PUBLIC RECORD

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

Consideration report number: 322

Application for a countervailing duty notice

Submitted by: OneSteel Manufacturing Pty Ltd

In relation to steel reinforcing bar exported to Australia from China

23 December 2015

Customs Act 1901 Part XVB

Contents

Abbreviations

Abbreviations/short form	Full reference
ABF	Australian Border Force
ACRS	Australasian Certification Authority for Reinforcing and Structural Steels
ADN	Anti-Dumping Notice
the applicant	OneSteel Manufacturing Pty Ltd
AS/NZS	Australian and New Zealand Standard
AUD	Australian dollars
China	People's Republic of China
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
CTMS	Cost to make and sell
Customs Act	*Customs Act 1901*
DDP	Delivered duty paid
FOB	Free on board
GOC	Government of China
the goods	The goods the subject of the application (also referred to as the goods under consideration)
Korea	Republic of Korea
Ministerial Direction	Ministerial Direction on Material Injury 2012
OneSteel	OneSteel Manufacturing Pty Ltd
PAD	Preliminary Affirmative Determination
Parliamentary Secretary	Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
Power Steel	Power Steel Co. Ltd.
Rebar	Steel reinforcing bar
Rebar coils	Coils of steel reinforcing bar
Rebar straights	Straight lengths of steel reinforcing bar
SG&A	Selling, general and administrative expenses
SEF	Statement of essential facts
Thailand	Kingdom of Thailand
Turkey	Republic of Turkey
USD	US dollars
USDOC	US Department of Commerce
USITC	US International Trade Commission
USP	Unsuppressed selling price
VAT	Value added tax

1. Findings and recommendations

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application under subsection 269TB(1)[1] of the *Customs Act 1901* (Customs Act) by OneSteel Manufacturing Pty Ltd (OneSteel) for the publication of a countervailing duty notice in respect of steel reinforcing bar (rebar) that has been imported into Australia from the People's Republic of China (China).

OneSteel allege that the Australian industry for rebar has suffered material injury caused by rebar exported to Australia from China at subsidised prices.

The legislative framework that underpins the making of an application and the Commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB of the Customs Act. The relevant legislative provisions are set out in **Non-Confidential Appendix 1**.

1.1. Findings

In accordance with subsection 269TC(1), the Commission has examined the application and is satisfied that:

- The application complies with the requirements of subsection 269TB(4) (as set out in section 2.2 of this report)
- There is an Australian industry in respect of like goods (as set out in section 2.5 of this report)
- There appear to be reasonable grounds for the publication of a countervailing duty notice in respect of the goods the subject of the application (as set out in sections 3, 4 and 5 of this report).

1.2. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (Commissioner) decide not to reject the application and initiate an investigation to determine whether a countervailing duty notice should be published.

The Commission further recommends that:

- Exports to Australia during the investigation period 1 July 2014 to 30 June 2015 be examined for subsidisation;[2] and
- Details of the Australian market from 1 July 2011 be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Non-Confidential Attachment 1**) in accordance with the requirements set out in subsection 269TC(4).

[1] A reference to a division, section, subsection, paragraph or subparagraph in this report is a reference to a provision of the *Customs Act 1901* unless otherwise specified.

[2] In its application, OneSteel suggested 1 October 2014 to 30 September 2015 as the investigation period. In this case, the Commission considers that it is appropriate to align the investigation period with the current Investigation 300 into the alleged dumping of rebar from China. On that basis, the Commission recommends that the investigation period is from 1 July 2014 to 30 June 2015.

1.3. Legislative framework

1.3.1. Authority to make decision

Division 2 of Part XVB of the Customs Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application.

1.3.2. Investigation process

Provisional measures

In accordance with section 269TD, the Commissioner may make a Preliminary Affirmative Determination (PAD) if he is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of the goods.

In deciding whether to make a PAD, the Commissioner must have regard to the application and any submissions received within 37 days of the initiation of the investigation. The Commissioner may also have regard to any other matters that he considers relevant.

Subsection 269TD(1) provides that the Commissioner may make a PAD at any time not earlier than 60 days after the date of initiation of the investigation. The *Customs (Preliminary Affirmative Determinations) Direction 2015* provides that, at day 60 of an investigation, the Commissioner must either:

- make a PAD under section 269TD; or
- publish a Status Report providing reasons why a PAD was not made.

A PAD or Status Report will be placed on the public record by 21 February 2016.[3]

If a PAD is made, the Commonwealth may require and take securities under section 42 if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues. The Commissioner must give public notice of the PAD and of a decision by the Commonwealth to require and take securities.

[3] With regard to due dates mentioned in this report, if that date falls on a weekend or public holiday in Victoria, the effective due date will be the following business day.

Statement of essential facts

A statement of essential facts (SEF) will be placed on the public record by 11 April 2016, or by such later date as the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science[4] (the Parliamentary Secretary) may allow in accordance with section 269ZHI of the Customs Act.[5] The SEF will set out the essential facts on which the Commissioner will base a recommendation to the Parliamentary Secretary. Interested parties are invited to lodge submissions in response to the SEF within 20 days of the SEF being placed on the public record.

Submissions received in response to the SEF will be taken into account in completing the report and recommendation to the Parliamentary Secretary.

Report to the Parliamentary Secretary

A recommendation to the Parliamentary Secretary will be made in a report on or before 26 May 2016 (or such later date as the Parliamentary Secretary may allow), unless the investigation is terminated.

The Parliamentary Secretary must make a declaration within 30 days after receiving the report, or due to special circumstances, such longer period as the Parliamentary Secretary considers appropriate.

Anti-Dumping Review Panel

Certain parties will have the right to seek review with the Anti-Dumping Review Panel in accordance with Division 9 of Part XVB of the Customs Act of either a decision by the Commissioner to terminate the investigation, or a decision of the Parliamentary Secretary after considering the Commissioner's report.

[4] On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

[5] The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, who is the relevant decision maker for this investigation.

2. The application and the Australian industry

2.1. Lodgement of the application

2.1.1. Legislative framework

The procedures for lodging an application are set out in section 269TB.

The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

2.1.2. The Commissioner's timeframe

Event	Date	Details
Application lodged and receipted by the Commissioner under subsections 269TB(1) and (5)	23 November 2015	OneSteel alleges that the Australian industry is suffering material injury caused by rebar that has been imported into Australia from China at subsidised prices.
	2 December 2015	The Commission notified OneSteel that the application contained important deficiencies which, if left unaddressed, might cast doubt on whether there appeared to be reasonable grounds for the publication of countervailing duty notice.
Applicant provided further information in support of the application under subsection 269TC(2A)	3 December 2015	Further information was provided by OneSteel in support of the application which recommenced the 20-day consideration period.[6]
Consideration decision due under section 269TC(1)	23 December 2015	The Commissioner shall decide whether to reject or not reject the application within 20 days after the applicant provided further information.

2.2. Compliance with subsection 269TB(4)

2.2.1. Finding

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

2.2.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a countervailing duty notice if, *inter alia*, the Commissioner is not satisfied that the application complies with subsection 269TB(4).

2.2.3. The Commission's assessment

The table below summarises the Commission's assessment of compliance with subsection 269TB(4).

[6] Subsection 269TC(2A) provides that 'if an applicant, after lodging an application under s. 269TB decides to give the Commissioner further information in support of that application without having been requested to do so' then the 20 day consideration period recommences.

Requirement for the application	Details
Lodged in writing under subsection 269TB(4)(a)	OneSteel lodged in writing confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the Commission's website at www.adcommission.gov.au.
Lodged in an approved form under subsection 269TB(4)(b)	The application is in the Commission's Form B108 for the purpose of making an application under subsection 269TB(1).
Contains such information as the form requires under subsection 269TB(4)(c)	OneSteel provided, as Form B108 requires: • a completed declaration; • answers to all questions that were required to be answered by OneSteel; • completed appendices; and • sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.
Signed in the manner indicated under subsection 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of OneSteel.
Supported by a sufficient part of the Australian industry under subsection 269TB(4)(e) and determined in accordance with subsection 269TB(6)	OneSteel provided information supporting its statement that it is the only Australian producer of rebar and therefore, the application is supported by a sufficient part of the relevant Australian industry in accordance with the requirements of subsections 269TB(6)(a) and 269TB(6)(b). As set out in section 2.4, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application. No producers of like goods other than OneSteel are named in the application and no further such producers or manufacturers of rebar in Australia have been discovered by the Commission. This finding is consistent with the previous Investigation 264.
Lodged in the manner approved under section 269SMS,for the purposes of paragraph 269TB(4)(f)	The application was lodged electronically to the Commission to the address provided in the Commissioner's Instrument in relation to the lodgement of applications relating to anti-dumping matters (available on the Commission's website), which is a manner approved under subsection 269SMS(2).

2.3. The goods the subject of the application

The table below outlines the goods as described in the application and their corresponding tariff classification.

Full description of the goods, as subject of the application				
Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.				
Further information				
The goods covered by this application include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating. *Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh.*				
Tariff classification (*Schedule 3 of the Customs Tariff Act 1995*)				
Tariff code	*Statistical code*	*Unit*	*Description*	*Duty rate*
7213.10.00	42	Tonne	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel: Containing indentations, ribs, grooves or other deformations produced during the rolling process	5% DCS: Free[7]
7214.20.00	47	Tonne	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot extruded, but including those twisted after rolling: Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling	5% DCS: Free
7227.90.10	69	Tonne	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel: --- Goods, as follows: (a) of high alloy steel; "flattened circles" and "modified rectangles" as defined in Note 1(1) to Chapter 72	5% DCS: 4% DCT: 5%[8]

[7] 'DCS' denotes the rate for countries and places listed in Part 4 of Schedule 1 of the *Customs Tariff Act 1995.*

[8] 'DCT' denotes the rate for Hong Kong, the Republic of Korea, Singapore and Taiwan.

7227.90.90	01*	Tonne	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel: --- Other *Containing indentations ribs, grooves or other deformations produced during the rolling process*	5% DCS: Free
7227.90.90	02*	Tonne	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel: --- Other *Of circular cross-section measuring less than 14 mm in diameter*	5% DCS: Free
7227.90.90	04*	Tonne	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel: --- Other *Other*	5% DCS: Free
7227.90.90	42**	Tonne	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel: --- Other	5% *DCS: Free*
7228.30.10	70	Tonne	- Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded: --- Goods, as follows: (a) of high alloy steel; "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72	5% DCS: 4% DCT: 5%
7228.30.90	40***	Tonne	- Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded: ---- Other - *Containing indentations, ribs, grooves or other deformations produced during the rolling process*	5% DCS: Free
7228.30.90	49****	Tonne	- Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded: - --- Other	5% DCS: Free

7228.60.10	72	Tonne	- Other bars and rods: --- Goods, as follows: (a) of high alloy steel; - "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72	5% DCS: 4% DCT: 5%

***Operative since 1 January 2015.**

**** Operative until 31 December 2014.**

*****Operative since 1 July 2015.**

******Operative until 30 June 2015.**

Other relevant investigations

On 1 July 2015, the Commissioner initiated Investigation 300 into the alleged dumping of rebar exported to Australia from China. The investigation period is 1 July 2014 to 30 June 2015 and the injury examination period is from 1 July 2011.[9] The SEF was originally due to be placed on the public record by 19 October 2015; however, the Commissioner was granted an extension to this date.[10] The SEF is due to be issued on or before 6 February 2016 and a recommendation to the Parliamentary Secretary will be made on or before 22 March 2016.[11]

On 19 November 2015, anti-dumping measures were imposed on rebar exported to Australia from the Republic of Korea (Korea), Singapore, Spain and Taiwan (except for Power Steel Power Steel Co. Ltd (Power Steel)). It was found that during the investigation period, these goods were exported at dumped prices which caused material injury to the Australian industry producing like goods, and that continued dumping may cause further material injury to the Australian industry.[12]

This above mentioned finding followed the Commission's dumping Investigation 264 into rebar exported to Australia from Korea, Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand (Thailand) and the Republic of Turkey (Turkey).[13]

On 19 October 2015, the Commissioner terminated part of Investigation 264, as it related to exports from Malaysia, Thailand, Turkey and Power Steel from Taiwan.[14]

[9] Anti-Dumping Commission Consideration Report 300, refers.

[10] Further details of the extension granted are available in Anti-Dumping Notice (ADN) No. 2015/123.

[11] ADN No. 2015/123, refers.

[12] Anti-Dumping Commission Final Report 264, refers.

[13] ADN No. 2015/133, refers.

[14] Anti-Dumping Commission Termination Report 264, refers.

Other administrations

OneSteel make reference in its application to the following administrations' investigations whereby anti-dumping and/or countervailing measures have been imposed on rebar imports:

- The Canada Border Services Agency initiated an investigation into the alleged dumping of certain concrete reinforcing bar originating from China, Korea and Turkey on 13 June 2014.[15]
- On 3 September 2014, the Malaysian Government's Ministry of International Trade and Industry announced it had decided to initiate a preliminary investigation into rebar originating from China and Korea.[16]
- On 9 September 2013, the US Department of Commerce (USDOC) and the US International Trade Commission (USITC) received petitions into the commencement of anti-dumping investigations relating to imports of steel concrete reinforcing bar from Turkey and Mexico and countervailing investigations relating to imports from Turkey. On 9 September 2014, the USDOC announced the following:
  - an affirmative final dumping of imports from Mexico; and
  - a final negative dumping determination with respect to Turkey and the investigation was terminated against Turkey;[17]
  - an affirmative final determination in the countervailing duty investigation of imports from Turkey.
- In October 2014, USITC announced its affirmative injury finding on the dumped imports from Mexico and the subsidized imports from Turkey.
- On 26 January 2015, the Canada Border Services Agency issued the findings on *the dumping and subsidizing of certain concrete reinforcing bar originating in or exported from the People's Republic of China, the Republic of Korea and the Republic of Turkey*.
- On 30 April 2015, the European Commission initiated an investigation into the alleged dumping of rebar (high fatigue performance steel concrete reinforcement) originating from China.[18]
- In April 2015, Egypt initiated an investigation of safeguard duty on imports of steel rebar.

The Commission notes that the mere fact that allegations of dumping and/or subsidisation have been made in other jurisdictions does not indicate that subsidisation is likely to have occurred in relation to rebar exports to Australia from China. The details of anti-dumping and countervailing activities in other jurisdictions have been provided for stakeholder information purposes only.

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[15] Canada Border Services Agency Dumping case number AD/1403. Additional information is available at http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1403/ad1403-i14-ni-eng.html

[16] Malaysian Government Ministry of International Trade and Industry http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.article.Article_3e771925-c0a8156f-35b220a3-46930e78

[17] US Department of Commerce International Trade Administration

http://trade.gov/press/press-releases/

[18] European Commission case number AD619

http://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=2120&sta=1&en=20&page=1&c_order=date&c_order_dir=Down

2.4. Like goods and the Australian industry

2.4.1. Finding

The Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- OneSteel produces goods that have characteristics that closely resemble the goods the subject of the application; and
- Those goods produced by OneSteel are wholly manufactured in Australia.

