604. Export credits provide a financial contribution as a direct transfer of funds from a government under s. 2(1.6)(a) of *SIMA*. These credits provide a benefit under *SIMR* s. 28 equal to the amount the recipient paid on the loan and the amount the recipient would pay on comparable commercial loans that the recipient could obtain on the market. Investment support under Article 30 is specific as export credits and guarantees are contingent upon export performance and therefore prohibited subsidies pursuant to *SIMA* s. 2(1) and 2(7.2)(b).

ii. Domestic Investment Promotion under Decree 164

605. Decree No. 164/2003/ND-CP ("Decree 164") has superseded Decree 51. Decree 164 is similar in structure to Decree 51, although the benefits it confers are more limited to tax benefits.[583] Under Chapter V, the Decree sets out a number of "Enterprise Income Tax Exemption and Reduction" programs for encouraged industries. Article 33 establishes the criteria to qualify as an investment project entitled to income tax exemptions and reductions.[584] Investment projects are entitled to preferences if they (1) involve investments in branches, lines and/or domains defined in List A; or (2) employ at least 100 labourers in urban areas, 20 workers in List B or List C geographic areas, or 50 labourers in other geographical areas.

606. As with Decree 51, Decree 164 contains a List A that sets out "branches, lines and domains eligible for investment preferences." Section III of List A enumerates "projects for production of, and trading in, export goods with the export value exceeding 50% of the total value

[582] Decree No. 51/1999/ND-CP of July 8, 1999 Detailing the Implementation of Law No 03/1998/QH10 on Domestic Investment Promotion (Amended), at Art 30, **Public Exhibit 7-E-1**.
[583] Decree No. 164/2003/ND-CP of December 22 2003 detailing the Implementation of the Law of Enterprise Income Tax, **Public Exhibit 7-E-5**.
[584] Decree No. 164/2003/ND-CP of December 22 2003 detailing the Implementation of the Law of Enterprise Income Tax, at Art. 33, **Public Exhibit 7-E-5**.

of goods produced and/or traded in a fiscal year." As discussed above, evidence reasonably available to the Complainants suggests that OCTG producers in Vietnam export well over 50% of their goods and would therefore fall under this Section and be eligible for the preferential tax programs. Moreover, to the extent that the OCTG producers meet the thresholds for employment, they will be entitled to preferences under the program.

1) Tax Preferences for Encouraged Industries under Article 35 of Decree 164

607. Article 35of Decree 164 sets the preferential tax rates for encouraged industries. Specifically, a preferential tax rate of 20% applies for newly established entities within geographical areas outside of the List B and List C geographic areas where they are branches, lines and/or domains defined in List A of the Appendix.[585] The tax rate is applicable for 10 years. Normally, enterprises in Vietnam are subject to a 25% enterprise income tax.[586]

608. Amounts otherwise due to the government that are exempted constitute a financial contribution under *SIMA* s. 2(1.6)(b). The tax incentive confers a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. The program is specific under s. 2(7.2)(a) of the *SIMA* as it is limited by a legislative/regulatory instrument to particular enterprises, i.e. List A enterprises. To the extent that the List A qualifying criteria is based on the "Export goods production and trading" section, the program is also specific under s. 2(7.2)(b) as a prohibited, export-contingent subsidy.

609. This program was countervailed by the United States Department of Commerce in Certain Frozen Warmwater Shrimp from Vietnam.[587]

[585] Decree No. 164/2003/ND-CP of December 22 2003 detailing the Implementation of the Law of Enterprise Income Tax, Appendix, **Public Exhibit 7-E-5**.
[586] Bloomberg, "Vietnam to Reduce Corporate Income Tax Rate to Help Businesses," **Public Exhibit 7-E-4**.
[587] United States Department of Commerce, *Certain Frozen Warmwater Shrimp from Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387, (August 19, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-6**.

2) Tax Preferences under Article 36 of Decree 164

610. Under Article 36 of Decree 164, enterprises are eligible for further tax exemptions or reductions. Twelve programs are enumerated. The programs most relevant and applicable to Vietnamese OCTG producers and exporters include:

- A tax exemption for two years after taxable income is generated and a 50% reduction for two subsequent years where the production establishment relocated out of urban centres;
- A tax exemption for two years after taxable income is generated and a 50% reduction for two subsequent years where the project is listed in List A or where it satisfies the conditions on labour employment in Article 33;
- A tax exemption for two years after taxable income is generated and a 50% reduction for five subsequent years where the project is listed in List A and where it satisfies the conditions on labour employment in Article 33; and,
- A tax exemption for four years after taxable income is generated and a 50% reduction for nine subsequent years where the establishment is in the form of a build-operate-transfer, build-transfer operate, and build-transfer contract.

611. In regards to the fourth item, a number of OCTG producers in Vietnam have opened recently and could have been set up under "build-transfer-operate" or "build-transfer" contracts. For example, SeAH Steel Vina Corp. was acquired by SeAH in 2006.[588]

612. Under *SIMA* s. 2(1.6)(b), amounts otherwise due to the government that are exempted constitute a financial contribution. The tax incentive confers a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. The program is specific under s. 2(7.2)(a) of the *SIMA* or under s. 2(7.2)(b) as either limited to particular enterprises or industries or export-contingent prohibited subsidies.

3) Income Tax Preferences for Exporters under Article 39 of Decree 164

613. Decree 164, like Decree 51, also provide additional tax reductions and exemptions for exporters that meet certain requirements. For enterprises falling in Section III of List A, Article 39 of Decree 164 provides the following income tax preferences:

[588] Excerpts from Vietnamese OCTG Producer Websites, **Public Exhibit 7-E-7**.

- A 50% reduction of tax where:
  - Export occurs in the first year by mode of direct export;
  - The export is of new commodities with economic-technical and utility properties different from those of the commodities already exported by enterprises; or,
  - The export is to a new country or new territories other than former markets.
- A 50% reduction of tax on the additional income arising from export in the fiscal year where the export turnover in the current year is higher than that of the previous year;
- A 20% reduction of tax where:
  - The export turnover accounts for more than 50% of the total turnover; or,
  - The export markets are maintained in a stable manner with regard to volume or export value for the previous three consecutive years.

614. Under *SIMA* s. 2(1.6)(b), there is a financial contribution where amounts otherwise due to the government that are exempted. The income tax preferences under Article 39 of Decree 164 confer a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. The exemptions are export contingent and therefore prohibited subsidies pursuant to *SIMA* s. 2(1) and 2(7.2)(b).

iii. Income Tax Preferences under Chapter V of Decree 24

615. Decree No. 24/2007/ND-CP ("Decree 24") replaced Decree 164 in 2007.[589] Many of the income tax reductions under Chapter V of Decree 24 are similar to those under Decree 164.

616. Like Decree 164, Article 33 of Decree 24 establishes the qualifying criteria for income tax exemptions and reductions under Chapter V. In particular and relevant to OCTG producers, investment projects that fall within the "branches, business lines or sectors on the List of sectors entitled to investment preferences promulgated by the Government under the Investment Law" are eligible for preferences.[590] That list, set out in Decree No. 108/2006/ND-CP ("Decree 108") includes "production of machines, equipment and detail assemblies for ... oil and gas

[589] Decree No. 24/2007/ND-CP Detailing the Implementation of the Law on Enterprise Income Tax, **Public Exhibit 7-E-8**.
[590] Decree No. 24/2007/ND-CP Detailing the Implementation of the Law on Enterprise Income Tax, **Public Exhibit 7-E-8**.

exploration."[591] Vietnamese OCTG producers, therefore, would be eligible for any preference extended to entities on the list of "sectors entitled to investment preferences."

1) Tax Preferences for Encouraged Industries under Article 34 of Decree 24

617. Article 34 sets the preferential tax rates for encouraged industries. Specifically, a preferential tax rate of 20% applies for 10 years as of the commencement of business operations for "Business establishments newly founded under investment projects in branches, business lines or sectors on the List of sectors entitled to investment preferences.[592] Normally, enterprises in Vietnam are subject to a 25% enterprise income tax.[593]

618. Amounts otherwise due to the government that are exempted constitute a financial contribution under *SIMA* s. 2(1.6)(b). The tax incentive confers a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. The program is specific under s. 2(7.2)(a) of the *SIMA* as it is limited by a legislative/regulatory instrument to particular enterprises, i.e. those listed in Decree 108.

619. This program was countervailed by the United States Department of Commerce in Certain Frozen Warmwater Shrimp from Vietnam.[594]

2) Tax Preferences under Article 35 of Decree 24

620. Under Article 35, enterprises are eligible for further tax exemptions or reductions. Five programs are enumerated. The programs that are the most relevant include:

- A tax exemption for two years after taxable income is generated and a 50% reduction for two subsequent years where the production establishment relocated out of urban centres; and,

[591] Decree No. 108/2006/ND-CP Detailing and Guiding the Implementation of a Number of Articles of the Investment Law, **Public Exhibit 7-E-9**.
[592] Decree No. 24/2007/ND-CP Detailing the Implementation of the Law on Enterprise Income Tax, **Public Exhibit 7-E-8**.
[593] Bloomberg, "Vietnam to Reduce Corporate Income Tax Rate to Help Businesses," **Public Exhibit 7-E-4**.
[594] United States Department of Commerce, *Certain Frozen Warmwater Shrimp from Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387, (August 19, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-6**.

- A tax exemption for two years after taxable income is generated and a 50% reduction for two subsequent years where the project is listed in Decree 108 as sectors entitled to investment preferences.

621. Under *SIMA* s. 2(1.6)(b), amounts otherwise due to the government that are exempted constitute a financial contribution. The tax incentive confers a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. The program is specific under s. 2(7.2)(a) or s. 2(7.2)(b) of the *SIMA* as either limited to particular enterprises or industries. In alternative, tax exemption granted for the production establishment relocated out of urban centres are specific because it is restricted to the enterprises within a designated geographic area, i.e. out of urban centres.

iv. Income Tax Preferences under Articles 15 and 16 of Decree 124

622. Under Article 15 of Decree 124/2008/ND-CP ("Decree 124"), "new enterprises established under investment projects in ... economic zones or hi-tech industrial parks" are entitled to a tax incentive rate of 10% for 15 years.[595] Normally, enterprises in Vietnam are subject to a 25% enterprise income tax.[596]

623. To the extent that OCTG producers are within these zones, they would be entitled to tax incentives. Several Vietnamese OCTG producers operate in industrial parks including SeAH Steel (Bien Hoa II Industrial Zone) and Vietubes Corporation (Đông Xuyên Industrial Zone).[597]

624. Furthermore, under Article 16 of Decree 124, "new enterprises established under investment projects in ... economic zones or hi-tech industrial parks" are also entitled to a tax exemption for 4 years and 50% reduction of payable tax amounts for nine subsequent years.

625. Amounts otherwise due to the government that are exempted constitute a financial contribution under *SIMA* s. 2(1.6)(b). The tax incentive confers a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted by the government. The program is

[595] Decree No. 124/2008/ND-CP of December 11, 2008, Detailing and Guiding the Implementation of a Number of Articles of the Law on Enterprise Income Tax, **Public Exhibit 7-E-10**.
[596] Bloomberg, "Vietnam to Reduce Corporate Income Tax Rate to Help Businesses," **Public Exhibit 7-E-4**.
[597] Excerpts from Vietnamese OCTG Producer Websites, **Public Exhibit 7-E-7**.

specific under s. 2(7.2)(a) of the *SIMA* or under s. 2(7.2)(b) as they are limited to enterprises in economic zones or high-tech industrial parks.

v. Tax Preferences for Foreign-Invested Enterprises

626. Under Article 46 of Decree No. 24/2000/NDCP, Foreign Invested Enterprises ("FIEs") benefit from a reduction in the standard corporate income tax rate.[598] In particular, Foreign-Invested Enterprises qualify for a reduced tax rate of 15% under Article 46(2) if, inter alia, (i) They are on the list of projects with investment encouragement; or, (ii) they are industrial park enterprises which export more than 50% of their products. Additionally, Article 46(3) provides that FIEs, if they meet two of the clauses under 46(2), will be entitled to a 10% preferential tax rate. Generally, the duration for the 15% preference is for 12 years while the duration for the 10% preference is 15 years.

