



Consideration report number: 355

Application for a dumping duty notice and countervailing duty notice

Submitted by Summit Select Pty Ltd

In relation to steel shelving units exported to Australia from the People's Republic of China

27 June 2016

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Abbreviations

Abbreviation / short form	Full reference
the applicant	Summit Select Pty Ltd
AUD	Australian Dollar
China	the People's Republic of China
CIF	cost, insurance and freight
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
DIBP	Department of Immigration and Border Protection
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Parliamentary Secretary	the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
USDOC	United States Department of Commerce

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 Summit Select Pty Ltd (Summit) for the publication of a dumping and countervailing duty notice in respect of certain steel shelving units (steel shelving) that has been imported into Australia from the People's Republic of China (China).

Summit alleges that the Australian industry for steel shelving has suffered material injury caused by steel shelving exported to Australia from China at dumped and 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 2.2.3 of this report)
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report)
- there appear to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application (as set out in sections 3, 4, 5 and 6 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 dumping duty notice and countervailing duty notice should be published.

The Commission further recommends that:

- exports to Australia during the investigation period 1 April 2015 to 31 March 2016 be examined for dumping and subsidisation, and
- details of the Australian market from 1 April 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 All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

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 received by the Commissioner under subsections 269TB(1) and (5)	5 May 2016	The Commission received an application from Summit which alleges that the Australian industry has suffered material injury caused by steel shelving that has been imported into Australia from China at dumped and subsidised prices.
	12 May 2016	The Commission notified Summit that the application contained critical and important deficiencies, which, if left unaddressed, created doubt on the reasonableness of the grounds for the publication of a dumping and countervailing duty notice.
Applicant provided further information in support of the application under subsection 269TC(2A)	19 May 2016	The applicant provided further information and data in support of its application without having been requested to do so (as provided in subsection 269TC(2A)). The application is taken to include that further information and data, and to have been lodged and received on 19 May 2016, when the additional information was lodged and received. Accordingly, the 20 day period for consideration of the application was restarted.
	6 June 2016	The Commission notified Summit that the application contained critical and important deficiencies, which, if left unaddressed, created doubt on the reasonableness of the grounds for the publication of a dumping and countervailing duty notice.
Applicant provided further information in support of the application under subsection 269TC(2A)	7 June 2016	The applicant provided further information and data in support of its application without having been requested to do so (as provided in subsection 269TC(2A)). The application is taken to include that further information and data, and to have been lodged and received on 7 June 2016, when the additional information was lodged and received. Accordingly, the 20 day period for consideration of the application was restarted.

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Event	Date	Details
Consideration decision due under section 269TC(1)	27 June 2016	The Commissioner has decided not reject the application.

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 dumping duty notice and a countervailing duty notice if, among other things, 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).

Requirement for the application	Details
Lodged in writing under subsection 269TB(4)(a)	The applicant 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 approved 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)	The applicant provided: <ul style="list-style-type: none"> • a completed declaration; • answers to all questions that were required to be answered by the applicant; • completed versions of all relevant 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 in the form under subsection 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of the applicant.

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<p>Supported by a sufficient part of the Australian industry under subsection 269TB(4)(e) and determined in accordance with subsection 269TB(6)</p>	<p>As set out in section 2.4.1 the Commission is satisfied that there is an Australian industry producing like goods.</p> <p>Summit has provided information concerning its own steel shelving production and stated that it is not aware of any other Australian producers of the product.</p> <p>The Commission identified two other potential manufacturers of like goods. Neither of these manufacturers provided evidence that they produce the goods.</p> <p>The Commission also visited multiple retailers to determine if other Australian manufactured steel shelving were available. The Commission did not find any other Australian-made goods for sale in retailers.</p> <p>The Commission will conduct further outreach to potential manufacturers of the goods as the investigation progresses.</p> <p>On the basis of the Commission's inquiries to date, Summit are the only member of the Australian industry. As such, the Commission is satisfied that the application has support from persons who account for:</p> <ul style="list-style-type: none"> • not less than 25 per cent of the total production of like goods in Australia given that Summit itself accounts for more than 25 per cent of the total production of like goods in Australia; and • more than 50 per cent of the Australian industry (measured by production of like goods in Australia) who have expressed opposition to or support for the application as Summit is the only member of the Australian industry and therefore the only member to express a view in relation to the application.
<p>Lodged in the manner approved under section 269SMS for the purposes subsection 269TB(4)(f)</p>	<p>The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by email to the Commission's email address provided in that instrument. The application was therefore lodged in a manner approved under subsection 269SMS(2).</p>

2.3. The goods the subject of the application

Full description of the goods, as subject of the application			
<p>The goods the subject of this application are unassembled steel framed shelving or workbench units with 2,3,4,5 or 6 shelves; the frame of which is either partially or totally:</p> <ul style="list-style-type: none"> • coated with paint or powder coated; • galvanised; or • made from colour bonded steel. <p>Typically, the shelves of the units are made of medium density fibreboard (MDF), particle board, melamine or steel, however other materials may be used.</p> <p>Usually, the units are pre-packed for sale in a kit form, containing all or the majority of the components required to assemble the finished unit.</p>			
Further information			
<p>Goods excluded from the application are:</p> <ul style="list-style-type: none"> • wall mounted bracket and strip shelving; • plastic shelving; • predominantly melamine and timber shelving units used for home furnishing; • industrial shelving; • slotted angle shelving; • shelving units with wire shelves; and • custom-made shelving units (designed and made specifically for a special project application). 			
Tariff classification (<i>Schedule 3 of the Customs Tariff Act 1995</i>)			
Tariff code	Statistical code	Description	Duty rate
9403.10.00	40	<i>Metal furniture of a kind used in offices</i>	China – zero Note: From 20 December 2015, the rate of duty applicable to imports from China reduced to zero. Prior to 20 December 2015, the applicable rate of duty for imports from China was 5 per cent.
9403.20.00	19	<i>Other metal furniture</i>	China – zero Note: From 20 December 2015, the rate of duty applicable to imports from China reduced to zero. Prior to 20 December 2015, the applicable rate of duty for imports from China was 5 per cent.

