



Canada Border
Services Agency

Agence des services
frontaliers du Canada

OTTAWA, May 8, 2012

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STATEMENT OF REASONS

**Concerning the termination of investigations with respect to
the dumping and subsidizing of**

**CERTAIN POTASSIUM SILICATE SOLIDS ORIGINATING IN OR EXPORTED
FROM THE ISLAMIC REPUBLIC OF PAKISTAN**

DECISION

On April 23, 2012, pursuant to paragraph 35(2)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency terminated dumping and subsidizing investigations respecting potassium silicate (also known as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass), of all grades and ratios in a soluble solid including chunks, flakes or powder forms, originating in or exported from the Islamic Republic of Pakistan.

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

Canada

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SUMMARY OF EVENTS

[1] On November 16, 2011, the Canada Border Services Agency (CBSA) received a written complaint from National Silicates Partnership (NSP), a private partnership between PQ Canada Company and NSL Potters Canada Company, of Etobicoke, Ontario (the Complainant), alleging that imports of certain potassium silicate solids originating in or exported from the Islamic Republic of Pakistan (Pakistan) are being dumped and subsidized and the alleged dumping and subsidization of these goods are causing injury and retardation and are threatening to cause injury to the Canadian industry.

[2] On December 7, 2011, pursuant to subsection 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. The CBSA also notified the Government of Pakistan (GOP) that a properly documented complaint had been received and provided the GOP with the non-confidential version of the subsidy portion of the complaint, which excluded sections dealing with normal value, export price and margin of dumping.

[3] On January 6, 2012, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain potassium silicate solids from Pakistan.

[4] On January 9, 2012, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain potassium silicate solids from Pakistan have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods.

[5] On March 6, 2012, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain potassium silicate solids have caused injury or are threatening to cause injury to the domestic industry. The Tribunal also determined that the evidence does not disclose a reasonable indication that the alleged dumping and subsidizing of certain potassium silicate solids have caused retardation to the domestic industry.

[6] On April 3, 2012, the President extended the 90-day period for making a preliminary determination, pertaining to all or part of the investigations, to 135 days, due to the complexity and novelty of the issues presented by the investigations, pursuant to paragraph 39(1)(a) of SIMA.

[7] The CBSA continued the investigations, and subsequent to further analysis and examination of the information presented, the President of the CBSA was satisfied, pursuant to subparagraph 35(1)(a)(ii) of SIMA, that the evidence indicated that the margin of dumping and amount of subsidy were insignificant. Therefore, the President of the CBSA was required under paragraph 35(2)(a) to terminate the investigations.

[8] The Tribunal's preliminary inquiry into the question of injury to the Canadian industry shall be terminated pursuant to subsection 35(3) of SIMA.

PERIOD OF INVESTIGATION

[9] The dumping and subsidy investigations have the same Period of Investigation (POI). The POI is from January 1, 2010 to September 30, 2011.

INTERESTED PARTIES

Complainant

[10] The Complainant accounts for a major proportion of the production of like goods in Canada. The Complainant's goods are produced at a manufacturing facility in Etobicoke, Ontario.

[11] The name and address of the Complainant are:

National Silicates Partnership
429 Kipling Avenue
Etobicoke, ON
M8Z 5C7

[12] There are no other known manufacturers of subject goods in Canada.

Exporters

[13] The CBSA identified three potential exporters and producers of the subject goods from its own research, information provided by the Complainant and CBSA import documentation over the period of January 1, 2010 to September 30, 2011.

[14] The CBSA sent the identified exporters two separate Requests for Information (RFI), one pertaining to the dumping investigation and one pertaining to the subsidy investigation.

[15] The CBSA received a response to the RFIs from Captain PQ Chemical Industries (Private) Ltd. (Captain). In the response, Captain stated that they were filing jointly with Fusion Technologies Inc. BFC (Fusion) as Fusion is considered an associated exporter under SIMA. Captain also stated that they are the sole manufacturer of potassium silicate solid in Pakistan.

[16] The evidence before the CBSA indicated that the third exporter identified at initiation was in fact a second production plant owned and operated by Captain.

Importers

[17] At the initiation of the investigations, the CBSA identified four potential importers of the subject goods from information provided by the Complainant and CBSA import documentation over the period of January 1, 2010 to September 30, 2011.

[18] The CBSA sent an importer RFI, pertaining to the dumping investigation, to each of these parties.

[19] The CBSA received a response from one importer, Marquis Alliance Energy Group Inc. (MAEG), a division of Secure Energy Services, which includes the companies formally known as Marquis Liquids and Solvex Technologies Inc. This group of companies appeared as the importer on CBSA import documents for all imports of subject goods during the POI.

Government of Pakistan

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

[21] At the initiation of the investigations, the CBSA sent a government subsidy RFI to the GOP. The CBSA received a response to that RFI from the GOP.

PRODUCT DEFINITION

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

"Potassium silicate (also known as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass), of all grades and ratios in a soluble solid including chunks, flakes or powder forms, originating in or exported from the Islamic Republic of Pakistan"

Additional Product Information

[23] Potassium silicate solid is also referred to as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass, potassium silicate chunks and/or potassium silicate flake. The subject goods include all grades of potassium silicate solid such as powder, granules, pellets, tablets, flakes, chunks and/or other solid forms. The chemical symbol for potassium silicate is K_2O_3Si . Potassium silicate solid is alkaline and commonly manufactured at a ratio of 1.5 to 3.0 relating to silicate (SiO_3) to potassium oxide (K_2O).

[24] The most common use of potassium silicate solid is as an ingredient in the manufacture of a derivative product, being potassium silicate liquid. Potassium silicate solid is dissolved to form potassium silicate liquid, known commonly in the industry as potassium silicate. Potassium silicate flake or glass/chunks and potassium silicate solid ground/milled powder may be dissolved in water or water and steam to transform it into potassium silicate liquid.¹ The above product definition does not include the derivative product, potassium silicate in liquid form.

[25] The most common end use in Canada of potassium silicate liquid (a primary derivative product) is as an ingredient in drilling fluid or mud slurry thinner in the oil & gas industry (a secondary derivative product). Drilling fluids are pushed into the drill hole to attract and bring to the surface the cuttings created in the drilling process. The silica in the drilling fluid adheres to the drilled surfaces in order to stabilize swelling or heaving clays and seals micro-fractures in the shale indentations to maintain the stability of the drill hole until the oil and tubular gas casing is inserted into the drilled hole. After the drill hole is drilled, oil country tubular goods (“OCTG”) (which include drill pipe, casings and tubing) are used to prevent the bored hole from collapsing.

[26] Potassium silicate solid in powder form may also be used to manufacture drilling fluid (or as an additive to drilling fluid) on-site at an oil or gas well. On-site manufacturing takes place in mixers/mix tanks.

[27] Potassium silicate solid is also used in limited agricultural applications as a fertilizer. It helps plants to resist toxicity from phosphorous manganese, aluminum and iron and increases tolerance to salt. Further it aids in resistance to drought by reducing water loss and may in certain situations improve growth and yield. In Canada, the use of potassium silicate solid for agricultural applications is approved for limited applications. Where potassium silicate solid is used in agricultural applications, it is often in a ground powder form.²

[28] Potassium silicate solid is also used as an ingredient in refractory brick and refractory mortar. Refractory bricks and refractory mortar are used to line furnaces, ovens, reactor vessels where the furnace, oven, and reactor vessel must withstand very high temperatures. Potassium silicate solid is used because it improves the ability of the bricks and mortar to withstand certain types of chemicals (e.g., corrosive acids).³

[29] Potassium silicate solid, to a lesser extent, is also used as a binder in welding rods.⁴

¹ Dumping Exhibit 2 (NC) - Complaint - Tab 11 of the complaint has additional information about potassium silicate liquid.

² Dumping Exhibit 2 (NC) - Complaint - Tab 13 of the complaint has additional information about the use of potassium silicate in agricultural applications.

³ Dumping Exhibit 2 (NC) - Complaint - Tab 16 of the complaint has additional information about bonding and coating applications.

⁴ Dumping Exhibit 2 (NC) - Complaint - Tab 15 of the complaint has additional information about these secondary derivative products.

Production Process

[30] The production process of the potassium silicate solid generally involves three stages: batch preparation, melting in a furnace and hardening/forming.

[31] The batch preparation involves mixing potassium carbonate (a further refined product of potash) and sand/silica as per the desired ratio in the end product, potassium silicate. Fusing of the potassium carbonate with the sand/silica occurs in a high temperature furnace to form a molten potassium silicate. Hardening of the fused potassium silicate takes place when it leaves the furnace and cools to form potassium silicate solid. The potassium silicate solid resembles chunks, flakes, pieces, and granular of clear to cloudy glass.

[32] The potassium silicate solid may be further crushed into a fine anhydrous (i.e. with no water) powder by processing in a powder mill. A more specialized form of potassium silicate solid is hydrous potassium silicate powder, which requires additional manufacturing process steps. The fine potassium silicate solid powder is a highly soluble version of the goods.