2.4.2. Legislative framework

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

Like goods are defined under subsection 269T(1). Subsections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

2.4.3. Locally produced like goods

The table below summarises the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

Factor	The Applicant's claims	The Commission's assessment
Physical likeness	That OneSteel's locally produced rebar and the imported goods are physically alike because both are: • Manufactured to the requirements of the Australian and New Zealand Standard (AS/NZS) 4671:2001 from Australasian Certification Authority for Reinforcing and Structural Steels (ACRS) certified mills; • Are alike in physical appearance; and • Are manufactured in an equivalent range of grades and diameters.	The Commission is satisfied that: • Based on a comparison of information provided by OneSteel and documentation provided by importers during the previous Investigation 264, the goods the subject of the application are consistent with those in Investigation 300; • The goods the subject of the application were imported under tariff classifications for rebar (consistent with those in Investigation 264 and the current Investigation 300); • The Commission notes the Investigation 264 finding: *"Whilst the indentations, ribs and grooves on the rebar may vary between mills, these variations do not significantly modify the performance characteristics of the rebar"*[19]; and • The goods produced by OneSteel appear to be manufactured to similar diameters and grades specified under the Australian Standard to those examined during Investigation 264. In this context, the Commission is satisfied with the reasonableness of the claims by OneSteel in relation to physical likeness between the goods the subject of the application and locally produced rebar.

[19] Anti-Dumping Commission Final Report 264 p.19, refers.

Factor	The Applicant's claims	The Commission's assessment
Commercial likeness	That OneSteel's locally produced rebar and the imported goods are commercially alike because they compete directly in the Australian market. OneSteel's application included data and graphs suggesting that the supply of rebar from China increased in response to falling importations of rebar the countries subject to Investigation 264 and that this change was close to the time that the preliminary dumping measures were imposed as a result of Investigation 264.	The Commission has observed in the data from the Australian Border Force (ABF) import database that around the same time that the anti-dumping measures were imposed as a result of Investigation 264: • There was a marked increase of rebar import volumes to Australia from China and a fall in rebar import volumes from countries with measures; and • Certain importers who imported rebar subject to the previous investigation have adjusted their source of supply country so as to import greater volumes of rebar from countries without measures, including China. Additionally, the Commission has observed from the information within the application and the ABF import data that close price competition exists in the market between the imports of rebar and the Australian produced goods, which suggests low product differentiation. In this context, the Commission is satisfied with the reasonableness of the claims by OneSteel that there is a close commercial likeness between the goods in Investigation 264 and the goods the subject of this application.
Functional likeness	That the locally produced rebar and the imported goods are functionally alike because both have comparable or identical end-uses. For both, the rebar is further processed by cold drawing through a die to produce wire. Such wire is used 'as is' or in a range of post-production processes including: • Bending; • Welding; and • Cutting. Both the locally produced goods and the imported goods are predominately used to reinforce concrete and precast structures.	In the previous Investigation 264, the Commission found that imported rebar and OneSteel's produced rebar are both used for the same end uses. Further, in Investigation 264 it was found that importers did not consider any alternative products as a suitable substitute for rebar. In this context, the Commission is satisfied with the reasonableness of the claims by OneSteel in relation to functional likeness between the goods and locally produced rebar.

Factor	The Applicant's claims	The Commission's assessment
Production likeness	That the rebar manufactured by OneSteel has a production likeness to the imported goods because both are manufactured in a similar manner and through similar manufacturing processes. For mills that have ACRS certification, this ensures that rebar produced through those facilities is subject to the same testing and verification processes prescribed to meet the requirements of AS/NZ 4671:2001. Section 2.5 considers production in Australia in greater detail.	In Investigation 264, the Commission found that whilst minor variations in the locally produced rebar and imported rebar production processes were observed, the Commission considered that the key production steps and processes are near identical. The Commission therefore considers it is reasonable for OneSteel to submit that there is a production likeness between the goods, the goods in Investigation 264 and the locally produced rebar.
Commission's assessment		
The Commission notes that OneSteel, and importers and exporters of rebar were subject to on-site verification by Commission staff during Investigation 264 and the Commission found that rebar produced by OneSteel were like goods to rebar imported into Australia from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey. Based on the analysis above, the Commission considers it is reasonable for OneSteel to claim that locally produced rebar closely resemble the goods the subject of the application and therefore are like goods. The Commission will further examine the issue of like goods during the course of the countervailing investigation.		

2.4.4. Manufacture in Australia

The table below summarises the Commission's assessment of whether at least one substantial process of manufacture is carried out in Australia[20] and whether the like goods are therefore considered to have been manufactured in Australia.[21]

[20] Subsection 269T(3).

[21] Subsection 269T(2).

The Applicant's claims
OneSteel stated that rebar can be produced via a fully integrated steel production manufacturing process or, alternatively by using ferrous scrap metal as the principal raw material input to electric arc furnace steelmaking. OneSteel advised in its application that rebar is either sold in straight lengths (rebar straights) or coils (rebar coils). Both rebar coils and rebar straights are produced in a variety of diameters. OneSteel has summarised its rebar straights manufacturing process as follows: • The raw material feed is steel billet; • The billet is loaded into the reheat furnace and heated to approximately 1200℃; • The heated billet passes through a series of rolling stands; • As the billet passes through each stand it gradually reduces in size and changes shape from a square section to a circular section; • The final (finishing) stand rolls have a rib profile machined into them so that when the circular bar passes through the rolls, deformations (ribs) are formed on the bar; • At the end of the rolling line, the bar is cooled and then quenched rapidly; and • On exiting, the bar is slowly cooled so that the temperature gradient established over the cross-section of the bar causes heat to flow from the core to the surface resulting in a (tempered) steel microstructure. OneSteel has summarised its rebar coils manufacturing process to follow the first five steps listed above for rebar straights prior to proceeding as follows: • The bar then undergoes a further modification so as to achieve the strength requirements, a process which is dependent on the particular mill; • After the finishing stand, the deformed bar is looped into rings, cooled and formed into coils; and • Depending on the particular mill, the deformed bar will undergo a further modification process so as to achieve strength requirements and will then be spooled into a coil. The above manufacturing process takes place at OneSteel's manufacturing facilities in Laverton, Victoria, and Sydney and Newcastle, New South Wales.
The Commission's assessment
The Commission notes that OneSteel was subject to on-site verification by Commission staff during Investigation 264 and the ongoing Investigation 300 and, that the Commission observed at least one substantial process in the manufacture of rebar at the manufacturing facilities in Australia. Based on the description of the manufacturing process above and that this process takes place at OneSteel's manufacturing facilities in Australia (specifically in Victoria and New South Wales), the Commission is satisfied that at least one substantial process in the manufacture of rebar is carried out in Australia and therefore, that OneSteel produces rebar in Australia.

2.5. Australian industry information

The table below summarises the Commission's assessment of whether OneSteel has provided sufficient information in the application to analyse the performance of the Australian industry.

Have the relevant appendices to the application been completed?		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Yes
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Yes
A7	Other injury factors	Yes

General administration and accounting information	
Ownership	OneSteel is a wholly owned subsidiary of Arrium Limited (ABN 63 004 410 833). Arrium limited is an international mining and materials, publicly listed company.[22]
Operations	OneSteel: • Exports iron ore and scrap metal; • Manufactures a wide range of steel products including structural, rail, rod, bar, wire and pipe and tube products; and • Distributes sheet and coil, piping systems, plate and aluminium products.[23]
Financial year	1 July to 30 June
Annual reports	OneSteel submitted Arrium Limited's Annual Report for years 2012, 2013 and 2014 and, OneSteel's Annual Report for 2011.[24]

Production and sales information	Cost to make and sell information	Other injury factors
Confidential Appendix A2 to the application contains data relating to both internal and external sales.	Confidential Appendix A6 to the application contains data relating to both internal and external sales.	Confidential Appendix A7 to the application contains data which at times is in respect to the total OneSteel business, and at times is particular to rebar.

The Commission's assessment
Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse the performance of the Australian industry between 1 January 2011 and 30 September 2015.[25]

2.5.1. Market size

OneSteel estimated the size of the Australian market using:

- Australian Bureau of Statistics import data;
- Trade data from a known published source; and
- OneSteel's own sales to external customers.

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[22] Non-confidential attachment A-2.4, refers.

[23] Non-confidential Attachment A-2.4.1, refers.

[24] Non-confidential Attachments A-2.4, A-2.4.1, A-2.4.2 and A-2.4.3, refers.

[25] OneSteel provided production, cost and sales data for rebar on a quarterly basis for financial years between 1 July 2011 to 30 September 2015.

OneSteel completed Confidential Appendix A2 to the application, using the data obtained to estimate the size of the Australian market.

Data gathered by OneSteel is set out below in Figure 1.

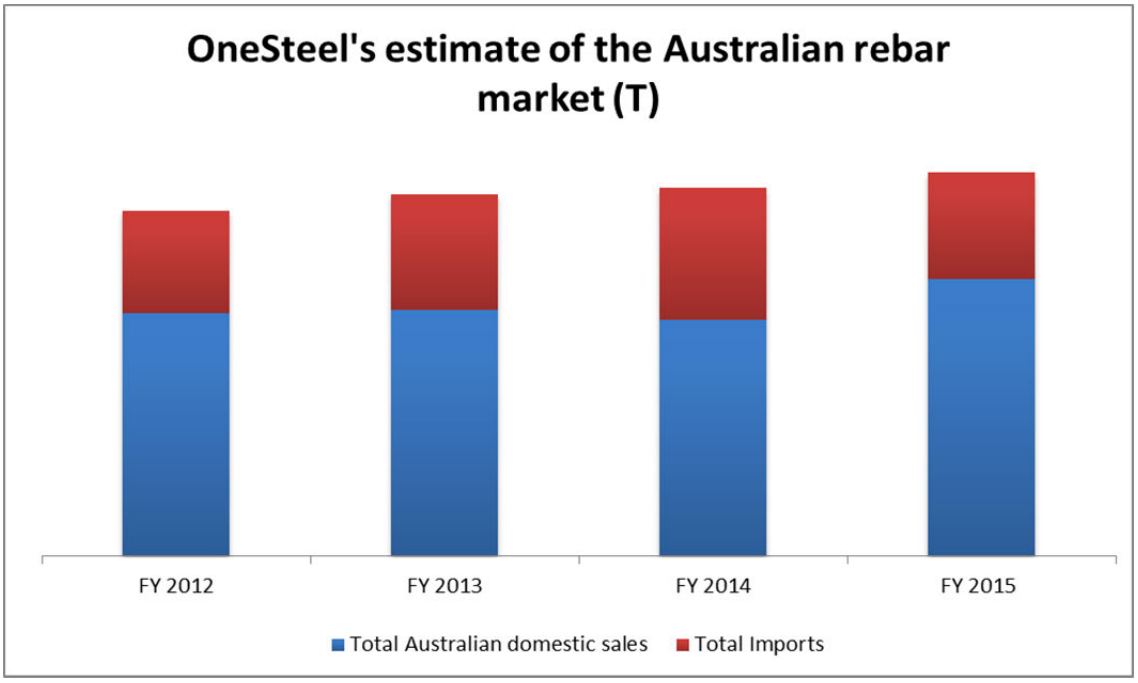

Figure 1: Australian market for rebar (tonnes)

The Commission compared the estimated import volumes in the application to the data contained in the ABF import database and, observed slight variances in OneSteel's estimates of the volumes of imported goods. However, the Commission considered these variances to be immaterial.

The Commission considers that the information submitted by OneSteel is reliable, relevant and suitable for estimating the size of the Australian market for rebar. The Commission's assessment of the Australian market for rebar is attached at **Confidential Attachment 2**.

3. Reasonable grounds – subsidisation

3.1. Findings

Pursuant to subsection 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods exported to Australia from China have been subsidised;
- the estimated subsidy margin for exports from China is greater than 2% and therefore is not negligible; and
- the estimated volume of goods from China that appear to have been subsidised is greater than 4% of the total Australian import volume of goods and therefore is not negligible.

3.2. Legislative framework

Subsection 269TC(1) of the Act requires that the Commissioner 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 Parliamentary Secretary must be satisfied of in order to publish a countervailing duty notice is that subsidisation has taken place (to an extent that is not negligible). This issue is considered in the following sections.

3.3. Consultation with the Government of China

In accordance with subsection 269TB(2C), the Commission invited the Government of China (GOC) for consultations during the consideration phase. The purpose of the consultations was to provide an opportunity for the GOC to respond to the claims made in the application in relation to countervailable subsidies, including whether the subsidies exist and, if so, whether the subsidies are causing, or are likely to cause, material injury to an Australian industry. The consultations have the aim of arriving at a mutually agreed solution.

To assist in determining whether it wished to undertake consultations and what it would like to consult on, the GOC was provided with a non-confidential version of the application.

The GOC advised the Commission that it wished to participate in consultations during the consideration phase. On 17 December 2015, the Commission held a teleconference with the GOC during which the GOC made a number of comments regarding the application. The GOC's written comments are available on the Commission's website (www.adcommission.gov.au). [26]

The GOC's comments to the Commission were along the following general lines:

- The GOC did not agree with the applicant's view that suppliers of inputs claimed by the applicant to be countervailable subsidies are public bodies. In support of its position, the GOC pointed to recent decisions by the WTO Appellate Body on the topic. In particular, the GOC's view is that, without more, majority ownership of an entity by the GOC cannot establish that the entity is a public body;

[26] GOC non-confidential submission, the Commission's electronic public record 322/06, refers.

- The GOC did not agree with the applicant's view that loans by state owned banks claimed by the applicant to be countervailable subsidies are public bodies. The GOC's view is that the application did not provide sufficient evidence to prove the applicant's claims;
- The GOC's view is that alleged subsidy programs should not be investigated without direct evidence proving that companies have benefited from grants and tax; and
- The GOC stated that its comments were not exhaustive and indicated that it might provide further comments during later stages of the application.

The Commission is cognisant of the requirement that it conducts the investigation in accordance with relevant WTO jurisprudence.

3.4. Subsidy programs

3.4.1. Legislative framework

Whether there is a countervailable subsidy is determined in accordance with subsection 269T(1), subsection 269T(2AA), section 269TACC and section 269TAAC.

3.4.2. The Applicant's claims

The applicant claims that there are 86 countervailable subsidy programs that benefit Chinese producers of rebar. Details of these programs are contained at Non-Confidential Attachment C-1 to the application.

The table below summarises the programs claimed by the applicant to be countervailable subsidies of rebar in China.