Previous investigations
<p>Dumping investigation 31 – Steel Shelving exported from China was initiated on 15 September 2000, covering the investigation period of 1 July 1998 to 30 September 2000 with an injury examination period from 1 July 1997. The goods which were the subject of that investigation had a description similar to this application from Summit, but also included a description of load weights of shelves. Dumping was found against one exporter and measures put in place. The measures expired in 2006.</p> <p>Dumping investigation 44 – Steel Shelving exported from Thailand was initiated on 19 April 2001, covering the investigation period of 1 January 2001 to 31 March 2001 with an injury examination period from 1 October 1999. The goods which were the subject of that investigation had a description similar to this application from Summit, but also included a description of load weights of shelves. Dumping was found against one exporter and measures put in place against all exporters from Thailand. The measures expired in 2006.</p> <p>Refer to Non-Confidential Attachment 2 for a chronological listing of previous investigations</p>
Other administrations
<p><u>US</u></p> <p>On 14 August 2015, the US Department of Commerce (“USDOC”) published final determination findings concerning certain boltless steel shelving units prepackaged for sale exported from China. The final countervailable subsidy rates were between 12.4 and 80.45 per cent</p> <p>Note: See Non-Confidential Attachment 3 for a list of the countervailable subsidies that were considered in the US case.</p>

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:

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

2.4.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping and countervailing duty notice if, among other things, 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.

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Factor	The Applicant's claims	The Commission's assessment
Physical likeness	Summit claims that the goods produced by the Australian industry are physically alike in all practical aspects.	In its application, Summit provided photographic evidence of both the goods and like goods. On the basis of the evidence provided by Summit, the Commission is satisfied that the goods produced by the Australian industry are physically alike to the goods.
Commercial likeness	Summit claims that there is a commercial likeness of the goods as they compete in the same market and on price.	The Commission considers that the goods are commercially similar as they compete in the same market. There is direct competition between imported goods and the goods produced by the Australian industry (as demonstrated by Summit's evidence at Attachment A3.3 of its application), and both are sold at home improvement stores, retailers, department stores, office supply stores and online retailers.
Functional likeness	Summit claims that the goods are functionally similar as they are both used for the same purposes, being domestic and 'light' commercial purposes.	The Commission considers that the imported and locally produced steel shelving are functionally alike in all aspects as they have the same end use, being domestic or some commercial use.
Production likeness	Summit claims that the goods are manufactured using similar production processes.	The Commission considers the imported goods and the goods produced by the Australian industry appear to be manufactured using equipment and processes which are alike in all significant practical aspects. This includes the main production of the steel components of the unit, which is produced using steel coil.
Commission's assessment		
The Commission's assessment is that the locally produced goods are similar to the goods the subject of the application and are like goods given that the primary physical characteristics of imported and locally produced goods are similar, the imported and locally produced goods are commercially alike as they are sold to common end users, being retailers, the imported and locally produced goods are functionally alike as they have the same end-uses and the imported and locally produced goods are manufactured in a similar manner.		

2.4.4. Manufacture in Australia

The table below summarises the Commission’s assessment of whether the goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

The Applicant’s claims
Summit claims that steel shelving kits are fully manufactured in Australia using Australian and imported raw materials. The major raw material used in producing steel shelving is steel coil. The steel coil used by Summit is hot dip zinc coated steel coils imported from Malaysia. MDF shelves and other products are purchased from Australian producers. Summit’s production process is provided at Non-Confidential Attachment 4 .
The Commission’s assessment
Noting the above, the Commission considers that the goods are wholly manufactured in Australia and, therefore, considers the like goods to have been manufactured in Australia.

2.5. Australian industry information

The table below summarises the Commission’s assessment of whether Summit 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	Not applicable
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Not applicable
A7	Other injury factors	Yes
General administration and accounting information – Summit		
History	Summit has been in business for 35 years.	
Ownership	Summit Select Pty Ltd (formerly Summit Storage Products Pty Ltd) is owned by Summit Storage Products Pty Ltd (formerly Summit Holdings NSW Pty Ltd). Both companies changed their business names in January 2015. Summit Storage Products Pty Ltd is a holding company and does not trade with customers.	
Operations	Summit’s head office is located in Sydney, New South Wales. The steel shelving units are manufactured at a factory in Keysborough, Victoria.	
Financial year	1 July to 30 June financial year.	
Audited accounts	Unaudited report and financial statements for the financial year to June 2015 is provided as Confidential Attachment A-6.3.1 and A-6.4.1 to the application.	
Annual reports	No annual report is produced for Summit.	

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Production and sales information	Cost to make and sell information	Other injury factors
The Commission has no significant concerns regarding the production and sales information provided.	The Commission has no significant concerns regarding the cost data provided.	The Commission has no significant concerns regarding the data provided in Appendix A7 to the application.
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 April 2011 and March 2016.		

2.5.1. Market size

Summit estimated the size of the Australian market using Summit's own sales data and knowledge of the market. Summit completed Confidential Appendix A2 to the application, using the data obtained to estimate the size of the Australian market.

Summit did not use other data sources, such as the Australian Bureau of Statistics (ABS) because it claimed that the tariffs under which steel shelves are classified is so broad that any source data from the ABS would not properly represent reasonable data.

The Commission has taken the data provided by Summit and data from the Department of Immigration and Border Protection (DIBP) import database to determine the size of the market.