627. Foreign-invested OCTG producers, such as SeAH Vina, qualify for benefits under this program.[599] OCTG products clearly fall within the "Manufacture of equipment, detail groups in oil, gas, mineral or fuel exploitation; manufacture of big lifting and lowering equipment" in the list of projects with investment encouragement.[600] Moreover, and as discussed above, OCTG producers export over [ ]% of their production and would fall under "production or processing with 50% or more of products for export" in the list of projects with investment encouragement. Lastly, and as noted above, several Vietnamese OCTG producers operate in industrial parks including SeAH Steel (Bien Hoa II Industrial Zone) and Vietubes Corporation (Đông Xuyên Industrial Zone).[601]

628. The tax incentives provide a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are exempted. The tax incentives provide a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted. The program is

[598] Decree No. 24/2000/ND-CP of July 31, 2000 detailing the Implementation of the Law on Foreign Investment in Vietnam, **Public Exhibit 7-E-11**.
[599] SeAh, Annual Report, **Public Exhibit 7-E-12**.
[600] Decree No. 24/2000/ND-CP of July 31, 2000 detailing the Implementation of the Law on Foreign Investment in Vietnam, **Public Exhibit 7-E-11**.
[601] Excerpts from Vietnamese OCTG Producer Websites, **Public Exhibit 7-E-7**.

specific under s. 2(7.2)(a) of the *SIMA* or under s. 2(7.2)(b) as either limited to particular enterprises or industries or export-contingent prohibited subsidies.

629. This program was found to be countervailable by the United States Department of Commerce in *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam*.[602]

vi. Import Duty Exemptions under Law 45

1) Exemptions for Imported Raw Materials for Exported Goods

630. Under the Law on Import Duty and Export Duty, No. 45/2005/QH-11 ("Law 45") and pursuant to Article 15 of Law 45, a firm that imports raw materials that are used for the production of exported goods, where such exportation occurs within 275 days, incurs no duty liability.[603] Article 19 of Law 45 provides for reimbursement of duties on raw materials or supplies imported for the production of export goods, for which import tax has been paid.[604]

631. In order to receive the exemption, "a company first notifies the Customs Office of the per unit amounts of raw materials used to produce a unit of the product that will be exported and the per-unit amounts of scrap. Then, the company applies for import duty exemptions by submitting an application package within 275 days of the time it imported the raw materials and the date it exports the finished products. The application package consists of a checklist of import declarations, a checklist of export declarations, and a reconciliation of these import declarations and export declarations titled {'}Report on Tax Calculation on Imported Raw Materials and Supplies.{'} This reconciliation lists the imported materials, the import duties on those materials, the exports against which the company is claiming non-liability for the import duties, and the total amounts of requested duty exemptions."[605]

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[602] United States Department of Commerce, *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428, (April 1, 2010), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-2**.
[603] *Law on Import Tax and Export Tax*, **Public Exhibit 7-E-13**.
[604] *Law on Import Tax and Export Tax*, at Art. 19, **Public Exhibit 7-E-13**.
[605] United States Department of Commerce, *Steel Wire Garment Hangers: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 77 FR 75973, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-19**.

632. During the United States Department of Commerce's countervailable subsidy investigations of this program, it was found that the GOV does not have a system to ensure that the imported materials, against which import duty exemptions are claimed, are used in the production of the products exported and that the company properly accounts for scrap.[606] As such, the Complainants have reason to believe that excessive duty exemptions, *i.e.*, exemptions of duties on imported raw materials used for the domestically sold goods, are provided under this program within the meaning of SIMR s. 35.01(1). Specifically, this program was countervailed by the United States Department of Commerce as providing excessive import duty exemptions including in *Certain Steel Wire Garment Hangers*,[607] *Polyethylene Retail Carrier Bags*,[608] and *Certain Frozen Warmwater Shrimp*.[609]

633. To the extent that Vietnamese OCTG producers import raw materials or supplies for the production of OCTG, these inputs would be exempt from the ordinary duty rate. Import duty exemptions provided a financial contribution under *SIMA* s. 2(1.6)(b) in the form of exempted amounts otherwise due to the government. A benefit is provided under *SIMR* s. 35.01 equal to the amount exempted that would have otherwise been payable. The program is specific s. 2(7.2)(b) as it is an export-contingent prohibited subsidy.

2) Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets

634. Article 16 of Law 45 states that projects entitled to investment incentives are exempted from import duties for those imports used to create fixed assets.[610] Additionally, Article 12 of Decree 87/2010/ND-CP states that goods imported to create fixed assets of investment projects in domains entitled to import duty preference listed in Appendix I to the Decree are exempted from

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[606] United States Department of Commerce, *Steel Wire Garment Hangers: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 77 FR 75973, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, Comment 5 at 29, **Public Exhibit 7-E-19**.

[607] United States Department of Commerce, *Steel Wire Garment Hangers: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 77 FR 75973, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, Comment 5 at 29, **Public Exhibit 7-E-19**.

[608] United States Department of Commerce, *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428, (April 1, 2010), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-2**.

[609] United States Department of Commerce, *Certain Frozen Warmwater Shrimp from Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387, (August 19, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-6**.

[610] *Law on Import Tax and Export Tax*, at Art. 19, **Public Exhibit 7-E-13**.

duties.[611] Notably, included in Appendix I is the "{m}anufacture of machines, equipment and detail assemblies in the sectors of oil and gas exploitation, mining, energy and cement; manufacture of large-capacity lifting equipment; manufacture of metal-working machines and metallurgical equipment."[612] Vietnamese OCTG producers, therefore, would qualify for these programs.

635. Import duty exceptions provide a financial contribution under *SIMA* s. 2(1.6)(b) in the form of exempted amounts otherwise due to the government. A benefit is provided under *SIMR* s. 35.01 equal to the amount exempted that would have otherwise been payable. The program is specific s. 2(7.2)(b) as it is an export-contingent prohibited subsidy.

636. This program was found countervailable by the United States Department of Commerce in *Certain Frozen Warmwater Shrimp from Vietnam*.[613]

vii. Interest Rate Support Program under the State Bank of Vietnam

637. Under Decision No. 131/QD-TTG ("Decision 131"), the GOV instituted an interest rate support program in January 2009 to stimulate the economy by providing capital support to organizations and individuals carrying out business projects.[614] The State Bank of Vietnam is responsible for implementing the program.[615] Initially, the program provided four percent interest rate support on short-term loans to all businesses except those falling within an Appendix.[616] The program was expanded to medium-and long-term loans of up to 24 months in April 2009.[617] The

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[611] Decree No. 87/2010/ND-CP Detailing a Number of Articles of the Law on Import Duty and Export Duty, **Public Exhibit 7-E-14**.

[612] Decree No. 87/2010/ND-CP Detailing a Number of Articles of the Law on Import Duty and Export Duty, at Appendix I, **Public Exhibit 7-E-14**.

[613] United States Department of Commerce, *Certain Frozen Warmwater Shrimp from Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387, (August 19, 2013), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-6**.

[614] Decision No. 131/QD-TTG On giving interest rate support to organizations, individuals that borrow capital from banks to carry out production and business, at Article 1, **Public Exhibit 7-E-15**.

[615] Decision No. 131/QD-TTG On giving interest rate support to organizations, individuals that borrow capital from banks to carry out production and business, at Article 4, **Public Exhibit 7-E-15**.

[616] Decision No. 131/QD-TTG On giving interest rate support to organizations, individuals that borrow capital from banks to carry out production and business, at Article 4, **Public Exhibit 7-E-15**.; State Bank of Vietnam Circular No. 02/2009/TT-NHNN Stipulating in Detail the Provision of the Interest Rate Support for Organizations and Individuals Borrowing Bank Loans for Their Production and Business, **Public Exhibit 7-E-16**.

[617] State Bank of Vietnam Circular No. 05/2009/TT-NHNN Providing in Details for the Implementation of Giving Interest Rate Support to Organizations, Individuals that Borrow Medium, Long Term Loans from Banks to Make New Investments for Production and Business Development, **Public Exhibit 7-E-17**.

program was further revised in December 2009 to limit the program to "agriculture and forestry; fisheries; processing; scientific and technological activities; and procurement of and trading in agricultural, forest and fishery products and salt" and lowered the support level to 2%.[618]

638. Notably, under the program, the list of ineligible projects includes "loans in Vietnamese Dong for purchasing foreign currency to make payment to foreign countries for the import of consumer commodities or to make payment to domestic suppliers for the purchase of consumer commodities, imported from foreign countries, as materials, raw materials and assets for performing project of production, business investment and development."[619] Thus, recipients are prohibited from using interest-supported loans to purchase foreign exchange to pay for imports, essentially preventing support for projects making use of imported goods in the production process.

639. OCTG producers using Vietnamese inputs in their production would be entitled to interest support under the January 2009 to December 2009 period of the program as OCTG production would not fall within any of the ineligible industries listed in Decision 131.

640. The interest rate support program is a financial contribution under *SIMA* s. 2(1.6) as a direct transfer of funds from the government. A benefit is conferred under *SIMR* s. 28 in the amount of the interest savings. The program is specific as a prohibited subsidy under *SIMA* s. 2(1) as the receipt of the interest is contingent upon the use of domestic goods over imported goods.

641. This program was found countervailable by the United States Department of Commerce in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam*.[620]

viii. Preferential Lending to Exporters

642. In *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam*, the United States Department of Commerce found preferential lending to exporters by the Vietnam

[618] Decision No. 2072/QD-TTg On Interest Rate Support for Medium and Long-Term Bank Loans in Vietnam Dong of Organizations and Individual, **Public Exhibit 7-E-18**.
[619] Decision No. 131/QD-TTG On giving interest rate support to organizations, individuals that borrow capital from banks to carry out production and business, **Public Exhibit 7-E-15**.
[620] United States Department of Commerce, *Steel Wire Garment Hangers: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 77 FR 75973, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-19**.

Joint Stock Commercial Bank for Industry and Trade ("VietinBank") to be countervailable.[621] The United States Department of Commerce found that the VietinBank offered "supported" interest rates to exporters, provided that they use the proceeds of the loan in the manner specified in the contract, follow the payment schedule specified in the contract, conduct payment for exporting through the lending institution, and sell the foreign exchange earned from the export sale through a lending institution. The "preferential" interest rates were offered by the VietinBank to implement its "Export Loan Program." The VietinBank is a state-owned commercial bank and, therefore, a government authority capable of providing a financial contribution.[622]

643. The preferential lending to exporters program is a financial contribution under *SIMA* s. 2(1.6)(a) as a direct transfer of funds from the government. A benefit is conferred under *SIMR* s. 28 in the amount of the interest savings. The program is specific as a prohibited subsidy under *SIMA* s. 2(1) as the receipt of the interest is contingent upon export.

ix. Grants to Firms that Employ More than 50 Employees

644. In Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam, the GOV reported the existence of a program in which it provides grants to firms that employ more than 50 employees.[623] To the extent that Vietnamese OCTG producers employ more than 50 employees, they are entitled to this program.

645. Grants provided by the government constitute a financial contribution under *SIMA* s. 2(1.6)(a) as a direct transfer of funds from the government. A benefit is conferred in the amount of the grant. The program is specific as the program is limited to particular enterprises, i.e. those with more than 50 employees.