Classification of Imports

[33] The subject goods are usually classified under the following Harmonized System (HS) classification code:

2839.90.10.00

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

CANADIAN INDUSTRY

[35] The Complainant accounts for the major proportion of known domestic production of like goods.

[36] There are no other known producers of potassium silicate solids in Canada.

IMPORTS INTO CANADA

[37] During the course of the investigations, the CBSA refined the total volume of imports based on CBSA import documentation and other information received from the cooperative exporter, cooperative importer and the Complainant.

[38] The following table presents the CBSA's calculation of the relative volume by country of imports of potassium silicate solid for purposes of the termination of investigations:

Imports of Potassium Silicate Solid (January 1, 2010 – September 30, 2011)⁵

Countries	% of Total Import Volume
Pakistan (subject goods)	78.3%
United States	21.0%
All Other Countries	0.7%
Total Imports	100%

[39] The numbers above differ from those presented in the initiation *Statement of Reasons*. A submission by the Complainant provided evidence that imports they made during the POI that were included in the original statistics were in fact potassium silicate liquid and should therefore be removed from the calculation of the import volume of potassium silicate solid.

[40] The CBSA verified and accepted this evidence and removed those imports during the POI by the Complainant that were potassium silicate liquid or goods other than like goods. The CBSA also removed importations by other companies that the CBSA was able to verify was potassium silicate liquid. The result of this change, as shown above, has increased the share of subject goods as a percentage of total volume of potassium silicate solid imported into Canada during the POI.

INVESTIGATION PROCESS

[41] Regarding the dumping investigation, information was requested from known and potential producers, exporters, and importers, concerning shipments of subject potassium silicate solid released into Canada during the POI of January 1, 2010 to September 30, 2011.

[42] Captain was the sole responding exporter to the dumping RFI. Captain has been identified by the CBSA as the only producer of potassium silicate solid in Pakistan. After reviewing Captain's response to the dumping RFI, three supplemental RFIs were sent to clarify information and to gather additional information. Responses to these supplemental RFIs were submitted by Captain by the requested deadlines. The information submitted by Captain was considered complete and sufficient for the purposes of determining normal value, export price and calculating margins of dumping. Further details regarding these calculations can be found in the "Dumping Investigation" section of this document.

⁵ Volumes are expressed as a percentage to protect confidential information.

[43] MAEG was the sole responding Canadian importer of subject goods during the POI. After reviewing their response to the dumping RFI, two supplemental RFIs were sent to clarify information and to gather additional information. Responses to these supplemental RFIs were provided by MAEG by the requested due dates. The company's response was considered complete.

[44] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters and the GOP concerning financial contributions made to exporters or producers of subject potassium silicate solid released into Canada during the POI of January 1, 2010 to September 30, 2011.

[45] The GOP responded to the subsidy RFI. After reviewing their response to the subsidy RFI, two supplemental RFIs were sent to clarify information and to gather additional information. The information submitted by the GOP was considered complete and sufficient to enable proper analysis of the 26 programs identified at initiation. Further details regarding this analysis can be found in the "Subsidy Investigation" section of this document.

[46] Captain was the sole responding exporter to the subsidy RFI. This response was received eight days after the due date, but taken into consideration for the purposes of the investigation. After reviewing Captain's response to the subsidy RFI, a supplemental RFI was sent to clarify information and to gather additional information. The information submitted by Captain was considered complete and sufficient to enable proper analysis of the 26 programs identified at initiation. Further details regarding this analysis can be found in the "Subsidy Investigation" section of this document.

DUMPING INVESTIGATION

Normal Value

[47] Normal values of goods sold to importers in Canada are generally calculated based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits pursuant to paragraph 19(b) of SIMA. Where, in the opinion of the President, sufficient information has not been furnished or is not available, normal values are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

Export Price

[48] The export price of goods sold to importers in Canada is generally calculated pursuant to section 24 of SIMA based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA. Where, in the opinion of the President, sufficient information has not been furnished or is not available, export prices are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

Results of Dumping Investigation

[49] The CBSA determined the margin of dumping by comparing the total normal value with the total export price. When the total export price is less than the total normal value, the difference is the margin of dumping.

[50] Information provided by the sole exporter in Pakistan of potassium silicate solid was used to calculate normal value and export price and the resulting margin of dumping pursuant to subsection 30.2(1) of SIMA.

[51] The overall result of the dumping investigation reveals that the weighted average export price was higher than the normal value, and that therefore, no dumping had taken place. As a result, the margin of dumping was found to be below 2% and is, therefore insignificant.

[52] Consequently, the CBSA is satisfied that the margin of dumping on certain potassium silicate solids from Pakistan is insignificant. Accordingly, the President of the CBSA terminated the dumping investigation pursuant to paragraph 35(2)(a) of SIMA for the reasons provided in subparagraph 35(1)(a)(ii).

[53] A summary of the margins of dumping determined for this investigation is found in **Appendix 1**.

Captain PQ Chemical Industries Ltd.

[54] Captain, the sole exporter of subject goods from Pakistan, had no domestic sales of potassium silicate solid during the POI. Captain provided information regarding their total cost of production, including administrative, selling and all other costs, plus an amount for profits. As such, normal values were calculated pursuant to paragraph 19(b) of SIMA using their costs of production, to which a reasonable amount for administrative, selling and all other costs as well as a reasonable amount for profits were added.

[55] Captain provided details regarding their costs of production for each sale to Canada. For cost items that were unsubstantiated, the CBSA requested further supporting documents in three supplemental RFIs. The information received in their responses to these supplemental RFIs adequately substantiated their cost items. As such, Captain's cost of production was accepted by the CBSA.

[56] Captain provided details with regard to allocation of administrative, selling and all other costs, however, these were not accepted as the CBSA could not reconcile these items to audited financial statements. These costs were allocated by the CBSA instead by using the administrative, selling and all other costs found in the exporter's audited financial statements. These costs were calculated as a percentage of the cost of production and allocated equally over the production of subject goods during the POI.

[57] An amount for profits was calculated under subparagraph 11(1)(b)(ii) of the *Special Import Measures Regulations* (SIMR), using the exporter's domestic sales of goods that are of the same general category as the goods sold in Canada during the POI. Goods of the same general category are considered to be sodium silicate solid, sodium silicate liquid and potassium silicate liquid as they are produced in the same factory, using a similar production process, and have many of the same characteristics. Captain provided the requested domestic sales information for these goods and the CBSA was able to perform a profit test, pursuant to 16(2)(b) of SIMA, on these sales, as required under section 13 of SIMR, to determine a reasonable amount for profits.

[58] With respect to export price, Captain provided detailed sales information for each sale to Canada. These sales corresponded to documentation provided by the cooperative importer in Canada and as well as CBSA import documentation. The export price was therefore determined pursuant to section 24 of SIMA using the adjusted exporter's selling price of the goods to the unrelated importer in Canada. Adjustments were made for freight, insurance and commission. The CBSA accepted that Captain and Fusion are associated parties under SIMA for purposes of these investigations and therefore the selling price between Fusion and the importer in Canada is the export price.

[59] The overall results of the dumping investigation regarding Captain revealed that the weighted average export price was higher than the normal value determined pursuant to paragraph 19(b) of SIMA, and that therefore, no dumping had taken place. As a result, the margin of dumping was found to be below 2% and is, therefore insignificant.

SUMMARY OF RESULTS – DUMPING

Period of Investigation - January 1, 2010 to September 30, 2011

Country	Dumped Imports as Percentage of All Subject Imports	Country Margin of Dumping	Imports as Percentage of All Country Imports	Dumped Imports as Percentage of All Country Imports
Pakistan	0%	0%	78.3%	0%

[60] A summary of the margins of dumping determined for this investigation is found in **Appendix 1**.

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

[61] Following the January 6, 2012, date of initiation, three submissions were received from counsel for the Complainant.

[62] Issues raised by participants through submissions pertaining to the dumping investigation and the CBSA's response to these issues are provided in **Appendix 2**.

SUBSIDY INVESTIGATION

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

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

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

[65] Where subsidies exist they may be subject to countervailing measures if they are specific in nature. A subsidy is considered to be specific when it is limited, in law, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy. An "enterprise" is defined under SIMA as also including a group of enterprises, an industry and a group of industries. A "prohibited subsidy" includes a subsidy which is contingent, in whole or in part, on export performance or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

[66] Notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific having regard as to whether:

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

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

Subsidy Investigation Process

[68] Prior to the initiation of the investigation, the Complainant submitted documents alleging that the potassium silicate solid producer and exporter in Pakistan benefited from actionable subsidies provided by the GOP.

[69] Financial contributions provided by State-Owned Enterprises (SOEs) operating under the direct or indirect control or influence of the GOP may also be considered to be provided by the GOP for purposes of this investigation.

[70] In support of its allegations, the Complainant provided a number of documents detailing support offered by the GOP, primarily to exporting enterprises and those operating in special economic areas.

[71] In reviewing the information found in the reports and articles that were provided by the Complainant, the CBSA identified 26 potential actionable subsidy programs and incentives that may be provided to manufacturers of potassium silicate solids in the following seven categories:

1. Grants Provided for Export Performance;
2. Preferential Loans;
3. Incentives for Small of Medium Enterprises;
4. Export Processing Zones;
5. Preferential Income Tax Rates;
6. Excessive Remission of Duties and Taxes; and
7. Purchases from State-Owned Enterprises.

