PUBLIC RECORD

Australian Government

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT
NO. 237

APPLICATION FOR A DUMPING DUTY NOTICE AND COUNTERVAILING DUTY NOTICE

SILICON METAL EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

30 January 2014

CONTENTS

ABBREVIATIONS

$	Australian dollars
ACBPS	Australian Customs and Border Protection Service
The Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
The applicant	Simcoa Operations Pty Ltd
CFR	Cost and freight
Commission	Anti-Dumping Commission
the Commissioner	the Anti-Dumping Commissioner
CTM	Cost to make
CTMS	Cost to make & sell
FOB	Free On Board
NIP	Non-injurious Price
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
USP	Unsuppressed Selling Price

1 SUMMARY AND RECOMMENDATION

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application for:

- the publication of a dumping duty notice in respect of silicon metal exported to Australia from the People's Republic of China (China); and
- the publication of a countervailing duty notice in respect of silicon metal exported to Australia from China.

1.1 Application of law to facts

Division 2 of Part XVB (the Division) of the *Customs Act 1901* (the Act)[1] sets out procedures for considering an application for a dumping duty and countervailing duty notice.

1.1.1 The role of the Commission

The Commission is responsible for preparing a report for the Anti-Dumping Commissioner (the Commissioner) examining an application for a dumping duty notice.

In this report, the following matters are considered in relation to the application:

- whether the application complies with subsection 269TB(4);
- whether there is, or is likely to be established, an Australian industry in respect of like goods;
- whether there appear to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application.

1.1.2 The role of the Commissioner

The Act empowers the Commissioner, after having regard to the Commission's report, to reject or not reject an application for the publication of a dumping duty notice or a countervailing duty notice.

If the Commissioner decides not to reject the application, the Commissioner must give public notice of the decision providing details of the investigation.

1.2 Findings and conclusions

The Commission has examined the application for the publication of a dumping duty notice and a countervailing notice in relation to silicon metal exported from China.

The Commission is satisfied that:

- the application complies with the requirements of subsection 269TB(4) (the reasons for being satisfied are set out in Chapter 3 of this report);

[1] All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901.*

- there is an Australian industry in respect of like goods (as set out in Chapter 4 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application (as set out in Chapters 5, 6, 7 and 8 of this report).

1.3 Recommendation

The Commission recommends that the Commissioner decide not to reject the application.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Appendix A** indicating that the Commission will inquire into whether the grounds exist to publish a dumping duty notice and a countervailing duty notice.

2 BACKGROUND

2.1 Application

On 10 January 2014, Simcoa Operations Pty Ltd (Simcoa) lodged an application requesting that the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) publish a dumping duty notice and countervailing duty notice in respect of silicon metal exported to Australia from China.

Simcoa alleges that the Australian industry has suffered material injury caused by silicon metal exported to Australia from China at dumped and subsidised prices. Simcoa claims the industry had been injured through:

- Lost sales volumes;
- Reduced market share;
- Price depression;
- Price suppression;
- Loss of profits and profitability;
- Reduced return on investment; and
- Reduced capacity utilisation.

2.2 The goods the subject of the application

2.2.1 Description

The goods the subject of the application (the goods) are:

- Silicon metal containing at least 96.00 per cent but less than 99.99 per cent silicon by weight, and

- Silicon metal containing between 89.00 per cent and 96.00 per cent silicon by weight that contains aluminium greater than 0.20 per cent by weight,

of all forms (i.e. lumps, granules, or powder) and sizes.

<u>Additional product information</u>

The goods the subject of the application include all forms and sizes of silicon metal, including off-specification silicon metal such as silicon metal with certain proportions of other elements such as aluminium, calcium, iron, etc.

The application states that silicon metal is a chemical element, of metallic appearance and steel grey in colour. It can be sold in lump, granule or powder form, and can be used in the same end-use applications whatever its form. Silicon metal is generally sold in lump form to the metallurgical industry and, in powder form to the chemicals industry. It is often referred to as a metal, although silicon metal possesses characteristics of both metals and non-metals (silicon metal is a metalloid).

The application states that silicon metal is principally used by primary and secondary aluminium producers as an alloying agent and by the chemical industry to produce silicones and photovoltaics. The type and level of impurities in the silicon metal generally influence the end-use application (i.e. whether 'primary' or 'secondary' use aluminium).

2.2.2 Tariff classification

The application states that the goods are classified to tariff subheading 2804.69.00 statistical code 14 in Schedule 3 to the *Customs Tariff Act 1995*. The Australian Customs and Border Protection Service's (ACBPS') tariff branch has confirmed this is the correct classification.

The applicant claims that the goods may also be incorrectly entered under tariff subheading 2804.61.00 statistical code 13, which relates to silicon metal with not less than 99.99% by weight of silicon.

The rate of Customs duty is free.

2.3 Consideration of the application

Under subsection 269TC(1) of the Act the Commissioner must examine an application for publication of a dumping duty notice or a countervailing duty notice upon its receipt and, within 20 days of lodgement (or 20 days of lodgement of further information in support of the application), decide whether or not to reject the application.

In relation to this application, this decision must be made no later than **30 January 2014**.

Subsection 269TC(1) specifies that the Commissioner shall reject the application if he is not satisfied that:

- the application complies with subsection 269TB(4); or
- there is, or is likely to be established, an Australian industry in respect of like goods; or
- there appear to be reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application.

The above matters are examined in the following sections of this report.

2.4 Previous investigations

On 9 February 2005 the then Minister for Justice and Customs (the Minister) accepted the ACBPS recommendations made in Trade Measures Report No. 81. Simcoa was the applicant for the dumping duty notice.

On 16 February 2005, the Minister published a dumping duty notice imposing measures on primary and secondary grade silicon metal exported from China to Australia.

In March 2005, Comalco Aluminium Limited (Comalco) and Alcoa Australia Rolled Products Pty Ltd (Alcoa) separately lodged applications with the Trade Measures Review Officer (TMRO) for a review of the Minister's decision to publish a dumping duty notice in respect of silicon metal exported from China to Australia.

The TMRO accepted the applications and on 15 April 2005 a public notice of his intention to conduct a review was published.

On 11 August 2005, the Minister accepted the recommendations following a review by the TMRO and subsequently wrote to the Chief Executive Officer of ACBPS requiring him to reinvestigate ACBPS' findings in respect of:

- like goods;
- the assessment of material injury to the Australian industry;
- the assessment of normal values and dumping margins for other exporters;
- price underselling; and
- the injury analysis period.

Following the reinvestigation, ACBPS affirmed its original findings in respect of:

- material injury;
- dumping margins;
- price underselling; and
- the injury analysis period.

ACBPS did find, however, that Australian produced primary use silicon metal was not like goods to secondary use silicon metal imported from China.

ACBPS recommended that the Minister sign a notice under s. 269ZZM(1)(b) of the Act revoking his original findings insofar as it related to like goods, and substitute a new decision.

The Minister revoked the existing notice specifying both secondary use silicon metal and primary use silicon metal and substituted a new notice which specified primary use silicon metal only.

The anti-dumping measures expired on 17 February 2010.

2.5 Current measures

There are currently no anti-dumping measures on the goods exported to Australia.

2.6 Other administrations

The Canadian Border Services Agency (CBSA) imposed final dumping and countervailing duties on silicon metal exported from China in November 2013. The dumping margins found ranged from 47% to 235%. The subsidy margin found was 21.1%.

The United States of America has had dumping duties on imports of silicon metal from China for over 30 years.

3 DOES THE APPLICATION COMPLY WITH SUBSECTION 269TB(4)?

Subsection 269TB(4) requires that the application must:

- be in writing; and
- be in an approved form; and
- contain such information as the form requires; and
- be signed in the manner indicated by the form; and
- be supported by a sufficient part of the Australian industry.

3.1 Approved form

The application is in writing, is in an approved form (a B108 application form), contains such information as the form requires (as discussed in the following sections) and is signed in the manner indicated in the form.

Confidential and public record versions of the application were submitted. The Commission considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information within the confidential application.

3.2 Supported by Australian industry

An application is taken to be supported by a sufficient part of the Australian industry if the Commission is satisfied the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50 percent of the total production or manufacture of like goods by that proportion of the Australian industry that has expressed either support for or opposition to, the application; and
- account for not less than 25 percent of the total production or manufacture of like goods in Australia.

Simcoa advised that it is the sole Australian manufacturer of silicon metal.

3.3 The Commission's assessment

Based on the information submitted by the applicant, the Commission considers that the application complies with subsection 269TB(4).

4 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, he is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

4.1 Locally produced like goods

Subsection 269T(1) defines like goods as

> *goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

4.1.1 Applicant's claims

Simcoa submitted that locally produced silicon metal possesses the same essential characteristics of the imported silicon metal as follows:

i. <u>Physical likeness</u>:

Silicon metal manufactured by Simcoa has the same physical and performance characteristics as imported silicon metal. There may be some variations in physical substance (i.e. in lump or powder form) however, this has more to do with handling requirements that are required for a specific end-use application;

ii. <u>Commercial likeness</u>:

Simcoa's locally produced silicon metal competes directly with imported silicon metal (whether primary or secondary silicon metal) in the Australian market.

iii <u>Functional likeness</u>

The locally-produced silicon metal and the imported silicon metal are used interchangeably in the same or comparable end-uses.

iv <u>Production likeness</u>

Silicon metal manufactured in Australia and imported silicon metal are produced in a similar manner. The silicon metal production processes and costs of production are similar.