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[621] United States Department of Commerce, *Steel Wire Garment Hangers: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 77 FR 75973, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-19**.
[622] United States Department of Commerce, *Steel Wire Garment Hangers: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 77 FR 75973, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-19**.
[623] United States Department of Commerce, *Steel Wire Garment Hangers: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 77 FR 75973, (December 26, 2012), and accompanying *Issues and Decision Memorandum*, **Public Exhibit 7-E-19**.

x. Subsidization of Vietnamese Subsidiaries of Chinese OCTG Producers by the Government of China

646. Lida Pipe (Vietnam) Co. Ltd ("Lida Pipe") is a subsidiary of Chinese OCTG producer Tianjin Lida Steel Group ("TIPCO").[624] The affiliation between Lida Pipe and TIPCO strongly suggests that Lida Pipe receives inputs, which could include green tube, from its Chinese affiliate. Indeed, TIPCO could use Lida Pipe in order to circumvent antidumping and countervailing duties against OCTG from China by using Lida Pipe to further process "green tube" prior to exporting the subject goods to Canada.

647. For the reasons set out above with respect to the subsidization of Thai subsidiaries of Chinese OCTG producers, Agency policy provides for a deemed, full pass-through of Chinese subsidies to the associated firms to be countervailed notwithstanding that the OCTG may be Vietnamese-originating goods for *SIMA* purposes

[624] Tianjin Lida Steel Pipe Group Co., Ltd, "Group Introduction," **Public Exhibit 7-E-20**.

F. OCTG from the Philippines are Being Subsidized

i. Investment Incentives Provided by the Clark Freeport Zone

1) Exemption of Taxes in Special Economic Zones

648. The Philippine Government set out the framework for Special Economic Zones in the Philippines through the *Republic Act No. 7916*.[625] Under s. 24 of that Act, "business establishments" operating within the Special Economic Zones are exempt from any local or national taxes. Rather, the Act provides that "{i}n lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government."[626] The national government then distributes the funds by providing 3% to the national government, 1% to the local government, and 1% to a development fund. Typically, the corporate tax rate in the Philippines is 30% of the net income.[627] This provision is mirrored in the Department of Finance, Department Order No. 3-08, s. 4(d) which extends the benefits to Special Economic Zones to enterprises in the Freeport Zone:

> Clark Freeport Zone – Freeport Enterprises in the CFZ shall be entitled to: (i) the Freeport status of the zone; and (ii) the 5% special tax on Gross Income Earned, in lieu of national and local taxes. PEZA Enterprises in the PEZA Ecozone/s within CFZ shall be entitled to incentives provided under RA 7916, but shall not be entitled to the Freeport status of CFZ.[628]

649. Additionally, it would appear that in order to qualify for the tax benefit in the Clark Freeport Zone the enterprise must export at least 70% of its goods.[629]

650. The payment and remittance of the 5% tax is the similar for Freeport Enterprises as it is for Special Economic Zone Enterprises with 3% to the National Government and 2% to the local government.[630]

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[625] *Republic Act No. 7916*, s. 24, **Public Exhibit 7-F-1.**

[626] "Gross income earned" is defined as net sales minus allowable costs, which are for manufacturing, cost of goods sold and financing charges generally. See Investor's Guide - 03: Allowable Deductions by Industry, Clark Freeport Zone, **Public Exhibit 7-F-15.**

[627] KPMG, "Corporate tax rates table," **Public Exhibit 7-F-2.**

[628] Republic of Philippines Department of Finance, Department Order No. 3-08, at SEC. 3(d), **Public Exhibit 7-F-4.**

[629] Clark Development Corporation, "Frequently Asked Questions," **Public Exhibit 7-F-10.**

[630] Republic of Philippines Department of Finance, Department Order No. 3-08, at SEC. 6, **Public Exhibit 7-F-4.**

651. OCTG producer HLD Clark is located within the Clark Freeport Zone. As outlined above, companies located in the Clark Freeport zone may avail themselves of the tax incentives set out in *Republic Act No. 7916* and in the Department Order No. 3-08.[631]

652. The tax incentive under the *Republic Act No. 7916* provides a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are exempted. The tax incentives provide a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted. The program is specific under s. 2(7.2)(a) because it is geographically specific to Special Economic Zones within the Philippines and is specific under s. 2(7.2)(b) as an export-contingent, prohibited subsidy.

2) Provision of Land for Less than Fair Market Value

653. The Clark Freeport Zone provides a number of lease rates applicable for industrial, ICT, commercial and tourism. For land/open space, the Clark Freeport Zone provides rental rates starting at $0.10 per square metre per month and for buildings starting at $0.50 per square metre per month.[632] The rates vary depending on the location of the land/structure. Compared to other Special Economic Zones, the Clark Freeport Zone offers lower land lease rates. The Philippine Economic Zone Authority reports that land rental rates range from $0.27-$0.45 per square metre per month.[633] This difference suggests that land in the Clark Freeport Zone, provided by the Clark Development Corporation, is offered at less than fair market value. The Clark Development Corporation is a subsidiary of the Bases Conversion Development Authority which is a "government instrumentality vested with corporate powers."[634]

654. HLD Clark recently acquired additional open land for its OCTG facility in the Clark Freeport Zone. In December 2010, HLD Clark reached a deal with the Clark Development Corp for a 25-year lease of four hectares (40,000 square metres) of open space.[635] Information

[631] "Chinese metal pipe manufacturing firm to expand Clark unit," Philistar (18 December 2010), **Public Exhibit 7-F-3**; "Clark: Your Economic Haven in the Asia Pacific," **Public Exhibit 7-F-5**.
[632] Clark Freeport Zone Investors Guide, **Public Exhibit 7-F-6**.
[633] Philippine Economic Zone Authority (PEZ), "Special Economic zones in Philippines," **Public Exhibit 7-F-7**.
[634] Invest Philippines, "Clark Development Corporation," **Public Exhibit 7-F-8**; Bases Conversion and Development Authority, "Welcome to the Official BCDA Website," **Public Exhibit 7-F-9**.
[635] "Chinese metal pipe manufacturing firm to expand Clark unit," Philistar (18 December 2010), **Public Exhibit 7-F-3**.

reasonably available to the Complainants suggests that this land acquisition could be at less than fair market value.

655. The provision of land at less than fair market value is a financial contribution under *SIMA* s. 2(1.6)(c) in the form of providing a good at less than fair market value. This confers a benefit under *SIMR* s. 36 equal to the difference between the price paid and the fair market value for the mining rights. The benefit is specific under *SIMA* s. 2(7.3)(a) as the lease rates vary from location to location within the Clark Freeport Zone and therefore used by a limited number of enterprises (i.e. those enterprises who acquire the land in those particular locations).

3) Other Investment Incentives Provided by the Clark Freeport Zone

656. According to the Global Gateway Logistics City website, an area which includes the Clark Freeport Zone, companies located inside the Zone receive the following benefits effective as of January 2013:

> 1. Exemption from VAT for the purchases from suppliers in the Customs Territory;
>
> 2. Exemption from real property tax;
>
> ...
>
> 5. Exemption from import taxes and duties on importation of raw materials, supplies and all other articles including finished goods;
>
> 6. Exemption from import taxes and duties on importation of machinery, equipment, supplies and all other articles including finished goods; and
>
> 7. Exemption from branch profit remittance tax of 15%.[636]

657. HLD Clark would be qualified to receive all these benefits as it is located within the Clark Freeport Zone.[637]

[636] Clark is it! Your Gateway to the World and Your Home Away from Home, Locator and Investor Guide, Global Gateway Logistics City at 19-22, **Public Exhibit 7-F-27**.
[637] About Us, HLD Clark Steel Pipe Co., Ltd., **Public Exhibit 7-F-13**.

658. The exemptions from various taxes and/or fees provided for the companies located within the Clark Freeport Zone provide a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are exempted. The tax incentives provide a benefit under *SIMR* s. 27.1(2) equal to the amount exempted. The program is specific under s. 2(7.2)(a) because it is geographically specific to Special Economic Zones within the Philippines.

ii. Investment Incentives Provided by the Board of Investment ("BOI")

659. The BOI is a government agency under the Department of Trade and Industry and its primary role is to promote investments in Philippines.[638] The BOI is "mandated through the Omnibus Investment Code (or Executive Order 226) to encourage investments through tax exemption and other benefits in preferred areas of economic activity specified by the BOI" in the annually-prepared investment priorities plan ("IPP").[639] "Iron and steel" activities, defined including "long steel products," is one of the preferred activities according to the 2012 IPP.[640] In addition, non-qualifying business may benefit from BOI if the entity is classified as an export-oriented.[641] In addition, a qualifying company may further designate itself as a "pioneer, a status which provides even more favorable preferential benefits. Of the companies that qualified under the "iron and steel," companies with projects over USD $500 million may be granted pioneer status.[642]

660. HLD Clark would qualify to be registered with BOI, because the manufacture of steel pipes and tubing is included as a preferred activity. In addition, HLD Clark also appears to be an export-oriented company, as demonstrated by the fact that the company has been one of the top five largest exporters in the Clark Freeport Zone year after year.[643] As such, HLD Clark would be appear to be qualified to be registered with the BOI as an export-oriented company.

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[638] Primer on Doing Business in the Philippines, Board of Investments (2010) at 12, **Public Exhibit 7-F-11**.
[639] Executive Order No. 226, The Omnibus Investments Code of 1987, **Public Exhibit 7-F-22**; Primer on Doing Business in the Philippines, Board of Investments (2010) at 12, **Public Exhibit 7-F-11**.
[640] Memorandum Order No. 40 Approving the 2012 Investment Priorities Plan, The President of the Philippines (June 2012), at 9, **Public Exhibit 7-F-12**.
[641] Primer on Doing Business in the Philippines, Board of Investments (2010) at 13, **Public Exhibit 7-F-11**.
[642] Memorandum Order No. 40 Approving the 2012 Investment Priorities Plan, The President of the Philippines (June 2012), at 33, **Public Exhibit 7-F-12**.
[643] HLD Clark was named to be among the top five largest exporters in the Clark Freeport Zone in September 2011, for the year of 2012, for the first half of 2013, and in September 2013. See Business and Investments Update, Clark Development Corporation (September 2011) at 6, **Public Exhibit 7-F-14**; South Korean Investment Reach $3.8B,

661. Once a company registers with BOI as a qualifying business, it is provided with subsidies outlined below.

1) Income Tax Holiday

662. Pursuant to the Executive Order No. 226 Article 39(a), BOI registered companies receive following income tax holidays:

> 1. BOI-registered enterprise shall be exempt from payment of the income taxes reckoned from the scheduled start of commercial operations, as follows:
>
> a. New projects with a pioneer status for six (6) years;
>
> b. New projects with a non-pioneer status for four (4) years;
>
> c. Expansion projects for three (3) years. As a general rule, exemption is limited to incremental sales revenue/volume.
>
> 2. New registered pioneer and non-pioneer enterprises and those located in the less developed areas (LDAs) may avail of a bonus year in each of the following cases:
>
> a. The indigenous raw materials used in the manufacture of the registered product must at least be fifty percent (50%) of the total cost of raw materials for the preceding years prior to the extension unless the Board prescribes a higher percentage; or
>
> b. Compliance with the Board's prescribed ratio of total imported and domestic capital equipment to the number of workers for the project
>
> c. The net foreign exchange savings or earnings amount to at least U.S. $500,000 annually during the first three (3) years of operations.
>
> In no case shall a registered pioneer firm avail of this incentive for a period exceeding eight (8) years.[644]

Manila Bulletin (October 30, 2013), **Public Exhibit 7-F-16**; Clark September Export Volume Up by 15%, Manila Bulletin (October 14, 2013), **Public Exhibit 7-F-17**; Customs Clark Cites Top Exporters, Revenue Contributors, Philippines News Agency (March 12, 2013), **Public Exhibit 7-F-18**.

[644] Executive Order No. 226, The Omnibus Investments Code of 1987, Article 39(a), **Public Exhibit 7-F-22**; Primer on Doing Business in the Philippines, Board of Investments (2010) at 13-14, **Public Exhibit 7-F-11**.