[72] Details regarding these potential subsidies will be reviewed in greater detail in **Appendix 3** and were provided in the *Statement of Reasons* issued for the initiation of this investigation.

Results of the Subsidy Investigation

[73] In conducting the subsidy investigation, the CBSA sent subsidy RFIs to the GOP, as well as to three potential exporters located in Pakistan that had been identified by the Complainant and CBSA import documentation. Information was requested in order to establish whether there had been financial contributions made by any level of government and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of potassium silicate solids and whether any resulting subsidy was specific in nature. The GOP was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[74] The CBSA received subsidy RFI responses, including responses in reply to supplemental RFI's issued by the CBSA, from the GOP and from Captain, the sole exporter in Pakistan. It should be noted that the three exporters identified at initiation were in fact addresses belonging or relating to Captain.

Government of Pakistan

[75] For purposes of this investigation, "Government of Pakistan" refers to all levels of government, including federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial levels. For this reason, the CBSA instructed the GOP to forward the relevant sections of its questionnaires to the appropriate subordinate level of government. Benefits provided by state-owned enterprises operating under the direct or indirect control or influence of the GOP may also be considered to be provided by the GOP for purposes of this investigation.

[76] As noted above, the GOP provided a response to the subsidy questionnaire that was issued by the CBSA at the initiation of the investigation. The GOP provided its response to the subsidy RFI, by the requested due date of February 13, 2012.⁶ The GOP responded to most areas of the RFI, but some answers relating to certain subsidy programs were not provided and data respecting a number of relevant government laws and regulations were also missing.

[77] The CBSA's review of the GOP's submission indicated that most of the information requested had been provided but some of the GOP's responses were limited. As a result, the CBSA issued a supplemental RFI to clarify issues and to request any missing information.⁷

[78] On March 24, 2012, the GOP provided a response to the supplemental RFI with notice of a second and final response anticipated to be completed in the near future.⁸ The submission contained information relating to the subsidy programs previously left unanswered and provided supporting government laws and regulations.

⁶ Subsidy Exhibit S032 (NC) – Response to Subsidy RFI – GOP.

⁷ Subsidy Exhibit S038 (PRO) – Subsidy SRFI to GOP, March 13, 2012.

⁸ Subsidy Exhibit S043 (PRO) – Response to Subsidy SRFI to GOP.

[79] On April 12, 2012, the GOP provided their second and final response to the supplemental RFI.⁹

[80] The information submitted by the GOP for purposes of the subsidy investigation was considered to be substantially complete. The GOP provided the CBSA with sufficient information to enable proper analysis of the programs.

[81] In summary, of the 26 potential subsidy programs, 18 of those programs were not used by the exporter, 2 of those programs were announced but never established, 4 of those programs did not exist and the remaining 2 of the potential subsidy programs were determined to not confer any benefit to the exporter during the POI.

[82] A summary of the findings for the named subsidy programs can be found in Appendix 3.

Captain PQ Chemical Industries Ltd.

[83] The response to the subsidy RFI from the sole exporter, Captain, was received on February 21, 2012, eight days past the due date.¹⁰ It has been taken into consideration for purposes of the investigation.

[84] Captain's submission was considered to be substantially complete with minor deficiencies. As a result, the CBSA issued a supplemental RFI to resolve those outstanding issues.¹¹

[85] On March 23, 2012, the CBSA received Captain's response to the subsidy SRFI.¹² The submission resolved the missing information that was requested.

[86] As a result, the information submitted by Captain for purposes of the subsidy investigation was considered to be substantially complete. The information that was provided allowed the CBSA to perform proper analysis of the programs.

[87] Of the total 26 potential actionable programs, none were found to benefit Captain, the sole exporter of potassium silicate solids in Pakistan.

[88] In summary, 0% of the goods from Pakistan are subsidized and the amount of subsidy, as a percentage of the export price, is 0%. The resultant amount of subsidy for the cooperative exporter is provided in Appendix 1.

⁹ Subsidy Exhibit S066 (NC) – Additional Response to Subsidy SRFI to GOP.

¹⁰ Subsidy Exhibits S034 (NC) and S033 (PRO) – Response to Subsidy RFI - Captain PQ.

¹¹ Subsidy Exhibit S037 (PRO) – Subsidy SRFI to Captain, March 13, 2012.

¹² Subsidy Exhibit S045 (NC) and S044 (PRO) – Response to Subsidy SRFI – Captain PQ.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - January 1, 2010 to September 30, 2011

Country	Subsidized Goods as Percentage of Country Imports	Amount of Subsidy as Percentage of Export Price	Country Imports as Percentage of Total Imports	Subsidized Goods as Percentage of Total Imports
Pakistan	0.0%	0.0%	78.3%	0.0%

[89] In order to terminate the subsidy investigation under paragraph 35(2) for the reasons provided in subparagraph 35(1)(a)(ii) of SIMA, the President must be satisfied that the amount of subsidy on the goods from Pakistan is insignificant. According to subsection 2(1) of SIMA, an amount of subsidy that is less than 1% of the export price of the goods is considered insignificant.

[90] However, section 41.2 of SIMA directs the President to take into account the provisions of Article 27 of the *WTO Agreement on Subsidies and Countervailing Measures* when conducting subsidy investigations. These provisions stipulate that any investigation involving a developing country must be terminated as soon as the President determines that the total amount of subsidy for a developing country does not exceed 2% of the export price of the goods.

[91] The CBSA normally makes reference to the *DAC List of Official Development Assistance Aid Recipients*, maintained by the Organization for Economic Cooperation and Development, to determine eligibility for the differential amounts for developing countries in subsidy investigations. As Pakistan is a developing country according to this list, the 2% threshold for insignificance would apply.

[92] Consequently, the CBSA is satisfied that the amount of subsidy on certain potassium silicate solids from Pakistan is insignificant. Accordingly, the President of the CBSA is required to terminate the subsidy investigation pursuant to paragraph 35(2)(a) of SIMA for the reasons provided in subparagraph 35(1)(a)(ii).

REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION

[93] Following the January 6, 2012, date of initiation, a submission was received from the GOP.

[94] Issues raised by participants through submissions pertaining to the subsidy investigation and the CBSA's response to these issues are provided in **Appendix 2**.

TERMINATION OF INVESTIGATIONS

[95] On the basis of the results of the investigation, the President is satisfied that certain potassium silicate solids originating in or exported from Pakistan have not been dumped and subsidized and that the margins of dumping and the amounts of subsidy are insignificant. Consequently, on April 23, 2012, the President terminated dumping and subsidizing investigations pursuant to paragraph 35(2)(a) of SIMA.

[96] **Appendix 1** contains a summary of the margins of dumping and amounts of subsidy relating to the termination of investigations.

[97] The Tribunal is required to terminate its preliminary inquiry pursuant to subsection 35(3) of SIMA.

FUTURE ACTION

[98] As investigations have been terminated, the CBSA will take no further action regarding this issue.

PUBLICATION

[99] A notice of the termination of these investigations will be published in the *Canada Gazette* pursuant to subparagraph 35(2)(b)(ii) of SIMA.

INFORMATION

[100] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site, in both English and French, at the address below. For further information, please contact the officers identified as follows:

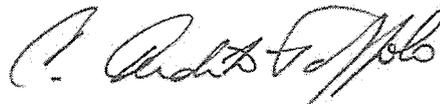
Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa, Ontario K1A 0L8
CANADA

Telephone: Benjamin Walker 613-952-8665
Simon Duval 613-948-6464

Fax: 613-948-4844

E-mail: SIMAREgistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi



Caterina Ardito-Toffolo
A/Director General
Anti-Dumping and Countervailing Directorate

Attachments

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

Exporter	Margin of Dumping (as Percentage of Export Price)	Amount of Subsidy (Rupee/MT)	Amount of Subsidy (as Percentage of Export Price)
Captain	0%	0	0%
Pakistan Total	0%	0	0%

APPENDIX 2 – DUMPING AND SUBSIDY REPRESENTATIONS

The details of representations made to the CBSA with respect to the dumping and subsidy investigations are listed below. Following the representations on the issues is a response explaining the position of the CBSA.

The CBSA's Import Statistics

Counsel for the Complainant made representations regarding CBSA import statistics of potassium silicate solid during the POI. Counsel submitted that the percentage of imports of potassium silicate solid from the United States is overinflated as imports from the United States are most likely potassium silicate liquid; a good which shares the same HS code, but not subject to the investigation. Counsel supported this claim by providing importation documentation from the Complainant of potassium silicate liquid from the United States during the POI.¹³

CBSA Response:

The CBSA verified the evidence presented by counsel for the Complainant and determined that many importations made by the Complainant from the United States during the POI were indeed potassium silicate liquid and therefore not part of the investigations. The CBSA also examined imports from the United States made by other companies and removed any transactions that were identified as potassium silicate liquid. The CBSA therefore did not include the imports of potassium silicate liquid from the Complainant or from other companies when calculating import volume statistics. This change resulted in a greater share of imports from Pakistan and a lower share of imports from the United States than originally identified at the initiation of the investigation.