4.1.2 The Commission's assessment

Based on the information provided in the application and information gathered during the previous dumping investigation, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application.

4.2 Manufactured in Australia

Subsections 269T(2) and 269T(3) specify that, for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.2.1 Applicant's manufacturing operations

Simcoa submitted that silicon metal is produced on a commercial scale in three submerged arc furnaces by the carbothermic reduction of silica (presented either as quartz of quartzite). The process is highly endothermic requiring 10 – 12 MWH/tonne of silicon metal produced.

Details of the production process are set out at pages 11 to 12 of the application.

The application states that silicon metal is manufactured from locally-produced inputs including quartz, charcoal, coal and char involving a high endothermic process that is considered both "substantial" and is highly capital intensive.

4.2.2 The Commission's assessment

Based on the description of the manufacturing process provided in the application and information gathered during the previous investigation, the Commission is satisfied that there is at least one substantial process of manufacture performed in Australia and, therefore, that the goods may be taken to have been produced in Australia.

4.3 Australian Market

Simcoa submitted that silicon metal is sold into primary aluminium and secondary aluminium end-uses. Silicon metal used in primary aluminium applications is combined with other elements to produce foundry and extrusion alloys which are used in the manufacture of goods such as car and truck wheels, window frames and door frames. Silicon metal used in these applications requires higher purity levels.

Silicon metal used in secondary aluminium applications generally requires lower quality requirements and is used in the manufacture of die casting alloys used in car parts, including manifolds, crank cases and other engine components.

4.3.1 Marketing and distribution

The application states that silicon metal is purchased by aluminium producers and sourced either from imports or from Simcoa. As Simcoa claims that it has lost the majority of its historic Australian sales, it has determined that Australian aluminium producers are sourcing product from imports.

4.3.2 Market segmentation, including geographic or product segmentation

The application states that silicon metal is sold and distributed across Australia. The application further notes there is no geographic segmentation for silicon metal, nor is there product segmentation other than identifying whether product is sold to primary or secondary aluminium applications.

4.3.3 Demand variability

The application states that demand for silicon metal has been impacted by the global economic slowdown in the automotive, housing and solar panel industries. The flow on effect of the contraction of these industries is reduced demand for silicon metal.

4.3.4 The way in which the imported and Australian product compete

Simcoa claims that silicon metal produced by the Australian industry competes directly with and has the same end uses as silicon metal imported from China. It is Simcoa's view that the goods manufactured in Australia are completely substitutable with silicon metal produced in China.

Simcoa advised that there are no commercially significant substitutes to silicon metal produced by the Australian industry or that is imported.

4.4 Market Size

4.4.1 Simcoa's claims

Simcoa advised that the Australian market for silicon metal is supplied by imports from China and other countries, and local production. Simcoa is the sole Australian producer of silicon metal, with an installed capacity of 48,000 tonnes per annum and the capability to supply 100 per cent of domestic demand.

Simcoa claims that in 2010 following the global economic slowdown, it held a significant share of the Australian market with premium grade silicon metal from local production, with Chinese imports accounting for approximately 50 per cent market share. Simcoa claims that in 2011 Chinese exports of silicon metal displaced Simcoa's domestic sales of locally produced goods on the Australian market.

In the subsequent two years (i.e. 2012 and 2013) the Australian market for silicon metal contracted. The share of the Australian market held by Chinese imports increased significantly in 2013.

Simcoa alleges that Chinese imports have been the sole cause for the displacement of Simcoa's Australian market share.

Figure 1 below shows the market share held by various countries and Simcoa based on on the Australian Bureau of Statistics (ABS) data supplied with the application and Simcoa's sales data.

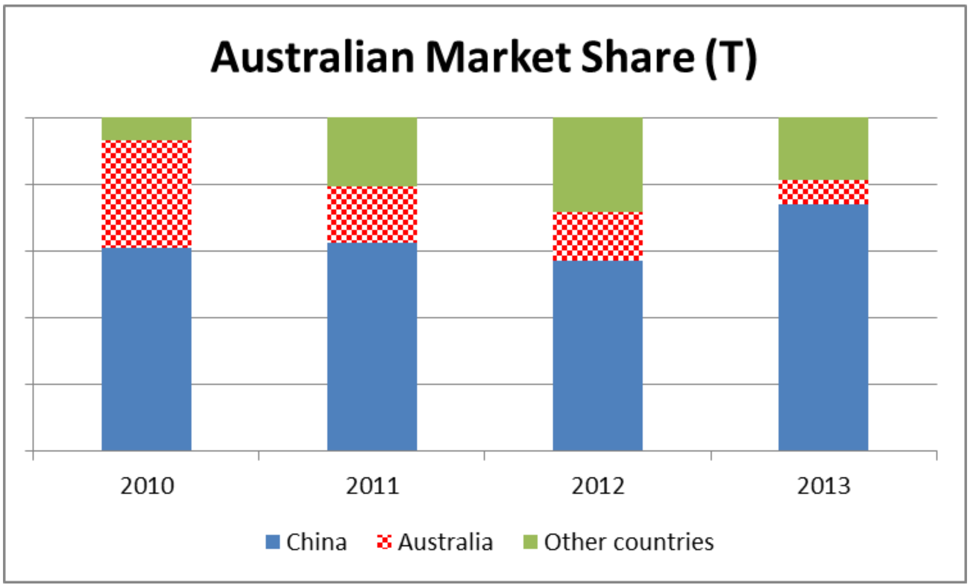


Figure 1 – Australian Market Share based on ABS data

Figure 1 shows that the Australian industry's share of the Australian market declined substantially over the period 2010 to 2013. During the same period Chinese exports to Australia increased their market share.

Figure 2 below shows the size of the Australian market based on ABS data and Simcoa's sales data.

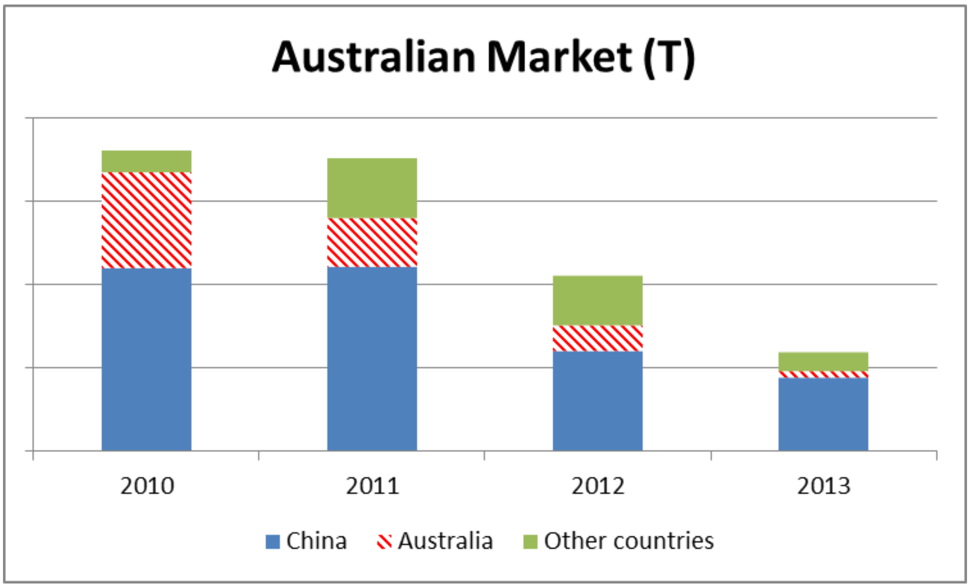


Figure 2 – Australian Market Size based on ABS data

4.4.2 The Commission's assessment

The Commission has assessed the volume data provided by the applicant and compared it to data contained within the ACBPS import data base. The Commission has observed some minor variations in the total figures between the two sets of data, however notes that both sets of data provide very similar results for market size and share.

The Commission considers that the information submitted by Simcoa is reliable, relevant and suitable for estimating the relative size of the Australian market for silicon metal. The Commission's assessment of the Australian market for silicon metal is attached at **Confidential Appendix 1**.

4.5 Australian industry information

4.5.1 General accounting/administration

Simcoa is an Australian based company owned 100 per cent by the Silicon Metal Company of Australia Pty Ltd. The Simcoa Metal Company of Australia Pty Ltd is 100 per cent owned by the Japanese listed company Shin-Etsu Chemical Co., Limited.

Simcoa is based at Kemerton, 160km south of Perth, Western Australia. It claims that it operates the only fully integrated silicon metal production plant in the world.

The industrial site consists of a sawmill, two charcoal retorts, three submerged arc electric furnaces, as well as a filter house (for cleaning the furnace off gases), and product packaging and dispatch facilities. Silicon metal production commenced in December 1989.