663. According to HLD Clark's website, it was established in 2009.[645] As the company qualifies as a company that conducts "preferred activities," namely activities pertaining to "iron and steel," HLD Clark would have been exempted from corporate tax for the income it earned in 2009-2012 at minimum pursuant to the income tax holiday policy for a non-pioneer company. In addition, HLD Clark could also receive further tax exempt periods if it qualifies as a pioneer company or has earned "bonus years" pursuant to the income tax holiday policy.

664. The income tax exemption provided by the BOI provides a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are exempted. The tax incentives provide a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted. The program is specific under s. 2(7.2)(a) because it is specific to the industries and enterprises conducting "preferred activities" as explicitly provided by the BOI and is specific under s. 2(7.2)(b) as an export-contingent, prohibited subsidy.

2) Exemption from Taxes and Duties on Imported Capital Equipment, Spare Parts and Accessories

665. According to the Executive Order No. 528 s. 2, "Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by the Board of Investments Registered New and Expanding Enterprises," imports classified under various tariff chapters are exempt from duties if it is imported by a company registered with BOI.[646] Eligible imports include articles of iron and steel (chapter 73) and electrical machinery and equipment (chapter 85), among others.[647] Furthermore, in order to qualify for the duty exemption, the following requirements must be met:

> a) They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices; and
>
> b) They are reasonably needed and will be used exclusively by the enterprise in its registered activity, unless prior approval of the BOI is secured.

[645] About Us, HLD Clark Steel Pipe Co., Ltd., **Public Exhibit 7-F-13**.
[646] Executive Order No. 528, Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by the Board of Investments Registered New and Expanding Enterprises, The President of the Philippines (May 12, 2006), **Public Exhibit 7-F-19**.
[647] Eligible imports are imports under the chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 87, 89, 90, 91 and 96 of the Tariff and Customs Code of the Philippines according to the s. 2 of the Executive Order No. 528. These chapters are available in Tariff and Customs Code of the Philippines, **Public Exhibit 7-F-20**.

666. However, the application form to obtain the duty exemption shows that these are not onerous requirements. According to the application form, an applicant simply needs to confirm the pre-prepared statements that satisfy the qualifications.[648] In particular, it does not require the applicant to submit any supporting documents or materials.

667. Similar duty and tax exemption is provided by the Executive Order No. 226 Article 39(m):

> Article 39(m). Exemption from Taxes and Duties on Imported Spare Parts
>
> Importation of required supplies and spare parts for consigned equipment or those imported tax and duty free by a registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes payable thereon, Provided, However, That at least seventy percent (70%) of production is exported; Provided, further, That such spare parts and supplies are not locally available at reasonable prices, sufficient quantity and comparable quality; Provided, finally, That all such spare parts and supplies shall be used only in the bonded manufacturing warehouse of the registered enterprise under such requirements as the Bureau of Customs may impose.

668. Based on the information reasonably available to the Complainants, HLD Clark was established in 2009 and also undertook an expansion in 2010.[649] To the extent that HLD Clark imported equipment and materials in establishing and expanding its Clark Freeport Zone plant, and for other purposes, the company could have qualified to register with the BOI and to be exempted from import duties.

669. The import duty exemption provided by the BOI provides a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are exempted. The tax incentives provide a benefit under *SIMR* s. 35.01 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted. The program is specific under s. 2(7.2)(a) because it is specific to the industries

[648] Application Form for the Importation of Capital Equipment, Spare Parts and Accessories Under E.O. 70, Board of Investment, **Public Exhibit 7-F-21**.
[649] About Us, HLD Clark Steel Pipe Co., Ltd., **Public Exhibit 7-F-13**; CDC, Steel Pipe Manufacturer Sign Pact for Expansion Project, Philippines News Agency (December 15, 2010), **Public Exhibit 7-F-23**.

and enterprises conducting "preferred activities" as explicitly provided by the BOI and is specific under s. 2(7.2)(b) as an export-contingent, prohibited subsidy.

3) Exemption from Wharfage Dues and Any Export Tax, Duty, Impost and Fee

670. According to the Executive Order No. 226 Article 39(n), "exports by a registered enterprise of its non-traditional export products shall be... exempted from any wharfage dues, and any export tax, duty, impost and fee."[650] "Non-traditional export products" is defined in the Presidential Decree No. 1319 "Providing for the Development and Accreditation of Certain Trading Companies and Prescribing Incentives Therefore" to be "export products the total F.O.B. Philippine Port Value of the export of which did not exceed five million U.S. dollars (U.S. $5,000,000) in 1968.[651]

671. According to an academic source, Philippine economy in 1960s was heavily concentrated on agriculture. A source finds that "close to 90 percent of total export earnings was being contributed by raw or simply processed agricultural products as late as the mid-1960s."[652] Specifically, total Philippine agricultural exports in 1965 in F.O.B. were U.S. $687 million, which accounted for 89.5% of the total Philippine exports in that year.[653] In contrast, there were only three pipe and tube manufacturers by 1968, one of which was just built in 1968 and another of which was only completed in 1964.[654] There is no other export data dating back to 1968 reasonably available to the Complainants. However, the earliest that is available to the Complainants indicate

[650] Executive Order No. 226, The Omnibus Investments Code of 1987, Article 39(n), **Public Exhibit 7-F-22.**
[651] Presidential Decree No. 1319, "Providing for the Development and Accreditation of Certain Trading Companies and Prescribing Incentives Therefore," s. 2(d), **Public Exhibit 7-F-24.**
[652] Production Incentives in Philippine Agriculture: Effects of Trade and Exchange Rate Policies, R.M. Bautista, Int'l Food Policy Res. Inst (January 1, 1987) at 16, **Public Exhibit 7-F-25.**
[653] Production Incentives in Philippine Agriculture: Effects of Trade and Exchange Rate Policies, R.M. Bautista, Int'l Food Policy Res. Inst (January 1, 1987) at 17, **Public Exhibit 7-F-25.**
[654] M. Garcia & S. Vicente, Competitiveness in the Philippine Steel Industry at 4, **Public Exhibit 7-F-26** (this paper was presented during the technical workshop on industry studies for the Meeting the Challenges of Globalization: Production Networks, Industrial Adjustment, Institutions and Policies, and Regional Cooperation Project, organized by the De La Salle University-Anglo King Institute for Economic and Business Studies with funding support from the International Development Research Centre (IDRC)-Canada, September 26-27, 2005, Angelo King International Conference Center, Manila, Philippines.

that "Philippines was hardly a player in the Southeast Asian trade with trade volume of 0.03 million MT in 1999, the second smallest next to Vietnam" in the entire field of iron and steel industry.[655]

672. Based on the best information available, the Complainants believe that there are reasons to investigate whether the exports of Subject Goods from Philippine in 1968 exceeded U.S. $ 5 million threshold. If it did not, exports of Subject Goods would qualify as "non-traditional export products," and thereby qualify for the exemption of wharfage dues, export tax, duty, impost and fee under the Executive Order No. 226 Article 39(n).

673. The exemption of wharfage dues, export tax, duty, impost and fee provided by the BOI provides a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are exempted. The tax incentives provide a benefit under *SIMR* s. 35 (or alternatively *SIMR* s. 27.1(2)) equal to the amount exempted. This program is specific under SIMA s. 2(7.2)(b), because the exemptions apply to the exported goods. In other words, benefits under this program are contingent upon exportation, which is prohibited export subsidy under s. 2(1) of the SIMA. In addition, this program is also specific under s. 2(7.2)(a) because it is specific to the industries and enterprises conducting "preferred activities" as explicitly provided by the BOI.

4) Tax Credits for BOI Registered Companies

674. Pursuant to the Executive Order No. 226 Article 39(k), BOI registered companies "shall enjoy a tax credit equivalent to the National Internal Revenue taxes and Customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing, or production of its export products and forming parts thereof."[656]

675. As mentioned above, it is a well-known fact that HLD Clark is one of leading exporters in Clark Freeport Zone. As the only requirement to receive the tax credit under Article 39(k) is to export, the Complainants believe that HLD Clark, to the extent that it pays income tax at all, would benefit from the tax credit in the form of reduced tax payable.

[655] Competitiveness in the Philippine Steel Industry, M. Garcia & S. Vicente at 23, **Public Exhibit 7-F-26**.
[656] Executive Order No. 226, The Omnibus Investments Code of 1987, Article 39(k), **Public Exhibit 7-F-22**.

676. In addition, Executive Order No. 226 Article 39(d) provides further tax credits on the purchases of domestically produced capital equipment. Article 39(d) provides that:

> A tax credit equivalent to one hundred percent (100%) of the value of the national internal revenue taxes and customs duties that would have been waived on the machinery, equipment and spare parts, had these items been imported shall be given to the new and expanding registered enterprise which purchases machinery, equipment and spare parts from a domestic manufacturer: Provided, That (1) That the said equipment, machinery and spare parts are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof; (2) that the equipment would have qualified for tax and duty-free importation under paragraph (c) hereof; (3) that the approval of the Board was obtained by the registered enterprise; and (4) that the purchase is made within five (5) years from the date of effectivity of the Code. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts, the provisions in the preceding paragraph for such disposition shall apply.

677. In essence, the tax credit is provided for the purchase of domestically imported capital equipment, for the amount of duties and taxes the purchaser would have saved had it imported such equipment pursuant to the Article 39(m) and the Executive Order No. 528 as described above. Since HLD Clark was established in 2009 and also undertook an expansion in 2010, the Complainants believe HLD Clark could have purchased eligible machineries, equipment or spare parts, and hence received tax credits to the extent that it paid any income taxes at all.[657]

678. Provision of tax credits by the BOI provides a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are deducted. The tax incentives provide a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount deducted. The program is specific under s. 2(7.2)(a) because it is specific to the industries and enterprises

[657] About Us, HLD Clark Steel Pipe Co., Ltd., **Public Exhibit 7-F-13**; CDC, Steel Pipe Manufacturer Sign Pact for Expansion Project, Philippines News Agency (December 15, 2010), **Public Exhibit 7-F-23**.

conducting "preferred activities" as explicitly provided by the BOI and is specific under s. 2(7.2)(b) as an export-contingent, prohibited subsidy.

5) Tax Deductions for BOI Registered Companies for Labour Expenses

679. According to the BOI, a BOI registered company "shall be allowed an additional deduction from taxable income equivalent to fifty percent of the wages of additional skilled and unskilled workers in the direct labor force."[658] This tax deduction is not available if the company is receiving income tax holidays.

680. There is no doubt that HLD Clark employs skilled and/or unskilled workers in the direct labor force. Specifically, at the time of establishment of the plant in the Clark Freeport Zone, HLD Clark reportedly "committed to employ 160 workers in the first year of operations" in the Zone.[659] As such, to the extent that HLD Clark is paying any income tax at all, it would be eligible to benefit from reduced income tax payable by deducting the an additional labour expenses.

681. Provision of tax deductions by the BOI provides a financial contribution under *SIMA* s. 2(1.6)(b) in amounts otherwise due to the government that are deducted. The tax incentives provide a benefit under *SIMR* s. 32 (or alternatively *SIMR* s. 27.1(2)) equal to the amount deducted. The program is specific under s. 2(7.2)(a) because it is specific to the industries and enterprises conducting "preferred activities" as explicitly provided by the BOI and is specific under s. 2(7.2)(b) as an export-contingent, prohibited subsidy.

i. Subsidization of Philippine Subsidiaries of Chinese OCTG Producers by the Government of China

682. HLD Clark Steel Pipe Co. Inc., ("HLD Clark") was established in 2009 in the Clark Freeport Zone of the Philippines.[660] HLD Clark is a subsidiary of Huludao City Steel Pipe Industrial Co., Ltd. ("Huludao"), a manufacturer of seamless and welded OCTG in China.[661]

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[658] Primer on Doing Business in the Philippines, Board of Investments (2010) at 15, **Public Exhibit 7-F-11**.
[659] Steel Pipe Maker Expands Operation in Clark Freeport, Pampanga Sun Star (December 16, 2010), **Public Exhibit 7-F-28**.
[660] PhilStar, "Chinese metal pipe manufacturing firm to expand Clark Unit," **Exhibit 7-F-30**; HLD Clark, "About Us," **Public Exhibit 7-F-31**.
[661] HLD Pipe, "About Us," **Public Exhibit 7-F-29.**

683. The fact that Huludao established HLD Clark in 2009 strongly suggests that it was created in order to circumvent antidumping and countervailing duty measures put in place. There is reason to believe that HLD Clark processes green tube sourced from associated suppliers in China, allowing Huludao, a cooperative exporter in the Agency's 2009 *OCTG* from China investigation but not in the Agency's 2007 *Seamless Casing from China* investigation, to avoid dumping and countervailing duties resulting from both investigations.