Observation of Import Documentation

Counsel for the complainant submitted a written observation regarding items on the protected exhibits list. In this observation they requested that the CBSA review all "costs, charges and expenses in respect of all shipments in the period of investigation for purposes of the

¹³ Dumping Exhibit 045 (NC) - Representation from Counsel on Importation Statistics.

determination of export price. Further, the CBSA should be mindful of the exchange rate manipulation.”¹⁴

CBSA Response:

The CBSA examined the costs, charges and expenses in respect of all shipments for the purposes of determining an export price. The CBSA did not find any inconsistencies with these expenses and was able to accurately determine an export price. The CBSA further examined the possibility of exchange rate manipulation but did not find any evidence to suggest such actions.

Request for Import Data

On February 7, 2012, the CBSA received a written request from counsel for the Complainant requesting access to the CBSA’s actual or raw import data that was used to prepare import volume data tables in the *Statement of Reasons* at initiation.¹⁵

CBSA Response:

On February 28, 2012, the CBSA sent a reply to the counsel for the Complainant, in which the CBSA informed counsel that their request for the actual or raw import data would not be granted.¹⁶ It was explained, in the reply, that the volume data tables, as well as all other relevant information upon which the President based his decision, were prepared using a refined version of the actual or raw import data, and that such data could be found in the *Statement of Reasons* at initiation and in the *Complaint Analysis*, both of which counsel has access. There were no further requests made in regards to this matter.

Request for Consultations from the Government of Pakistan

On March 5, 2012, the Government of Pakistan submitted a written request for consultations, pursuant to article 13.2 of the *Agreement on Subsidies and Countervailing Measures*, in order to clarify the 26 alleged subsidy programs from which the exporter might have benefited.¹⁷

CBSA Response:

On March 7, 2012, in response to the above mentioned request, the CBSA responded providing the contact information of the area responsible for such consultation at the Department of Foreign Affairs and International Trade. There were no further requests made in regards to this matter.¹⁸

¹⁴ Dumping Exhibit 051(NC) - Observations from Counsel representing the Complainant - National Silicates Partnership.

¹⁵ Dumping Exhibit 072 (NC) – Counsel Request for Import Data.

¹⁶ Dumping Exhibit 072 (NC) – CBSA Response – Counsel Request for FIRM data.

¹⁷ Subsidy Exhibit 035 (NC) – Government of Pakistan - Request for Consultations.

¹⁸ Subsidy Exhibit 036 (NC) – Response to Request for Consultations - Government of Pakistan.

APPENDIX 3 - SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

The information submitted by the GOP in conjunction with the information submitted by the sole exporter in Pakistan was used for the purposes of the termination of the subsidy investigation. Sufficient information was provided to the CBSA to enable a proper analysis of the programs or to demonstrate whether or not programs used by the cooperative exporter were specific and would therefore constitute actionable subsidies. The absence of such information would normally prevent the CBSA from determining amounts of subsidy for the cooperative exporter and would result in the CBSA resorting to the use of facts available. However, due to the amount of cooperation and the volume of information that has been provided by the cooperative exporter and the GOP, the CBSA has determined an amount of subsidy for the cooperative exporter.

This appendix consists of descriptions of the potential actionable subsidy programs investigated by the CBSA that were found to not confer a benefit to the cooperative exporter.

I. GRANTS PROVIDED FOR EXPORT PERFORMANCE

Program 1: Export Investment Support Fund

General Information:

The GOP, as part of its Strategic Trade Policy Framework, has set up the *Export Investment Support Fund* to assist the eligible export oriented sectors. The program was announced in the Pakistan Federal Budget 2009-2010, in order to channelize investments to selected sectors, but was never established due to lack of funding.

Legal Basis:

No document pertaining to this program was ever published. It was only announced in the Federal Budget 2009-2010. Although announced, it was never established.

Eligibility:

The program was intended to be limited to Pakistan's main export oriented sectors, such as textile and clothing.

Determination of Subsidy and Specificity:

On the basis of available information, the subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The funding provided is limited to export oriented enterprises in a specific sector, is a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

Findings of the Investigation:

As no funds were available with the Ministry of Finance for the *Export Investment Support Fund* due to higher than expected expenditures on law & order in Pakistan, the *Export Investment Support Fund* was never established.

Program 2: Assistance for Opening Exporters Offices Abroad

General Information:

This program was announced under the Trade Policy 2007-2008 through a notification by the Ministry of Commerce, Trade Development Authority of Pakistan (TDAP), under which companies are to benefit in form of 50% subsidy in rental fees for three years; and subsidy in salaries for three employees for three years.

Legal Basis:

This program was acknowledged by the GOP by providing the public notice of the TDAP, as part of the Trade Policy 2007-2008, titled *Assistance for Opening Exporters Offices Abroad* published in the press in October 2009.

Eligibility:

The eligibility criteria for this program are found in the *Assistance for Opening Exporters Offices Abroad* public notice. The program was intended to be limited to socially and environmentally compliant and ISO Certified exporters of the textile sector, leather sector, carpet and rugs, agro-food sector, mineral sector, services sector (IT), engineering and manufacturing sector, cutlery products, furniture and handicrafts, for setting up business offices abroad in the following countries; Malaysia; Japan; China; United Arab Emirates; Russian; United States of America; European Union; and Africa.

Determination of Subsidy and Specificity:

On the basis of available information, the subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

The funding provided is limited to export oriented enterprises, is a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

Findings of the Investigation:

As Canada is not part of the qualified countries, Captain is not eligible and cannot apply for the benefit under this program.

Program 3: Quality Assurance and Lab Accreditation Scheme

General Information:

This program was announced under the Trade Policy 2005-2006 through a notification by the Ministry of Commerce, TDAP, under which companies are to benefit from this program for a period of three years. The *Quality Assurance and Lab Accreditation Scheme* has since expired in June 2008 and has been reconfigured under the name, *Compliance Certification Scheme* for another three years as part of the Strategic Trade Policy Framework announced in 2009-2010.¹⁹ The program was established to encourage all exporters/manufacturers to obtain various quality, environmental and social certifications.

This program provides eligible manufacturers 50% subsidy on 1st certification; 66% subsidy on 2nd certification; 82% subsidy on 3rd certification; and 100% subsidy on 4th certification.

Legal Basis:

This program was acknowledged by the GOP by providing the public notice of the TDAP, as part of the Trade Policy 2009-2010, titled *Compliance Certification Scheme* published in the press in October 2009.

Eligibility:

The eligibility criteria for this program are found in the *Compliance Certification Scheme* public notice. Under this program all manufacturing exporters are eligible. The applicant firm is to select an accredited certification agency for the relevant certification program, finalize terms and conditions with it and submit the application to the TDAP. After evaluation and acceptance of the request by the TDAP, 50% payment of the benefit will be released upon attainment of the certificate and the balance 50% will be paid upon production of satisfactory surveillance audit report.

Determination of Subsidy and Specificity:

The subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the funds received.

¹⁹ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E2.

The funding provided is limited to export oriented enterprises, is a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

Findings of the Investigation:

Captain has never applied or received any benefit related to this program. Captain maintains an internal lab for quality/specs check of its own products. The lab is within the premises of the factory and subject goods exported to Canada are checked before export. The internal lab was established through Captain's own resources and is upgraded from time to time by Captain, without any financial assistance from the GOP.²⁰

Program 4: Warehousing Scheme

General Information:

This program was announced under the Trade Policy 2009-2010 through a notification by the Ministry of Commerce, TDAP, to encourage foreign trade, this program provides financial assistance to exporters to establish a warehouse in any country, which is a potential market for Pakistani products by way of funding for one year as per the following: 100% subsidy on 1st quarter; 75% subsidy on 2nd quarter; 50% subsidy on 3rd quarter; and 25% subsidy on 4th quarter. After one year, the exporter(s) bear all the cost.²¹

Legal Basis:

This program was acknowledged by the GOP by providing the public notice of the TDAP, as part of the Trade Policy 2009-2010, titled *Warehousing Scheme* published in the press.

Eligibility:

The eligibility criteria for this program are found in the *Warehousing Scheme* public notice. The scheme is open to all exporters establishing a warehouse in any part of the world provided that it is a potential market for Pakistani products.

Determination of Subsidy and Specificity:

The subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the funds received.

The funding provided is limited to export oriented enterprises, is a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

²⁰ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 27.

²¹ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E3.

Findings of the Investigation:

Captain does not have a warehouse in export markets. Therefore, Captain has never applied or received any benefit related to this program.²²

Program 5: Inland Freight Subsidy

General Information:

This program was announced under the Trade Policy 2009-2010 through a notification by the Ministry of Commerce, TDAP, under which companies are to benefit from this program for a period of three years. To encourage foreign trade, the *Inland Freight Subsidy* provides financial assistance by compensating the inland freight cost to exporters.²³

Products originating from a minimum of 100 kilometers from a seaport would qualify for a subsidy of 50% of inland freight costs.