Simcoa's financial year is from 1 January to 31 December. Simcoa advised that it does not prepare an annual financial report, however it does prepare audited special purpose financial reports. Simcoa provided copies of the special purpose financial reports for the years ended 31 December 2011 and 31 December 2012. It also provided management reports for the March 2013, June 2013 and September 2013 quarters.

4.5.2 Sales information

Simcoa provided sales and production information in the application, including a summary of domestic and export sales volumes and revenues, as required in the relevant Confidential Appendices A2, A3, A5 and A6 for the period 1 October 2009 to 30 September 2013, with Confidential Appendix A1 provided for the period 1 October 2012 to 30 September 2013 and A4 provided for the period 1 January 2012 to 30 September 2013.

The Commission examined the detail in, and link between, relevant appendices noting no major discrepancies. For the purposes of this report, the Commission considers that Simcoa's appendices are reliable for assessing the economic condition of the Australian industry in respect of silicon metal.

4.5.3 Cost information

Simcoa completed a Confidential Appendix A6 cost to make and sell (CTMS) spreadsheet for domestic and export sales. The information provided in this appendix included production and sales volumes, manufacturing costs, selling (including distribution), general and administrative (SG&A) expenses for the period 1 October 2009 to 30 September 2013.

The Commission examined the information provided and the link between other appendices and considers the information reliable for the purposes of preliminarily assessing the economic condition of the Australian industry in respect of silicon metal.

4.5.4 Other economic factors

Simcoa completed Confidential Appendix A7 for the period 1 January 2010 to 30 September 2013 showing movements in assets, capital investment, R&D expenses, revenue, return on investment, capacity, capacity utilisation, employment, closing stocks, cash flow measures and wages

4.5.5 The Commission's assessment – Australian Industry

Based on the information in the application, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application and that the information contained in the application is sufficient for the purposes of a preliminary analysis of the economic condition of the Australian industry in respect of silicon metal for the period 1 January 2010 to 31 December 2013.

5 REASONABLE GROUNDS – DUMPING

5.1 Findings

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that:

- Silicon metal has been exported to Australia from China at dumped prices (refer section 5.6);
- the volume of silicon metal that appears to have been dumped from China is greater than 3% of the total Australian import volume of the goods, and therefore is not negligible (refer section 5.5); and
- the estimated dumping margin for China is greater than 2% and is therefore not negligible (refer section 5.6).

5.2 Legislative framework

Article 5.2 of the World Trade Organisation (WTO) Anti-Dumping Agreement (AD Agreement) states that an application shall include evidence of dumping. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG of the Act, one of the matters that the Minister must be satisfied of to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods. This issue is considered in the following sections.

5.3 Export Price

5.3.1 Simcoa's claims

Simcoa relied upon data available from the Australian Bureau of Statistics (ABS) to calculate the Free on Board (FOB) prices it used in its application.

Weighted average quarterly FOB export prices for silicon metal exported from China from 1 October 2012 to 30 September 2013 provided in the application are:

Period	Quantity (Tonnes)	FOB price A$/MT
Oct – Dec 2012	1875.3	$2,320.49
Jan – Mar 2013	1931.3	$2,301.93
Apr – Jun 2013	1729.6	$2,110.59
Jul – Sep 2013	1532.2	$2,186.54

Figure 3 – Table of Quarterly FOB prices from application based on ABS data

5.3.2 The Commission's assessment

The Commission examined the data and calculations provided by Simcoa. A comparison of the quarterly weighted average export prices from the ACBPS import database and the quarterly weighted average export prices provided by Simcoa shows that apart from the March 2013 quarter all other quarterly FOB prices are reasonably accurate. While the discrepancy in the March 2013 quarter is larger, the FOB price reported in the ACBPS import database is lower than the FOB price provided in the application.

The Commission considers that the export prices submitted by Simcoa are sufficiently reliable and relevant for the purposes of the application. Refer **confidential appendix 5**.

5.4 Normal Values

5.4.1 Simcoa's claims

Simcoa states that it has been unable to access domestic selling price information for silicon metal sold on the domestic market in China. It has therefore constructed a normal value.

Simcoa has alleged a market situation exists for silicon metal in China (see Section 5.4.2 below). It states this is an additional reason why constructed selling prices should be used in place of domestic selling prices. Simcoa has indicated that its preference is for US market prices for silicon metal to be used to establish the normal value. However, Simcoa has constructed a normal value based on the best available information to establish exporter's costs plus a profit to calculate a quarterly constructed normal value.

Simcoa obtained information from a company that is claimed to be an independent authority on cost economics for, amongst others, the silicon metal industry. Simcoa is a subscriber to a publication of Silicon Cost Data. This contains cost economics data for silicon metal manufactured in the key provinces in China, based on the company's knowledge of the location of silicon metal producers, on an annual basis. The extract from the report provided with the application contained the data for the period October to December 2012 and the 2013 calendar year.

The Silicon Cost Data report states that Yunnan province in China contains the highest volume of silicon metal output. Simcoa has used costs relating to this province in its constructed normal value for the period 1 October 2012 to 30 September 2013. Specifically the report provides costs for raw materials, labour and direct and indirect overheads relating to the manufacture of silicon metal.

The report does not include the cost of interest on fixed capital, depreciation, amortization, profit, income taxes, corporate overhead, research and development. Simcoa has added these costs to the normal value on the following basis:

- Depreciation – based on Simcoa's own expenses in 2012-13. Simcoa considers this reasonable on the basis of publications by the Government of China (GOC) that it is enforcing new investment in large electric arc furnaces and Simcoa has installed a third furnace;
- Selling, general and administrative expenses – based on Simcoa's own expenses in 2012-13. Simcoa considers these to be 'relatively low' due to the lean sales and

administration function performed by Simcoa at its production facility. It considers its structure and scale to be similar to that of Chinese manufacturers.

Profit of 5% has been added on the basis that the CBSA found that Chinese domestic profit in the silicon metal industry is low (3.56%).

Constructed normal values have been calculated as follows:

	Oct-Dec 2012	Jan-Mar 2013	Apr-Jun 2013	Jul-Sep 2013
Normal Value (US$/MT)	$2367	$2411	$2411	$2411
ROE	1.0442	1.0356	0.9971	0.9093
A$/MT	$2266	$2328	$2418	$2651

Figure 4 – Table of constructed normal value from application

Simcoa's export price is calculated at the FOB level and its constructed normal value is at ex-works. Simcoa has therefore made an adjustment to the normal value for inland delivery to the wharf. The amount of the adjustment was based on data in the Silicon Cost Report for China.

5.4.2 The Commission's assessment – normal value

While the Commission would not ordinarily assess the reasonableness of a constructed normal value on the basis of a market situation claim alone, in the absence of available data for domestic selling prices of like goods in China the Commission considers it is reasonable for Simcoa to submit constructed normal values.

The Commission notes that while Simcoa's market situation claims may result in some costs of production being assessed as not reflecting competitive market costs (being understated) Simcoa has used the actual costs in China as reported in the Silicon Cost Data report in its normal value calculation. If any costs are understated and replaced with competitive market costs this would increase the normal value.

The Commission considers that, based on the information submitted in the application, the applicant's estimate of normal values for silicon metal sold in China appears to be reasonable.

5.4.3 Simcoa's Market Situation claims

In its application, Simcoa referred to the recent findings of the CBSA into silicon metal exported from China[2]. In the finding of 5 November 2013, CBSA found that the GOC measures significantly influence "*the Chinese ferroalloy sector, which includes silicon metal*." Further, CBSA was satisfied that "*Domestic prices are substantially determined by*

2 CBSA Statement of Reasons concerning the making of final determinations with respect to the dumping and subsidizing of certain silicon metal originating in or exported from the People's Republic of China, 4214-39 AD/1400, 4218-37 CVD/136, 5 November 2013 (at Non-Confidential Attachment B-3.1.1).

the GOC, and there is sufficient reason to believe that the domestic prices for silicon metal are not substantially the same as they would be in a competitive market[3]."

Simcoa referred to measures found within that report to support its claim of market situation. Simcoa claim the measures impacting the Chinese silicon metal industry include:

- ***GOC export control measures***

This includes the now repealed 15 per cent export tax (with effect from 1 January 2013), the absence of a rebate of the 17 per cent value added tax (VAT) on export of silicon metal, the maintenance of minimum silicon metal export prices by the GOC, and the use of export quotas on silicon metal.

- ***Government influence on the price of inputs used in the production of silicon metal***

CBSA was satisfied that the GOC exercises "substantial influence" over key raw material inputs in the silicon metal manufacturing process, including electricity and coal that account for 70 per cent of silicon metal production costs. The cost of electricity and coal in the total production cost of silicon metal account for 55-60 per cent and 8-10 per cent, respectively. The Canadian industry was able to demonstrate to CBSA that the electricity cost for silicon metal producers in Yunnan province (that accounted for 20 per cent of China's silicon metal production) was 32 per cent below the rates in other provinces. In respect of coal, the GOC exercises control of the industry through "*the use of policies, laws, regulations, production caps and production ceilings*" to control the volume of coal produced and sold in China.