The Commission found that the two tariff classifications cover many different types of shelves and various other pieces of furniture, and not all are manufactured from steel. In order to obtain a more reliable picture of the steel shelving market, the Commission used text data mining techniques to refine the import database. This involved measuring the frequency of words used in goods descriptions containing the word 'shelf' or 'shelves' (or a variation of those) and then using a pattern matching technique to find those that closely matched the goods description. The Commission is satisfied that it was able to determine a reliable estimate of the market.

The Commission's results and estimation of the market for steel shelving are set out below in Figure 1 for the period 2011 to 2016, with years aligned to the injury analysis period – from 1 April 2011 to 31 March 2016. Each column represents a 1 April to 31 March year, rather than a financial year, in order to align with the injury analysis period

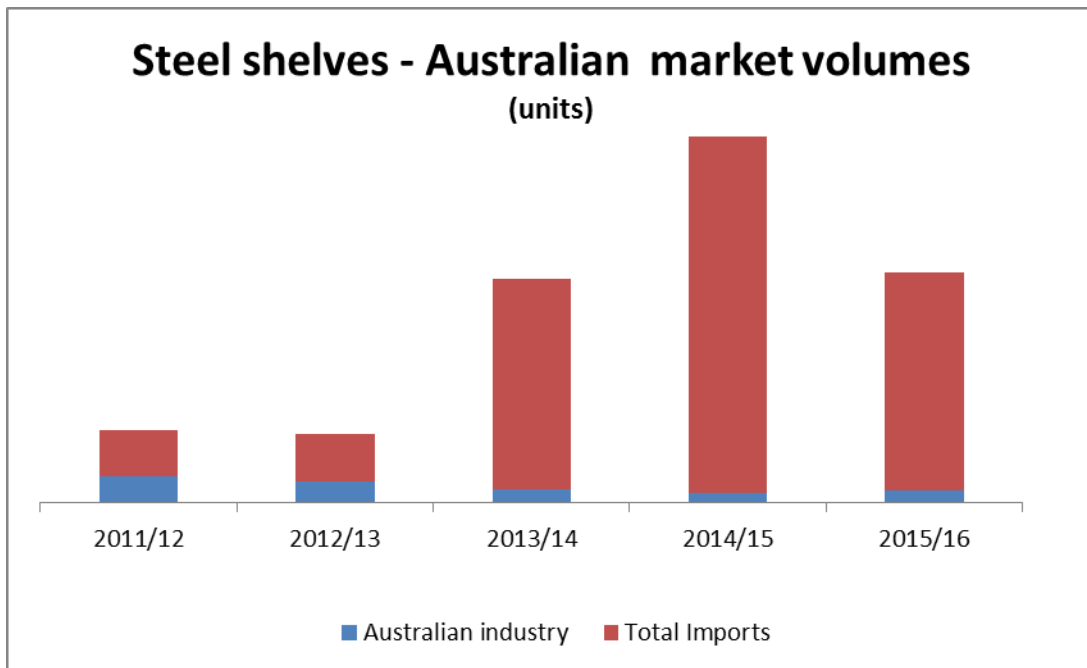


Figure 1: Total Australian market volume of steel shelving

Summit claims that it had at least 95 per cent of the pre-packaged steel shelving market in Australia in 2005-06, which excluded any custom and made to order shelving. The Commission notes that this coincides with the last period of when measures were in place following Investigation 31.

Summit notes in its application that it has limited data on which to base its market analysis, but it suspects that its market share has declined in recent years as its sales volume has declined. Summit claimed that the steel shelving market has remained largely steady in the 10 years since 2005/06, and that sales growth has generally kept pace with population growth.

The Commission's analysis indicates a substantial spike in market volume in years 2013/14 and 2014/15, and, although it fell in 2015/16, the size of the market is at much greater levels than prior to 2012/13.

Figure 1 suggests that Summit's market share in 2011/12 was approximately 40 per cent of the market. Imports, especially from China, increased in the following years. The Australian industry's market share appears to have subsequently declined to a small fraction of the market, about 5 per cent in 2015/16.

The Commission's assessment of the Australian market for steel shelving is attached at **Confidential Appendix 2**.

3. Reasonable Grounds – dumping

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 have been exported to Australia from China at dumped prices;
- the estimated dumping margin for exports from China is greater than 2 per cent and therefore is not negligible, and
- the estimated volume of goods exported from China that appear to have been dumped is greater than 3 per cent of the total Australian import volume of goods and therefore is not negligible.

3.2. Legislative framework

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

Under section 269TG, one of the matters that the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)² must be satisfied of in order to publish a dumping duty notice is that the export price of the goods that have been exported to Australia is less than the normal value of those goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

3.3. Export price

3.3.1. Legislative framework

Export price is determined by applying the requirements in 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

² 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.

3.3.2. The Applicant's estimate

The table below summarises the approach taken by Summit to estimate export prices and the evidence relied upon.

Country	Basis of estimate	Details
China	<p>Summit calculated a deductive export price in 2015 with regard to provisions in subsection 269TAB(3) and using the following data as evidence:</p> <ul style="list-style-type: none"> • Retail selling price of imported goods; • Adjustments for retailer and importer profit margins; • Adjustments for cost to import and deliver. 	<p>Summit provided evidence of retail selling prices for three products: Nut and Bolt 4 Shelf, Boltless 4 Shelf and Boltless 5 Shelf.</p> <p>Summit estimated profits margins for retailer and importers based on its trading knowledge.</p> <p>Summit estimated the cost to import and deliver, which included ocean freight, duties and inland delivery based on source document evidence. Summit adjusted the ocean freight component to account for whether the product was hand loaded into or palletised on the shipping container.</p> <p>Summit deducted the estimated profit margins, and cost to import and deliver, from the retail selling prices to produce an estimated FOB export price for the three products.</p>

3.3.3. The Commission's assessment

The Commission assessed Summit's methodology, calculations and supporting evidence in accordance with section 269TAB.