Legal Basis:

This program was acknowledged by the GOP by providing the public notice of the TDAP, as part of the Trade Policy 2009-2010, titled *Inland Freight Subsidy* published in the press.

Eligibility:

The eligibility criteria for this program are found in the *Inland Freight Subsidy* public notice. Exporters of cement, light engineering, leather garments, furniture, soda ash, hydrogen peroxide, caustic soda, sanitary wares including tiles, finished marble, marble blocks, granite, and onyx products are eligible to benefit under this program.

Determination of Subsidy and Specificity:

The subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the funds received.

The funding provided is limited to export oriented enterprises, is a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

²² Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 30.

²³ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E4.

Findings of the Investigation:

Captain has not exported any of the items that fall under the list mentioned above, therefore Captain has not benefited under this subsidy program. As part of the investigation, the CBSA verified by a supplemental subsidy RFI sent on March 13, 2012, if Captain applied or benefited from this program as a result of their sodium silicate production, for which the main input material is soda ash. Captain stated they had “never applied nor benefited from this subsidy program for any of its products or the required raw materials”.²⁴ Furthermore, the CBSA found no evidence of Captain having benefited from this program through a review of their financial statements.

II. PREFERENTIAL LOANS

Program 6: Preferential Loans from the State Bank of Pakistan

General Information:

For the purposes of this investigation the “*State Bank of Pakistan*” is considered to be part of the GOP. This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporter of subject goods. As a result, the GOP informed the CBSA of the existence of the *Export Finance Scheme*. Under the *Export Finance Scheme*, short term export financing facilities are provided to the exporters through commercial banks.

Legal Basis:

This program was acknowledged by the GOP by providing the relevant circulars: i) *BSD Circular No.35/2001* and ii) *BSD Circular No.44/1998*.

Eligibility:

The eligibility criteria for this program are found in the *BSD Circular No.35/2001*. Under this program, any enterprise exporting eligible commodities can avail financing under this scheme at prevailing mark-up rates, which varied between 7.5% to 11% per annum during the POI.

Determination of Subsidy and Specificity:

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

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

²⁴ Subsidy Exhibit S045 (NC) – Response to Subsidy SRFI – Captain PQ, page 10.

Findings of the Investigation:

Captain has not availed itself of any preferential loan facilities from the State Bank of Pakistan, or from any commercial bank under the *Export finance Scheme*. Captain did obtain short term loan facilities for its working capital from multiple banks. However, after verification by the CBSA, all facilities from these banks were obtained within a reasonable range of the benchmark lending rates.²⁵

The CBSA compared Captain's obtained lending rates²⁶ to the benchmark lending rates given by the State Bank of Pakistan²⁷ for the period of January 1, 2010 to September 30, 2011. The latter was also supported by the Karachi Interbank Offered Rate (KIBOR) recognized as the benchmark rate for all corporate lending in Pakistani rupee after January 31, 2004.²⁸ As a result, Captain's short loans did not confer any countervailable benefit.

Program 7: Preferential Loans from the Soneri Bank

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporter of subject goods during the POI. Based on the information provided by the complainant, Soneri Bank is an Islamic bank in Pakistan with connections to the State Bank of Pakistan. As such, CBSA investigated the relationship between Soneri Bank and the State Bank of Pakistan and whether the exporter of subject goods has received, directly or indirectly, preferential loans.

Legal Basis:

The GOP denied the existence of this program. Furthermore, the GOP described the Soneri Bank as a private Limited bank established under prudential regulations of the State Bank of Pakistan.

Eligibility:

Not applicable as no information was found for this program.

²⁵ Subsidy Exhibit S044 (NC) and S045 (PRO) – Response to Subsidy SRFI – Captain PQ, page 1 to 9.

²⁶ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E13.

²⁷ Subsidy Exhibit S066 (NC) – Additional Response to Subsidy SRFI – GOP, page 1.

²⁸ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E21.

Determination of Subsidy and Specificity:

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

Pursuant to subsection 27.1(2) of the *Special Import Measures Act (SIMR)*, any amount owing and due to a government that is exempted shall be treated as a grant under section 27 of the SIMR.

Findings of the Investigation:

Captain did obtain short term loan facilities for its working capital from multiple banks, including Soneri Bank. However, all facilities from these banks were obtained within a reasonable range of the benchmark lending rates.²⁹

The CBSA compared Captain's obtained lending rates³⁰ to the benchmark lending rates given by the State Bank of Pakistan³¹ for the period of January 1, 2010 to September 30, 2011. The latter was also supported by the KIBOR recognized as the benchmark rate for all corporate lending in Pakistani rupee after January 31, 2004.³² As a result, Captain's short loans did not confer any countervailable benefit.

III. INCENTIVES FOR SMALL AND MEDIUM ENTERPRISES

Program 8: Special Loans – State Bank of Pakistan's Refinance Facility for Modernization of SMEs

General Information:

To encourage long term investment in small and medium enterprises (SMEs), the State Bank of Pakistan provides refinance for a maximum period of ten years. Refinance under this scheme is provided through all commercial banks and Development Finance Institutions.³³

²⁹ Subsidy Exhibit S044 (NC) and S045 (PRO) – Response to Subsidy SRFI – Captain PQ, page 1 to 9.

³⁰ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E13.

³¹ Subsidy Exhibit S066 (NC) – Additional Response to Subsidy SRFI – GOP, page 1.

³² Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E21.

³³ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E5.

The State Bank of Pakistan provides refinance to the banks against financing provided by them to SMEs at the following rates:

Tenor	Rate of Refinance	Banks' Spread	End Users' Rate
Up-to 3 years	5.50%	2.50%	8.00%
Over 3 years and up-to 5 years	6.25%	2.75%	9.00%
Over 5 years and up-to 10 years	7.00%	3.00%	10.00%

The rate of interest once fixed shall remain locked-in for the entire duration of the loan, provided the borrower(s) continue to repay all scheduled installments by the respective due dates.

Legal Basis:

This program was acknowledged by the GOP and circular titled, *Refinance Facility for Modernization of SMEs*, published in September 8, 2010, was provided.

Eligibility:

The eligibility criteria for this program are found in the *Refinance Facility for Modernization of SMEs* circular. The State Bank of Pakistan provides such refinancing to certain clusters/sectors. These include rice husking, cotton ginning, power looms, dairy & livestock, cutlery & stainless utensils, surgical instruments, marble & granite, engineering goods, fisheries, packaging/processing of fruits/vegetables, furniture, gems & jewellery, sports goods and agro-based industry.

Determination of Subsidy and Specificity:

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

The funding provided was found to be limited to a number of enterprises of certain clusters/sectors named above, pursuant to paragraph 2(7.3)(a) of SIMA.

Findings of the Investigation:

Captain has not availed itself the refinance facility for modernization of SMEs. The State Bank of Pakistan provides such refinancing to certain cluster/sectors under which Captain does not fall.³⁴

Program 9: Loan Guarantees by State Bank of Pakistan/Pakistan Export Finance Guarantee Agency

General Information:

Targeting small enterprises and farmers with economic landholding, without any specific regional or cluster restrictions, across the country, the State Bank of Pakistan provides partial credit coverage of 40% on loans extended by banks to fresh or collateral deficient small borrowers and farmers.³⁵

Legal Basis:

This program was acknowledged by the GOP and circular titled *Credit Guarantee Scheme for Small and Rural Enterprises*, published by the State Bank of Pakistan, was provided.

Eligibility:

The eligibility criteria for this program are found in the *Credit Guarantee Scheme for Small and Rural Enterprises* circular. The eligible borrowers under the scheme are small enterprises and farmers with economic landholding. The selection criteria for eligible borrowers includes: regular and estimable positive cash flow; be in conformity with relevant Prudential Regulations; should have clean e-CIB record; and in line with the Credit Policy of Banks.

Determination of Subsidy and Specificity:

This program constitutes a financial contribution in the form of loan guarantee. It constitutes a practice of government involving the potential direct transfer of funds or liabilities pursuant to paragraph 2(1.6)(a). A subsidy exists where a loan guarantee by a government results in interest costs lower than they would be without the guarantee.

Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to a government that is exempted shall be treated as a grant under section 27 of the SIMR.

³⁴ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 42.

³⁵ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E6.

Findings of the Investigation:

Captain has not availed itself of this facility as no loan guarantees have been offered by the State Bank of Pakistan or the Pakistan Export Finance Guarantee Agency to Captain.³⁶ During the POI, Captain has availed itself of only short term financing facilities from banks reviewed as part of Program 6 and 7 above.

Program 10: Grants from Business Support Fund to SMEs

General Information:

Although this program was announced by the Ministry of Industries for the fiscal year 2009-2010, it was never established as no funds were available with the Ministry of Finance due to higher than expected expenditures on the law & order situation in Pakistan.³⁷

Legal Basis:

No document pertaining to this program was ever published. It was only announced by the Ministry of Industries for the fiscal year 2009-2010. Although announced, it was never established.

Eligibility:

The program was intended to help SMEs by providing grants towards the cost of conducting international market research and the cost of preparing product directories.

Determination of Subsidy and Specificity:

On the basis of available information, the subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to a government that is exempted shall be treated as a grant under section 27 of the SIMR.