Category	Program (number and description)	Summary of claims
Provision of goods (Programs 1-4)	1. Billet provided by the Government of China at less than adequate remuneration 2. Coking coal provided by the Government of China at less than adequate remuneration 3. Coke provided by the Government of China at less than adequate remuneration 4. Electricity provided by the Government of China at less than adequate remuneration	The applicant claims that: • Substantial GOC ownership stakes in Chinese companies that provide key inputs to the production of rebar result in countervailable subsidies for rebar in the form of the provision of goods or services; • State invested enterprises (SIEs), companies in which the GOC holds equity, are public bodies, i.e. the SIEs are vested with government authority; • The steel industry is favoured by the GOC and prices for the goods identified in these programs are provided to producers of steel products such as rebar at reduced prices; and • The benefit conferred on Chinese suppliers of rebar is the difference between the actual purchase price of these inputs and a price that would reflect adequate remuneration. The applicant notes that two of these inputs, coke and coking coal, have previously formed the basis for findings by the Commission of countervailable subsidies of steel products manufactured in China.

Category	Program (number and description)	Summary of claims
Preferential tax policies (Programs 5-9)	5. Preferential Tax Policies for High and New Technology Enterprises 6. Preferential Tax Policies in the Western Regions 7. Land Use Tax Deduction 8. Tariff and VAT Exemptions on Imported Materials and Equipment 9. VAT refund on comprehensive utilisation of resources	The applicant claims that: • A number of programs provide for preferential tax treatment of Chinese companies that produce rebar. The applicant claims that these constitute countervailable subsidies for rebar in the form of foregoing or non-collection of revenue due to the relevant government body; and • The benefit conferred on Chinese suppliers of rebar is the tax revenue forgone apportioned to each unit of the goods. The applicant notes that all of these programs have previously formed the basis for findings by the Commission of countervailable subsidies of products manufactured in China, most recently in REP 237 in respect of silicon metal. One of the programs (which the applicant records as two programs because of two separate claimed effects) has been the subject of GOC subsidy notification to the WTO.
Financial grants (Programs 10-42)	10. One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" and "Famous Brands of China"; 11. Matching Funds for International Market Development for small and medium size enterprises (SMEs) 12. Superstar Enterprise Grant 13. Research and Development (R&D) Assistance Grant 14. Patent Award of Guangdong Province 15. Innovative Experimental Enterprise Grant 16. Special Support Fund for Non-State-Owned Enterprises 17. Venture Investment Fund of Hi-Tech Industry 18. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment 19. Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan 20. Water Conservancy Fund Deduction	The applicant claims that: • 33 programs potentially provide for financial grants to Chinese companies that produce rebar. The applicant claims that these constitute countervailable subsidies for rebar in the form of cash grants; and • The benefit conferred on Chinese suppliers of rebar is the extent to which funds are provided to those suppliers. The applicant notes that all of these programs have previously formed the basis for findings by the Commission of countervailable subsidies of products manufactured in China. Four of these programs were most recently found to be countervailable subsidies in REP 198, the remainder in REP 237.

Category	Program (number and description)	Summary of claims
	21. Wuxing District Freight Assistance	
	22. Huzhou City Public Listing Grant	
	23. Huzhou City Quality Award	
	24. Huzhou Industry Enterprise Transformation & Upgrade Development Fund	
	25. Wuxing District Public List Grant	
	26. Anti-dumping Respondent Assistance	
	27. Technology Project Assistance	
	28. Transformation technique grant for rolling machine	
	29. Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	
	30. Key industry revitalization infrastructure spending in 2010	
	31. Provincial emerging industry and key industry development special fund	
	32. Environmental protection grant	
	33. Environmental protection fund	
	34. Intellectual property licensing	
	35. Financial resources construction - special fund	
	36. Reducing pollution discharging and environment improvement assessment award	
	37. Grant for elimination of out dated capacity	
	38. Grant from Technology Bureau	
	39. High and New technology Enterprise Grant	
	40. Independent Innovation and High Tech Industrialization Program	
	41. Environmental Prize	
	42. Jinzhou District Research and Development Assistance Program	

Category	Program (number and description)	Summary of claims
Equity programs (Programs 43-45)	43. Debt for equity swaps 44. Equity infusions 45. Unpaid dividends	The applicant claims that three equity related programs constitute countervailable subsidies for Chinese rebar suppliers. The applicant notes that all of these programs have previously formed the basis for findings by the Canada Border Services of countervailable subsidies of rebar manufactured in China and for findings by the European Commission of countervailable subsidies of organic coated steel manufactured in China.
Preferential loans and interest rates to producers / exporters of rebar (Program 46)	46. Preferential loans and interest rates	The applicant claims that preferential loans and interest rates to rebar suppliers constitute countervailable subsidies for those suppliers. The applicant notes that the banking market in China is dominated by state owned banks. The European Commission has previously stated that state owned banks in China should be considered public bodies and found in 2013 that preferential loans and interest rates provided to steel industry participants should be considered a countervailable subsidy.
Miscellaneous programs disclosed in the annual report of Shandong Iron and Steel Co., Ltd (Programs 47-86)	47-86. Miscellaneous programs	The applicant claims that there are a number of subsidies that were in fact paid to at least one rebar supplier. The applicant has provided the 2014 annual report for Shandong Iron and Steel Co., Ltd. The annual report lists a number of government programs that the company has drawn on.

3.4.3. The Commission's assessment

The table below summarises the Commission's assessment of claims by the applicant.

Availability of information on Chinese subsidy programs

The Commission considers that the Australian industry is likely to face challenges in obtaining information regarding subsidy programs in China. In this respect, the Commission notes advice provided by the Australian Government's Department of Foreign Affairs and Trade during Investigation 238 that China had failed to comply with its notification obligations under Article 25 of the Agreement on Subsidies and Countervailing Measures.[27] For purposes of this report, the Commission has made an assessment of the availability to applicants of information which is contained at **Confidential Attachment 3.**

Have exporters in fact received the identified subsidies?

[27] Anti-Dumping Commission Final Report 238, p. 79 refers.

The Commission notes that, until the investigation is undertaken, it will not be clear whether a given exporter of rebar has in fact received any of the subsidies under the programs identified. For example, in Investigation 237 in relation to silicon metal, the Commission found that the cooperating exporter, the Linan group of companies, had in fact received only a few of the grants found to be potentially available to Chinese manufacturers of silicon metal. For the purposes of this consideration report, the Commission considers the identified programs under the lesser standard of whether, to the satisfaction of the Commissioner, there appear to be reasonable grounds that the identified programs are countervailable subsidies.[28]

Category	The Commission's assessment
Provision of goods (Programs 1 – 4)	*Previous findings for provision of goods* The Commission accepts that two of these inputs, coke and coking coal, have previously formed the basis for findings by the Commission of countervailable subsidies of steel products manufactured in China, namely findings of countervailable subsidies of Chinese hot rolled plate steel in Investigation 198. Given that coke and coking coal are important required inputs for steel products generally, including hot rolled plate steel and rebar, there appear to be reasonable grounds to be satisfied that the provision of coke and coking coal to rebar suppliers at less than adequate remuneration are countervailable subsidies.[29] The Commission also notes its previous finding (REP 237 refers) and that of the European Commission[30] that electricity provided for less than adequate remuneration was considered to be a countervailable subsidy. The goods in those previous findings were not fully akin to rebar, however, given the official favoured status bestowed on the steel industry by the GOC and the differential prices for electricity imposed by the GOC there appear to be reasonable grounds to be satisfied that the provision of electricity to rebar suppliers at less than adequate remuneration is a countervailable subsidy.[31] *Provision of billet at less than adequate remuneration* The Commission has not previously made a finding regarding the provision of billet at less than adequate remuneration, nor is it aware that such a finding has been made by any other anti-dumping authority. The Commission notes the following concerning the applicant's arguments regarding the provision of billet at less than adequate remuneration: • The Chinese companies referred to by the applicant are vertically integrated in producing billet that is then used to produce rebar. However to the extent that not all Chinese producers of rebar are vertically integrated, the provision of billet at less than adequate remuneration from SIE producers of billet may be a countervailable subsidy; and • The applicant has cited the WTO Appellate Body Report in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436) in support of its reasoning that Chinese billet suppliers are public bodies (see the definition of 'subsidy' at section 269T) because the GOC exercises meaningful

[28] Subsection 269TC(1).

[29] Subsections 269TC(1) and 269TACD(3).

[30] *Council Implementing Regulation (EU) No 215 / 2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China* at section 3.3.1.4.

[31] Subsections 269TC(1) and 269TACD(3).

Category	The Commission's assessment
	control over them. However the Appellate Body in DS436 rather overturned a decision by the WTO Panel that relied too heavily on the 'meaningful control' indicia as one of three indicia to be considered in assessing whether an entity possesses, exercises or is vested with governmental authority (DS436 at paragraph 4.36). The Commission proposes to further consider, during the course of the investigation, whether the supply of billet at less than adequate remuneration is a countervailable subsidy. *Appear to be reasonable grounds* Accordingly the Commission accepts that, at least for coke, coking coal and electricity, there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information that there appear to be reasonable grounds that the programs for provision of goods described by the applicant are countervailable subsidies.[32] Programs for provision of billet at less than adequate remuneration may only be applicable to rebar producers that purchase billet, not integrated producers of billet and rebar.
Preferential tax policies (Programs 5-9)	*Previous findings, notifications for preferential tax policies* The applicant points to a number of programs that it claims provide for preferential tax treatment of Chinese companies that produce rebar. The Commission found in a previous countervailing subsidy investigation (Anti-Dumping Commission Report 237 refers)[33] that all of these programs constitute countervailable subsidies for rebar in the form of foregoing or non-collection of revenue due to the relevant government body. Programs 5 and 6 appear to have been recently notified by the GOC under Article XVI:1 of the GATT and Article 25:2 of the SCM Agreement.[34] *Appear to be reasonable grounds* Accordingly the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information that there appear to be reasonable grounds that the tax policies described by the applicant are countervailable subsidies.
Financial grants (Programs 10-42)	*Previous findings for financial grants* All of the financial grants programs claimed by the applicant to be countervailable subsidy programs have previously been found to be countervailable subsidies by the Commission (Anti-Dumping Commission Report 198 and Anti-Dumping Commission Report 237 refer).[35] *Appear to be reasonable grounds* With the above caveat, the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information that there appear to be

[32] Subsection 269TC(1).

[33] The goods considered in Anti-Dumping Commission Report 237 were silicon metal, not rebar. However the production of silicon metal, l ke rebar, falls broadly within the steel industry and therefore the poss bility that the programs identified in REP 237 may also apply to rebar cannot be dismissed without further investigation.

[34] Document reference G/SCM/N/220/CHN, G/SCM/N/253/CHN, G/SCM/N/284/CHN, 27 October 2015 at pages 11 and 17.

[35] The goods considered in Anti-Dumping Commission Report 198, hot rolled plate steel and Anti-Dumping Commission Report 237, silicon metal, fall within the steel industry.

Category	The Commission's assessment
	reasonable grounds that the financial grants described by the applicant are countervailable subsidies that are available to producers in the Chinese steel industry.
Equity programs (Programs 43-45)	*Previous findings for equity programs* The equity related programs claimed by the applicant to be countervailable subsidy programs have previously been considered by the European Commission.[36] In that case the GOC provided little cooperation to the European Commission and the European Commission was forced to rely in large part on information provided in the application. On that basis the European Commission found the equity programs to be countervailable subsidies. *Appear to be reasonable grounds* As noted above, the Commission considers that the Australian industry faces challenges in obtaining information regarding subsidy programs in China. However, for purposes of consideration of the application under subsection 269TC(1) the applicant is only required to show that there appear to be reasonable grounds for the publication of a countervailing duty notice. On that basis the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information that there appear to be reasonable grounds that the equity programs described by the applicant are countervailable subsidies. The programs will be subject to further scrutiny so far as they may apply to rebar during the course of the investigation.
Preferential loans and interest rates to producers/ exporters of rebar	*Previous findings for preferential loans and interest rates* The preferential loan and interest rate program claimed by the applicant to be a countervailable subsidy program was previously considered by the European Commission.[37] In that case the GOC provided little cooperation to the European Commission and the European Commission was forced to rely on secondary information including information provided in the application. On that basis the European Commission found preferential loans and interest rates to be countervailable subsidies. *Appear to be reasonable grounds* As noted above, the Commission considers that the Australian industry faces challenges in obtaining information regarding subsidy programs in China. However, for purposes of consideration of the application under subsection 269TC(1) the applicant is only required to show that there appear to be reasonable grounds for the publication of a countervailing duty notice. On that basis the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information that there appear to be reasonable grounds that loans and interest rates described by the applicant are countervailable subsidies. The programs will be subject to further scrutiny so far as they may apply to rebar during the course of the investigation.

[36] *Council Implementing Regulation (EU) No 215 / 2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China* at section 3.3.3.

[37] *Council Implementing Regulation (EU) No 215 / 2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China* at section 3.3.2.

Category	The Commission's assessment
Miscellaneous programs disclosed in the annual report of Shandong Iron and Steel Co., Ltd	*Subsidies actually received* The applicant provided a list of programs from the 2014 annual report of Shandong Iron and Steel Co., Ltd. The programs are listed along with amounts that the company states to have received under the programs. Neither the application nor the company report provide any detail of these programs however the Commission notes the following: • Some program names appear to indicate that the program may be countervailable subsidies. • The miscellaneous programs all appear to be sums that the company has in fact received from some level of government. This is a significant part of the factual matrix that is often unknown, at least at this stage of an investigation. If, on further investigation, one or more of the programs meet the description of a countervailable subsidy set out in the legislation then it is clear that the company has received the subsidies. • If the Commission becomes satisfied that the company has listed all of the government grants it has received then the miscellaneous programs may serve as a cross check to confirm or counter claims of subsidies provided. *Appear to be reasonable grounds* Accordingly the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information that there appear to be reasonable grounds that the miscellaneous programs identified by the applicant are countervailable subsidies.

3.5. Amount of countervailable subsidy

3.5.1. Legislative framework

Subsidy margins are determined under section 269TACD.

The amount of the countervailable subsidisation and the volume of subsidised goods cannot be negligible. Whether the countervailable subsidisation and the volume of subsidised goods are negligible is assessed under section 269TDA.

3.5.2. The Commission's assessment

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;[38] and
- the verified weighted average export prices of rebar from China obtained during a verification visit to a Chinese exporter in Investigation 300,

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.

[38] Programs 2, 3 and 4 were chosen to estimate the subsidy margin as they have been previously found by the Commission to be countervailable. The applicant was able to provide a subsidy value for these programs, enabling the estimation of the margin.

The Commission is satisfied that the subsidy margin and volume of subsidised goods are above negligible levels, taking into account that China is considered a developing country in accordance with Part 4, Division 1 of Schedule 1 of the *Customs Tariff Act 1995*.

The assessment of the subsidy margin forms **Confidential Attachment 4**.