The Commission considers that it did not have sufficient information to calculate an export price under subsections 269TAB(1)(a),(b) or (c) and has therefore calculated an FOB export price under subsection 269TAB(3) for China based on DIBP data and compared this to Summit's estimate.

The Commission accepts that an applicant can only provide information that is reasonably available to it. The Commission considers that Summit's approach of using retail selling prices with deductions for profit margins, and cost to import and deliver, is reasonable for the purposes of this application.

Summit's calculation of export price and the Commission's comparative calculations are at **Confidential Appendix 4**.

3.4. Normal value

3.4.1. Legislative framework

Normal value is determined by applying the requirements in section 269TAC taking into account whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA;
- the goods were sold in the ordinary course of trade under section 269TAAD;
- there has been an absence or low volume of sales of like goods in the country of export; and

- the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under subsection 269TAC(1).

3.4.2. The Applicant's estimate

The table below summarises the approach taken by Summit to estimate normal values and the evidence relied upon.

Country	Basis of estimate	Details
China	Constructed normal value under subsection 269TAC(2)(c)	<p>Summit calculated a normal value in accordance with section 269TAC(2)(c) for the following reasons:</p> <ul style="list-style-type: none"> • Summit has no evidence of actual domestic prices for the goods in China; • Summit considers it unlikely that there are sufficient volumes of domestic sales of like goods in the ordinary course of trade by Chinese exporters. This was found in Investigation 31, and Summit is not aware of any major shifts in the domestic Chinese market that would have seen a marked increase in domestic sales of like goods and development of a domestic market since that time. • Summit considers that a market situation exists in China that renders all domestic sales of like goods unsuitable. Summit claims that any selling prices of like goods in China are distorted due to the influence of the Government of China in the Chinese iron and steel industry that influences the cost of key steel raw material inputs used in the manufacture of steel shelving units. Summit cited a number of steel investigations in which the Commission has found that a market situation exists, as well as steel price comparison data sourced from MEPS International Ltd. <p>Summit used its costs in 2015 with certain adjustments and sourced independent data where available to calculate:</p> <p>Cost to make:</p> <ul style="list-style-type: none"> • raw materials; • labour expenses; • overheads; and • internal delivery. <p>Selling, general and administrative expenses:</p> <ul style="list-style-type: none"> • selling expenses; • distribution expenses; and • administrative expenses. <p>Profit:</p> <ul style="list-style-type: none"> • based on a publicly available industry report of the fabricated metal products sector in China. <p>Manufacturing (labour and overheads) and selling, general and administrative (SG&A) costs were adjusted downwards based on a publicly available manufacturing cost index that compared China and Australia.</p>

3.4.3. The Commission's assessment

The Commission assessed Summit's methodology, calculations and supporting evidence in accordance with sections 269TAC, 269TAAD and 269TAA.

The Commission has calculated normal value under subsection 269TAC(6) because sufficient information is not available to calculate normal value under the preceding subsections.

Summit claims that one of the reasons it calculated a normal value in accordance with section 269TAC(2)(c) was that it considers it unlikely that there are sufficient volumes of domestic sales of like goods in the ordinary course of trade by Chinese exporters. The Commission notes that this finding was made in Investigation 31 in 2001 and since then, the Chinese economy has experienced a shift towards consumption-based growth. Throughout the investigation, the Commission will seek pertinent information from manufacturers and exporters in China, and the Government of China, so that Summit's claims regarding the domestic Chinese market can be thoroughly assessed.

In order for the Commission to consider if there are 'reasonable grounds' for the publication of a dumping notice, the Commission analysed the applicant's estimate of the normal value of the goods.

The Commission finds that the approach used to estimate normal value is reasonable for the purpose of this Consideration Report. Summit provided detailed information related to its cost to make and sell, and provided independent data on which it based the estimate of profit and certain adjustments, and the Commission finds this data appears to be appropriate and reliable.

3.4.4. Market situation claims

The applicant is claiming that there is a situation in the Chinese steel shelving market that renders domestic sales unsuitable for determining normal value under subsection 269TAC(1) (i.e. that a 'market situation' exists – see subparagraph 269TAC(2)(a)(ii)), and therefore constructed normal values should be used instead for determining whether steel shelving exported from China are sold at dumped prices (see paragraph 269TAC(2)(c)).

The Commission's assessment of the applicant's market situation claims

The Commission observes that the applicant relies on the previous dumping and countervailing investigation findings in relation to steel products exported from China in submitting its claims on the existence of a market situation in the Chinese domestic market for raw material inputs into steel shelving.

Based on an assessment of the information set out in the application and the information gathered by the Commission in previous investigations concerning Chinese iron and steel industries, the Commission considers that it is appropriate to examine the applicant's market situation claims during the course of the investigation.

Throughout the investigation, the Commission will seek pertinent information from manufacturers and exporters in China, and the Government of China, so that Summit's claims regarding the domestic Chinese market and market situation can be thoroughly assessed.

Summit's estimate of normal value and the Commission's assessment are at **Confidential Appendix 4**.

3.5. Dumping margins

3.5.1. Legislative framework

Dumping margins are determined in accordance with the requirements of section 269TACB.

Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

3.5.2. The Commission's assessment

The Commission considers the applicant's dumping margin estimate to be reasonable based on information available to the company.

The Commission's estimated dumping margin for China based on the export price from DIBP data and the normal value estimated by Summit is the same as the applicant's margin.

The table below summarises the dumping margin estimated by Summit. As Summit provided dumping margins by product type (Nut and Bolt 4 Shelf, Boltless 4 Shelf and Boltless 5 Shelf) and whether it was hand loaded or palletised for ocean freight, the Commission has presented the average of these dumping margins for China. Dumping margins are expressed as a percentage of the export price.