- ***GOC policies and regulations directed at production levels and participants***

Claims that the GOC's industrial policies regulated the Chinese silicon metal industry, including prices in the industry. The CBSA referred the claims and identified the 12th Five Year Plan to the GOC for comment, however, the GOC failed to respond to the CBSA's request for information.

Simcoa claims that the extent of the GOC's influence on production levels within China is extensive and limits the decisions enterprises may take according to free market principles.

- ***Government Restrictions on the Use and Supply of Inputs***

CBSA was able to identify GOC restrictions on inputs in silicon metal production in the Yunnan government's "Opinions Concerning Promoting Industrial restructuring of Industrial Silicon".

3 *Ibid,* P. 25.

- ***Chinese domestic selling prices for silicon metal***

The CBSA examined domestic prices in the US market for silicon metal as reported by Metal Bulletin, Platts Metals Week, Ryan's Notes and CRU and contrasted these with published Chinese domestic prices. On average, CRU prices indicated that Chinese domestic prices were 37 per cent below US domestic prices during the period of investigation (i.e. 2012).

Simcoa submitted that the CBSA's finding that the GOC influences the domestic selling prices of silicon metal in China is well founded. They noted these findings are consistent with recent findings by the Commission into hollow structural sections and galvanised steel and aluminium zinc coated steel exported from China where the GOC was assessed as influencing domestic selling prices in China due to a range of factors. These factors included the elimination of backward production capacity and the range of GOC's plans and policies for the steel industry. Simcoa submit the same GOC policies and plans influence domestic silicon metal prices in China.

5.4.4 The Commission's assessment – market situation claims

The Commission notes the finding and reasons in the CBSA investigation and considers it relevant, however notes that the legislative basis for the decision is different to Australia's legislation in respect of the market situation provisions:

- Canada's anti-dumping legislation includes provisions relating to exports from countries with governments that may monopolise export trade and substantially determine domestic prices in the industry sector under review. Applicants can allege that the conditions set out in s20 of Canada's Special Import Measures Act exist. If the allegation is reasonably supported the authorities will conduct an investigation into whether the conditions exist ("s20 inquiry"). In the case of a prescribed country such as China, a finding that s20 exists in relation to a particular industry requires that domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

- Unlike Canada, Australia treats China as a market economy and establishes normal values for exports from China in the same way it would for any other country. While the systems differ, the substance of the CBSA findings are relevant to the Commission's consideration of whether the situation in the market of the country of export is such that prices in that market are not suitable for use in determining normal values. Under Australia's anti-dumping laws, such findings would be relevant to determining normal values in any exporting country. In this circumstance, the Commission considers the CBSA finding to be relevant given it relates to the same goods as that covered by the present application.

Based on an assessment of the information set out in the CBSA's decision and the information gathered by the Commission in recent investigations in the ferro-alloy sector the Commission considers it appropriate to examine Simcoa's market situation claims during the course of the investigation. It will seek the necessary information from exporters and the GOC in order to independently assess the claims.

The Commission notes that a finding of a market situation and the potential impact on the methodology under which normal value is determined may remove the obligation on the Minister to consider application of the lesser duty rule – pursuant to s. 8(5BAA)(a) of the *Customs Tariff (Anti-Dumping) Act 1975.* Accordingly, associated with its assessment of Simcoa's market situation claims, the Commission will make recommendations to the Minister as to the level of any duties to be applied.

5.5 Import Volumes

From the information available from the ACBPS import database, imports of silicon metal from China represent more than 3% of the total import volume of silicon metal in the 12 month period ending December 2013 and are therefore not in negligible volumes as defined in subsection 269TDA.

5.6 Dumping Margin

Dumping margins for silicon metal calculated by Simcoa and provided in its application are summarised as follows:

Weighted-average dumping margin

	Oct-Dec 2012	**Jan-Mar 2013**	**Apr-Jun 2013**	**Jul-Sep 2013**	**Total**
Normal Value (incl freight) A$	**A$2,371**	**A$2,435**	**A$2,529**	**A$2,774**	
Weighted Av. Export Price	$2,320	$2,302	$2,111	$2,187	
Qty Exported (tonnes)	1,875.3	1,931.3	1,729.6	1,532.2	7,068.2
Weighted Av Normal Value $	$4,446,336	$4,702,229	$4,374,158	$4,250,323	$17,773,046
Weighted Av Export Price $	$4,350,696	$4,445,392	$3,651,186	$3,350,921	$15,798,195
Weight Av Margin $	$95,680	$256,837	$722,972	$899,402	
Weighted Av N.V. 2012/13					A$2,515
Weighted Av E.P. 2012/13					A$2,235
Av Dumping Margin					**A$280**
As % of Export price					**12.5%**

Figure 5 – Applicant's calculation of dumping margin

The Commission reviewed the appendices and calculations provided by Simcoa and consider them to reasonable.

6 REASONABLE GROUNDS – SUBSIDISATION

6.1 Findings

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that:

- countervailable subsidies have been received in respect of silicon metal exported to Australia from China (refer subsection 6.4.2.1);
- the total volume of silicon metal exported to Australia from China over a reasonable examination period in respect of which a countervailable subsidy has been received is greater than 4 per cent of the total Australian import volume, and is therefore not negligible (refer section 6.5); and
- the total amount of the subsidy received in respect of silicon metal exported to Australia from China over a reasonable examination period is likely to be greater than 2 per cent and is therefore not negligible (refer section 6.6).

6.2 Legislative framework

Article 11.2 of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement) states that an application shall include evidence of subsidisation. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a countervailing duty notice if, inter alia, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a countervailing duty notice.

Under section 269TJ of the Act, one of the matters that the Minister must be satisfied of to publish a countervailing duty notice is that a countervailable subsidy has been received in respect of the goods.

6.3 Consultation with the Government of China

In accordance with s.269TB(2C), the Commission invited the GOC for consultations during the pre-initiation phase. The purpose of the consultations was to provide an opportunity for the GOC to respond to the claims made within the application in relation to countervailable subsidies, including whether they exist and, if so, whether they are causing, or are likely to cause, material injury to an Australian industry.

Prior to these consultations, the GOC was provided with a non-confidential version of the countervailing application and non-confidential attachments.

The GOC advised the Commission that it did not wish to consult with the Commission during the consideration phase but provided a position paper.

The position paper outlined the GOC's objections to the countervailing application on the basis that the application did not meet the "sufficient evidence" obligation of the SCM

Agreement. The GOC claims that the applicant has made no attempt to identify which subsidies have been received in respect of the goods the subject of the application.

6.4 Subsidy programs alleged in the application

6.4.1 Programs investigated by the CBSA

Simcoa refers to the recent CBSA investigation into the subsidisation of silicon metal exported to Canada from China. The application states that the investigation identified 91 subsidy programs.

Simcoa's application does not seek an investigation of the programs investigated by the CBSA. Simcoa claims that some of the programs investigated by the CBSA have also been investigated by the Commission.

The Commission has read the CBSA's investigation findings and notes that although the CBSA initiated an investigation into 91 programs, due to non-cooperation by the Government of China it made findings for only 6 programs based on evidence contained in questionnaire responses from cooperating exporters. For the remaining 85 programs the CBSA found them to be countervailable using the best available information.

In relation to the 6 programs for which the CBSA received sufficient information from exporters, the Commission does not consider those subsidy programs are readily identifiable with the names of programs previously found to be countervailable by the Commission.

6.4.2 Programs previously investigated by the Commission

Simcoa has submitted that 46 subsidy programs previously found to be countervailable by the Commission are applicable to the goods the subject of the current application as follows:

- 33 programs listed in the table at page 40 of the application;
- 12 additional programs found to be countervailable in the investigation of the subsidisation of hot rolled plate steel from China (REP 198 refers); and
- The provision of coal at less than adequate remuneration.

Simcoa notes that the subsidy programs previously found to be countervailable by the Commission were provided in respect of goods that are part of the same broader ferro-alloy industry of which silicon metal is a part.

6.4.2.1 The Commission's assessment

The Commission confirms that the programs nominated by Simcoa have been found in previous investigations by the Commission to be countervailable subsidies.

The Commission considers there are reasonable grounds to believe that these programs are still in operation in China, and that due to:

- the nature of the goods subject to the application and their manufacturing process; and
- the number of potential exporters identified by the Commission in its preliminary research of imports, and the likelihood that at least some exporters will meet the eligibility criteria for each program;

there are reasonable grounds to conclude that exporters of silicon metal may have received benefits under the programs and that their investigation is warranted.

Noting that some of the programs are applicable to entities that are foreign invested enterprises (FIEs) or located only in particular regions the Commission had regard to the information contained in the ACBPS import database in relation to exporters of silicon metal during the proposed investigation period. It is not possible to determine from this information alone whether an entity is an FIE. In addition, while the ACBPS database contains an address for each entity the Commission is unable to determine whether the entity has facilities located in regions other than this address.