4. Reasonable grounds – injury to the Australian industry

4.1. Findings

Pursuant to subsection 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury in the form of:

- Sales volume - lost sales;
- Price depression;
- Price suppression; and
- Reduced profitability.

Due to the limitations of available data, the Commission does not, at this stage, have sufficient information to establish whether there appears to be reasonable grounds that the Australian industry, as claimed, has suffered injury in the form of:

- Less than full capacity utilisation;
- Loss of employment and wages;
- Loss of assets employed in the production of the goods; and
- Loss of capital investment in the production of the goods.

During the course of the investigation, this data will become available and enable the Commission to make a determination regarding the above.

4.2. Legislative framework

Subsection 269TC(1) of the Act requires that the Commissioner 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 section269TJ of the Act, one of the matters that the Minister must be satisfied of in order to publish a countervailing duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

4.3. The Applicant's claims

The table below summarises OneSteel's claims of injury.

Injury claims
Volume effects[39] • Lost market share; and • Lost sales volume. Price effects[40] • Price depression; and • Price suppression. Profit effects[41] • Reduced profitability

[39] OneSteel's non-confidential application p. 26, refers.

[40] OneSteel's non-confidential application pp. 26-27 and pp.40-41, refers.

[41] OneSteel's non-confidential application p. 27-28 and pp.40-41, refers.

Other injury factors claims[42]
• Less than full capacity utilisation; • Loss of employment and wages; and • Loss of assets employed in the production of the goods; and • Loss of capital investment in the production of the goods.

4.4. Approach to injury analysis

4.4.1. Legislative framework

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

4.4.2. The Commission's approach

The following injury analysis is based on:

- OneSteel's submitted costs, sales and other financial data; and
- ABF import data.

OneSteel provided data from 1 July 2010 to 30 September 2015.

For the purposes of analysing and assessing injury experienced by the Australian industry, the Commission has used data related to OneSteel's external and internal sales of rebar. During the investigation, the Commission will examine OneSteel's internal sales, including verifying that these are arms length transactions and any effect they might have on OneSteel's injury claims.

The Commission notes that the ongoing Investigation 300 verified OneSteel's data and found that the *"selling prices of rebar to both related and unrelated parties can be relied upon in the assessment of the economic condition of the Australian industry"*.[43]

The Commission notes that in its application, OneSteel referred to the Ministerial Direction on Material Injury[44] (Ministerial Direction) when putting forward its claims of material injury caused by subsidised rebar exports to Australia from China and whether the injury that is caused can be considered to be 'material'.

OneSteel contended that on the evidence tendered, it had lost a material volume of sales and value, which if not for the subsidised rebar imports from China "would have resulted in higher prices, greater sales volume and overall value, market share and profitability".[45]

4.4.3. Commencement of injury

In its application, OneSteel alleged that that Australian industry has suffered material injury caused by rebar exported to Australia from China at subsidised prices. OneSteel contends that this material injury commenced in or around October 2014.

OneSteel provided importation pattern analysis in support of its claim that exports from China of rebar did not begin to enter the Australian market in any significant volumes until shortly after the initiation of Investigation 264 during October 2014.

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[42] OneSteel's non-confidential application pp. 28-29, refers.

[43] Australian industry visit report for Investigation 300 page 30, refers.

[44] Ministerial Direction on Material Injury (Minister for Home Affairs, 27 April 2012)

[45] OneSteel's non-confidential application, pp. 49-50 refers.

For the purposes of its injury analysis, the Commission has analysed OneSteel's injury claims from 1 July 2011 ('the injury analysis period'). Any references to financial years are for the period 1 July to 30 June.

4.5. Volume effects

4.5.1. Sales volume

For the purposes of assessing volume effects, specifically in relation to OneSteel's sales, the Commission has separated its analysis of sales volume below into:

- Lost volume, so as to provide a platform for a macro analysis; and
- Lost sales, so as to allow for a micro analysis.

Lost volume

In its application, OneSteel submitted that it has experienced lost sales volume due to the growth in the volume of subsidised imports of rebar from China.

The figure below illustrates the volume of OneSteel's sales for rebar over the injury analysis period.

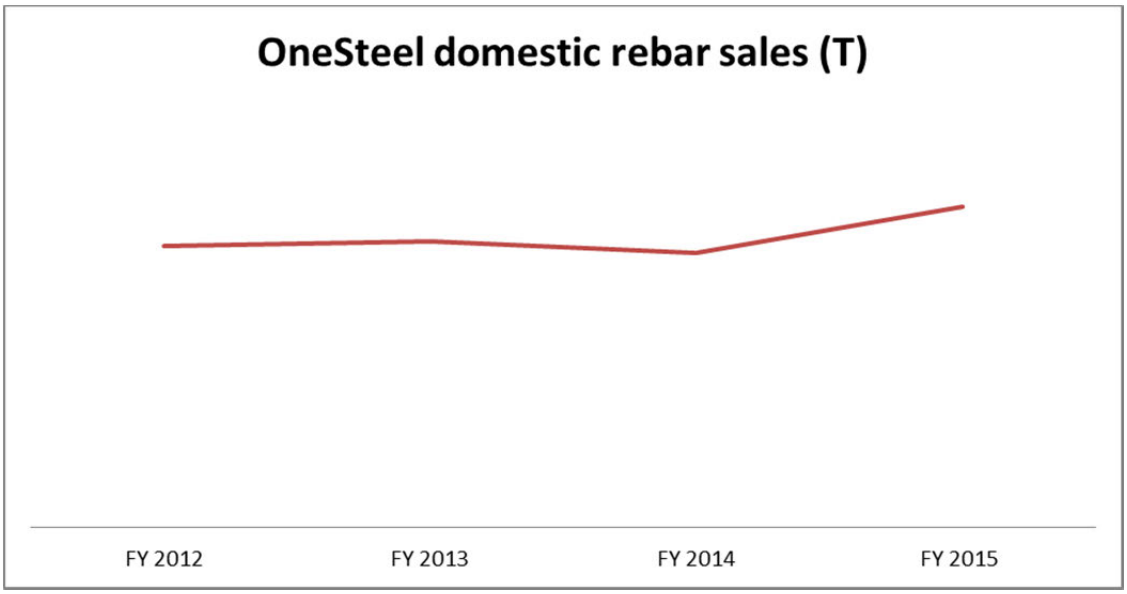

Figure 2: OneSteel's domestic sales volume of rebar

The Commission observes in the above figure that after a drop in sales volume in the FY 2014 period, OneSteel sales volumes of rebar has notably increased in the FY 2015 period to higher levels than it achieved in FY 2012.

Lost sales

Despite the growth in sales volume, OneSteel contends that it has lost sales in FY 2015 as a result of the allegedly subsidised imports.

The following figure depicts the change in source of supply for importers (measured by reference to volume in tonnes) who previously imported rebar from exporters that are now subject to measures, over the period October 2014 to September 2015. The importer volume shares are split into all other imports, imports from China and imports that are subject to measures as a result of the previous Investigation 264.

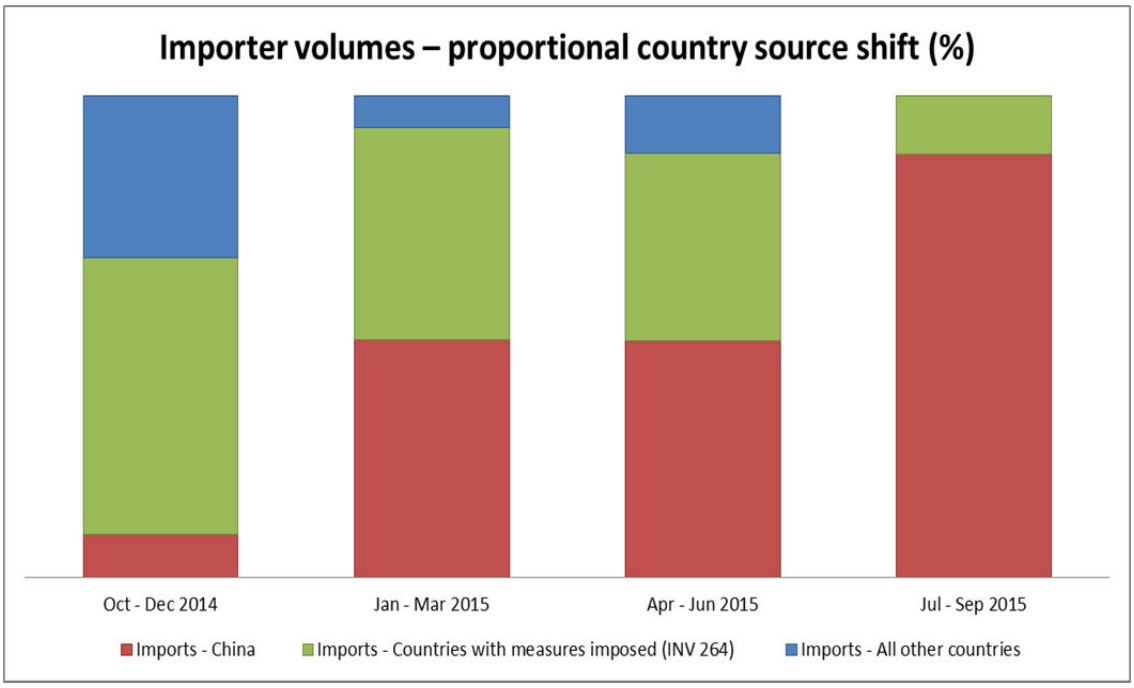

Figure 3: Importers' source of rebar if sourced from exporters with Investigation 264 measures, quarterly basis

The above figure suggests that once the previous Investigation 264 was initiated in October 2014, the source of country for imports of rebar shifted towards China and away from exporters subject to anti-dumping measures.

4.5.2. Market share

OneSteel submitted that it has lost the opportunity to increase its market share to a greater amount across the proposed investigation period due to the growth in the volume of subsidised imports from China.

Figure 4 below depicts the estimated yearly market shares (measured by reference to volume in tonnes) for the injury analysis period. The market shares are split into Australian industry, imports from China, imports that are subject to measures as a result of the previous Investigation 264 and all other imports.

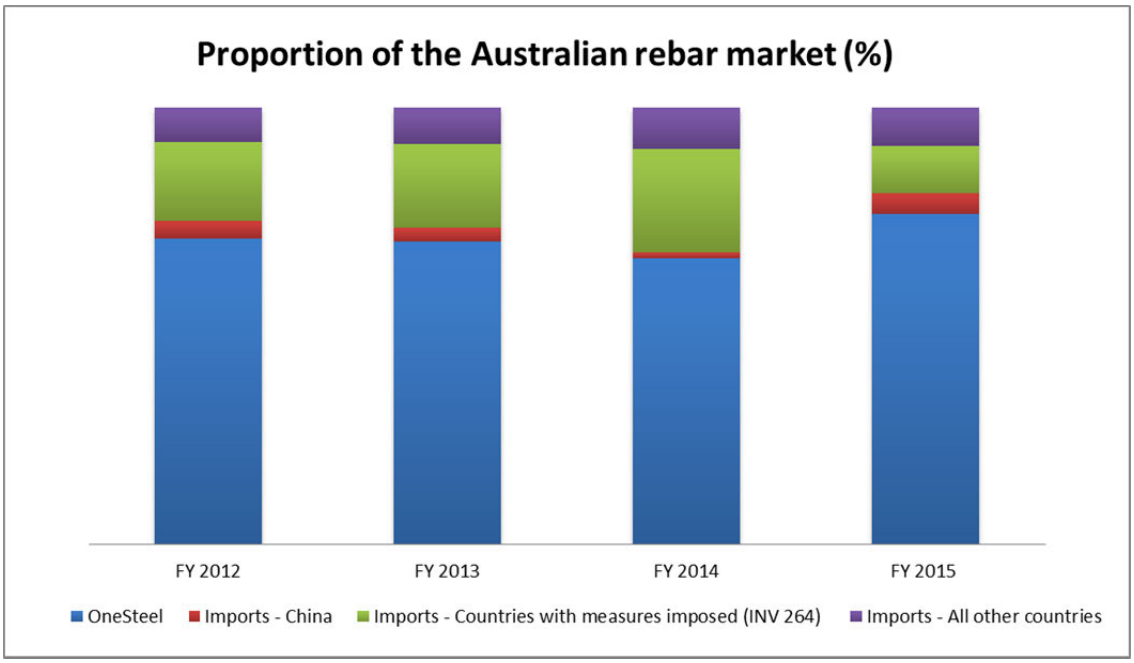

Figure 4: An estimate of the proportion of the Australian rebar market, annual basis

As can be seen in the above figure, the relative proportional change in the rebar market in Australia from FY 2012 to FY 2015 is summarised as:

- Imports from China grew;
- Imports from countries with measures fell;
- Imports without measures grew slightly; and
- OneSteel's market share grew.

The Commission also charted the four most recent quarters' market shares (measured by reference to volume in tonnes) in the injury analysis period. When comparing the December 2014 quarter to the recently completed September 2015 quarter, the Commission observed the relative proportional change in the rebar market in Australia to be as follows:

- China's market share rapidly increased;
- Imports from countries with measures significantly decreased;
- Imports without measures declined; and
- OneSteel's market share was constant.

The Commission's volume effects analysis is contained in **Confidential Attachment 2**.

4.5.3. Conclusion – volume effects

The Commission notes that the Australian industry has claimed that it was unable to increase its volume of sales as it would have expected, resulting in a stable market share proportion.

Based on the information available, the Commission has concluded that OneSteel has not demonstrated lost sales volume and reduced market share. These claims will need to be further analysed during the course of the investigation.

In this respect the Commission must comply with the Ministerial Direction given to the Commissioner on 27 April 2012 under subsection 269TA(1) stating, in part, that:

> *"…In cases where it is asserted that an Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, I direct that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline."*[46]

Accordingly, there does appear to be reasonable grounds to support OneSteel's claim that where the competition from countries subject to anti-dumping measures appears to have been significantly reduced, the Australian industry would have increased its sales and market share further had it not been for the allegedly subsidised imports of rebar from China.

4.6. Price effects

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 prices and costs.