684. For the reasons set out above with respect to the subsidization of Thai subsidiaries of Chinese OCTG producers, Agency policy provides for a deemed, full pass-through of Chinese subsidies to the associated firms to be countervailed notwithstanding that the OCTG may be Philippines-originating goods for *SIMA* purposes

G. OCTG from Ukraine are Being Subsidized

i. Sale of Nikopol Ferroalloys Plant to Interpipe Limited

685. Interpipe Limited ("Interpipe"), the largest producer of OCTG in Ukraine by output, is owned by Victor Pinchuk, who is reported to be the second richest person in Ukraine today and is also a son-in-law of the former Ukrainian president Leonid Kuchma.[662] Mr. Pinchuk's influence over the Government of Ukraine ("GOU") and his ability to secure massive government subsidies cannot be overstated. The Economist put it simply that "{n}one {*in Ukraine*} probably has more influence, or more at stake, than Victor Pinchuk."[663] The influence of Victor Pinchuk and Interpipe in this respect is perhaps best illustrated by the 2003 GOU privatization of Nikopol Ferroalloy Plant ("Nikopol"). This former state-owned operation was sold to Interpipe, in a transaction that the Ukrainian Supreme Court later judged to be illegal.[664] Throughout this chain of events, the GOU, under the authority of SPF, conferred what it claimed to be USD $1 billion company to Interpipe for USD $80 million.

686. Up until the 2003 privatization, the majority ownership of Nikopol was in the hands of the State Property Fund ("SPF"). The SPF was a Ukrainian state-owned institution responsible for privatizing state-owned enterprises, constituted and operating under the *Decree of the President of Ukraine No. 56 on Unified System of Privatization Institutions in Ukraine*.[665]

687. Nikopol was one of the GOU's most sought-after assets, being the "world's leading producer of manganese alloys," and "accounting for about 10% of global production" thereof.[666] Nikopol was also a monopoly producer of certain alloy metals, reportedly supplying 90% of the

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[662] MetalBulletin, *The Five Year Outlook for the Global OCTG Industry* (Excerpts) (2013), 106-108, **Confidential Exhibit 7-G-26**; Interpipe Limited, 2012 Consolidated Financial Statement at 51, **Public Exhibit 7-G-1**; Forbes, The World's Billionaires, (March 2013), **Public Exhibit-7-G-2**.
[663] The Economist, Face Value: Oligarch Agonistes (December 16, 2004), **Public Exhibit 7-G-3**.
[664] Pravda, "Ukraine's Privatization of Nikopol Steel Factory Illegal," (January 20, 2006), **Public Exhibit 7-G-4**.
[665] Ukraine Gateway, State Property Fund of Ukraine, **Public Exhibit 7-G-5**.
[666] Wikileaks, "Ukraine: Struggle for Nikopol Ferroalloy Works Nearing Endgame?" (May 10, 2007), **Public Exhibit 7-G-6**.

steel industry in Ukraine.[667] "Most Ukrainian mills," therefore, which would include the Interpipe mills, were reported to be "dependent on Nikopol for ferroalloys."[668]

688. In 2003, the SPF put out a tender to sell and privatize Nikopol. Under the privatization scheme, the SPF would sell 25% of the plant, transfer the right to manage SPF's remaining 26% of the plant, and provide an exclusive option to purchase SPF's remaining shares in the future.[669] In other words, the winner of the tender would become the *de facto* owner of Nikopol, particularly for the existing minority shareholders of Nikopol, who were Mr. Pinchuk (23% ownership stake) and his chief business rival, Mr. Ihor Kolomoyskiy of Pryvat Group (26% ownership stake).[670]

689. The tender was reported to be scandalous from the very beginning. Soon after the SPF went to tender, on March 31, 2003, Ukrainian courts suspended the sale at the request of Pryvat Group.[671] The allegation was that the "SPF designed the tender so that only Interpipe... could qualify."[672] It has been reported that, as a matter of fact, only one tender participant was allowed to bid in the tender when the court suspension was lifted and the tender resumed in April.[673] This, of course, was Interpipe's "Prydniproviye" consortium.[674]

690. Perhaps unsurprisingly, therefore, SPF awarded the sale to Interpipe for a mere UAH 205 million, while at least one other interested bidder, Pryvat Group, publicly pledged to pay more than twice that amount (UAH 540 million).[675] Subsequent to the first tender, which made Interpipe the majority owner of Nikopol, Interpipe went on to purchase SPF's remaining 26% share unopposed and to thereby become Nikopol's overwhelming majority owner with 74% ownership. This 74% majority ownership stake was composed of Interpipe's 23% initial ownership

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[667] Kyiv Post, "SPF Awards Interpipe Disputed Nikopol Share," (June 4, 2003), **Public Exhibit 7-G-7**; Nikopol Ferroalloy Plant, "The Ukraine & Russia: Current Production Levels, Capacities & Outlook for the Future," (June 2003) at 10 **Public Exhibit 7-G-8**.
[668] Kyiv Post, "SPF Awards Interpipe Disputed Nikopol Share," (June 4, 2003), **Public Exhibit 7-G-7**.
[669] Kyiv Post, "Nikopol Sale Halted Over Price Dispute," (April 2, 2003), **Public Exhibit 7-G-9**, and ForUm, "Verkhovna Rada Barred the Privatization of Nikopol Ferroalloy Plant," (February 10, 2006), **Public Exhibit 7-G-10**.
[670] Wikileaks, "Ukraine: Struggle for Nikopol Ferroalloy Works Nearing Endgame?," (May 10, 2007) at 2, **Public Exhibit 7-G-6**.
[671] Kyiv Post, "Nikopol Sale Halted Over Price Dispute," (April 2, 2003), **Public Exhibit 7-G-9**.
[672] Kyiv Post, "Nikopol Sale Halted Over Price Dispute," (April 2, 2003), **Public Exhibit 7-G-9**.
[673] Kyiv Post, "SPF Awards Interpipe Disputed Nikopol Share," (June 4, 2003), **Public Exhibit 7-G-7**.
[674] Wikileaks, "Ukraine: Struggle for Nikopol Ferroalloy Works Nearing Endgame?" (May 10, 2007) at 2, **Public Exhibit 7-G-6**.
[675] Kyiv Post, "SPF Awards Interpipe Disputed Nikopol Share," (June 4, 2003), **Public Exhibit 7-G-7**.

stake combined with the new 25% ownership purchased from SPF and the follow-on additional 26% ownership subsequently purchased from SPF under the exclusive option to purchase.[676]

691. In total, the purchase price paid by Interpipe for SPF's 51% ownership stake in Nikopol was UAH 410.5 million, or roughly USD 80 million, a price that was widely reported to have been outrageously below fair market value.[677] Tellingly, Mr. Pinchuk himself later admitted, in testimony before the Ukrainian Supreme Court, that SPF's 51% share was at the time "worth somewhere between USD 200-300 million."[678] Even more revealing than Mr. Pinchuk's testimony on this point, the GOU itself had publicly projected "a sale price of {USD} $1 billion."[679] For this reason, President Yushchenko, who displaced President Kuchma in 2005 during the so-called "Orange Revolution," sought to reverse the Nikopol privatization.[680]

692. Ukrainian authorities under President Yushchenko challenged the Nikopol privatization before the Ukrainian Supreme Court, and litigation ensured across a number of Ukrainian legal fora revealing the true nature and extent of the benefits conferred to Interpipe based on revelations including the following: (1) government lawyers admitting that the SPF had acted illegally; and (2) "{the} Nikopol privatization did not occur according to established privatization guidelines and {was} illegal, but had been carried out on orders of top Ukrainian officials, including then-President Kuchma and Kuchma's son-in-law Pinchuk."[681] Against the backdrop of overwhelming evidence of a rigged tender, the Ukrainian Supreme Court in particular ruled that the sale was illegal, and Ukrainian legislators barred the privatization of Nikopol.[682]

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[676] Wikileaks, "Ukraine: Oligarch Pinchuk on Nikopol Ferroalloy and Post-election Politics," (February 2, 2006) at 2, **Public Exhibit 7-G-11**.
[677] ForUm, "Verkhovna Rada Barred the Privatization of Nikopol Ferroalloy Plant," (February 10, 2006), **Public Exhibit 7-G-10**.
[678] Wikileaks, "Ukraine: Oligarch Pinchuk on Nikopol Ferroalloy and Post-election Politics," (February 2, 2006), at 2, **Public Exhibit 7-G-11**.
[679] Wikileaks, "Ukraine: Oligarch Pinchuk on Nikopol Ferroalloy and Post-election Politics," (February 2, 2006) at 2, **Public Exhibit 7-G-11**. The author of the leaked cable is the Political Counselor of the U.S. Embassy in Kiev. See U.S. Department of State, Ukraine: Principal U.S. Embassy Officials at 5, **Public Exhibit 7-G-12**.
[680] ForUm, "Verkhovna Rada Barred the Privatization of Nikopol Ferroalloy Plant," (February 10, 2006), **Public Exhibit 7-G-10**.
[681] Wikileaks, "Ukraine: Oligarch Pinchuk on Nikopol Ferroalloy and Post-election Politics," (February 2, 2006) at 2, **Public Exhibit 7-G-11**.
[682] Pravda, "Ukraine's Privatization of Nikopol Steel Factory Illegal," (January 20, 2006), **Public Exhibit 7-G-4**; ForUm, "Verkhovna Rada Barred the Privatization of Nikopol Ferroalloy Plant," (February 10, 2006), **Public Exhibit 7-G-10**.