The exception to the above view on the reasonableness of the programs applied for is in relation to the following three programs found to be countervailable in REP 198:

- Technique transformation grant for rolling machine
- 400 sintering desulfuration transformation fund
- Coking coal provided at less than adequate remuneration

Based on the description of these programs, without further evidence being provided the Commission does not consider these would be applicable to manufacturers and exporters of silicon metal. The first two programs listed above relate to equipment used specifically by steel manufacturers. In relation to the third program, in REP 198 the Commission found that the GOC provided coking coal at less than adequate remuneration. REP 198 sets out the Commission’s view, based on evidence gathered during that investigation, that coking coal is a particular type of coal that is used in steel manufacture in the production of coke. It is distinct from thermal and other types of coal. The Commission does not consider this program to be relevant to the manufacture of silicon metal and it will not be investigated unless further evidence is provided within a reasonable timeframe.

6.4.3 Electricity provided at less than adequate remuneration

Simcoa identified an additional program that should be examined in a subsidy investigation being the provision by State Owned Enterprises (SOEs) of electricity at less than adequate remuneration. It refers to the CBSA finding that this program was countervailable.

6.4.3.1 The Commission’s assessment

The Commission has read the CBSA’s finding in relation to this program. The CBSA based its finding on evidence gathered from exporters and independent research. The CBSA found that electricity was provided to manufacturers of electricity by SOEs. The Commission notes the CBSA’s analysis and finding that:

- the SOEs were subject to meaningful control by the GOC in performing the function of the provision of electricity and were therefore public bodies;
- the program is specific because subsidised electricity was only provided to certain industries within a region; and
- a benefit was received because the electricity was provided at a lower rate than that provided to other heavy industries in the region.

The Commission considers another administration's finding of a subsidy is relevant information for determining that there are reasonable grounds to investigate the program. The CBSA's finding was in relation to the same goods that are the subject of the application so it is reasonable to assume that exporters of silicon metal to Australia would similarly be eligible for and in receipt of such benefits.

6.5 Import Volumes

From the information available from the ACBPS import database, imports of silicon metal from China represent more than 4% of the total import volume of silicon metal in the 12 month period ending December 2013 and are therefore not in negligible volumes as defined in subsection 269TDA.

6.6 Amount of subsidisation

The Commission is satisfied following preliminary analysis of:

- the amount of the benefits received under countervailable subsidies investigated in previous investigations conducted by the Commission;
- the proportion of the total cost of production of silicon metal constituted by electricity as set out in the Silicon Cost Report; and
- the export prices of silicon metal during the twelve months ended December 2013, taken from the ACBPS import database,

that the benefit received by Chinese exporters under the programs found to warrant investigation is likely to result in subsidy margins that are above negligible levels.

6.7 Conclusion – Subsidisation in China

The Commission is satisfied that the benefits received by Chinese exporters of silicon metal under the programs alleged in the application are likely to result in subsidy margins that are above negligible levels.

Based on an analysis of the evidence supplied in the application that is reasonably available to the applicant the Commission considers that there are reasonable grounds for the publication of a countervailing duty notice in relation to the following subsidy programs. Note that the numbering used reflects the numbering proposed to be used in the investigation:

Program Number	Program Name	Program Type
1	Electricity provided by government at less than adequate remuneration	Remuneration
2	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Income Tax
3	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Income Tax
4	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Income Tax
5	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Income Tax
6	Preferential Tax Policies in the Western Regions	Income Tax
7	Land Use Tax Deduction	Income Tax
8	Preferential Tax Policies for High and New Technology Enterprises	Income Tax
9	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff & VAT
10	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant
12	Matching Funds for International Market Development for Small and Medium Enterprises	Grant
12	Superstar Enterprise Grant	Grant

Program Number	Program Name	Program Type
13	Research & Development (R&D) Assistance Grant	Grant
14	Patent Award of Guangdong Province	Grant
15	Innovative Experimental Enterprise Grant	Grant
16	Special Support Fund for Non State-Owned Enterprises	Grant
17	Venture Investment Fund of Hi-Tech Industry	Grant
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Grant
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant
20	Water Conservancy Fund Deduction	Grant
21	Wuxing District Freight Assistance	Grant
22	Huzhou City Public Listing Grant	Grant
23	Huzhou City Quality Award	Grant
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant
25	Wuxing District Public List Grant	Grant
26	Anti-dumping Respondent Assistance	Grant
27	Technology Project Assistance	Grant
28	Capital injections	Equity
29	Environmental Protection Grant	Grant
30	High and New Technology Enterprise Grant	Grant
31	Independent Innovation and High-Tech Industrialization Program	Grant

Program Number	Program Name	Program Type
32	VAT Refund on Domestic Sales by Local Tax Authority	Tariff & VAT
33	Environmental Prize	Grant
34	Jinzhou District Research and Development Assistance Program	Grant
35	Grant for Industrial enterprise energy management centre construction demonstration project Year 2009	Grant
36	Key industry revitalization infrastructure spending in budget Year 2010	Grant
37	Provincial emerging industry and key industry development special fund	Grant
38	Environmental protection fund	Grant
39	Intellectual property licensing	Grant
40	Financial resources construction special fund	Grant
41	Reducing pollution discharging and environment improvement assessment award	Grant
42	Comprehensive utilization of resources - VAT refund upon collection	Tariff & VAT
43	Grant of elimination of out dated capacity	Grant
45	Grant from Technology Bureau	Grant

Consequently, the Commission considers that an investigation should be initiated into these programs.

It is noted that the initiation of an investigation into the above-listed programs does not preclude the Commission from examining additional subsidy programs should further information be provided or otherwise come to light within a reasonable time period following initiation of the investigation.

The Commission notes that a determination that a countervailable subsidy has been received may, depending on the Commission's findings as to whether there has been compliance with Article 25 of the WTO Agreement on Subsidies and Countervailable Measures, remove the obligation on the Minister to consider application of the lesser duty rule – pursuant to s.10(3CA)(a) of the *Customs Tariff (Anti-Dumping) Act 1975.*

Accordingly, associated with its assessment of the alleged subsidisation of the goods, the Commission will make recommendations to the Minister as to the level of any duties to be applied.

7 REASONABLE GROUNDS – ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

7.1 Findings

Having regard to the information contained in the application, and to other information considered relevant, the Commission is satisfied that Simcoa appears to have experienced injury in terms of:

- lost sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits and profitability;
- reduced capital investment;
- reduced research and development expenditure; and
- reduced return on investment.

7.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice or a countervailing duty notice if, inter alia, he is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice respectively.

Under sections 269TG and 269TJ, one of the matters that the relevant Minister must be satisfied of to publish a dumping duty notice or a countervailing duty notice is that, because of dumping of the goods or their receipt of countervailable subsidies, material injury has been or is being caused or is threatened to the Australian industry producing like goods.

7.3 Approach to injury analysis

The injury analysis detailed in this section is based on information submitted by Simcoa in its application and import data from ACBPS import database. Simcoa provided production, cost and sales data for silicon metal. The data was provided on a quarterly basis for the period 1 October 2009 to 30 September 2013.

The information provided by Simcoa was used as the primary basis for assessing Simcoa's claims of material injury caused by the dumping of silicon metal. The Commission has converted the data to analyse it on a calendar year basis noting that figures for the 2013 calendar year are for the months January to September only.

The Commission's assessment of the economic condition of the Australian silicon metal industry is at **Confidential Appendix 2**.

7.4 The applicant's injury claims

Simcoa alleges that the Australian industry has suffered material injury caused by silicon metal exported to Australia from China at dumped and subsidised prices. The applicant claims the industry had been injured through:

- Lost sales volumes;
- Reduced market share;
- Price depression;
- Price suppression;
- Loss of profits and profitability;
- Reduced return on investment; and
- Reduced capacity utilisation

7.5 Commencement of injury

Simcoa alleges that material injury caused by dumped and subsidised imports of silicon metal from China commenced in the 2010 financial year when its sales volumes decreased by approximately 50%.

7.6 Volume effects

Simcoa claims that it has suffered material injury in relation to sales volume and market share. Simcoa submitted that continuous growth in China's market share of silicon metal sales in Australia has resulted in a 'lock-out" effect for supply by Simcoa to large domestic customers. Simcoa claims that dumped imports have forced it to direct sales from the domestic market to exports to a point it has almost been forced out of the Australian market completely.

7.6.1 Sales Volume

The following graph depicts Simcoa's sales of silicon metal on the Australian market. The 2013 total includes sales from January to September only. All other years are calendar years.