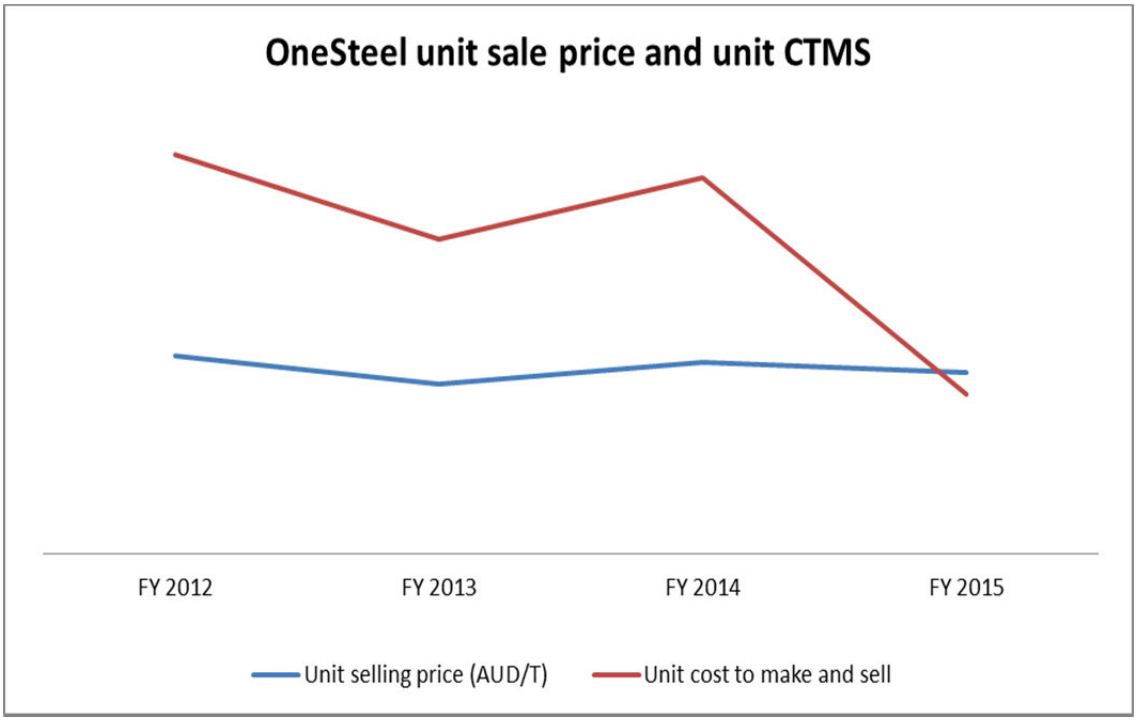

Figure 5: OneSteel's unit selling price and unit cost to make and sell[47]

Figure 5 shows that OneSteel's unit cost to make and sell exceeded its unit selling prices from FY 2012 to FY 2014. The Commission observed that the amount by which costs exceeded prices was relatively constant.

The chart above also shows that the unit cost to make and sell declines notably in FY 2015 to an amount lower than the unit selling price, for the first time across the injury analysis period

The Commission also charted OneSteel's unit cost to make and sell against the unit selling price for the four most recent quarters in the injury analysis period. The Commission observed that whilst OneSteel's price was lower when comparing the

[46] Ministerial Direction on Material Injury (Minister for Home Affairs, 27 April 2012).

[47] The scale has been adjusted to better show the trend of the data.

December 2014 quarter to the recently completed September 2015 quarter, the unit selling price exceeded the unit cost to make and sell in FY 2015.

In its application, OneSteel has claimed that the FY 2015 improvements in its cost to make and sell is largely due to the decrease in the cost to make rebar resulting from lowering scrap metal prices. The Commission also notes the improvement in the OneSteel's cost price margin for rebar attributed to the remedial effects of previous Investigation 264.[48] OneSteel claimed that the imposition of anti-dumping measures resulting from the initiation of Investigation 264 in October 2014 resulted in the industry regaining lost volume. However, as the volume of allegedly subsidised imports from China increased across the FY 2015 period, OneSteel began to experience a decline in its sales volumes. OneSteel submits that this was particularly evident in the third quarter of FY 2015.

The Commission has displayed below the quarterly sales volumes and unit sales price for the October 2014 to the September 2015 period.

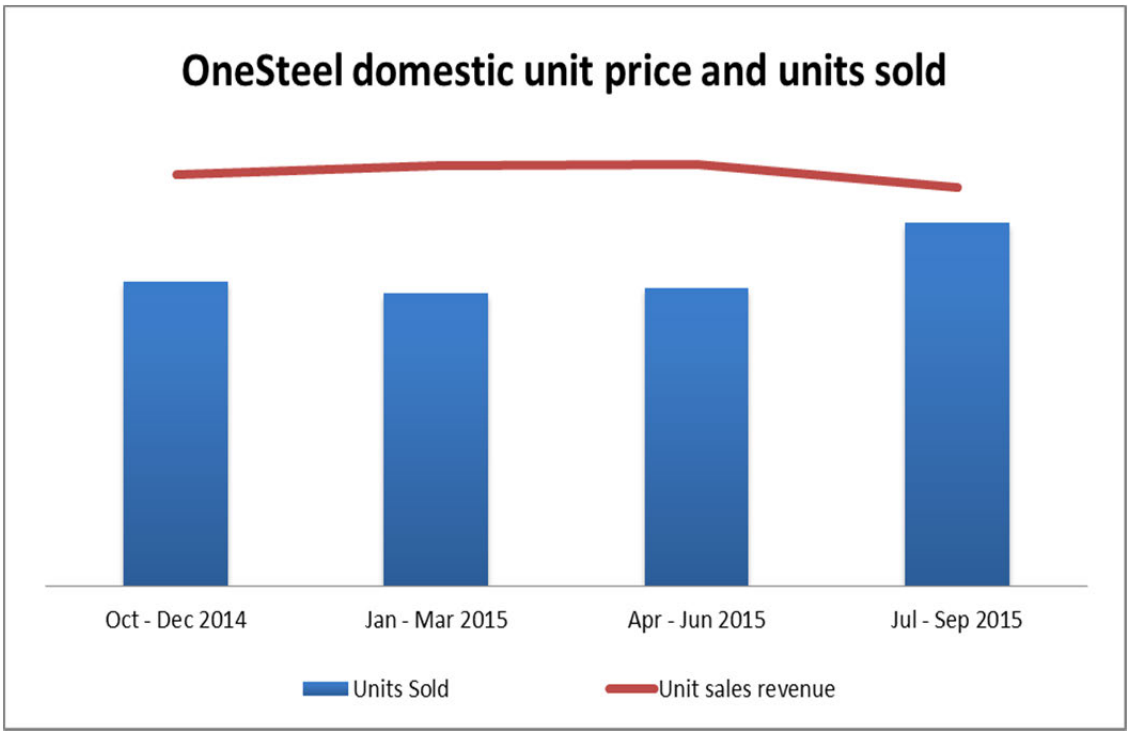

Figure 6: Domestic unit sale price per tonne and domestic units sold, quarterly basis

Figure 6 above shows that OneSteel increased its unit selling price in the March 2015 quarter, which coincided with a decline in the number of units sold. The chart also shows that when OneSteel reduced its sale price to a low in the July to September 2015 period, this coincided with the highest sales for the period. The Commission notes that the recovery in sales appears to support OneSteel's claim that this may have resulted from the reduced selling prices.

Over the entire injury analysis period, sales volumes appear to have recovered back to higher levels than observed in FY 2012, while the sales price has declined. This is illustrated in the following figure.

[48] Anti-Dumping Commission Australian Industry Visit Report - Inv 300 – OneSteel Manufacturing Pty ltd, p.53 refers.

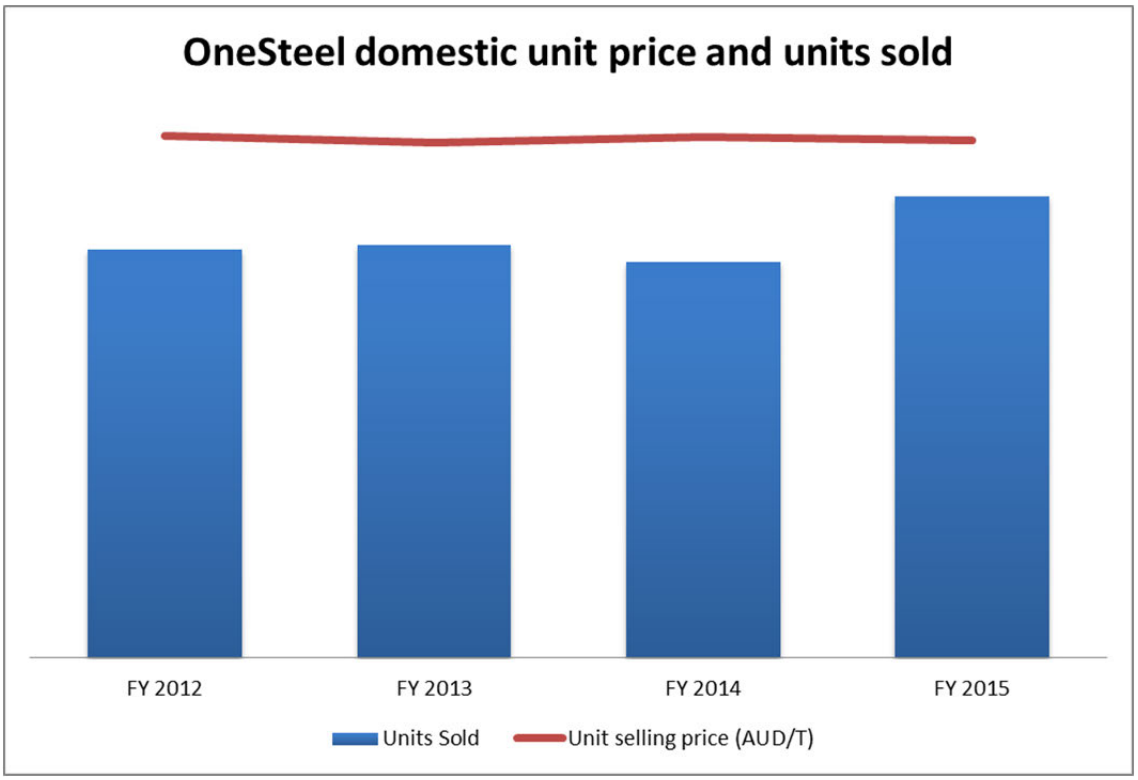

Figure 7: Domestic unit sale price and units sold for injury analysis period, annual basis

The above figure supports OneSteel's claim that in order to grow production volumes to a level above FY 2012 levels, OneSteel reduced its unit selling prices.

The Commission's assessment of the Australian industry's price effects are contained in **Confidential Attachment 5**.

4.6.1. Conclusion – price effects

The above analysis supports OneSteel's claim that the Australian Industry could have achieved higher prices in the absence of the allegedly subsidised rebar imports from China.

Accordingly, there appear to be reasonable grounds that the Australian industry has suffered injury in the form of price depression and price suppression.

4.7. Profit and profitability effects

In its application OneSteel claims that whilst it had experienced an improvement in profit and profitability, this was largely driven by a reduction in its cost to make due to recent lower world prices of scrap metal which is a major input into the production of rebar.

Figure 8, below, charts the relationship between OneSteel's per unit sales revenue and per unit profit over the injury analysis period.

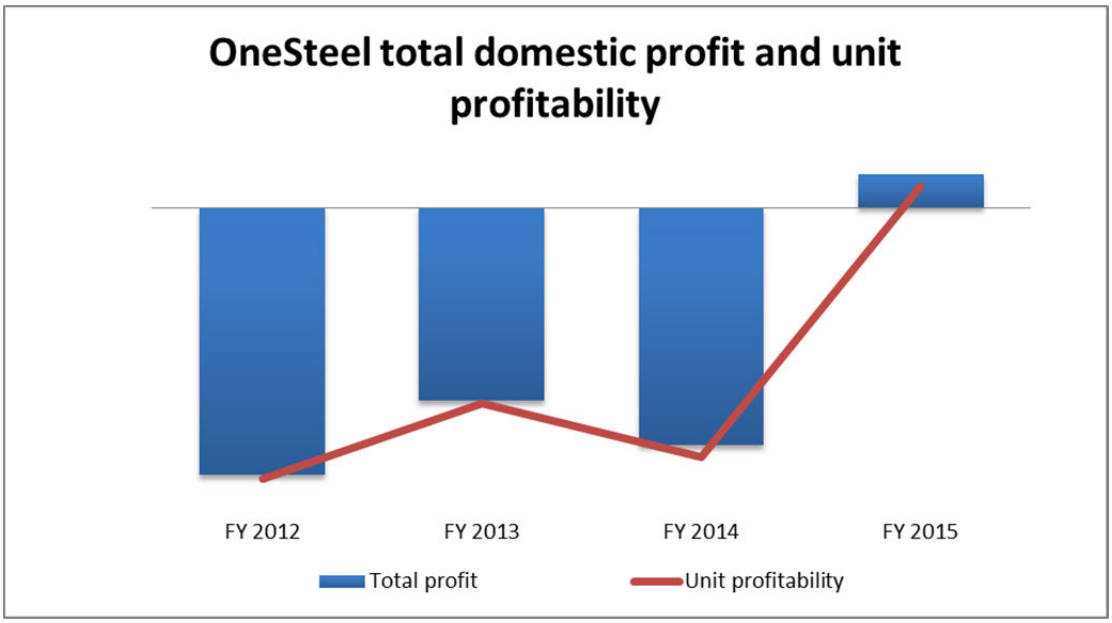

Figure 8 – OneSteel's domestic profit and unit profitability

Figure 8 shows that OneSteel has experienced its first profitable financial year in 2015, when considering the full injury analysis period.

The Commission's assessment of the Australian industry's profit and profitability effects are contained in **Confidential Attachment 5**.

4.7.1. Conclusion – profit and profitability effects

Based on this analysis, there does not appear to be reasonable grounds to support the claim that the Australian industry suffered injury in the form of reduced profits.

However, the Commission is of the view that OneSteel has suffered reduced profitability. The Commission accepts that OneSteel has experienced an improving profit and profitability position, however that this improvement appears to have been facilitated by a reduction in its cost to make due to a decline in the world price of a key raw material input, and that had OneSteel not experienced price depression and suppression as a result of the allegedly subsidised rebar imports from China, it may have had the opportunity to further improve its overall profit and profitability position.

4.8. Other injury factors

OneSteel completed Confidential Appendix A7 (other injury factors) for each of the financial years from FY 2012 to FY 2015.

The data provided by OneSteel was at times in respect of the total OneSteel business, and at times it was particular to rebar. In relation to the other economic factors, these showed:

- Declining capital investment and assets employed in the production of like goods;
- Loss of employment levels; and
- Declining wages.

The Commission is unable to draw conclusions on the data provided, which relates to all products manufactured by OneSteel. Notwithstanding, this does not diminish the assertions made by OneSteel in relation to the other injury factors that it has suffered. The necessary data will be obtained during the course of the investigation and verification visit.

4.8.1. Conclusion – other injury factors

OneSteel's performance in relation to the other economic factors will be further examined during the course of the investigation.

4.8.2. The Commission's assessment

The Commission's assessment of the economic condition of the other injury factors forms **Confidential Attachment 5**.

5. Reasonable grounds – causation factors

5.1. Findings

Having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by subsidised exports from China, and that the injury is material.