693. Interpipe simply disregarded both the Supreme Court ruling and the legislative reversal of the privatization, and continued with legal action in other fora. Ultimately, however, Interpipe is reported to have entered into a deal with Pryvat Group involving multiple companies and assets, which resulted in Pryvat Group withdrawing evidence that it submitted in the Supreme Court case against the Nikopol privatization.[683] Specifically, it is reported that "{o}n April 20, 2007... the Administrative Chamber of Ukraine's Supreme Court had quietly issued a ruling... canceling the 2005 and subsequent rulings that the Nikopol privatization had been illegal" on the basis of "Pryvat's retraction of evidence." [684]

694. The sale of Nikopol by the SPF to Interpipe constitutes government provision of goods, *i.e.*, the assets of Nikopol, within the meaning of SIMA s. 2(1.6). Based on best information available and statements from the GOU itself, the amount of the benefit within the meaning of SIMR s. 36 is more than USD 900 million, being the difference between the USD 80 million reported total purchase price and the fair market value estimated by the GOU of USD 1 billion. The sale is specific within the meaning of s. 2(7.2)(a) of SIMA because the sale was to Interpipe alone. In addition, the SIMR s. 36 provides that for a Government provision of goods, "the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, over the estimated total quantity of subsidized goods to which the subsidy is attributable." Since the GOU provided Interpipe with ferroalloy plant assets, the Complainants believe that the most appropriate methodology for calculating the amount of subsidy is to allocate the benefit over the expected useful life of those assets. For example, Asset Class No. 33.4 of Table B-1, Appendix B, of the U.S. Department of Treasury, Internal Revenue Service, Publication 946 ("How to Depreciate Property") provides for a 15-year average useful life for assets used for the manufacture of primary steel mill products.

ii. The 2013 GOU Stimulus Plan for USD $55 Billion

695. On March 25, 2013, the GOU Cabinet of Ministers released a stimulus plan for USD 55 billion in a 300-page program, with the aim of boosting "some sectors of the economy

[683] Wikileaks, "Ukraine: Struggle for Nikopol Ferroalloy Works Nearing Endgame?," (May 10, 2007) at 3, **Public Exhibit 7-G-6**.
[684] Wikileaks, "Ukraine: Struggle for Nikopol Ferroalloy Works Nearing Endgame?," (May 10, 2007) at 3, **Public Exhibit 7-G-6**.

that would make Ukraine less dependent on external shocks."[685] Specifically, the GOU aims to "help push gross domestic product up by 3.4 percent in 2013, and up to 4 percent in 2014" through this stimulus program.[686] The USD 55 billion cost of the stimulus plan was to be "partially financed from the state budget" and by "bank loans and government bonds," to be guaranteed by the GOU.[687]

696. There is no known, written eligibility criteria for granting the benefits under this program. Instead, according to Mr. Ihor Prasolov, Minister of Economic Development and Trade, funded projects were "hand-picked." [688] In particular, some of the selected projects were funded because they "expand the production of commodities that are in demand."[689] In fact, there are only 38 projects that are reportedly "hand-picked" and are expected to benefit from this program.[690] These "selected companies are big contributors to the gross domestic product" and are targeted from "out of metallurgic, agricultural, aeronautics and shipbuilding sector, the pharmaceutical, and engineering and space industry."[691] It has been publicly reported that "{w}ithin the target industries, the metallurgy is one of the largest beneficiaries."[692] Unsurprisingly, among the beneficiaries is Ukraine's largest OCTG producer, Interpipe, which is expected to receive UAH 2.29 billion or over USD 275 million.[693]

697. The plan is reported to provide stimulus in the form of loans "with small interest rates… while {*the GOU would be*} acquiring this money at higher costs at the international financial

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685 Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.
686 Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.
687 Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.
688 Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-I-13**.
689 Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.
690 Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.
691 Kyiv Post, "Government's Stimulus Plan Can Work to Modernize Economy, Ensure Good Future for Ukraine," (April 29, 2013), **Public Exhibit 7-G-14**.
692 Kyiv Post, "Government's Stimulus Plan Can Work to Modernize Economy, Ensure Good Future for Ukraine," (April 29, 2013), **Public Exhibit 7-G-14**.
693 Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.

markets."[694] Many commentators in Ukraine have pointed out that this program is nothing more than a scheme to "dole out cash to the nation's richest people."[695] A Member of Parliament from Ukraine's minority party noted that this program "is only given to a very limited number of people who represent big business."[696]

698. Based on best available information, the specific form of UAH 2.29 billion paid by the GOU to Interpipe is in the form of preferential loans, which constitute financial contributions in the form of direct transfer of funds under the SIMA s. 2(1.6)(a). In addition, the parts of the funding from commercial banks for the selected projects will involve further financial contributions by the GOU in the form of government guarantees, given the reports that commercial banks "will eventually issue a loan under a government guarantee" and that "if private business {*recipients*} fail to pay, they {*the GOU*} will have to foot the bill."[697] The benefits conferred to Interpipe would be the difference between the interest payable and the interest on a comparable non-guaranteed commercial loan, under the SIMR s. 29 and s. 31.1(1). In addition, this program is specific within the meaning of s. 2(7.2)(a) or s. 2(7.3) of SIMR because it is not generally available throughout the Ukrainian economy—in contrast, it is being granted only to "hand-picked" recipients, only 38 of whom are known to date, and who are known to be limited selected from within a targeted list of industries, namely the metallurgic, agricultural, aeronautics, shipbuilding, pharmaceutical, and engineering and space industries.

iii. The Rescue Plan for Steel and Mining Companies

699. In addition to the USD $55 billion stimulus plan, the GOU has further undertaken various measures in order to "rescue" Ukraine's steel industry. Specifically, soon after the stimulus plan was announced, the Cabinet of Ministers on June 1, 2013, implemented a steel and mining industry rescue package in the form of a Memorandum of Understanding ("MOU") signed with a number

[694] Kyiv Post, "Government's Stimulus Plan Can Work to Modernize Economy, Ensure Good Future for Ukraine," (April 29, 2013), **Public Exhibit 7-G-14**.
[695] Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.
[696] Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.
[697] Kyiv Post, "Nation's Richest Expected to Benefit from $55 Billion Stimulus Plan," (March 28, 2013), **Public Exhibit 7-G-13**.

of industry participants.[698] Among the nine signed beneficiaries of the MOU is Mr. Kirichko, director of Interpipe.[699]

700. The objectives of the MOU cannot be clearer than what is stated on the MOU: to " overcome the consequences of the decrease in production of mining and smelting complex in Ukraine caused by decrease in steel consumption at leading world markets"; and to "develop home metal products consumption as a prerequisite for expeditious infrastructure modernization of the state and sustainable operation of mining and smelting complex, reducing its dependence on fluctuations in the world market, formation of developed domestic metal product market."[700]

701. Responsibilities of the signatory companies under the MOU include maintaining the production level and increasing the production capacity. In turn, the MOU stipulates that the GOU would provide the following specific subsidies:

- recommendation to the National Commission of the State Regulation of Energy not to raise electricity tariffs applicable to the steel and mining industry by more than 5% of the level set on April 1, 2013;
- transportation fees to the steel and mining industry shall not rise by more than 5% of the level set on 2012;
- the GOU shall implement interstate and intergovernmental measures to maintain and expand markets for products of steel and mining complexes; and
- the GOU shall consider amending the legislations to provide state guarantees for production modernization projects undertaken by the private enterprises in steel and mining industry.[701]

702. Tellingly, one media article describes that this MOU "provide{s} mining and steel companies with a wide range of unlimited tax, customs, tariff and railway transportation

[698] Cabinet Ministers of Ukraine, Memorandum of Understanding between the Cabinet of Ministers of Ukraine and the Enterprises of Mining and Metallurgical Complex of Ukraine, (June 1, 2013), **Public Exhibit 7-G-21**.
[699] Cabinet Ministers of Ukraine, Memorandum of Understanding between the Cabinet of Ministers of Ukraine and the Enterprises of Mining and Metallurgical Complex of Ukraine, (June 1, 2013), **Public Exhibit 7-G-21**.
[700] Cabinet Ministers of Ukraine, Memorandum of Understanding between the Cabinet of Ministers of Ukraine and the Enterprises of Mining and Metallurgical Complex of Ukraine, (June 1, 2013), **Public Exhibit 7-G-21**.
[701] Cabinet Ministers of Ukraine, Memorandum of Understanding between the Cabinet of Ministers of Ukraine and the Enterprises of Mining and Metallurgical Complex of Ukraine, (June 1, 2013), **Public Exhibit 7-G-21**.

privileges."[702] Specifically, the GOU "ensures that rates for the use of mineral resources, land and environmental tax will remain unchanged," one that is expected to cost UAH 0.7 billion alone.[703] According to this report, the MOU is "a fresh and hardly the last example of how oligarchs are practicing the parasitism of state budget financing and avoid taxes."[704]

703. Based on best information available, the MOU provides a financial contribution in the form of deduction or exemption of amounts owing to the GOU (in case of tax benefits) and/or provision of goods or services (in case of provision of electricity, transportation services, and state guarantees). In the case of deductions or exemptions of amounts owing to the GOU, the benefits conferred would be the amount deducted or exempted. In case of provision of goods or services, the benefits conferred within the meaning of SIMR s. 36 would be the difference between the price actually charged for the goods and/or services and their fair market value (which in case of state guarantees would be interest difference between the non-guaranteed commercial loan and the state-guaranteed loan). The MOU subsidies are specific within the meaning of s. 2(7.2)(a) or s. 2(7.3) of SIMR because they are provided only to the mining and steel industries. In this regard, the purpose of the MOU specifically names the mining and steel industries as the intended beneficiaries of the MOU.[705]

iv. State Support Provided for the Construction and Operation of Dniprosteel

704. In 2007, Interpipe commissioned a construction of an electric arc steel furnace ("EAF"), Dniprosteel, which would cost USD $700 million to build, but would cut the natural gas consumption by one-eighth, and provide 1.32 million tons of steel for its seamless pipe production, or 90% of Interpipe's steel requirements, by 2014.[706] The second phase of Dniprosteel is also in plan, which is expected to increase the output to 2 million tons a year.[707] Dniprosteel plant, advertised to be "the largest investment project in Eastern Europe" by Interpipe, was completed

[702] The Ukrainian Week, "Put in a Good Word for the Poor Oligarchs," (June 14, 2013), **Public Exhibit 7-G-15**.
[703] The Ukrainian Week, "Put in a Good Word for the Poor Oligarchs," (June 14, 2013), **Public Exhibit 7-G-15**.
[704] The Ukrainian Week, "Put in a Good Word for the Poor Oligarchs," (June 14, 2013), **Public Exhibit 7-G-15**.
[705] The Ukrainian Week, "Put in a Good Word for the Poor Oligarchs," (June 14, 2013), **Public Exhibit 7-G-15**.
[706] Bloomberg, "Interpipe Opens New $700 Million Steel Mill in Ukraine," (October 4, 2012), **Public Exhibit 7-G-17**.
[707] Bloomberg, "Interpipe Opens New $700 Million Steel Mill in Ukraine," (October 4, 2012), **Public Exhibit 7-G-17**.

and began operations in October 2012, with an extravagant opening ceremony featuring the President of Ukraine, Mr. Yanukovish.[708]

705. Since its inception, Dniprosteel has been a crown jewel of Interpipe, publicly described to be "state-of-the-art," "a new step for the steel industry," and "a new reference point in the cultural history of Ukraine."[709] What was also clear from the beginning was that the GOU would fully support Interpipe using any means it has in its disposal in order to assure that Dniprosteel is a huge success to Interpipe, demonstrated by the President Yanukovich visit to the construction site in October 2010, in which he "gave instructions to the relevant government departments to assist with the construction of the smelting complex and gave an urgent order to affirm documentation for the project."[710]

706. Based on the information available, the Complainants believe that Mr. Yanukovinch's instructions materialized into at least two separate and distinct countervailable subsidy measures, which are described further below:

1) <u>Dniprosteel Rescue Fund</u>

707. In March 2010, economic conditions surrounding Interpipe was becoming gloom, as the company fell behind its Eurobond debt obligations and its credit rating began to fall. In order to save Interpipe in these troubling times, a GOU lawmaker submitted a request for public credit of USD$300 million, to use used to complete the construction of Dniprosteel. Some of the rationales for this public credit were stated to be to increase international competitiveness and to save production capacity of Interpipe.[711] Although no further public reports of the status of the recue fund submission can be found to date by the Complainants, given the successful completion of the Dniprosteel in 2012 and the track record of the GOU's support of Interpipe, the Complainants respectfully request that the Agency initiate an investigation of this program.

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[708] Interpipe, Interpipe Steel: A State-of-the-art Project, **Public Exhibit 7-G-22**; Interpipe, Interpipe Steel Opening – for the workers, the city, and society, **Public Exhibit 7-G-23**.
[709] Interpipe, Interpipe Steel Opening – for the workers, the city, and society, **Public Exhibit 7-G-23**.
[710] Steel Guru, "Interpipe Presents New Electric Steel Smelting Complex Interpipe Steel," (October 13, 2010), **Public Exhibit 7-G-19**.
[711] "Why do Metallurgists Need Government Support?" (17 March 2010), **Exhibit 7-G-24**.