Country	The Applicant's estimate
China	75%

Based on the level estimated by Summit and the Commission, the dumping margin for China is not negligible.

Based on analysis of the DIBP import data, the volume of imports of steel shelving from China represented more than 3 per cent of the total volume of steel shelving imported during the proposed investigation period.

The Commission is satisfied that there appears to be reasonable grounds to publish a dumping duty notice.

The estimated dumping margins by Summit and the Commission are at **Confidential Appendix 4**.

4. Reasonable grounds – subsidisation

4.1. 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 per cent and therefore is not negligible;
- the estimated volume of goods from China that appear to have been subsidised is greater than 4 per cent of the total Australian import volume of goods and therefore is not negligible.

4.2. Legislative framework

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

Under section 269TJ, 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.

4.3. Consultation with the Government of China

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

The Government of China advised the Commission that it did wish to participate in consultations during the consideration phase. The Government of China provided a written submission to the Commission, in which it disputed the allegation of a particular market situation, and also that referring solely to the USDOC case on boltless steel shelving is insufficient evidence.

4.4. Subsidy programs

4.4.1. Legislative framework

The determination as to whether there is a countervailable subsidy is made in accordance with subsection 269T(1), subsection 269T(2AA), section 269TACC and section 269TAAC.

4.4.2. The Applicant's claims

The applicant has primarily relied on subsidy claims from an August 2015 USDOC case into Boltless Steel Shelving exported from China.

The table below summarises the claims by the applicant based on the USDOC case.

PUBLIC RECORD

Category	Program (number and description)	Details
Preferential tax policies (Programs 1-12)	1. "Two Free/Three Half" Program for Foreign-Invested Enterprises (FIEs)	Summit claims that Chinese producers of the goods have benefited from preferential tax policies.
	2. Income Tax Reductions for Export Oriented FIEs	
	3. Income Tax Benefits for FIEs based on Geographic Location	
	4. Local Income Tax Exemption and Reduction Programs for Productive FIEs	
	5. Income Tax Reduction for High or New Technology Enterprises	
	6. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law	
	7. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies	
	8. Import Tariff and Value-Added Tax (VAT) Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	
	9. VAT Refunds for FIEs Purchasing Domestically Produced Equipment	
	10. Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone	
	11. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies	
	12. VAT Refunds for FIEs Purchasing Domestically Produced Equipment	
Financial grants (Programs 13-25)	13. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands	Summit asserts that Chinese producers of the goods have benefited from a number of financial grants provided by the GOC.
	14. Special Fund for Energy Savings Technology Reform	
	15. International Market Exploration (SME) Fund	
	16. Export Assistance/Outward Expansion Grants in Guangdong Province	
	17. Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises	
	18. Technology to Improve Trade Research and Development Fund	
	19. Rental/Purchase Assistance in Ningbo Municipality Yinzhou District Southern Commercial Zone	
	20. Exhibition Subsidy	
	21. Foreign Trade Bureau Award	
	22. Export Credit Insurance Subsidy	
	23. Export Subsidy for High-tech	

PUBLIC RECORD

	Merchandise	
	24. Clean Energy Measure Subsidy	
	25. Innovative Growth Grant	
Provision of inputs for less than adequate remuneration (Programs 26-28)	26. Provision of Hot Rolled Coil Steel for Less Than Adequate Remuneration	The applicant contended that producers of the goods received a benefit under these programs through inputs being provided by the GOC (including State-invested enterprises (SIEs)) at less than adequate remuneration (LTAR).
	27. Provision of Electricity for Less Than Adequate Remuneration	
	28. Provision of galvanised steel for less than adequate remuneration	

4.4.3. The Commission's assessment

In conducting its assessment, the Commission has had regard to the USDOC investigation, previous Commission investigations and China's income tax laws³. The Commission has preliminarily assessed each subsidy program below, using the information listed above as well as its own research. The Commission has conducted an assessment whether, based on the available evidence, the program is a subsidy as defined under subsection 269T(1) which confers a benefit under section 269TACC and is specific as assessed under section 269TAAC.

The Commission's assessment below is a preliminary assessment of the programs the applicant has claimed are countervailable subsidies. During the course of the investigation, the Commission will examine these subsidy programs further, and may also examine additional subsidy programs.

Program Number	Program Name	Program Type	Countervailable Subsidy received in relation to the goods (Yes/No)
1.	"Two Free/Three Half" Program for Foreign-Invested Enterprises (FIEs)	Tax	No
2.	Income Tax Reductions for Export Oriented FIEs	Tax	No
3.	Income Tax Benefits for FIEs based on Geographic Location	Tax	Yes
4.	Local Income Tax Exemption and Reduction Programs for Productive FIEs	Tax	No
5.	Income Tax Reduction for High or New Technology Enterprises	Tax	Yes
6.	Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law	Tax	No
7.	Income Tax Credits on Purchases of	Tax	No