5.2. Legislative framework

Subsection 269TC(1) of the Customs Act requires that the Commissioner 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 Customs Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a countervailing duty notice is that subsidisation has caused material injury to Australian industry. This issue is considered in the following sections.

5.3. Cause of injury to the Australian industry

5.3.1. Legislative framework

The matters that may be considered in determining whether the Australian industry has suffered injury caused by dumped or subsidised goods are set out in section 269TAE.

5.4. The Applicant's claims

The table below summarises the causation claims of OneSteel.

Injury caused by subsidisation
Volume effects[49] • If OneSteel did not reduce their selling price then a greater loss of sales volume would have occurred; • China's excess rebar capacity has had an indirect impact on the Australian domestic rebar market by displacing volumes in the east and south-east Asian region which has in turn seen those economies offload surplus production capacity to Australia; and • A consequence of Chinese exports of rebar becoming subject to a growing number of trade remedies actions implemented against them in other markets, Chinese exporters began to quickly focus and impact directly on the Australian market. Price effects[50] • Chinese exports consistently undercut the prices of all other sources of the goods including the prices of OneSteel; and • Any improvement in OneSteel's overall net gain or loss position has been driven by the reduction in the cost to make and sell of rebar, due in large part to the reduction in the costs of raw material inputs. Profit effects:[51] • Chinese export prices influenced OneSteel's prices, through price depression and suppression, consequently impacting OneSteel's profit and profitability.
Injury caused by other factors
OneSteel contends that China is the main source of the injury and did not provide any further evidence of other factors.

5.5. The Commission's assessment

5.5.1. Volume and price effects

Using the ABF import database, the Commission has charted, in the following figure, the volume of imports from China against the weighted average free on board (FOB) export price per tonne for China over the injury analysis period. It can be seen that from FY 2013 as the weighted average FOB export price increased, then the volume of imports of rebar decreased. Whilst in FY 2014, the imports of rebar increased however the weighted average FOB export price of those imports decreased.

[49] OneSteel's non-confidential application pp. 30-34, refers.

[50] OneSteel's non-confidential application pp. 34-39, refers.

[51] OneSteel's non-confidential application pp. 39-41 refers.

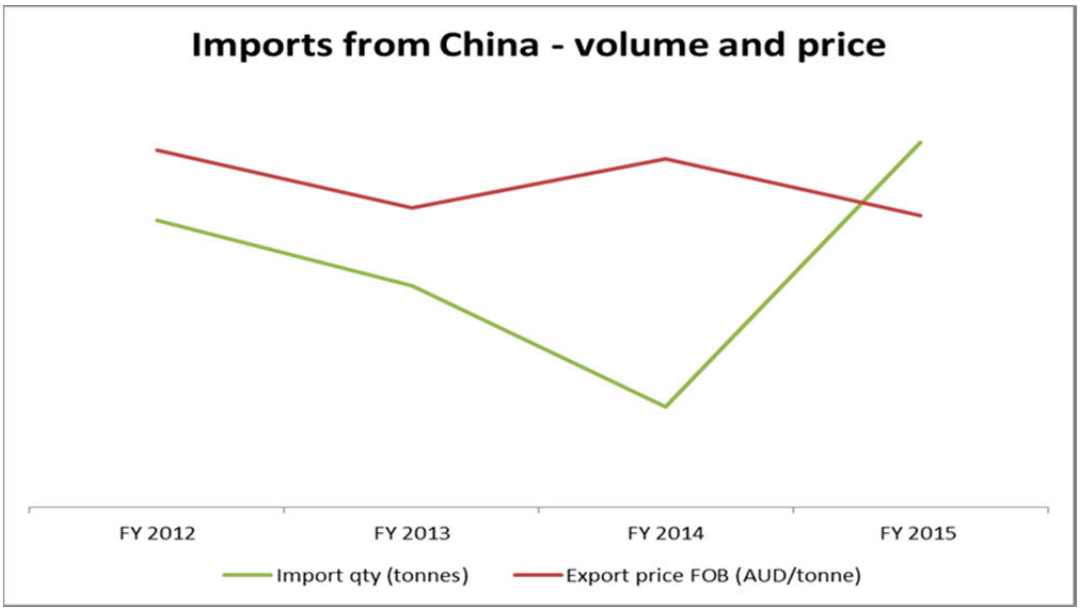

Figure 9: Imports from China and the weighted average FOB export price

The Commission observes in the above figure that in FY 2015, the volume of imports from China has increased significantly and the weighted average FOB export price decreased which supports OneSteel's claim that it has reduced its prices in response to lower priced Chinese imports of the goods, and has therefore suffered injury in the form of price depression.

As discussed in section 4.6, OneSteel has not been able to increase its prices of rebar in the injury analysis period.

The Commission also charted the movement in OneSteel's cost to make and sell against net sales revenue for the period October 2014 to September 2015. The Commission notes that whilst there has been a downward trend overall in FY 2015 for OneSteel's cost to make and sell, the Commission observed that during the four most recent quarters, the improving trend between OneSteel's net sales revenue against its cost to make and sell has slowed. It is therefore reasonable to conclude that OneSteel has suffered injury in the form of price suppression due to the allegedly subsidised rebar imports from China.

The Commission accepts that OneSteel has experienced an improving profit and profitability position however, is of the view that reducing the cost to make and sell has facilitated this improvement. In addition, had OneSteel not experienced price depression and suppression as a result of the rebar exported from China, it is reasonable to assume that it may have had the opportunity to further improve its overall profit and profitability position.

5.5.2. Market share

OneSteel submitted that it has lost the opportunity to increase its market share across the proposed investigation period due to the growth in the volume of subsidised imports from China. This is despite the implementation of anti-dumping measures as a result of the findings in the previous Investigation 264.

In the following figure, the Commission has charted the volume (expressed in tonnes) of rebar imports from China, exporters with anti-dumping measures, and all other countries.

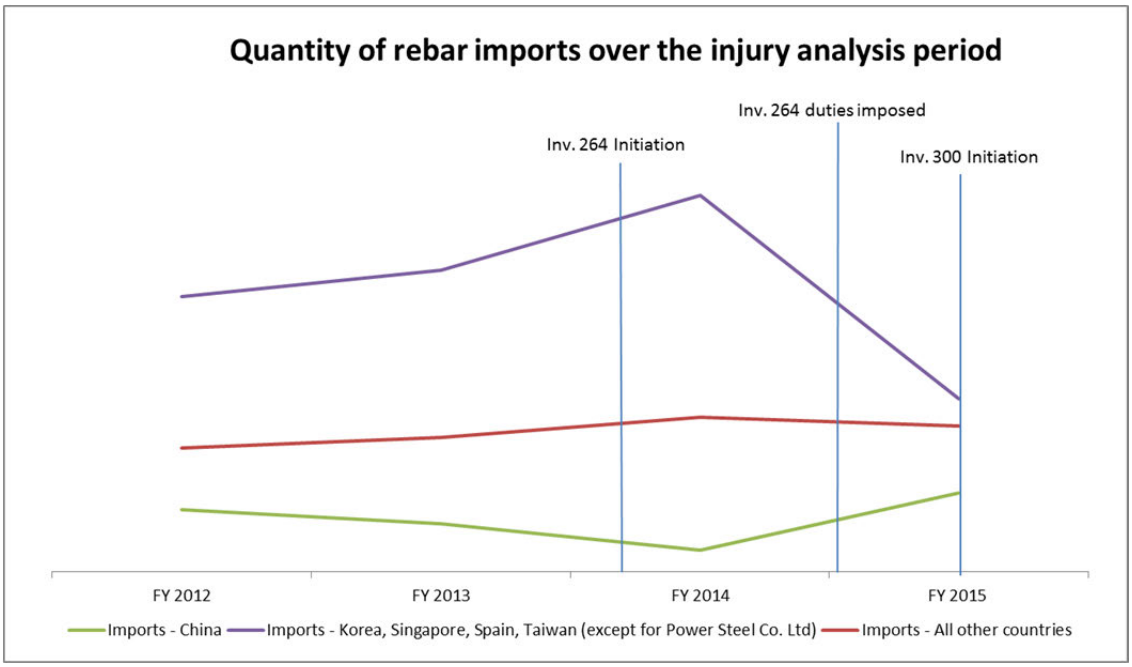

Figure 10: Import volumes of rebar to Australia

The chart shows that shortly after Investigation 264 was initiated, imports subject to measures declined. Around the same time, imports of rebar from China began increasing. The Commission observes that following on from the imposition of measures, this trend continued.

Based on the evidence that the Commission has to date, it appears reasonable that as imports subject to anti-dumping measures began to lose market share, OneSteel gained part of that market share and that the allegedly dumped goods exported from China gained part.

The Commission's market share analysis is included in **Confidential Attachment 2.**

5.5.3. Pricing and price undercutting

In its application, OneSteel provided evidence to support its claim that the market for rebar in Australia is a commodity market with price being the primary factor affecting purchase decisions.

The Commission found in Investigation 264 that:

> *"The Commission considers that rebar is a commodity like product, which means that the grades and sizes used in the market are commonly available and are interchangeable regardless of origin. As a result, price is one of the primary factors affecting purchasing decisions."*[52]

OneSteel submitted that between the period 2011/2012 and 3 September 2015, it had reduced prices in response to importer price offers for the goods exported from China.[53] As discussed in section 2.4, given the low product differentiation between the goods and the Australian produced goods, the Commission accepts that the Australian rebar market exhibits price sensitivity. Accordingly the Commission accepts that as customers can purchase either from OneSteel or from an import supply source, import offers and movement in price of import offers can be used to

[52] REP264, p. 77 refers.

[53] OneSteel's non-confidential application p. 35 refers.

negotiate prices with OneSteel. The Commission considers that OneSteel is obliged to respond to the price of imports in order to remain price competitive.

Falling import prices can directly cause price injury resulting in lost revenue and profits. Price undercutting occurs when imported product is sold at a price below that of the Australian industry.

The evidence supporting price undercutting predominantly relies on market intelligence gathered internally. OneSteel claimed that the price undercutting information supports its position that it has lost sales volumes and market share to imported rebar sourced from China.

For the purposes of determining whether price undercutting is occurring, the Commission calculated delivered duty paid (DDP) prices for imports taken from the ABF import database over the period October 2014 to September 2015. For the purposes of the analysis, the Commission took the FOB export prices calculated from ABF import data and added verified importation costs from the current Investigation 300 and added those to the FOB export price for comparison to OneSteel's data.[54]

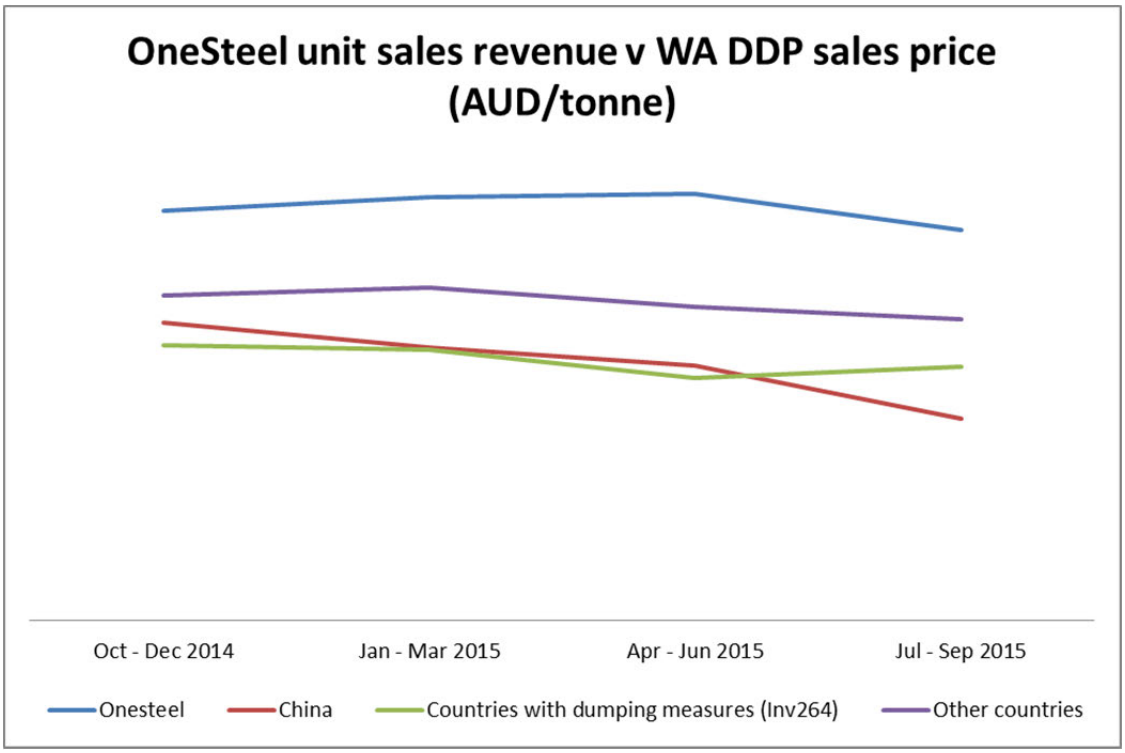

Figure 11: Weighted average DDP export price compared to OneSteel's sales price for rebar[55]

Based on this analysis, there appears to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of price depression caused by price undercutting by exports of Chinese rebar.

The Commission will further evaluate price undercutting claims during the course of the investigation process, through verification of actual selling prices in Australia by

[54] The importation costs were verified during importer visits conducted by the Commission as part of Investigation 264.

[55] The scale has been adjusted to better show the trend of the data.

importers and comparing and contrasting these with the selling prices of OneSteel, for sales transactions made under the same conditions.

5.5.4. Other possible causes of injury

In its application, OneSteel submit that it is suffering material injury caused by dumped and subsidised exports of rebar from China.

The Commission recently published the *Preliminary Affirmative Determination Report Number 300* in so far as it relates to the current Investigation 300. It is noted that the Commissioner was satisfied that there appear to be sufficient grounds for the publication of a dumping duty notice, and therefore for making a PAD under section 269TD of the Act. The Commissioner was preliminarily satisfied that the Australian industry has suffered material injury, in the form of loss of sales volume, price suppression and price depression, as a result of the allegedly dumped exports of rebar to Australia from China.

5.5.5. Comparison of export price and non-injurious price

As an additional test to establish whether there is a causal link between the allegedly subsidised goods and material injury, the Commission sought to compare export prices from China with estimates of a non-injurious price (NIP) for the 12 months ending 30 September 2015. The approach taken is consistent with that of Investigation 300.

To calculate the NIP, the Commission estimated the unsuppressed selling price (USP) for rebar for the 12 months ending 31 September 2015 using the weighted average cost to make and sell of OneSteel. At this stage, the Commission has not applied a profit to this cost to make and sell.

The Commission then deducted amounts from that USP for importer SG&A and profit, including into-store costs, Customs duty and overseas freight. These calculations provided for NIP at the FOB level.