708. The provision of USD$300 million in "public credit," whether it takes the form of grant or loan, is a financial contribution in the form of direct transfer of funds in accordance with SIMA s. 2(1.6)(a). For the amount received as grants, benefit is the amount of the grant received under SIMR s. 27. For the amount received as loans, benefit is the difference between the interest rate actually paid and the interest that would have been incurred on a non-guaranteed commercial loan under SIMR s. 28(b). Such grant or loan is *de jure* specific in law pursuant to SIMA s. 2(7.2)(a), because it is explicitly and exclusively provided to Interpipe.

2) State Program for Enhancement of Economic Development in 2013-2014

709. According to the *Decree of the Cabinet of Ministers of Ukraine on State Program for Enhancement of Economic Development in 2013-2014* ("State Development Program for 2013-2014"), the President of Ukraine, Mr. Yanukovich, promulgated this state-subsidy program in part in order to target and develop "priority branches of national economy."[712] The goals of this program include "support of national producers and implementation of import substitution policy," and "increase in export of domestic products."[713]

710. Metallurgical industry is one of the priority industries identified by the State Development Program and the critical importance of the industry to the GOU is set out as follows:

> *The domestic metallurgical enterprises mainly produce common metal-roll of ordinary steel grades. About 80 percent of the mining and smelting products are exported making, that is 40 percent of currency earnings of the country.*
>
> *Metallurgical industry and production of ready metal products is one of the major components of mining and smelting complex of the country. In 2012 around 11.7 percent of all employed persons worked at the enterprises of this branch. The sales volume of metallurgical products and ready metal products was 18.8 percent of the total share of industrial products; and the power intensity of the industry was 30 percent higher than all over the world.* [714]

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[712] Decree of the Cabinet of Ministers of Ukraine on State Program for Enhancement of Economic Development in 2013-2014,(February 27, 2013) at 1, **Public Exhibit 7-G-25**.
[713] Decree of the Cabinet of Ministers of Ukraine on State Program for Enhancement of Economic Development in 2013-2014,(February 27, 2013) at 3, **Public Exhibit 7-G-25**.
[714] Decree of the Cabinet of Ministers of Ukraine on State Program for Enhancement of Economic Development in 2013-2014,(February 27, 2013) at 4, **Public Exhibit 7-G-25**.

711. There are 65 specific task items contained in the Annex to the State Development Program, and a number of specific activities and/or projects are stipulated under each of the task item. Among the task items is a task "to establish conditions for modernization, technical re-equipment, restructuring of the existing and foundation of new enterprises."[715] Under this task, UAH 1,540 million is apportioned to Interpipe's Dniprosteel EAF, which is provided for increasing the "export of pipe products by 700 thousand tons (value of not less than USD 700 million)." The UAH 1,540 million support is due 2014 and the funds will be raised using the state-guarantees.[716]

712. Based on the information available, the UAH 1,540 million support could have taken a form of direct transfer of funds (either a grant or a preferential loan) or a contingent transfer of funds (provision of a loan guarantee) under the SIMA s. 2(1.6)(a). In the case of a grant, the benefit is the amount of the grant under the SIMR s. 27. In the case of a preferential loan, the benefit is the difference between the preferential interest actually paid on the loan and the amount of interest that would be payable on a comparable non-guaranteed commercial loan under the SIMR s. 29. In the case of a provision of loan guarantee, the benefits conferred within the meaning of SIMR s. 31.1 would be the difference between the interest rate actually paid and the interest that would have had been payable had it not been for the guarantee. In addition, this program is *de jure* specific in law pursuant to SIMA s. 2(7.2)(a), because it is explicitly and exclusively provided to Interpipe.

v. Provision of Electricity at Less Than Fair Market Value

713. According to the World Bank's study of Ukraine's trade policy, the provision of electricity at less than adequate remuneration is one of "{t}he main instruments of government support" for the metallurgy sector.[717] The metallurgy sector is estimated to have received about USD 0.3 billion in energy subsidies, or 0.7% of Ukraine's GDP based on 2002 data.[718] Most of these subsidies are estimated to have been provided in the form of low electricity tariff, at prices

[715] Decree of the Cabinet of Ministers of Ukraine on State Program for Enhancement of Economic Development in 2013-2014,(February 27, 2013), Annex, **Public Exhibit 7-G-25.**
[716] Decree of the Cabinet of Ministers of Ukraine on State Program for Enhancement of Economic Development in 2013-2014,(February 27, 2013), Annex, **Public Exhibit 7-G-25.**
[717] World Bank, "Ukraine's Trade Policy: A Strategy for Integration into Global Trade," (June, 2005) at 102, **Public Exhibit 7-G-16.**
[718] World Bank, "Ukraine's Trade Policy: A Strategy for Integration into Global Trade," (June, 2005) at 105, **Public Exhibit 7-G-16.**

that the World Bank estimated to be lower than cost.[719] The energy subsidies are reported to have accounted for 4.7% of Ukraine's entire metallurgical exports in 2002.[720]

714. Based on the information available, the Complainants believe that Interpipe, one of the largest companies in the Ukrainian metallurgical sector, has benefited from electricity prices provided by the GOU at less than fair market value. Specifically, Interpipe's director general, Oleksandr Kirichko, stated publicly that "Interpipe will ask the government to cut electricity prices" for its Dniprosteel EAF plant, the plant, as mentioned above, the Ukrainian President visited and gave "instructions to the relevant government departments to assist with the construction of the smelting complex."[721] Given the track record of the GOU of using the electricity rate as a mean to support the metallurgy sector, Interpipe's request for the preferential electricity rate, and Ukrainian President's explicit and public pledge to support Interpipe, the Complainants respectfully request that the Agency initiate investigation of this program.

715. The provision of electricity is a financial contribution within the meaning of government provision of goods under the SIMA s. 2(1.6)(c). The amount of benefit is the difference between the fair market price of the electricity and the discounted price of electricity provided to Interpipe under the SIMR s. 36. Any special electricity discount received by Interpipe for its new steel plant in response to the company's request is specific to Interpipe within the meaning of s. 2(7.2)(a) or s. 2(7.3) of SIMR. In particular, the World Bank study finds that "{t}he metallurgy sector accounted for about half of all implicit energy subsidies to the Ukrainian industry," while the sector accounted for only 30% of Ukraine's GDP in 2012, according to the State Agency for Investment and National Projects of Ukraine.[722] In other words, best available public information already confirms that the electricity subsidies are *de facto* specific to the Ukrainian steel sector

[719] World Bank, "Ukraine's Trade Policy: A Strategy for Integration into Global Trade," (June, 2005) at 105, **Public Exhibit 7-G-16**.
[720] World Bank, "Ukraine's Trade Policy: A Strategy for Integration into Global Trade," (June, 2005) at 106, **Public Exhibit 7-G-16**.
[721] Bloomberg, "Interpipe Opens New $700 Million Steel Mill in Ukraine," (October 4, 2012), **Public Exhibit 7-G-17**; Steel Guru, "Interpipe Presents New Electric Steel Smelting Complex Interpipe Steel," (October 13, 2010), **Public Exhibit 7-G-19**.
[722] World Bank, "Ukraine's Trade Policy: A Strategy for Integration into Global Trade," (June, 2005) at 105, **Public Exhibit 7-G-16**; Invest Ukraine, "Metals and Mining in Ukraine," (March 13, 2013), **Public Exhibit 7-G-18**.

H. OCTG from Indonesia are Being Subsidized

i. Income Tax Subsidies

1) Tax Deductions to "Labour-Intensive" Industries in the Upstream Oil and Gas Sector

716. PT Citra Tubindo Tbk ("CT") is a producer of OCTG selling into Canada, located in the Kabil Integrated Industrial Estate ("KIIE") of Batam Island.[723] As a key regional steel producer and Indonesia's champion in the steel sector, CT has not shied away from boasting of its influence over the Government of Indonesia ("GOIN") and of winning favors. According to CT's 2012 Annual Report, the President Director of the company reported having an "attitude of {'}no surrender{'} to convince the Government of the Republic of Indonesia that the supporting industry of oil and gas is a strategic industry which needs to be supported by the Government of Indonesia for it plays a role to induce national economic growth."[724]

717. The company's influence was clearly displayed in its 30th anniversary celebration on August 24, 2013, which was attended by the provincial Governor, HM Sani and the Vice Minister of Energy and Mineral Resources, Siswoutomo Susilo.[725] According to the Minister, there are government incentives "to keep forward nationalism," for "{l}abor-intensive industries in the upstream oil and gas sector" with "a minimum of 30 percent of its products for exports," ostensibly in the form of "additional tax deductions."[726] Not surprisingly, given that this policy was announced at CT's 30th anniversary celebration event, CT's exports accounted for 52% of the total revenue in 2012 according to the company's 2012 Annual Report.[727]

718. The "additional tax deductions" constitute financial contribution in the form of amounts forgone under the SIMA s. 2(1.6)(b). Pursuant to the SIMR s. 27, amounts forgone by the government is treated as a grant and it confers benefits in the amount of the "grant," *i.e.*, the

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[723] PT Citra Tubindo Tbk, 2012 Annual Report at 12, **Public Exhibit 7-H-1** ("{t}he Company operates its activities according to the intentions and objectives stated in the Articles of Association, such as providing the needs of Oil Country Tubular Goods…").and Notes to Financial Report at 7 ("{t}he company's products are marketed domestically and exported to Japan, United States, Canada, Australia, Middle East, Africa and Asia"); PT Citra Tubindo Tbk, Annual Report Notes to Financial Report at 6, **Public Exhibit 7-H-1**.
[724] PT Citra Tubindo Tbk, 2012 Annual Report at 6, **Public Exhibit 7-H-1**.
[725] Kabil Integrated Industrial Estate, "Celebration of the 30th Anniversary of Citra Tubindo," **Public Exhibit 7-H-2**.
[726] Kabil Integrated Industrial Estate, "Celebration of the 30th Anniversary of Citra Tubindo," **Public Exhibit 7-H-2**.
[727] PT Citra Tubindo Tbk, 2012 Annual Report at 47, **Public Exhibit 7-H-1**

amounts forgone. This program is *de jure* specific and a prohibited subsidy under SIMA s. 2(7.2)(b), because the deduction is contingent upon exportation of at least 30% of its production.

2) <u>Deferral of Import Income Tax on Imported Capital Goods, Equipment and Raw Materials for Production Destined for Export (Bonded Zone Locations)</u>

719. According to the U.S. Department of Commerce in the Preliminary CVD finding of *Monosodium Glutamate from Indonesia*, imports into Indonesia are subject to an income tax withholding equal to either 2.5 percent or 7.5 percent of the total import value, depending on whether the importer owns an Import Identification Number under Article 22 of Indonesia's *Income Tax Law*.[728] In addition, the import income tax withholding would apply only to imports of capital goods, equipment, or raw materials for use in the production of exported goods. Importantly, the amount withheld is the importer's income tax, not import duty or tariff.[729]

720. However, when a company imports into a bonded zone, that company is not required to pay any import income tax withholding upon entry.[730] As a result, companies outside of bonded zones would offset import income tax withheld against their income tax liability at the year-end, while the companies located within the bonded zones would not need to do such offsetting.[731]

721. As a result of the exemption from import income tax withholding for the companies located within the bonded zones, these companies effectively pays less in import income tax, as the import income tax payable at the year-end is less than the import income tax withheld, measured at the time of the importation. In addition, the companies that benefit from the deferred import income tax are not known to be paying any interest on the amount deferred. In other words,

[728] United States Department of Commerce, *Monosodium Glutamate from Indonesia: Preliminary Negative Countervailing Duty Determination*, 79 FR 13614, (March 11, 2014), and accompanying *Issues and Decision Memorandum* at 8, **Public Exhibit 7-H-3**.
[729] United States Department of Commerce, *Monosodium Glutamate from Indonesia: Preliminary Negative Countervailing Duty Determination*, 79 FR 13614, (March 11, 2014), and accompanying *Issues and Decision Memorandum* at 8, **Public Exhibit 7-H-3**.
[730] United States Department of Commerce, *Monosodium Glutamate from Indonesia: Preliminary Negative Countervailing Duty Determination*, 79 FR 13614, (March 11, 2014), and accompanying *Issues and Decision Memorandum* at 8, **Public Exhibit 7-H-3**.
[731] United States Department of Commerce, *Monosodium Glutamate from Indonesia: Preliminary Negative Countervailing Duty Determination*, 79 FR 13614, (March 11, 2014), and accompanying *Issues and Decision Memorandum* at 8, **Public Exhibit 7-H-3**.

the present value of the import income tax payable at the year-end is less than the import income tax that would have been withheld, measured at the time of importation.