³⁶ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 43.

³⁷ Subsidy Exhibit S032 (NC) – Response to Subsidy RFI – GOP, page 68.

Findings of the Investigation:

As no funds were available with the Ministry of Industries for the *Grants from Business Support Fund to SMEs* due to higher than expected expenditures on law & order in Pakistan, the *Grants from Business Support Fund to SMEs* was never established.

Program 11: Land at Concessionary Rates in Industrial Estates and Export Processing Zones

General Information:

The Export Processing Zones Authority (EPZA) provides land rates in five Export Processing Zones (EPZ)³⁸, at the following areas and rates:

- | | |
|---------------------------------|--|
| a. Risalpur, Khyber Pakhtunkhwa | US\$ 0.50 per sq.ft., lease basis; |
| b. Sandak, Balochistan | N/A, under lease with foreign companies; |
| c. Sandak, in Dubbar | N/A, under lease with foreign companies; |
| d. Sialkot, Punjab | US\$ 1.60 per sq.ft., ownership basis; and |
| e. Karachi, Tuwairqui Steel | US\$ 1.50 per sq.ft., lease basis. |

Legal Basis:

The EPZA was established on the February 28, 1980 by the GOP through ordinance, i.e. EPZA Ordinance IV of 1980. The EPZA are responsible for administrating the EPZs.

Eligibility:

Specific industrial sectors are allowed to invest in EPZs established at Risalpur, Balochistan, Dubbar, Sialkot and Karachi.

In the Karachi EPZ, the EPZA welcomes investors in the following priority sectors: hi-tech industry; gem & jewelry; software houses; information technology based industries; and precession engineering.

Determination of Subsidy and Specificity:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in Pakistan and the price at which the goods or services were provided by the government.

Goods and services provided by government to enterprises located in EPZs and other designated areas are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises located in EPZs.

³⁸ Subsidy Exhibit S032 (NC) – Response to Subsidy RFI – GOP, page 73.

Findings of the Investigation:

Although Captain is situated in Karachi, it is not located in any of the EPZs or industrial estates. The Karachi EPZ is located adjacent to the Landhi Industrial Area in Karachi, Sindh, Pakistan. Conversely, Captain's Karachi factory is located at D-24, Site Super Highway, Phase-I, Karachi. As a result, Captain is not eligible to avail itself of any benefits under this program.³⁹

IV. EXPORT PROCESSING ZONES

Program 12: Export Processing Zones Incentives and Benefits

General Information:

In the objective to accelerate the pace of industrialization in Pakistan and to enhance the volume of exports by creating and enabling environment for investors to initiate export-oriented projects, the EPZA offers the industries located in EPZs the following incentives: lower rental rates than outside the zone; duty-free machinery and equipment; potential underpayment of duty and sales tax on raw materials and no sales tax on inputs, including electricity and gas.

Legal Basis:

The EPZA was established on the February 28, 1980 by the GOP through ordinance, i.e. EPZA Ordinance IV of 1980. The EPZA are responsible for administrating the EPZs.

Eligibility:

Specific industrial sectors are allowed to invest in EPZs established at Risalpur, Balochistan, Dubbar, Sialkot and Karachi.

In the Karachi EPZ, the EPZA welcomes investors in the following priority sectors: hi-tech industry; gem & jewelry; software houses; information technology based industries; and precession engineering.

Determination of Subsidy and Specificity:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in Pakistan and the price at which the goods or services were provided by the government.

³⁹ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 48.

Goods and services provided by government to enterprises located in EPZs and other designated areas are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises located in EPZs.

Findings of the Investigation:

Although Captain is situated in Karachi, it is not located in any of the EPZs or industrial estates. The Karachi EPZ is located adjacent to the Landhi Industrial Area in Karachi, Sindh, Pakistan. Conversely, Captain's Karachi factory is located at D-24, Site Super Highway, Phase-I, Karachi. As a result, Captain is not eligible to avail itself of any benefits under this program.⁴⁰

V. PREFERENTIAL INCOME TAX RATES

Program 13: Income Tax Exemptions for Undertakings and Set-ups in Specified Areas

General Information:

To attract investment in Larkano Industrial Estate, the Income Tax Ordinance 2001, administered by the Federal Board of Revenue, stipulates that profits and gains derived by a taxpayer from an industrial undertaking set up in Larkano Industrial Estate will be allowed income tax exemptions for a period of ten years beginning with the month in which the industrial undertaking is set up or commercial production commenced.

Legal Basis:

This program was acknowledged by the GOP through the *Schedule II of the Income Tax Ordinance 2001*, administered by the Federal Board of Revenue.

Eligibility:

The income tax exemption is allowed to industrial undertaking set up in Larkano Industrial Estate between the 1st day of July, 2008 and the thirtieth day of June, 2013.⁴¹

Determination of Subsidy and Specificity:

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

⁴⁰ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 48.

⁴¹ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E7

Preferential tax rates provided to exporters in a specified area were found to be limited, in law, to a particular enterprise pursuant to paragraph 2(7.2)(a) of SIMA, as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Schedule II of the Income Tax Ordinance 2001*. In addition, the subsidy is further limited to a group of enterprises located in the Larkano Industrial Estate.

Findings of the Investigation:

Captain has not availed itself of any income tax exemption under this program as it does not fall within the area eligible for such exemptions. Therefore, no benefit was conferred to Captain under this program.

Program 14: Income Tax Exemptions in Export Processing Zones

General Information:

To attract investment in EPZs under the EPZA, the Income Tax Ordinance 2001, administered by the Federal Board of Revenue, stipulates that profits and gains derived by a taxpayer from an industrial undertaking set up in the Gawadar Export Processing Zone. Will be allowed income tax exemptions for a period of ten years beginning with the month in which the industrial undertaking is set up or commercial production commenced.⁴²

Legal Basis:

This program was acknowledged by the GOP through the *Schedule II of the Income Tax Ordinance 2001*, administered by the Federal Board of Revenue.

Eligibility:

The income tax exemption is allowed to industrial undertaking set up in the Gawadar EPZ.

Determination of Subsidy and Specificity:

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

Preferential tax rates provided to exporters in a specified area were found to be limited, in law, to a particular enterprise pursuant to paragraph 2(7.2)(a) of SIMA, as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Schedule II of the Income Tax Ordinance 2001*. In addition, the subsidy is further limited to a group of enterprises located in the Gawadar EPZ.

⁴² Subsidy Exhibit S065 (NC) – Response to Subsidy SRFI – GOP, S15.

Findings of the Investigation:

Captain is not located in the Gawadar EPZ in Pakistan. Captain has manufacturing facilities in Karachi and Faisalabad in Pakistan and therefore is not eligible to avail any benefit under this program.⁴³

Program 15: Preferential Tax Rates for Export Business – Final Tax on Exports

General Information:

Under this scheme a company may benefit from a tax regime on its export turnover. A withholding tax of 1% is deducted on the total value of the export transaction of foreign exchange proceeds, regardless of any profit of the company. This tax deduction is to be considered a final tax on the income arising from the export transactions.⁴⁴

In comparison, the tax regime on domestic sales are at a rate of 35% applied on the net income of a domestic sale.

Legal Basis:

This program was acknowledged by the GOP through the *Schedule II of the Income Tax Ordinance 2001*, administered by the Federal Board of Revenue.

Eligibility:

This scheme is accessible to every exporter at the time of realization of the proceeds on account of a sale of goods. *The Income Tax Ordinance, 2001* of Pakistan does not require applications to be made by exporters to avail this facility. Such deductions are automatically made at the export stage by the relevant authorities.⁴⁵

Determination of Subsidy and Specificity:

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

The subsidy is a prohibited subsidy pursuant to paragraph 2(7.2)(b) of SIMA, as it is contingent, in whole or in part, on export performance.

⁴³ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 49.

⁴⁴ Subsidy Exhibit S065 (NC) – Response to Subsidy SRFI – GOP, S16.

⁴⁵ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 50.

Findings of the Investigation:

The investigation established that in practice the scheme could, in certain circumstances, provide a favourable tax treatment for the exporters. The tax rate at 1% of the total export turnover could represent an advantageous tax system in comparison with the normal tax regime where a rate at 35% is applied on the normal income. In the extent that this tax regime results in profits due to the fact that exports are taxed at a lower rate than domestic sales, this scheme would be considered to be a subsidy.

As for Captain, the CBSA has performed a series of calculations in order to determine if Captain has benefited from a potential lower tax rate on its exports, which were taxed at the rate of 1% of their total value. To this end, the CBSA compared the actual income tax paid on exports with the amount which would have been payable had the goods been sold domestically and subject to the normal tax rate of 35% of net profit.

As a result, Captain's profits from exports were not taxed at a lower rate than those earned on domestic sales during the POI. Therefore, Captain did not receive any benefit under this program.

Program 16: Excessive Claims of Deductions and Exemptions and Concessions

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporter of subject goods during the POI. Based on the information provided by the complainant, there was reason to believe that the exporters located in Pakistan could avail themselves of a benefit by claiming excessive deductions, exemptions and/or concessions.