The weighted average export price for the investigation period was below the NIP. The Commission considers this finding is consistent with OneSteel's claim that the allegedly dumped goods have caused material injury.

The Commission's calculations of the NIP and the comparison with export price are at **Confidential Attachment 6**.

5.5.6. Conclusion – material injury caused by subsidised rebar

The Commission considered that:

- The size of the subsidies indicated in the application;
- The magnitude of observed shifts in market share over the period FY 2012 to FY 2015; and
- The preliminary assessment of price depression and price suppression, particularly demonstrated through the price undercutting analysis,

reasonably supports a conclusion that subsidised rebar from China has caused material injury to the Australian industry.

Other possible causes of injury will be considered during the investigation.

6. Appendices and attachments

Appendices	Title
Appendix 1	Legislative framework

Attachments	Confidentiality	Title
Attachment 1	Public	Public notice
Attachment 2	Confidential	Market analysis
Attachment 3	Confidential	Availability to applicants of information analysis
Attachment 4	Confidential	Subsidy margin analysis
Attachment 5	Confidential	Injury analysis
Attachment 6	Confidential	USP and NIP analysis

Appendix 1 – Legislative framework

Part XVB of the *Customs Act 1901*

Division 1A – Anti-Dumping Commission and Commissioner

Subdivision F—Form and manner of applications

269SMS Form and manner of applications

(1) The Commissioner may, by writing, approve a form for the purposes of a provision of this Part.

(2) The Commissioner may, by writing, approve the manner of lodging an application under a provision of this Part.

(3) The Commissioner may, by writing, approve the manner of withdrawing, under subsection 269TB(3), an application lodged under subsection 269TB(1) or (2).

Division 1 – Definitions and role of Minister

Definitions

269T

(1) In this Part, unless the contrary intention appears:

…[56]

countervailable subsidy means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy.

…

countervailing duty notice *means a notice published by the Minister under subsection 269TJ(1) or (2) or 269TK(1) or (2).*

…

investigation period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application.

…

like goods, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not

[56] Note: Ellipses are used in this Appendix to indicate an intentional omission of a whole section, subsection or paragraph of the legislation, without altering the original meaning of the legislation.

alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

…

subsidy, in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Note 1: See also subsection (2AA).

Note 2: Section 269TACC deals with whether a financial contribution or income or price support confers a benefit.

…

(2) For the purposes of this Part, goods, other than unmanufactured raw products, are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia.

…

(2AA) Without limiting the definition of ***subsidy*** in subsection (1), a financial contribution or income or price support may confer a benefit in relation to goods exported to Australia if that contribution or support is made in relation to goods or services used in relation to the production, manufacture or export of the goods exported to Australia.

…

(2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for

the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.

(3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

(4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia:

(a) there is an Australian industry in respect of those like goods; and

(b) subject to subsection (4A), the industry consists of that person or those persons.

(4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

…

269TA Minister may give directions to Commissioner in relation to powers and duties under this Part

(1) The Minister may give to the Commissioner such written directions in connection with carrying out or giving effect to the Commissioner's powers and duties under this Part as the Minister thinks fit, and the Commissioner shall comply with any directions so given.

(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the Commissioner in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Commissioner's powers.

(3) Where the Minister gives a direction to the Commissioner, the Minister shall:

(a) cause a notice setting out particulars of the direction to be published on the Anti-Dumping Commission's website as soon as practicable after giving the direction; and

(b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice on the Anti-Dumping Commission's website.

(4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Definition—countervailable subsidy

269TAAC

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if:

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) eligibility for the subsidy is automatic; and

(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and

(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) The Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

(5) In making a determination under subsection (4), the Minister must take account of:

(a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and

(b) the length of time during which the subsidy program has been in operation.

…

Ordinary course of trade

269TAAD

(1) If the Minister is satisfied, in relation to goods exported to Australia:

(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:

(i) for home consumption in the country of export; or

(ii) for exportation to a third country;

at a price that is less than the cost of such goods; and

(b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;

the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.

(2) For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.

(3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.

(4) The cost of goods is worked out by adding:

(a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and

(b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.

(5) Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

Arms length transactions

269TAA

(1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

(a) there is any consideration payable for or in respect of the goods other than their price; or

(b) the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

(c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

(1A) For the purposes of paragraph (1)(c), the Minister must not hold the opinion referred to in that paragraph because of a reimbursement in respect of the purchase or sale if the Minister is of the opinion that the purchase or sale will remain an arms length transaction in spite of the payment of that reimbursement, having regard to any or all of the following matters:

(a) any agreement, or established trading practices, in relation to the seller and the buyer, in respect of the reimbursement;

(b) the period for which such an agreement or practice has been in force;

(c) whether or not the amount of the reimbursement is quantifiable at the time of the purchase or sale.

(2) Without limiting the generality of subsection (1), where:

(a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and

(b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

(3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:

(a) the amount of the price paid or to be paid for the goods by the importer; and

(b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and

(c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and

(d) such other matters as the Minister considers relevant.

(4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:

(a) both being natural persons:

(i) they are members of the same family; or

(ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:

(i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or

(ii) both of them together control, directly or indirectly, a third body corporate; or

(iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or

(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or

(d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

Note: In relation to the reference to member of a family in subparagraph (4)(a)(i), see also section 4AAA.

Export price

269TAB

(1) For the purposes of this Part, the export price of any goods exported to Australia is:

(a) where:

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

(ii) the purchase of the goods by the importer was an arms length transaction;

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation; or

(b) where:

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

(ii) the purchase of the goods by the importer was not an arms length transaction; and

(iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

(c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.

(1A) For the purposes of paragraph (1)(a), the reference in that paragraph to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.

(2) A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:

(a) any duties of Customs or sales tax paid or payable on the goods; and

(b) any costs, charges or expenses arising in relation to the goods after exportation; and

(c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

Normal value of goods

269TAC

(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(1A) For the purposes of subsection (1), the reference in that subsection to the price paid or payable for like goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of the sales.

(2) Subject to this section, where the Minister:

(a) is satisfied that:

(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or

(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

the normal value of goods exported to Australia cannot be ascertained under subsection (1); or

(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

(c) except where paragraph (d) applies, the sum of:

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or

(d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be

an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.

(3) The price determined under paragraph (2)(d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2)(d) at that price, is representative of the price paid in such sales.

(3A) The Minister is not required to consider working out the normal value of goods under paragraph (2)(d) before working out the normal value of goods under paragraph (2)(c).

(4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:

(a) has a monopoly, or substantial monopoly, of the trade of the country; and

(b) determines or substantially influences the domestic price of goods in that country;

the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

(c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arm's length transactions;

(d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arm's length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;

(e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:

(i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;

(ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;

(f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arm's length transactions.

(5) The price determined under paragraph (4)(d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4)(d) at that price, is representative of the price paid in such sales.

(5A) Amounts determined:

(a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and

(b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);

must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b).

(5B) The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.

(5C) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2)(d) or (4)(d), the Minister may have regard to the following matters:

(a) whether the volume of trade from the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the volume of trade from the country of export to Australia; and

(b) whether the nature of the trade in goods concerned between the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the nature of trade between the country of export and Australia.

(5D) The normal value of goods (the exported goods) is the amount determined by the Minister, having regard to all relevant information, if the exported goods are exported to Australia and the Minister is satisfied that the country of export has an economy in transition and that at least one of the following paragraphs applies:

(a) both of the following conditions exist:

(i) the exporter of the exported goods sells like goods in the country of export;

(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;

(b) both of the following conditions exist:

(i) the exporter of the exported goods does not sell like goods in the country of export but others do;

(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;

(c) the exporter of the exported goods does not answer questions in a questionnaire given to the exporter by the Commissioner under subsection 269TC(8) within the period described in that subsection or subsection 269TC(9) for answering questions;

(d) the answers given within the period mentioned in subsection 269TC(8), or the further period mentioned in subsection 269TC(9), by the exporter of the exported goods to a questionnaire given to the exporter under subsection 269TC(8) do not provide a reasonable basis for determining that paragraphs (a) and (b) of this subsection do not apply.

Note: Subsection 269TC(8) deals with the Commissioner giving an exporter of goods to Australia a questionnaire about evidence of whether or not paragraphs (a) and (b) of this subsection apply, with a specified period of at least 30 days for the exporter to

answer the questions. Under subsection 269TC(9) the Commissioner may allow the exporter a further period for answering the questions.

(5E) To be satisfied that the conditions in paragraph (5D)(a) or (b) exist, the Minister must have regard to the matters (if any) prescribed by the regulations.

(5F) Without limiting the generality of subsection (5D), for the purpose of working out, under that subsection, the amount that is to be the normal value of goods exported to Australia, the Minister may determine that amount in a manner that would be open to the Minister under paragraph (4)(c), (d), (e) or (f) if subsection (4) were applicable.

(5J) For the purposes of fulfilling Australia's international obligations under an international agreement, regulations may be made to disapply subsection (5D) to a country.

(6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

(7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(7A) The application of subsection (5D) to goods that are exported to Australia from a particular country does not preclude the application of other provisions of this section (other than subsections (4) and (5)) to other goods that are exported to Australia from that country.

(8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

(a) relate to sales occurring at different times; or

(b) are not in respect of identical goods; or

(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

(9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(10) Where:

(a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and

(b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;

he or she may direct that the normal value of the goods is to be so ascertained.

(11) For the purposes of subsection (10), the country of origin of goods is:

(a) in the case of unmanufactured raw products—the country of which they are products; or

(b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.

(14) If:

(a) application is made for a dumping duty notice; and

(b) goods the subject of the application are exported to Australia; but

(c) the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;

the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2)(a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB.

…

Working out whether dumping has occurred and levels of dumping

269TACB

(1) If:

(a) application is made for a dumping duty notice; and

(b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and

(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;

the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.

(2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):

(a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or

(aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or

(b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or

(c) use:

(i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and

(ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other

part or each of these other parts were the whole of the investigation period.

(2A) If paragraph (2)(aa) or (c) applies:

(a) each part of the investigation period referred to in the paragraph must not be less than 1 month; and

(b) the parts of the investigation period as referred to in paragraph (2)(aa), or as referred to in subparagraphs (2)(c)(i) and (ii), must together comprise the whole of the investigation period.

(3) If the Minister is satisfied:

(a) that the export prices differ significantly among different purchasers, regions or periods; and

(b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;

the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.

(4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:

(a) the goods exported to Australia during that period are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.

(4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.

(5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:

(a) the goods exported to Australia in that transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.

(6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:

(a) the goods exported to Australia in each such transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.

(10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding

normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

Working out whether a financial contribution or income or price support confers a benefit

269TACC

(1) Subject to subsections (2) and (3), the question whether a financial contribution or income or price support confers a benefit is to be determined by the Minister having regard to all relevant information.

(2) A direct financial payment received from any of the following is taken to confer a benefit:

(a) a government of a country;

(b) a public body of a country;

(c) a public body of which a government of a country is a member;

(d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

Guidelines for financial contributions

(3) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:

(a) the provision of equity capital from a government or body referred to in subsection (2) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;

(b) the making of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain;

(c) the guarantee of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the enterprise receiving the guarantee is required to repay on the loan a lesser amount than would be required for a comparable commercial loan without that guarantee;

(d) the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;

(e) the purchase of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the purchase is made for more than adequate remuneration.

(4) For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

Amount of countervailable subsidy

269TACD

(1) If the Minister is satisfied that a countervailable subsidy has been received in respect of goods, the amount of the subsidy is an amount determined by the Minister in writing.

(2) After the amount of the countervailable subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

Material injury to industry

269TAE

(1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:

(aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

(ab) if the determination is being made for the purposes of section 269TJ—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

(ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

(i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and

(h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

(2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:

(aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

(ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

(ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

(i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and

(g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.

(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

(a) the volume and prices of imported like goods that are not dumped; or

(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

and any such injury or hindrance must not be attributed to the exportation of those goods.

(2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.

(2B) In determining:

(a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or

(b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;

because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.

(2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:

(a) each of those exportations is the subject of an investigation; and

(b) either:

(i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or

(ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and

(c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and

(d) if the determination is being made for the purposes of section 269TG or 269TH—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and

(da) if the determination is being made for the purposes of section 269TJ or 269TK:

(i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and

(ii) the volume of each of those exportations is not negligible; and

(e) it is appropriate to consider the cumulative effect of those exportations, having regard to:

(i) the conditions of competition between those goods; and

(ii) the conditions of competition between those goods and like goods that are domestically produced.

(3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:

(a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and

(b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and

(c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:

(i) for which there are sales or forward orders; or

(ii) which are held as stocks; and

(d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and

(e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and

(f) the level of return on investment in the industry; and

(g) cash flow in the industry; and

(h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and

(ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and

(j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and

(k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and

(m) investment in the industry.

…

Division 2 – Consideration of anti-dumping matters by the Commissioner

Application for action under Dumping Duty Act

269TB

(1) Where:

(a) a consignment of goods:

(i) has been imported into Australia;

(ii) is likely to be imported into Australia; or

(iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;

(b) there is, or may be established, an Australian industry producing like goods; and

(c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Commissioner, request that the Minister publish that notice in respect of the goods in the consignment.

…

(2C) A notification by the Commissioner under subsection (2B) must include an invitation to consult with the Commissioner in relation to whether:

(a) any countervailable subsidies exist; and

(b) any such subsidies, if found to exist, are causing or are likely to cause material injury of a kind referred to in paragraph 269TJ(1)(b) or 269TK(1)(b);

with the aim of arriving at a mutually agreed solution.

…

(4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:

(a) be in writing; and

(b) be in a form approved by the Commissioner for the purposes of this section; and

(c) contain such information as the form requires;

(d) be signed in the manner indicated in the form;

(e) in the case of an application under subsection (1)—be supported by a sufficient part of the Australian industry; and

(f) be lodged in the manner approved under section 269SMS.

…

(6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the Australian industry if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:

(a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and

(b) account for not less than 25% of the total production or manufacture of like goods in Australia.

Consideration of application

269TC

(1) The Commissioner shall, within 20 days after receiving an application under subsection 269TB(1) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:

(a) that the application complies with subsection 269TB(4); or

(b) that there is, or is likely to be established, an Australian industry in respect of like goods; or

(c) that there appear to be reasonable grounds:

(i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or

(ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2) The Commissioner shall, within 20 days after receiving an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard

to the matters contained in the application and to any other information that the Commissioner considers relevant:

(a) that the application complies with subsection 269TB(4); or

(b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or

(c) that there appear to be reasonable grounds:

(i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or

(ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2A) If an applicant, after lodging an application under section 269TB, decides to give the Commissioner further information in support of that application without having been requested to do so:

(a) the information must be lodged with the Commissioner, in writing, in the manner in which applications under that section must be lodged; and

(b) the information is taken to have been received by the Commissioner when the information is first received by a Commission staff member doing duty in relation to dumping applications; and

(c) this Part has effect as if:

(i) the application had included that further information; and

(ii) the application had only been lodged when that further information was lodged; and

(iii) the application had only been received when that further information was received.