³ *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises 1991*

Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law 2007

Enterprise Income Tax Law of the People's Republic of China 2007

PUBLIC RECORD

	Domestically Produced Equipment by Domestically Owned Companies		
8.	Import Tariff and Value-Added Tax (VAT) Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	Tax	Yes
9.	VAT Refunds for FIEs Purchasing Domestically Produced Equipment	Tax	No
10.	Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone	Tax	Unknown
11.	Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies	Tax	No – this program is a repeat of Program 7
12.	VAT Refunds for FIEs Purchasing Domestically Produced Equipment	Tax	No – this program is a repeat of Program 9
13.	GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands	Grant	Yes
14.	Special Fund for Energy Savings Technology Reform	Grant	Yes
15.	International Market Exploration (SME) Fund	Grant	Yes
16.	Export Assistance/Outward Expansion Grants in Guangdong Province	Grant	Yes
17.	Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises	Grant	Yes
18.	Technology to Improve Trade Research and Development Fund	Grant	Yes
19.	Rental/Purchase Assistance in Ningbo Municipality Yinzhou District Southern Commercial Zone	Grant	Yes
20.	Exhibition Subsidy	Grant	Yes
21.	Foreign Trade Bureau Award	Grant	Yes
22.	Export Credit Insurance Subsidy	Grant	Yes
23.	Export Subsidy for High-tech Merchandise	Grant	Yes
24.	Clean Energy Measure Subsidy	Grant	Yes
25.	Innovative Growth Grant	Grant	Yes
26.	Provision of Hot Rolled Coil Steel for Less Than Adequate Remuneration	LTAR	Yes
27.	Provision of Electricity for Less Than Adequate Remuneration	LTAR	Yes
28.	Provision of Galvanised Steel For Less Than Adequate Remuneration	LTAR	Unknown

PUBLIC RECORD

<u>Category</u>	<u>The Commission's consideration</u>
Preferential tax policies (Programs 1-12)	<p>Program 1: Two Free/Three Half" Program for Foreign-Invested Enterprises (FIEs) Program 2: Income Tax Reductions for Export Oriented FIEs Program 4: Local Income Tax Exemption and Reduction Programs for Productive FIEs Program 7: Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies (for technology upgrading purpose) Program 9: VAT Refunds for FIEs Purchasing Domestically Produced Equipment</p> <p>The Commission has verified that these programs ceased to operate prior to 2015.</p>
	<p>Program 3: Income Tax Benefits for FIEs based on Geographic Location Program 5: Income Tax Reduction for High or New Technology Enterprises Program 8: Import Tariff and Value-Added Tax (VAT) Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries</p> <p>The name for Program 3 is an overall name used by the applicant to cover a number of programs that are based on the FIE's geographic location. These may include, but not limited to:</p> <ul style="list-style-type: none"> • Preferential Tax Policies For Enterprises with Foreign Investment Established in Special Economic Zones (Excluding Shanghai Pudong Area); • Preferential Tax Policies For Enterprises with Foreign Investment Established in the Costal Economic Open Areas and in The Economic And Technological Development Zone; • Preferential Tax Policies for Enterprises with Foreign Investment Established In Pudong Area Of Shanghai; • Preferential Tax Policies for Enterprises with Foreign Investment Established in the Three Gorges of Yangtze River Economic Zone; and • Preferential Tax Policies in the Western Regions. <p>Further information from exporters is required to determine whether these subsidy programs apply to the exporters.</p> <p>At this stage, these programs appear to meet the definition of a countervailable subsidy, being revenue foregone by GOC, and are also considered to be 'specific'. After having regard to the matters in the application and to other relevant information, there appear to be reasonable grounds that these programs are countervailable subsidies.</p>
	<p>Program 6: Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law</p> <p>While the program is considered to be a subsidy, the deduction is not considered to be 'specific' and thus, not a countervailable subsidy program.</p>
	<p>Program 10: Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone</p> <p>No information on this subsidy program.</p>
	<p>Program 11: See program 7 above. Program 12: See program 9 above.</p>

PUBLIC RECORD

<p>Financial grants (Programs 13-25)</p>	<p>Program 13: GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands Program 14: Special Fund for Energy Savings Program 15: International Market Exploration (SME) Fund Program 16: Export Assistance/Outward Expansion Grants in Guangdong Province Program 17: Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises Program 18: Technology to Improve Trade Research and Development Fund Program 19: Rental/Purchase Assistance in Ningbo Municipality Yinzhou District Southern Commercial Zone Program 20: Exhibition Subsidy Program 21: Foreign Trade Bureau Award Program 22: Export Credit Insurance Subsidy Program 23: Export Subsidy for High-tech Merchandise Program 24: Clean Energy Measure Subsidy Program 25: Innovative Growth Grant</p> <p>Further information from exporters is required to determine whether these subsidy programs apply to the exporters.</p> <p>At this stage, these programs appear to meet the definition of a countervailable subsidy, being a financial contribution that involves a direct transfer of funds from a government, and are also considered to be 'specific'. After having regard to the matters in the application and to other relevant information, there appear to be reasonable grounds that these programs are countervailable subsidies.</p>
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PUBLIC RECORD

<p>Provision of goods for less than adequate remuneration (Programs 26 - 28)</p>	<p>Program 26: Provision of Hot Rolled Coil Steel for Less Than Adequate Remuneration</p> <p>In August 2015, the USDOC found that the provision of hot rolled coiled steel for less than adequate remuneration was a countervailable subsidy.</p> <p>The Commission considers this recent determination by the USDOC as reasonable grounds that benefits may have been received by Chinese exporters of steel shelving in the form of certain input materials, such as hot rolled coiled steel, provided at less than adequate remuneration.</p> <p>At this stage, this program appear to meet the definition of a countervailable subsidy, being the provision of an input for less than adequate remuneration.</p> <p>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 program for provision of goods described by the applicant are countervailable subsidies.</p> <p>Program 27: Provision of Electricity for Less Than Adequate Remuneration</p> <p>In August 2015, the USDOC found that the provision of electricity for less than adequate remuneration was a countervailable subsidy.</p> <p>The Commission considers this recent determination by the USDOC as reasonable grounds that benefits may have been received by Chinese exporters of steel shelving in the form of electricity provided at less than adequate remuneration.</p> <p>The Commission has found in previous investigations, such as case 237, that a subsidy exists for the provision of electricity for less than adequate remuneration. Although the goods in that case, silicon metal, was not for a downstream product like steel shelving, it make a finding that electricity provided to exporters was influenced by the GOC.</p> <p>At this stage, this program appear to meet the definition of a countervailable subsidy, being the provision of an input for less than adequate remuneration.</p> <p>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 program for provision of goods described by the applicant are countervailable subsidies.</p> <p>Program 28: Provision of Galvanised Steel For Less Than Adequate Remuneration</p> <p>The applicant did not provide any evidence to support the claim this subsidy exists. The Commission notes that the findings of investigation 190 – zine-coated (galvanized) steel exported from China, Korea and Taiwan – included a positive finding that a particular market situation exists for the production of galvanised steel in China. This finding would support the applicant’s claim there a subsidy exists in relation to the provision of galvanised steel for less than adequate remuneration.</p>
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4.5. Amount of countervailable subsidy

4.5.1. Legislative framework

Subsidy margins are determined under section 269TACD.