Legal Basis:

The GOP denied the existence of this program. Furthermore, the GOP referred the CBSA to the *Schedule II of the Income Tax Ordinance 2001*, administered by the Federal Board of Revenue.

Eligibility:

Not applicable as no information was found on this program. However, any exporter that would claim excessive deductions, exemptions and/or concessions beyond what is entitled would avail themselves a benefit.

Determination of Subsidy and Specificity:

On the basis of available information, under this program excessive claims of deductions, exemptions and concessions would constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, amounts that would otherwise be owing or due to the government and confers a benefit to the recipient equal to the amount in excess of the allowed deduction, exemption and/or concession.

Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to a government that is exempted shall be treated as a grant under section 27 of the SIMR.

Findings of the Investigation:

Captain did not claim any deductions or concessions beyond what was entitled on their income tax returns of 2010 or 2011. Therefore, Captain did not avail itself of any benefit under this program.⁴⁶

VI. EXCESSIVE REMISSION OF DUTIES AND TAXES

Program 17: Manufacturing Bond Scheme

General Information:

Under this scheme any company, who obtained a license from the Collector of Customs, is permitted to import duty-free input material under the condition that it is used for subsequent exports.⁴⁷

Legal Basis:

This program was acknowledged by the GOP through the *Customs Rules 2001*, issued June 18, 2001, and administered by the Federal Board of Revenue.

Eligibility:

Any person or firm that has obtained a license to operate a warehouse is allowed to import input goods, without payment of custom duty, central excise duty and sales tax after declaring on the bill of entry that the input goods are being imported under this scheme.

⁴⁶ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure D11.

⁴⁷ Subsidy Exhibit S032 (NC) – Response to Subsidy RFI – GOP, page 103.

Determination of Subsidy and Specificity:

On the basis of available information, under this program excessive claims of deductions, exemptions and concessions would constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, amounts that would otherwise be owing or due to the government and confers a benefit to the recipient equal to the amount in excess of the allowed deduction, exemption and/or concession.

Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to a government that is exempted shall be treated as a grant under section 27 of the SIMR.

Findings of the Investigation:

The CBSA has found that Captain does not pay duties at the import level of their raw materials used for production of products for export. Refer to *Program 19: Drawback and Remission Scheme* for details regarding duties on imported raw materials used for production of subject goods exported to Canada and other countries. The exemption from payment of duties only provides a deferral of the tax liability and does not constitute revenue forgone as Captain is not allowed to deduct this percentage from the final tax liability.

In its verification, the CBSA found that the duties exempted were not excessive remissions, refunds or drawbacks and therefore Captain has not availed itself of any benefit from this program.

Program 18: Excessive Repayments of Customs Duties

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporter of subject goods during the POI. Based on the information provided by the complainant, there was reason to believe that the exporters located in Pakistan could avail themselves of a benefit by claiming repayments of customs duties.

Legal Basis:

The GOP denied the existence of this program. Furthermore, the GOP referred the CBSA to the *Custom Rules 2001*, issued June 18, 2001, and administered by the Federal Board of Revenue.

Eligibility:

Not applicable as no information was found on this program. However, any exporter that would claim excessive deductions, exemptions and/or concessions beyond what is entitled would avail themselves of a benefit.

Determination of Subsidy and Specificity:

On the basis of available information, under this program excessive repayments of duties would constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, amounts that would otherwise be owing or due to the government and confers a benefit to the recipient equal to the amount in excess of the allowed repayment.

Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to a government that is exempted shall be treated as a grant under section 27 of the SIMR.

Findings of the Investigation:

Captain did not receive re-payments of customs duties on goods exported to Canada or any other export destination. Yet, as mentioned above Captain did not pay the duty on imported raw materials used for production of subject goods exported to Canada and other countries.⁴⁸ Refer to *Program 19: Drawback and Remission Scheme* for details regarding duties on imported raw materials used for production of subject goods exported to Canada and other countries.

The exemption from payment of duties only provides a deferral of the tax liability and does not constitute revenue forgone as Captain is not allowed to deduct this percentage from the final tax liability.

In its verification, the CBSA found that the duties exempted were not excessive remissions, refunds or drawbacks and therefore Captain has not availed itself of any benefit from this program.

Program 19: Drawback and Remission Schemes

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporter of subject goods. As a result, the GOP informed the CBSA of the existence of the *Duty and Tax Remission for Exports Scheme* (DTRE).

Under the DTRE scheme, essentially 4 types of duties and taxes are exempted namely (i) customs duty at 5% (refundable); (ii) Federal Excise Duty at 1% (refundable); (iii) Advance tax at 4% (adjustable); and (iv) Sales tax at 16% (adjustable).⁴⁹

- (i) Customs Duty - This duty is either refunded or not collected at the time of import of raw materials that are used in the production of products for exports. If the raw materials are imported for production of product destined for domestic sales, no such refund or exemption is available.

⁴⁸ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E15.

⁴⁹ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 56.

- (ii) Federal Excise Duty - This duty is also refunded or not collected at the time of import of raw materials that are used in the production of products for exports. If the raw materials are imported for production of product destined for domestic sales, no such refund or exemption is available.
- (iii) Advance Tax - The advance tax is payable at the time of import of raw materials for use in production of goods in Pakistan. The exemption from payment of advance tax only provides a deferral of the tax liability to a company and does not constitute revenue forgone as a company availing this exemption is not allowed to deduct this percentage from the final tax liability. However, in case of exports, this tax is exempt, but to the extent of raw material used for production of goods for exports.
- (iv) Sales Tax - Sales tax is related to tax on sale of the product. However, the incident of sales tax is passed on to the customers (end-users). For all local sales Captain collected sales tax from the customers, the same was paid to the tax authorities on behalf of the end-users. As export sales are concerned such collection does not take place as sales are made outside the jurisdiction of the tax authorities of Pakistan. Similarly, the sales tax on imported raw materials used for production of goods destined for export, being an adjustable tax, is not collected at the time of imports.

Legal Basis:

The GOP referred the CBSA to the *Custom Rules 2001*, issued June 18, 2001, and administered by the Federal Board of Revenue.

Eligibility:

Any exporters are eligible to the exemption from paying duties on imported raw materials as long as the imported raw materials are used for production of goods for exports.

Determination of Subsidy and Specificity:

On the basis of available information, under this program excessive repayments of duties would constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, amounts that would otherwise be owing or due to the government and confers a benefit to the recipient equal to the amount in excess of the allowed repayment.

Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to a government that is exempted shall be treated as a grant under section 27 of the SIMR.

Findings of the Investigation:

It is the responsibility of the government of Pakistan to ensure that amounts of drawback or remission are not in excess of the actual amounts of duties paid on the inputs and that they relate to export only, and not domestic sales.

At the time of application for claiming exemption under the DTRE scheme, Captain provided the GOP with the details and specifications of the goods to be produced for export sales and the raw materials required for the same. As such, exemption and remission was limited to the extent of the inputs used for exports to Canada and other export destinations and was not excessive to the applicable duties and taxes, therefore, this program did not confer any benefit to Captain.^{50,51}

Program 20: Ad hoc Additional Duty Drawback @ 1% of Export Value

General Information:

In order to encourage exports of selected fourteen sectors, the GOP in Trade Policy 2009-2010, decided to give interim relief of additional duty drawback at 1% of export value for exports made from July 1, 2009 to June 30, 2010.

Legal Basis:

This program was acknowledged by the GOP by providing the public notice of the TDAP, as part of the Trade Policy 2009-2010, titled *Ad hoc Relief @ 1% of Export Value*.

Eligibility:

The edibility criteria for this program are found in the *Ad hoc Relief @ 1% of Export Value* public notice. The eligible sectors under this program are: tents, canvas, & tarpaulin; electric machinery; carpets, rugs and mats; sports goods; footwear; surgical\medical\veterinary\beauty care instruments; cutlery; onyx products; electric fans; furniture; auto parts; handicrafts; jewellery; and pharmaceuticals.

The exporters of the 14 sectors submit their bank statement indicating quarterly exports to the TDAP. After approval from the TDAP, exporters of the 14 sectors mentioned above are entitled to the additional duty drawback at 1% of export value.⁵²

Determination of Subsidy and Specificity:

The subsidy provided by this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, amounts that would otherwise be owing and due to the government are exempted or deducted, and confers a benefit to the recipient equal to the amount of the amounts exempted or deducted.

The exemption or deduction provided is limited to export oriented enterprises, is a prohibited subsidy, as such subsidies are contingent, in whole or in part, on export performance. Prohibited subsidies are specific pursuant to paragraph 2(7.2)(b) of SIMA.

⁵⁰ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Appendix IIA.

⁵¹ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E15.

⁵² Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E9.

Findings of the Investigation:

Captain is not part of the qualified sectors above, therefore, Captain is not eligible and cannot apply or benefit under this program.⁵³

VII. PURCHASES OF STATE-OWNED ENTERPRISES

Program 21: Pakistan Water and Power Development Authority

General Information:

For the purposes of this investigation the “*Pakistan Water and Power Development Authority*” is considered to be a vertically integrated state-owned enterprise (SOE). Based on the information provided by the complainant, this program was identified as possibly having provided actionable benefits to the exporter of subject goods where the amount by which the price of electricity is lower than fair market value may be a subsidy.