(3) Where, in accordance with subsection (1) or (2), the Commissioner rejects an application, the notice informing the applicant of that rejection:

(a) shall state the reasons why the Commissioner was not satisfied of one or more of the matters set out in that subsection; and

(b) shall inform the applicant of the applicant's right, within 30 days of the receipt of the notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

(4) If the Commissioner decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Commissioner must give public notice of the decision:

(a) setting out particulars of goods the subject of the application; and

(b) setting out the identity of the applicant; and

(ba) setting out the countries of export known to be involved; and

(bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and

(bc) setting a date, which should be the date or estimated date of publication of the notice, as the date of initiation of the investigation; and

(bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and

(be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and

(bf) indicating that a report will be made to the Minister:

(i) within 155 days after the date of initiation of the investigation; or

(ii) within such longer period as the Minister allows under section 269ZHI;

on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period in relation to the application; and

(c) inviting interested parties to lodge with the Commissioner, within 37 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought in the application; and

(d) stating that if the Commissioner, in accordance with section 269TD, makes a preliminary affirmative determination in relation to the application, he or she may apply provisional measures, including the taking of securities under section 42, in respect of interim duty that may become payable on the importation of the goods the subject of the application; and

(e) stating that:

(i) within 110 days after the date of initiation of the investigation; or

(ii) such longer period as the Minister allows under section 269ZHI;

the Commissioner, in accordance with section 269TDAA, will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation to the Minister; and

(f) inviting interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and

(g) indicating the address at which, or the manner in which, submissions under paragraph (c) or (f) can be lodged; and

(h) stating that if the Minister decides to publish or not to publish a dumping duty notice or a countervailing duty notice after considering the report referred to in paragraph (bf), certain persons will have the right to seek review of that decision in accordance with Division 9.

(5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.

(5A) The Commissioner cannot vary the length of the investigation period.

(6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the Commissioner, if the Commissioner is satisfied, by representation in writing by an interested party:

(a) that a longer period is reasonably required for the party to make a submission; and

(b) that allowing a longer period will be practicable in the circumstances;

the Commissioner may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.

(7) As soon as practicable after the Commissioner decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Commissioner must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:

(a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or

(b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.

(8) If the Commissioner is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a countervailing duty notice has an economy in transition, the Commissioner must, as soon as practicable after deciding not to reject the application:

(a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and

(b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and

(c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:

(i) the exporter does not give the answers to the Commissioner within the period; or

(ii) the exporter gives the answers to the Commissioner within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.

Note Paragraph 269TAC(5D)(a) or (b) applies if a government of the country of export significantly affects the selling price in that country of like goods to the goods that are the subject of the application.

(9) Despite the fact that, under subsection (8), the Commissioner has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the Commissioner is satisfied, by representation in writing by the exporter:

(a) that a longer period is reasonably required for the exporter to answer the questions; and

(b) that allowing a longer period will be practicable in the circumstances;

the Commissioner may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.

(10) If, during an investigation in respect of goods the subject of an application under section 269TB, the Commissioner becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods, the Commissioner may examine that issue as part of the investigation.

269TD Preliminary affirmative determinations

(1) At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application under section 269TB, the Commissioner may, if he or she is satisfied:

(a) that there appears to be sufficient grounds for the publication of such a notice; or

(b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a determination (a *preliminary affirmative determination*) to that effect.

(2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the Commissioner:

(a) must have regard to:

(i) the application concerned; and

(ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and

(b) may have regard to any other matters that the Commissioner considers relevant.

(3) The Commissioner is not obliged to have regard to any submission that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely consideration of the question whether or not to make a preliminary affirmative determination.

(4) If the Commissioner makes a preliminary affirmative determination:

(a) the Commissioner must give public notice of that determination; and

(b) the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

(5) If the Commonwealth decides to require and take securities under subsection (4), the Commissioner must give public notice of that decision.

269TDAA Statement of essential facts in relation to investigation of application under section 269TB

(1) The Commissioner must, within 110 days after the date of initiation of an investigation arising from an application under section 269TB or such longer period as the Minister allows under section 269ZHI, place on the public record a statement of the facts (the *statement of essential facts*) on which the

Commissioner proposes to base a recommendation to the Minister in relation to that application.

(2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:

(a) must have regard to:

(i) the application concerned; and

(ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and

(b) may have regard to any other matters that the Commissioner considers relevant.

(3) The Commissioner is not obliged to have regard to a submission received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

Termination of investigations

269TDA

Commissioner must terminate if all dumping margins are negligible

(1) If:

(a) application is made for a dumping duty notice; and

(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:

(i) there has been no dumping by the exporter of any of those goods; or

(ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;

the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if countervailable subsidisation is negligible

(2) If:

(a) application is made for a countervailing duty notice; and

(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:

(i) no countervailable subsidy has been received in respect of any of those goods; or

(ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if negligible volumes of dumping are found

(3) If:

(a) application is made for a dumping duty notice; and

(b) in an investigation for the purposes of the application the Commissioner is satisfied that the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and

(ii) that have been, or may be, dumped;

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of dumped goods?

(4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:

(a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and

(b) subsection (5) does not apply in relation to those first mentioned goods.

Aggregation of volumes of dumped goods

(5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:

(a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and

(b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and

(c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

Negligible dumping margins to count in determining volume

(6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or

weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:

(a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and

(b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.

Commissioner must terminate if negligible volumes of countervailable subsidisation are found

(7) If:

(a) application is made for a countervailing duty notice; and

(b) in an investigation for the purposes of the application, the Commissioner is satisfied that the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia from a particular country of export during a reasonable examination period; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of subsidised goods?

(8) For the purposes of subsection (7), the total volume of goods the subject of the application for a countervailing duty notice that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been received is taken to be a negligible volume if:

(a) that country of export is not a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 3%; or

(b) that country of export is a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 4%;

and subsections (9), (10) and (11) do not apply in relation to those first mentioned goods.

Aggregation of volumes of subsidised goods from countries other than developing countries

(9) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received, if:

(a) the country of export is not a developing country; and

(b) the volume of such goods:

(i) that have been, or may be, exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 3%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another country that is not a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 3%; and

(d) the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 7%.

Aggregation of volumes of subsidised goods from developing countries

(10) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

(a) the country of export is a developing country; and

(b) the volume of such goods:

(i) that have been, or may be, exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another country that is a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 4%; and

(d) the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

Aggregation of volumes of subsidised goods from member countries that are developing countries

(11) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

(a) the country of export is a member country and a developing country; and

(b) the volume of such goods;

(i) that have been, or may be exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another member country that is a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(d) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

Negligible countervailable subsidies to count in determining volume

(12) The fact that the level of countervailable subsidy that has been, or may be, received in respect of goods that have been, exported, or may be exported, to Australia from a country of export is a negligible level under subsection (16) does not prevent exports from that country being taken into account:

(a) in working out the total volume of goods that have been, or may be, exported from a country of export and in respect of which a countervailable subsidy has been, or may be, payable; and

(b) in aggregating, for the purposes of subsection (9), (10) or (11), volumes of goods that have been, or may be, exported to Australia from that country and other countries and in respect of which a countervailing subsidy has been, or may be, received.

Commissioner must terminate dumping investigation if export causes negligible injury etc.

(13) Subject to subsection (13A), if:

(a) application is made for a dumping duty notice; and

(b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that export is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

(13A) If, in relation to the investigation referred to in subsection (13), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

(a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by those exports is negligible—subsection (13) does not apply in relation to those countries;

(b) if the Commissioner is satisfied that such injury or hindrance that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (13) applies to that country.

Commissioner must terminate countervailable subsidy investigation if export causes negligible injury

(14) Subject to subsection (14A), if:

(a) application is made for a countervailing duty notice; and

(b) in an investigation, for the purpose of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country that has been, or may be, caused by that export is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

(14A) If, in relation to the investigation referred to in subsection (14), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in *Commissioner must give public notice of termination decisions*

(15) If the Commissioner decides to terminate an investigation so far as it relates to a particular exporter or country of export, the Commissioner must:

(a) give public notice of that decision; and

(b) ensure that:

(i) in the case of an exporter, a copy of the notice is sent to the applicant, the exporter and the government of the country of export; or

(ii) in the case of a country of export, a copy of the notice is sent to the applicant and the government of that country; and

(c) inform the applicant of the applicant's right, within 30 days after the first publication of the public notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

Negligible countervailable subsidisation

(16) For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:

(a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or

(b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or

(c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

Definition—reasonable examination period

(17) In this section:

reasonable examination period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period comprising:

(a) the whole or a substantial part of the investigation period; or

(b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.

total Australian import volume, in relation to a volume of goods the subject of an application for a dumping duty notice or a countervailing duty notice that have been, or may be, exported to Australia from a particular country during a period, means the total volume of all goods the subject of the application and like goods that have been, or may be, exported to Australia from all countries during that period.

Customs (International Obligations) Regulation 2015

Part 8—Anti dumping duties

Division 1—Ordinary course of trade

43 Determination of cost of production or manufacture

(1) For subsection 269TAAD(5) of the Act, this section sets out:

(a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the amount) to be the cost of production or manufacture of like goods in a country of export; and

(b) factors that the Minister must take account of for that purpose.

(2) If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.

(3) The Minister must take account of the information available to the Minister about the allocation of costs in relation to like goods, in particular to establish:

(a) appropriate amortisation and depreciation periods; and

(b) allowances for capital expenditures and other development costs.

(4) For subsection (3), the information includes information given by the exporter or producer of the goods mentioned in subsection (1) that demonstrates that the exporter or producer of the goods has historically used the method of allocation.

(5) If:

(a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of the goods mentioned in subsection (1); and

(b) the information mentioned in subsection (3) does not identify the item;

the Minister must adjust the costs identified by the exporter or producer to take that item into account.

(6) Subsection (7) applies if:

(a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and

(b) the information mentioned in subsection (3) does not identify the circumstance.

(7) The Minister must adjust the costs identified in the information:

(a) to take the circumstance into account; and

(b) to reflect:

(i) the costs at the end of the start up period; or

(ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.

(8) For this section, the Minister may disregard any information that he or she considers to be unreliable.

44 Determination of administrative, selling and general costs

(1) For subsection 269TAAD(5) of the Act, this section sets out:

(a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the amount) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and

(b) factors that the Minister must take account of for that purpose.

(2) If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;

the Minister must work out the amount by using the information set out in the records.

(3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

(4) The Minister must take account of the information available to the Minister about the allocation of costs, in particular to establish:

(a) appropriate amortisation and depreciation periods; and

(b) allowances for capital expenditures and other development costs.

(5) For subsection (4), the information includes information given by the exporter or producer of goods that demonstrates that the exporter or producer of the goods has historically used the method of allocation.

(6) If:

(a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of goods; and

(b) the information mentioned in subsection (4) does not identify the item;

the Minister must adjust the costs identified by the exporter or producer to take that item into account.

(7) Subsection (8) applies if:

(a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and

(b) the information mentioned in subsection (4) does not identify the circumstance.

(8) The Minister must adjust the costs identified in the information:

(a) to take the circumstance into account; and

(b) to reflect:

(i) the costs at the end of the start up period; or

(ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.

(9) For this section, the Minister may disregard any information that he or she considers to be unreliable.

(10) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

Division 2—Normal value of goods

45 Determination of profit

(1) For subsection 269TAC(5B) of the Act, this section sets out:

(a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the amount) to be the profit on the sale of goods; and

(b) factors that the Minister must take account of for that purpose.

(2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

(3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

(4) However, if:

(a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and

(b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;

the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.

(5) For this section, the Minister may disregard any information that he or she considers to be unreliable.

(6) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

46 Determining whether conditions exist—matters to which the Minister must have regard

(1) For subsection 269TAC(5E) of the Act, the matters are set out in the following table.

Matters to which the Minister must have regard	
Item	**Matter**
1	Whether the entity makes decisions about prices, costs, inputs, sales and investments: (a) in response to market signals; and (b) without significant interference by a government of the country of export (see subsection (2)).
2	Whether the entity keeps accounting records in accordance with generally accepted accounting standards in the country of export.
3	Whether the generally accepted accounting standards in the country of export are in line with: (a) international financial reporting standards developed by; and (b) international accounting standards adopted by; the International Accounting Standards Board. Note: The international financial reporting standards and international accounting standards could in 2015 be viewed on the International Accounting Standards Board's website (http://www.ifrs.org).
4	Whether the accounting records mentioned in item 2 are independently audited.
5	Whether the entity's production costs or financial situation is significantly affected by the influence that a government of the country of export had on the domestic price of goods in the country before the country's economy was an economy in transition.
6	Whether the country of export has laws relating to bankruptcy and property.
7	Whether the entity is subject to the bankruptcy and property laws mentioned in item 6.
8	Whether the entity is part of a market or sector in which the presence of an enterprise owned by a government of the country of export prevents market conditions from prevailing in that market or sector.
9	Whether utilities are supplied to the entity under contracts that reflect commercial terms and prices that are generally available throughout the economy of the country of export.
10	If the land on which the entity's facilities are built is owned by a government of the country of export—whether the conditions of rent are comparable to those in a market economy.
11	Whether the entity has the right to hire and dismiss employees and to fix the salaries of employees.

(2) In assessing whether there is significant interference for paragraph (b) of item 1 in the table in subsection (1), the Minister must have regard to the following:

(a) whether a genuinely private company or party holds the majority shareholding in the entity;

(b) if officials of a government of the country of export hold positions on the board of the entity—whether those officials are a minority of the members of the board;

(c) if officials of a government of the country of export hold significant management positions within the entity—whether those officials are a minority of the persons holding significant management positions;

(d) whether the entity's ability to carry on business activities in the country of export is affected by:

(i) a restriction on selling in the domestic market; or

(ii) the potential for the right to do business being withdrawn other than under contractual terms; or

(iii) if the entity is a joint venture in which one of the parties is a foreign person, or is carried on in the form of such a joint venture—the ability of the foreign person to export profits and repatriate capital invested;

(e) whether the entity's significant production inputs (including raw materials, labour, energy and technology) are supplied:

(i) by enterprises that are owned or controlled by a government of the country of export; and

(ii) at prices that do not substantially reflect conditions found in a market economy.

(3) In this section:

entity, in relation to goods, means:

(a) the exporter of the exported goods mentioned in subsection 269TAC(5D) of the Act; or

(b) if the exporter of the goods is not the producer of the goods, but the goods are produced in the country of export—the producer of the goods.

government, of a country, includes any level of government of the country.

47 Determination of value—countries to which subsection 269T(5D) of the Act does not apply

For subsection 269TAC(5J) of the Act, Schedule 2 prescribes countries to which subsection 269TAC(5D) of the Act does not apply.