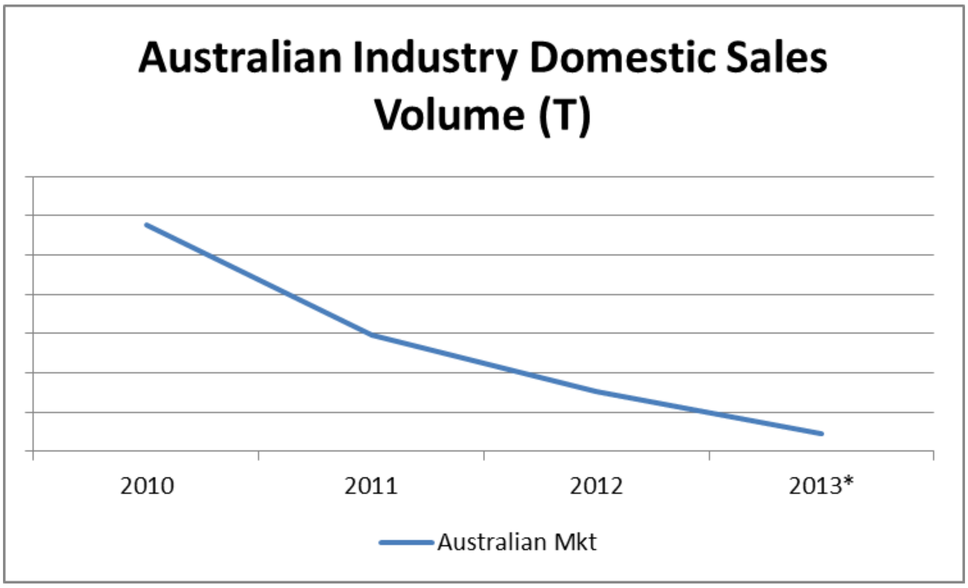
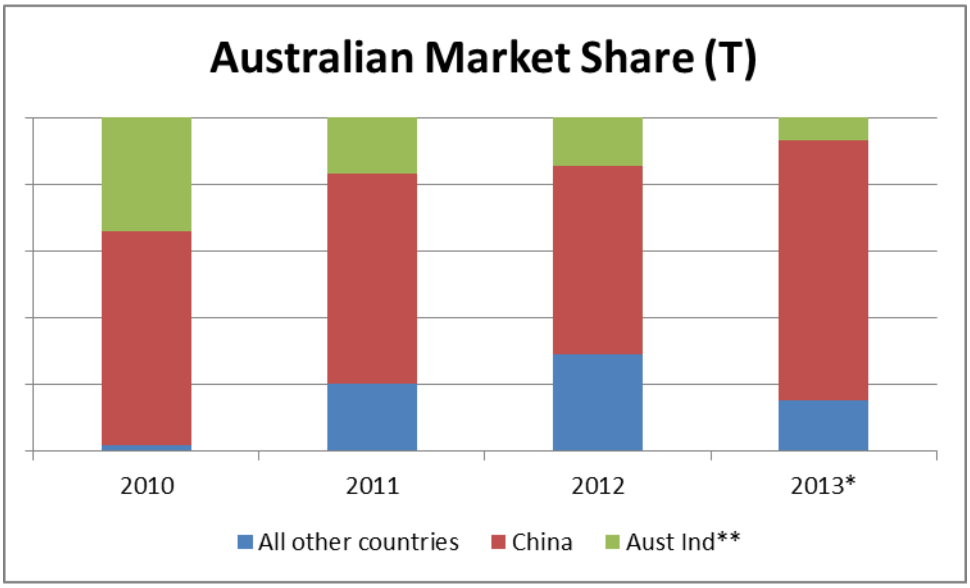


Figure 6 – Applicant's silicon metal domestic sales volume

Figure 6 indicates that Simcoa's domestic sales volume has steadily decreased since 2010. Although the data for 2013 represents only three quarters of a calendar year, if sales remained consistent through to December 2013, the overall trend will continue to be one of decline in the domestic market. Simcoa noted in its application that the Australian market as a whole decreased during the 2011-2013 period also.

7.6.2 Market Share

The following graph depicts changes in market share of sales on the domestic market between Simcoa and imports based on sales information provided in the application and data obtained from the ACBPS import database.



* 2013 figures include data for January to September only
** Australian industry domestic sales only included

Figure 7 – Australian market share

Figure 7 illustrates that the Australian industry has consistently lost market share over the period. Whilst China lost some of its market share to other countries in 2012, China has regained any loss of market share and further increased its share in 2013.

7.6.3 Export Sales

The graph below represents the proportion of Simcoa's sales on the domestic and export markets.

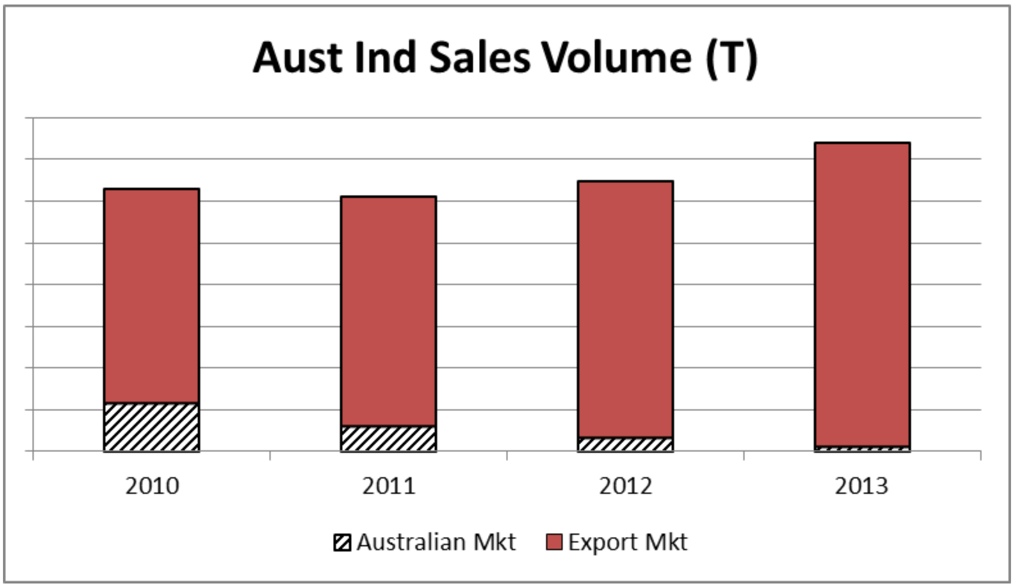


Figure 8 – Simcoa's domestic v export sales of silicon metal

The information provided by Simcoa demonstrates that sales to the domestic market have steadily decreased over the period to a point where they represent a small portion of Simcoa's total sales in 2013.

Whilst Figure 8 shows that sales volumes have increased overall, Simcoa submit that sales to the export market are not financially beneficial to the company and therefore to shift sales volumes from the domestic market to the export market has a negative effect on Simcoa's profits and profitability. This is discussed further below.

7.6.4 Conclusion – volume effects

Based on this analysis, there appears to be reasonable grounds to support the claim that the Australian industry has lost sales volume and market share.

7.7 Price effects

7.7.1 Price depression and price suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

The following graphs illustrate the movements and relationships of Simcoa's net revenue and total and unit CTMS for silicon metal for the calendar years 2010 to 2013. The first graph depicts total net revenue and total CTMS, whilst the second graph depicts revenue and CTMS on a per unit basis