PUBLIC RECORD

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.

4.5.2. The Commission's assessment

The table below summarises the subsidy margins from the USDOC investigation in relation to subsidised boltless steel shelving from China. The Commission has used the findings of the USDOC in relation to those subsidies that the Commission considers countervailable in this case. The Commission considers these findings to be reasonable based on the information provided in the USDOC investigation.

Subsidy margins are expressed as a percentage of the export price. The table also indicates whether the Commission is satisfied that the subsidy margin and volume of subsidised goods are above negligible levels.

Country	USDOC findings	Negligible margin?	Negligible volume?
China	Between 12.4 and 80.45 per cent	No	No

5. Reasonable grounds – injury to the Australian industry

5.1. 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:

- loss of sales volume;
- reduced market share;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced revenue;
- reduced employment; and,
- reduced capacity utilisation.

5.2. Legislative framework

Under sections 269TG and 269TJ of the Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty or a countervailing duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

5.3. The Applicant's claims

Summit claims that the Australian industry has been injured through:

- loss of sales volume;
- reduced market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced revenue;
- reduced employment; and,
- reduced capacity utilisation.

In its application, Summit claims that it observed increases in import volumes of pre-packaged steel shelving since 2008, while its own sales correspondingly went down. Summit claims that it has been unable to find any evidence that custom made to order shelving has caused any significant injury to the pre-packaged shelving unit market in Australia.

Summit claims that it has lowered its prices and costs in an effort to be competitive with allegedly dumped goods. However, the resulting lower production volumes increased costs and further reduced profitability.

For the purposes of the following injury analysis, the Commission analysed Summit's claims from 1 April 2011 to 31 March 2016 (the injury analysis period). Each column

represents a 1 April to 31 March year, rather than a financial year, in order to align with the injury analysis period

5.4. Approach to injury analysis

5.4.1. Legislative framework

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

5.4.2. The Commission's approach

The following injury analysis is based on:

- Summit's provided costs, sales and other financial data; and
- DIBP import data.

5.5. Volume effects

5.5.1. Sales volume

Loss of volume

Summit claims it experienced a loss of sales volume due to growth in the volume of dumped imports of steel shelving from China. The figure below shows the volume of Summit's sales of steel shelving units over the injury analysis period.

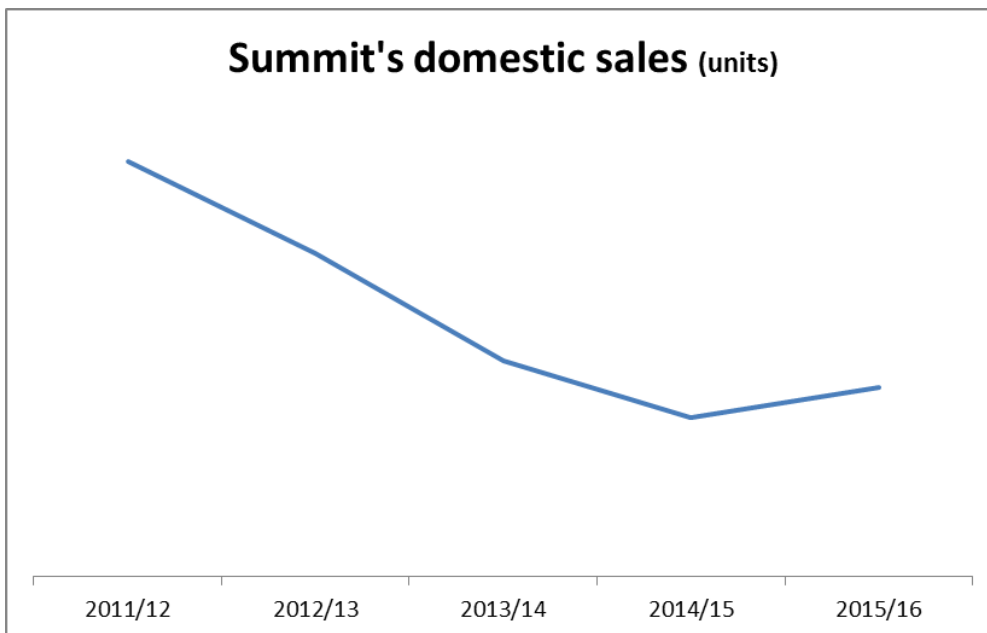


Figure 2: Summit's domestic sales over the injury period

The Commission observes in the above figure that there has been a consistent decline in Summit's domestic sales volume over the injury period, though the last year of the period experienced a slight increase. Despite this slight increase during the investigation period, volumes remain well below the 2011/12 and 2012/13 volumes, and below the 2013/14 volume.

5.5.2. Market share

Summit claims that it has lost market share over the injury analysis period to imports from China. Figure 3, below, shows Summit’s market share position over the injury analysis period.