722. CT is located in KIIE, which is labeled as a "Free Trade Zone,"[732] which is also a bonded zone.[733] In addition, another major Indonesian producer of OCTG, PT Bakrei & Brothers Tbk ("Bakrie") reported to have earned a "bonded zone license" for its subsidiary, Seamless Pipe Indonesia Jaya.[734] As such, these companies would appear to be eligible to benefit from the deferred import income tax program.

723. Deferral of import income tax is a financial contribution in the form of revenue forgone under the SIMA s. 2(1.6)(b). Under this program, import income tax is deferred only with respect to the imports to be used for exported products. As such, this program confers benefits as provided under SIMR s. 33 and 34, with the amount of benefit being:

> {T}he present value of the interest that would have been payable, by the recipient of the deferral of income taxes, on a commercial loan in an amount equal to the amount of the deferred taxes, for a period equal to the period of the deferral, and with repayment terms similar to those in the payment schedule that applies to the deferred taxes.

724. In addition, this program is a *de jure* specific and prohibited subsidy under SIMA s. 2(7.2)(b), because the deferral is contingent upon export of the imports subject to the deferral.

3) Tax Holiday Package for the Large Pioneer Sector Investments

725. On November 31, 2011, the GOIN Industry Minister M.S. Hidayat announced an issuance of tax reduction for certain large manufacturing projects, followed by a similar tax holiday introduced by the Investment Coordinating Board ("BKPM").[735] According to the Minister, these two tax incentives are "just the same" and the "investors can choose whether to propose applications to get the tax holiday through the Industry Ministry or the BKPM."[736]

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[733] Kabil Integrated Industrial Estate, "Investment Incentives and Attractions in Batam," **Public Exhibit 7-H-4**; China Go Abroad, "Kabil Industrial Estate," **Public Exhibit 7-H-5**.

[734] Bakrie & Brothers, 2006 Annual Report at 13, **Public Exhibit 7-H-6**.

[735] Embassy of Indonesia in Ottawa, "Tax Holidays Becomes Available to Investors," **Public Exhibit 7-H-7**.

[736] Embassy of Indonesia in Ottawa, "Tax Holidays Becomes Available to Investors," **Public Exhibit 7-H-7**.

726. Under the tax holiday programs, an investor is "offered an income tax holiday from between five to 10 years along with tax allowances to projects in high-priority sectors and in remote areas in a bid to accelerate investments in the country's infrastructure and natural resource-based manufacturing industries."[737] Notably, such industries, also known as the country's pioneer sectors, are limited to the following: (1) base metal; (2) oil refining and basic petrochemicals; (3) machinery; and (4) renewable energy; and (5) telecommunication equipment.[738] In addition, the investments must have a value of Rp 1 trillion or more, and the GOIN will further narrow down the recipients based on a number of other factors such as investment value, location, and multiplier effects of the business.[739]

727. The tax allowance that accompanies the tax holiday would "cut taxable income {*by*} up to 30 percent of total investments realized over six years" and it "will be made available for certain labour-intensive projects in remote areas with a minimum investment of Rp 50 billion."[740]

728. The tax holidays and allowances administered by the BKPM operate in a similar manner, in that a taxpayer "can be granted a tax relief facility for a period of between 5 and 10 years, starting from the commencement of its commercial production."[741] This program is also provided for the "pioneer industry" companies with an investment of Rp 1 trillion or more.[742] The difference is that, under the BKPM administered program, the "taxpayer will be entitled to an income tax reduction of 50% for a further 2 years" once the tax holiday period expires.[743]

729. Given that one of the enumerated industries is "base metal," the Complainants have reason to believe that the Indonesian OCTG producers would be eligible for the tax holidays and allowances.

730. The income tax holidays and allowances constitute financial contribution in the form of amounts forgone under SIMA s. 2(1.6)(b). Pursuant to SIMR s. 27, amounts forgone by the government are treated as a grant and confers a benefit in the amount of the "grant," *i.e.*, the

[737] Embassy of Indonesia in Ottawa, "Tax Holidays Becomes Available to Investors," **Public Exhibit 7-H-7**.
[738] Embassy of Indonesia in Ottawa, "Tax Holidays Becomes Available to Investors," **Public Exhibit 7-H-7**.
[739] Embassy of Indonesia in Ottawa, "Tax Holidays Becomes Available to Investors," **Public Exhibit 7-H-7**.
[740] Embassy of Indonesia in Ottawa, "Tax Holidays Becomes Available to Investors," **Public Exhibit 7-H-7**.
[741] Indonesia Investment Coordinating Board, "Investment Incentives," **Public Exhibit 7-H-8**.
[742] Indonesia Investment Coordinating Board, "Investment Incentives," **Public Exhibit 7-H-8**.
[743] Indonesia Investment Coordinating Board, "Investment Incentives," **Public Exhibit 7-H-8**.

amounts forgone. The income tax holidays and allowances are *de jure* specific under SIMA s. 2(7.2)(a), since eligibility is restricted to particular enterprises within the five enumerated "pioneer industries."

4) Income Tax Allowances under the *Regulation No. 144 of 2012*

731. According to the BKPM, 129 business segments in ten enumerated industries are eligible for a preferential income tax package pursuant to Regulation No. 144 of 2012. There are four specific, separate tax programs under this package, each of which provide countervailable subsidies to OCTG producers:

1. Reduction of Net Income of 30 Percent of the Investment, Charged for Six Years at Five Percent Each Year;
2. Accelerated Depreciation Expense;
3. Reduction of Tax on Foreign Dividend Income to 10%; and
4. Extension of Loss Carry Forward of One to Five Years.[744]

732. The Complainants have reason to believe that these four programs may be used by the Indonesian OCTG producers. For example, the tax deduction for the investment amount – namely the reduction of 30 percent of the investment amount over six years –appears to be similar to the "tax allowance" proclaimed by the GOIN Industry Minister M.S. Hidayat, described above. Specifically, the Minister stated that the "tax allowance" would "cut taxable income {*by*} up to 30 percent of total investments realized over six years."[745] As such, the Complainants believe that this program, along with the other three programs under Regulation No. 144 of 2012, is provided for the "pioneer industry" companies with an investment of Rp 1 trillion or more as well.[746]

733. These income tax programs are a financial contribution in the form of amounts forgone under SIMA s. 2(1.6)(b). Pursuant to SIMR s. 27, amounts forgone by the government are treated as a grant and it confers a benefit in the amount of the "grant," *i.e.*, the amounts forgone. These

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[744] *Regulation of the Minister of Finance of the Republic of Indonesia Number 144/PMK.011/2012 Concerning Facilitation of Income Tax for Investment in Specific Business Sector and/or in Specific Regions*, Article 2, **Public Exhibit 7-H-9**.
[745] Indonesia Investment Coordinating Board, "Investment Incentives," **Public Exhibit 7-H-8**.
[746] Indonesia Investment Coordinating Board, "Investment Incentives," **Public Exhibit 7-H-8**.

income tax programs appears to be *de jure* specific under SIMA s. 2(7.2)(a), since eligibility appears to be restricted to particular enterprises within the five enumerated "pioneer industries."

5) Five Percent Income Tax Reduction for Certain Publicly Traded Companies

734. Pursuant to the Indonesian *Income Tax Law* Article 17(2b) and the Government *Regulation No. 81/2007*, companies with 40% or more of its shares traded on the Indonesia Stock Exchange are subject to 20% tax rate, a 5% reduction from the normal rate of 25%.[747]

735. According to Barkie's 2012 Annual Report, the "Company has complied with the requirements of the Government Decree No. 81 Year 2007 and Law No. 26 Year 2008, and therefore, has effected the 5% tax rate reduction in its corporate income tax computation."[748]

736. The income tax reduction is a financial contribution in the form of revenue forgone under SIMA s. 2(1.6)(b). Pursuant to SIMR s. 27, amounts forgone by the government are treated as a grant and confers a benefit in the amount of the "grant," *i.e.*, the amounts forgone. The income tax reduction is explicitly limited to those with 40% or more of their shares trading in Indonesia Stock Exchange. As such, this program is *de jure* specific within the meaning of SIMA s. 2(7.2)(a). In any case, the Complainants believe that this program is also *de facto* specific pursuant to the SIMA s. 2(7.3), as the only companies eligible to benefit from this program are a subset of a small fraction of the Indonesian economy, namely those companies currently listed on the Indonesia Stock Exchange. As of the end of 2012, there were only 459 issuers listed on the Indonesia Stock Exchange.[749] In contrast, the World Bank data show that during 2009-2013 alone, there were 47,549 newly registered businesses in Indonesia.[750] Given that eligibility is further restricted to the companies with 40% or more of its shares traded in the Indonesia Stock Exchange, the Complainants believe that the 5% reduction of income tax rates is used by a limited numbers of particular enterprises. In addition, these companies would benefit disproportionally, if not predominantly or exclusively, from the 5% income tax rate reduction.

[747] Ministry of Finance of the Republic of Indonesia, "Instruction for the Completion of Income Tax Return for Corporate" at 12-13, **Public Exhibit 7-H-10**.
[748] Bakrie & Brothers, 2012 Annual Report at 331, **Public Exhibit 7-H-11**.
[749] Indonesia Stock Exchange, 2012 Annual Report at 18, 19, **Public Exhibit 7-H-12**.
[750] World Bank, New Businesses Registered, **Public Exhibit 7-H-13**.

ii. Import Duty Exemption for Companies Using Machines with Qualifying Local Content

737. Article 5 of the *Regulation of the Minister of Finance No. 176 of 2009*, "The Exemption of Import Duty on Imported Machines, Goods and Materials for the Building or Development of Industries within the Framework of Investment" provides an import duty exemption for companies that meet local content requirements as follows:

> Article 5 (1) If companies carry out the building or development of industries, except those producing services, using locally made machines of at least 30% (thirty percent) of the total value of machines, the import of goods and materials can be granted import duty exemption as intended in Article 2 paragraph (1) for production needs/additional production needs for 4 (four) years according to their installed capacity, with the import period of 4 (four) years after the decision on import duty exemption takes effect. [751]

738. Article 2(1) simply provides that "{t}he import of machine, goods and materials by companies engaged in... industries production goods... can be granted exemption of import duty facilities."[752]

The import duty exemption is a financial contribution in the form of revenue forgone or amounts not collected under SIMA s. 2(1.6)(b). Pursuant to SIMR s. 27, amounts forgone by the government are treated as a grant, which confers a benefit in the amount of the "grant," *i.e.*, the amounts forgone. This program is a prohibited subsidy contingent upon the use of domestic goods, and as such constitutes a *de jure* specific under the SIMA 2(7.2)(b).

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[751] *Regulation of the Minister of Finance No. 176/PMK.011/2009 Concerning the Exemption of Import Duty on Imported Machines, Goods and Materials for the building or Development of Industries within the Framework of Investment*, **Public Exhibit 7-H-14**.

[752] *Regulation of the Minister of Finance No. 176/PMK.011/2009 Concerning the Exemption of Import Duty on Imported Machines, Goods and Materials for the building or Development of Industries within the Framework of Investment*, **Public Exhibit 7-H-14**.