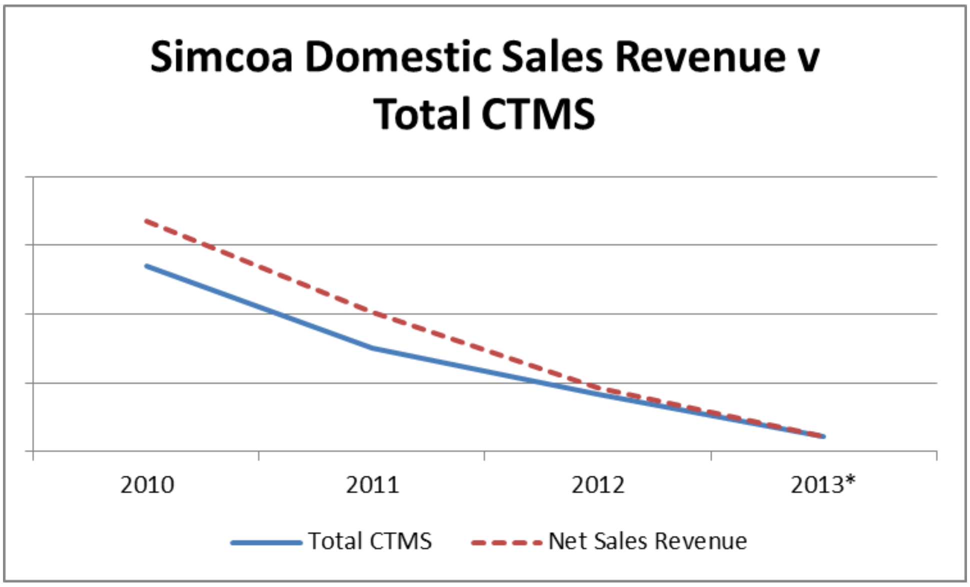


Figure 9 – Total revenue v total CTMS

* 2013 January to September only

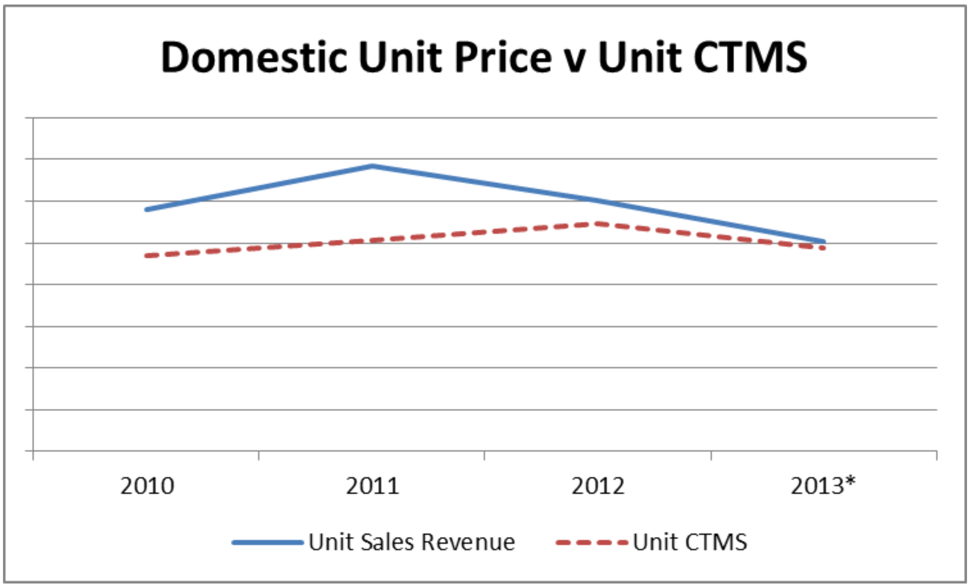


Figure 10 – Unit revenue v unit CTMS

* 2013 January to September only

Figures 9 and 10 demonstrate that the profit margin on domestic sales has declined over the four year period to a point where domestic sales barely breakeven. Unit CTMS increased steadily from 2010 to 2012 before decreasing in 2013, however there has been an increase overall of unit CTMS over the four year period. Both total revenue and unit revenue have declined since 2011, with total revenue also declining from 2010. Figure 10 supports Simcoa's claims of price depression.

Figure 11 depicts unit revenue as a proportion of unit CTMS. The Commission has considered the extent to which price suppression has occurred, noting that both unit CTMS and unit price decreased in 2013, however unit price decreased at a greater rate.

Figure 11 shows a deterioration of unit revenue as a proportion of unit CTMS. Furthermore, the Commission notes the decreasing margin between revenue and CTMS for 2013 which is evident in Figures 9 and 10.

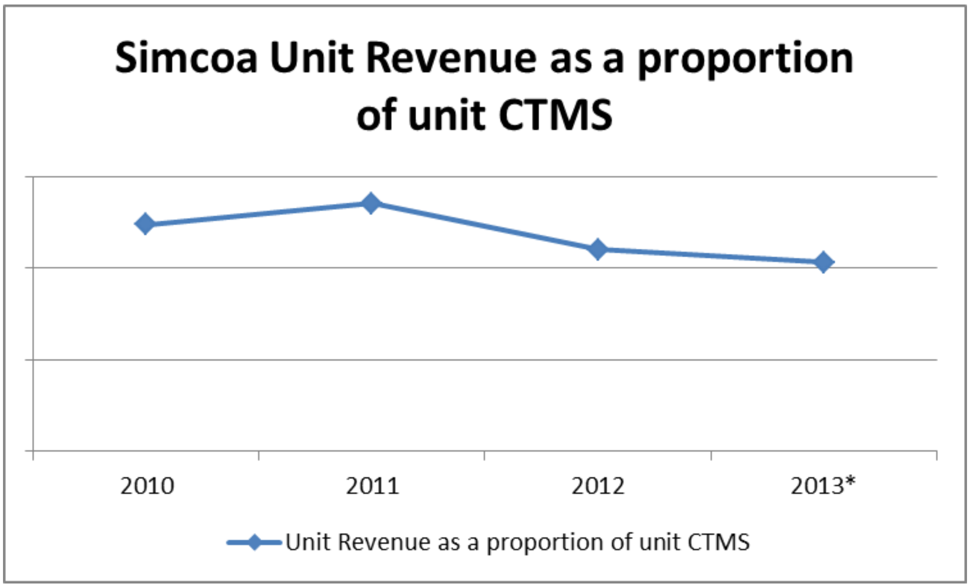


Figure 11 – Simcoa's unit revenue as a proportion of unit CTMS

7.7.2 Conclusion – price effects

Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has experienced injury in the form of price depression and price suppression.

7.8 Profit and profitability effects

The graph below shows movements in Simcoa's total domestic profits and unit profitability (unit profit measured as a percentage of unit revenue).

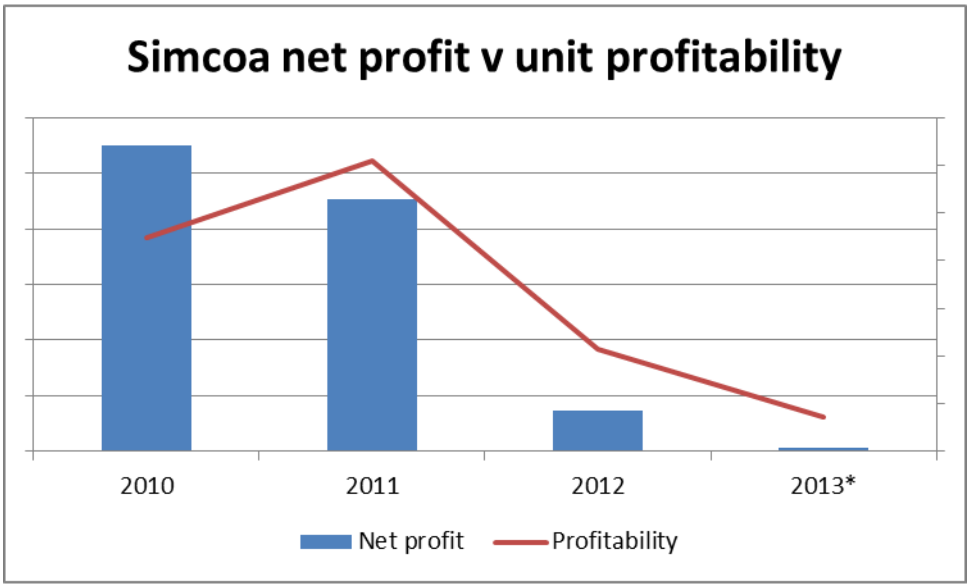


Figure 12 – Total profit and unit profitability (domestic sales)

Figure 12 shows a dramatic reduction of profits over the period and falling profitability for silicon metal since 2011. The graph support Simcoa's claims of substantive profit and unit profitability deterioration on the domestic market.

Figure 13 below shows a comparison of the profitability between Simcoa's domestic and export sales.

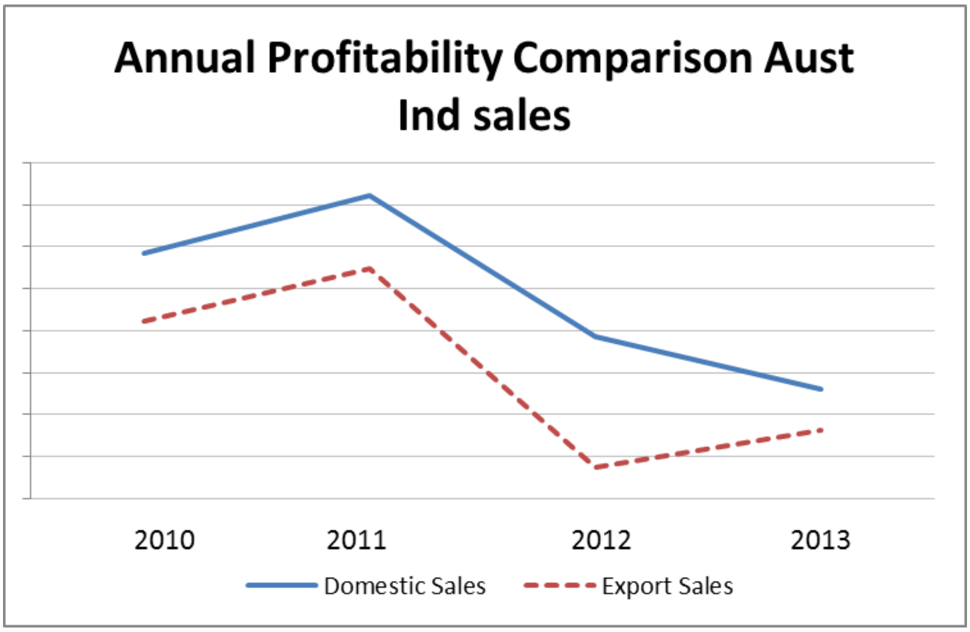


Figure 13 – Australian industry unit profitability

Figure 13 supports Simcoa's claim that sales on the export market are less profitable than sales on the domestic market. A diversion from the domestic market to the export market due to dumped and/or subsidised imports would therefore be a source of injury to Simcoa.

7.8.1 Conclusion – profit and profitability effects

Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has experienced injury in the form of reduced profit and profitability. This takes the form of reduced profit and profitability on the domestic market and reduced profit and profitability from the additional sales to the export market that would have been made on the domestic market in the absence of allegedly dumped and subsidised exports.