Legal Basis:

The GOP denied the existence of this program. Furthermore, the GOP referred the CBSA to the Karachi Electric Supply Company, as they provide electricity to the sole exporter of subject goods.

Eligibility:

Not applicable as no information was found on this program. However, any manufacturer that would purchase electricity from a SOE at less than fair market value would avail itself a benefit under this program.

Determination of Subsidy and Specificity:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, where the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in Pakistan and the price at which the goods or services were provided by the government.

Goods and services provided by government to producers are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises purchasing from SOEs.

⁵³ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 62.

Findings of the Investigation:

Captain is not purchasing utilities from Pakistan Water and Power Development Authority. Therefore, Captain did not avail itself of any benefit under this program.⁵⁴

Program 22: Karachi Electric Supply Corporation

General Information:

For the purposes of this investigation the “*Karachi Electric Supply Corporation*” (KESC) is considered to be a vertically integrated SOE. Based on the information provided by the complainant, this program was identified as possibly having provided actionable benefits to the exporter of subject goods where the amount by which the price of electricity is less than fair market value may be a subsidy.

Legal Basis:

The GOP denied the existence of this program, but confirmed to the CBSA that the sole exporter of subject goods obtains its electricity from KESC.

Eligibility:

Not applicable as no information was found on this program. However, any manufacturer that would purchase electricity from a SOE at less than fair market value would avail itself a benefit under this program.

Determination of Subsidy and Specificity:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, where the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in Pakistan and the price at which the goods or services were provided by the government.

Goods and services provided by government to producers are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises purchasing from SOEs.

Findings of the Investigation:

Captain purchases electricity from KESC, which is a publicly listed company established and operating under the laws of Pakistan. The power sector of Pakistan is regulated by the National Electric Power Regulatory Authority (NEPRA) which is the sole and exclusive regulator enjoying quasi-judicial powers.⁵⁵

⁵⁴ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 65.

⁵⁵ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E16.

The CBSA compared the rate at which electricity was provided to Captain by KESC⁵⁶ to the industrial rate published in the “Cost of doing Business in Pakistan” publication used as a benchmark for the purposes of this investigation.⁵⁷

As a result, the rates at which Captain was provided electricity during the POI are above the benchmark, therefore, Captain did not avail any benefit under this program.

Program 23: Purchases from Other State-Owned Enterprises at Less Than Fair Market Value

General Information:

Based on the information provided by the complainant, there is reason to believe that exporters in Pakistan might avail themselves of direct subsidies where the amount by which the goods or services purchased from SOEs are at less than fair market value.

As such, CBSA investigated the relationship between the sole cooperative exporter and the SOEs providing goods and services. It was found that other than KESC, which provides electricity, the sole exporter of subject goods also purchases natural gas from an SOE, Sui Sothern Gas Company Limited.

Legal Basis:

The GOP denied the existence of this program.

Eligibility:

Not applicable as no information was found on this program. However, any manufacturer that would purchase goods or services from a SOE at less than fair market value would avail itself of a benefit under this program.

Determination of Subsidy and Specificity:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, where the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in Pakistan and the price at which the goods or services were provided by the government.

Goods and services provided by government to producers are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises purchasing from SOEs.

⁵⁶ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E10.

⁵⁷ Subsidy Exhibit S002 (NC) – Complaint, Tab 80, *Cost of Doing Business in Pakistan*, July 2010, page 6.

Findings of the Investigation:

Captain purchases natural gas from a state owned company, Sui Sothern Gas Company Limited on industrial rates prescribed by an independent regulator namely Oil & Gas Regulatory Authority, which is a quasi-judicial statutory body.⁵⁸

The CBSA compared the rate at which gas was provided to Captain by Sui Sothern Gas Company Limited⁵⁹ to the industrial rate published in the “Cost of doing Business in Pakistan” publication used as a benchmark for the purposes of this investigation.⁶⁰

As a result, the rates at which Captain was provided gas during the POI are above the benchmark, therefore, Captain did not avail itself of any benefit under this program.

Program 24: Pakistan Mineral Development Corporation

General Information:

For the purposes of this investigation the “*Pakistan Mineral Development Corporation*” (PMDC) is considered to be a SOE. Based on the information provided by the complainant, this program was identified as possibly having provided actionable benefits to the exporter of subject goods where the amount by which the price of raw materials is lower than fair market value may be a subsidy.

Legal Basis:

The GOP denied the existence of this program, but confirmed to the CBSA that the sole exporter of subject goods has purchased silica sand from PMDC at market rates.

Eligibility:

Not applicable as no information was found on this program. However, any manufacturer that would purchase raw materials from a SOE at less than fair market value would avail itself of a benefit under this program.

Determination of Subsidy and Specificity:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, where the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in Pakistan and the price at which the goods or services were provided by the government.

⁵⁸ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 68.

⁵⁹ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E11.

⁶⁰ Subsidy Exhibit S002 (NC) – Complaint, Tab 80, *Cost of Doing Business in Pakistan*, July 2010, page 9.

Goods and services provided by government to producers are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises purchasing from SOEs.

Findings of the Investigation:

Captain did purchase a small quantity of Silica Sand in Faisalabad during the POI from PMDC.⁶¹

The CBSA compared the purchase price at which silica sand was provided to Captain by the PMDC⁶² to purchases made from other non-state owned suppliers used as a benchmark for the purposes of this investigation.⁶³

As a result, the price at which Captain was provided the silica sand from the PMDC during the POI are within a reasonable range of the benchmark for purposes of this investigation, therefore, Captain did not avail itself of any benefit under this program.

Program 25: Cost of Domestic Inputs Lower Than Imported Inputs

General Information:

Based on the information provided by the complainant, this program was identified as possibly having provided actionable subsidies to the exporter of subject goods. The GOP may have a program in place to encourage the purchase of domestic raw materials over imported raw materials. The exporter would benefit from the amount by which the price of domestic raw materials is lower than imported fair market value raw materials.

Legal Basis:

The GOP denied the existence of this program.

Eligibility:

Not applicable as no information was found on this program. However, any manufacturer that would purchase raw materials from a SOE at less than fair market value would avail itself a benefit under this program.

Determination of Subsidy and Specificity:

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

⁶¹ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, page 70.

⁶² Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E19.

⁶³ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E18.

The benefit an exporter would acquire from the difference between the price of domestic raw materials and the imported fair market value raw materials is a prohibited subsidy pursuant to paragraph 2(7.2)(b) of SIMA, as it is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

Findings of the Investigation:

Production of potassium silicate involves fusing two raw materials, potassium carbonate and silica sand as per the desired ratio.

As mentioned above, Captain sources their silica sand from various domestic suppliers at fair market prices.⁶⁴ Purchases of the other input, potassium carbonate, during the POI were from foreign suppliers.⁶⁵ As such, Captain did not avail itself of any benefit under this program.

Program 26: Purchases of Goods and Services from the State Bank of Pakistan

General Information:

For the purposes of this investigation the “*State Bank of Pakistan*” is considered to be part of the GOP. This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporter of subject goods. The GOP may have provided goods or services to the exporter at less than fair market value.

The GOP denied the existence of this program and referred the CBSA to the *Export Finance Scheme* described above under *Program 6 – Preferential Loans from the State Bank of Pakistan* and the *Credit Guarantee Scheme for Small and Rural Enterprises* also described above under *Program 9 - Loan Guarantees by State Bank of Pakistan/Pakistan Export Finance Guarantee Agency*.

Legal Basis:

The GOP denied the existence of this program.

Eligibility:

Not applicable as no information was found on this program. However, any manufacturer that would purchase goods or services from the GOP at less than fair market value would avail itself a benefit under this program.

⁶⁴ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E18.

⁶⁵ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E15.

Determination of Subsidy and Specificity:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, where the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in Pakistan and the price at which the goods or services were provided by the government.

Goods and services provided by government to producers are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises purchasing from SOEs.

Findings of the Investigation:

Captain did obtain short term loan facilities for its working capital from multiple banks, including Soneri Bank. However, all facilities from these banks were obtained within the reasonable range of the benchmark lending rates.⁶⁶

The CBSA compared Captain's obtained lending rates⁶⁷ to the benchmark lending rates given by the State Bank of Pakistan⁶⁸ for the period of January 1, 2010 to September 30, 2011. The latter was also supported by the Karachi Interbank Offered Rate (KIBOR) recognized as the benchmark rate for all corporate lending in Pakistani rupee after January 31, 2004.⁶⁹ As a result, Captain's short term loans did not confer any countervailable benefit.

⁶⁶ Subsidy Exhibit S044 (NC) and S045 (PRO) – Response to Subsidy SRFI – Captain PQ, page 1 to 9.

⁶⁷ Subsidy Exhibit S033 (PRO) – Response to Subsidy RFI – Captain PQ, Annexure E13.

⁶⁸ Subsidy Exhibit S066 (NC) – Additional Response to Subsidy SRFI – GOP, page 1.

⁶⁹ Subsidy Exhibit S034 (NC) – Response to Subsidy RFI – Captain PQ, Annexure E21.