7.9 Other economic factors

Simcoa completed Confidential Appendix A7 (other injury factors) for silicon metal for the 2010 – 2013 calendar years, noting 2013 was complete for January to September only. Data provided in Confidential Appendix A7 showed:

- reduced capital investment since 2011;
- reduced research and development expenditure; and
- reduced return on investment.

While the data in Confidential Appendix A7 does not support Simcoa's claim of reduced capacity utilisation the applicant claims that this is due to the 2013 period not reflecting the full calendar year and once this is taken into account the data will show reduced capacity utilisation. This claim, in addition to the above claims of other injury factors, will be further examined during the course of the investigation.

8 REASONABLE GROUNDS – CAUSATION FACTORS

8.1 Findings

Having regard to the matters contained in the application, the Commission is satisfied that the goods under consideration exported to Australia from China at allegedly dumped and subsidised prices appear to have caused material injury to the Australian industry.

8.2 Simcoa's claims

Simcoa submitted that although the Australian market for silicon metal is supplied by both it, as a domestic manufacturer, and imported products, Simcoa has the production capacity to supply the entire market demand. Simcoa acknowledge that the overall market size has decreased over the past four years, however instead of maintaining its share of the market its share has been displaced by Chinese imports. Simcoa claims that the quantity of Chinese imports has increased more than the decrease in Simcoa's domestic sales.

Simcoa submitted that following the global financial crisis it maintained the level of market share over the course of the downturn. Simcoa claim that in 2011 Chinese prices undercut the Australian prices by more than 10% which led to the increased level of imports at the expense of Simcoa's market share.

Simcoa provided evidence of contract negotiations with a major Australian customer in 2012. Simcoa claim that the price offered to this customer was well below previous agreed prices, however ultimately this major customer chose to source its supply from a Chinese supplier and has continued to source product from China since. The continuing growth of Chinese imports has resulted in a 'lock-out' effect on Simcoa supplying large Australian customers, the result being Simcoa is unable to regain domestic sales.

Simcoa claims that on 1 January 2013 China abolished the 15% export tax, which created a further gap between prices further amplifying the effect of price undercutting.

Simcoa claims that because of the loss of its Australian market share it has been forced to sell excess stock supplies on the export market at reduced prices, which has negatively affected the company's profits and profitability. Simcoa maintain that if it were able to sell this stock on the Australian market it would be at a more profitable rate.

8.3 Factors other than dumping

Simcoa highlighted that the size of the Australian silicon metal market in 2009 and 2010 was impacted by the global financial crisis that commenced in 2008 continuing into 2009. While the market size was lower in 2010 than earlier years, Simcoa claims that it maintained what it considered to be a reasonable share of that market.

The Australian silicon metal market increased slightly during 2011 before reducing substantially in both the 2012 and 2013 calendar years. Simcoa claims this was due to reduced demands from the aluminium, solar panel and building industries. Simcoa claim that this reduced overall market size exposed it to increased susceptibility to the alleged dumped and subsidised Chinese imports.

8.4 The Commission's assessment

The Commission examined Simcoa's appendix A4 domestic sales data provided for the 2012 calendar year and the period 1 January 2013 to 30 September 2013. The Commission calculated the aggregated weighted average unit selling price for silicon metal. At this stage no comparison has been made between primary and secondary grades of silicon metal. The Commission understands that there may not be a material price difference between grades in the proposed investigation period, but will further examine this issue. The Commission compared this data with information from the ACBPS import database for unit CIF prices of imported silicon metal. As Simcoa's prices are delivered prices the Commission added to the CIF price an amount for inland transport from the port to the customer based on Simcoa's transportation costs for 2013. The results are contained in Figure 14 below.

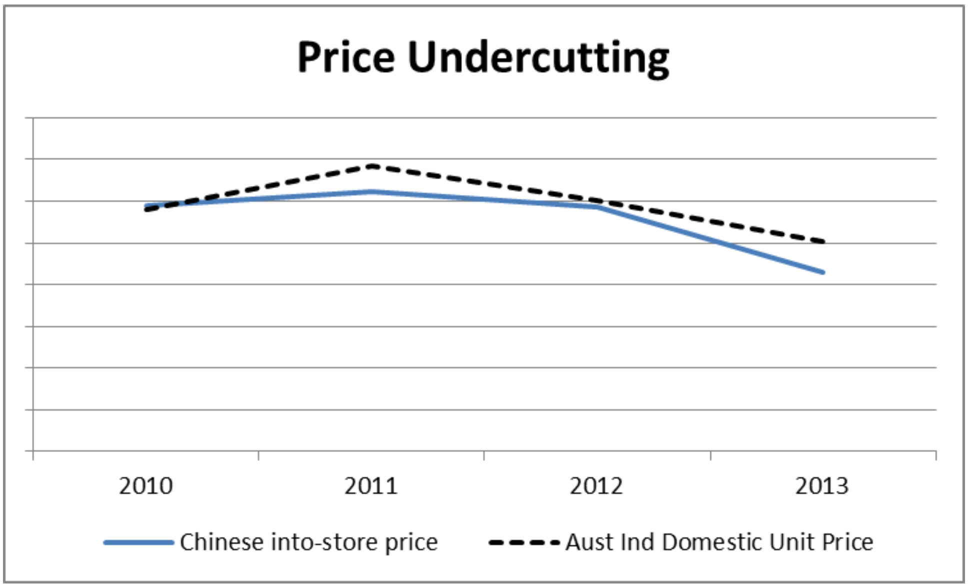


Figure 14 – Price undercutting analysis

Figure 14 shows that Chinese imports undercut Australian industry prices throughout the period 2011 to 2013. The Commission's analysis of price undercutting is contained in **confidential appendix 3**.

The Commission assessed Simcoa's claims that the diversion of domestic sales to the export market has caused it additional injury due to the reduced profitability of export sales. The Commission calculated the potential lost profit assuming Simcoa was able to retain the proportion of domestic to export sales that it had in 2010 in 2013. The result was a material effect on Simcoa's profit. The calculation was undertaken based on the actual total sales volume in 2013 so the effect would be exaggerated if the lost volume is also taken into account.

The apparent price undercutting appears to have caused price depression and price suppression and lost domestic sales volume. The loss of domestic sales volume in turn led to an increased sales volume on the export market at a lower profit rate. On the available information, the injury caused by the alleged dumping and subsidisation appears to be material.

As an additional test of whether there is a causal link between the alleged dumping and subsidisation and material injury, the Commission sought to compare export prices from China to estimates of a non-injurious price (NIP) for the year ending 30 September 2013.

To calculate the estimated NIP, the Commission assumed that the unsuppressed selling price (USP) for Simcoa in the nine months ending September 2013 may have been the equivalent of its full weighted average CTMS for that year. While it may be reasonable to consider adding a profit, the Commission has applied no profit for the purposes of this test.

The Commission then deducted amounts from that USP for importer 'into-store' costs, customs duty and overseas freight. The Commission used overseas freight data obtained from the ACBPS import database. In relation to the other deductions, the Commission used importation costs from a recent steel case. The Commission did not deduct amounts for importer SG&A and profit as it appears that end users may be direct importers of silicon metal from China.

These calculations provided for a NIP that was at delivery terms of FOB which is suitable for comparison to the ABS export prices provided by Simcoa. The comparison showed that the weighted average export price for the year was below the non-injurious price. The Commission regards this finding as being consistent with Simcoa's claim that the allegedly dumped goods have caused material injury.

The Commission will need to further consider the effect of Simcoa's export sales on the overall injury to Simcoa and the decision in 2010 to expand the production capacity despite an already declining domestic market. Based on information provided in the 2004 dumping investigation and the evidence provided in the application it appears that the export market has historically been a significant part of Simcoa's business strategy and was factored into its decision to expand its capacity. The Commission considers that the entirety of injury caused by diversion of sales to the export market may not be attributable to dumping. This is something that will need to be further examined as part of the investigation.

9 CONCLUSION

The Commission has examined the application and is satisfied that:

- the application complies with subsection 269TB(4); and
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of dumping duty and countervailing duty notices in respect of the goods the subject of the application.

Accordingly, the delegate of the Commissioner has not rejected the application for the publication of a dumping duty and countervailing duty notice under subsection 269TB(1).

For the purposes of the investigation:

- the investigation period to determine whether dumping and subsidisation has occurred will be from **1 January 2013** to **31 December 2013**; and
- The Commission will examine the Australian market and the economic condition of the industry from **1 January 2010** for the purposes of injury analysis.

The Commission will also examine whether the trade in the dumped or subsidised goods provides a basis for any dumping and/or countervailing notice to apply retrospectively, pursuant to section 269TN of the Customs Act 1901.

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10 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Market size and share assessment
Confidential Appendix 2	Assessment of economic condition of the silicon metal industry
Confidential Appendix 3	Price undercutting analysis
Confidential Appendix 4	Analysis of potential lost revenue
Confidential Appendix 5	FOB export price comparison