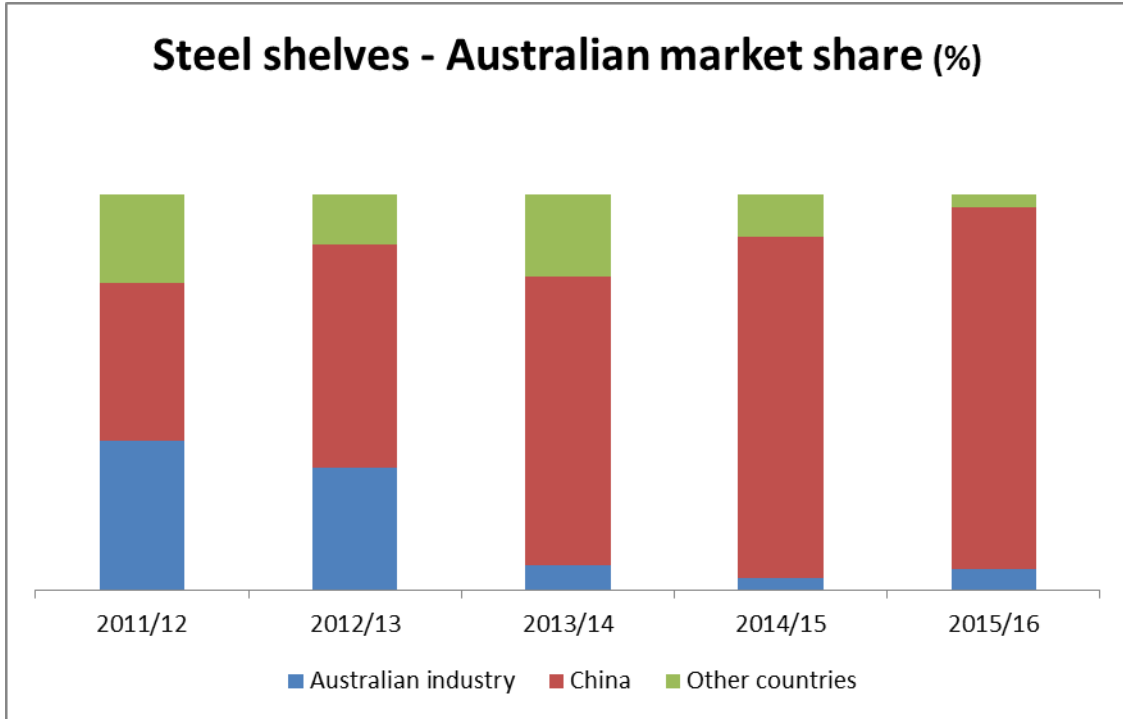


Figure 3: Summit’s market share over the injury period

The Commission observes that the market share of imports increased significantly over the injury analysis period, especially from China. In 2015/16, the market share of Chinese imports reached their highest level. The Australian industry’s market share increased slightly from 2014/15 to 2015/16, but is still at levels well below 2011/12 and 2012/13.

5.5.3. Conclusion – volume effects

Imported steel shelving represents approximately 95 per cent of the market, up from about 60 per cent at the beginning of the injury analysis period. Based on the information currently available, the Commission considers that there appear to be reasonable grounds for Summit’s claims that it has suffered loss of sales volume and reduced market share.

The Commission’s sales volumes and market share analysis is contained in **Confidential Appendix 2**.

5.6. 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 4, below, shows the movement in weighted average net prices (per unit) and unit cost to make and sell (CTMS - per unit) provided by Summit over the injury analysis period.

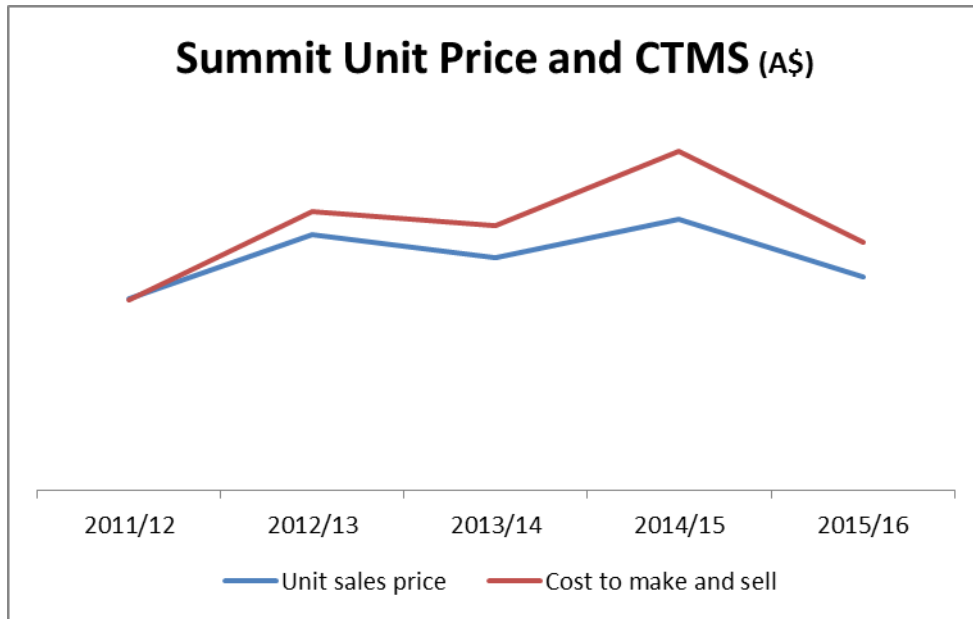


Figure 4: Summit’s unit domestic price and CTMS over the injury period

The figure above shows that Summit’s unit cost to make and sell exceeded its unit sales price during the injury analysis period. The Commission observes that at the beginning of the period, unit prices and CTMS were closely aligned with little margin. Unit prices fluctuated, but ended the period higher’ CTMS has increased faster, but came down during 2015/16.

Figure 5, below, outlines the annual sales volumes and unit sales prices for the injury analysis period.

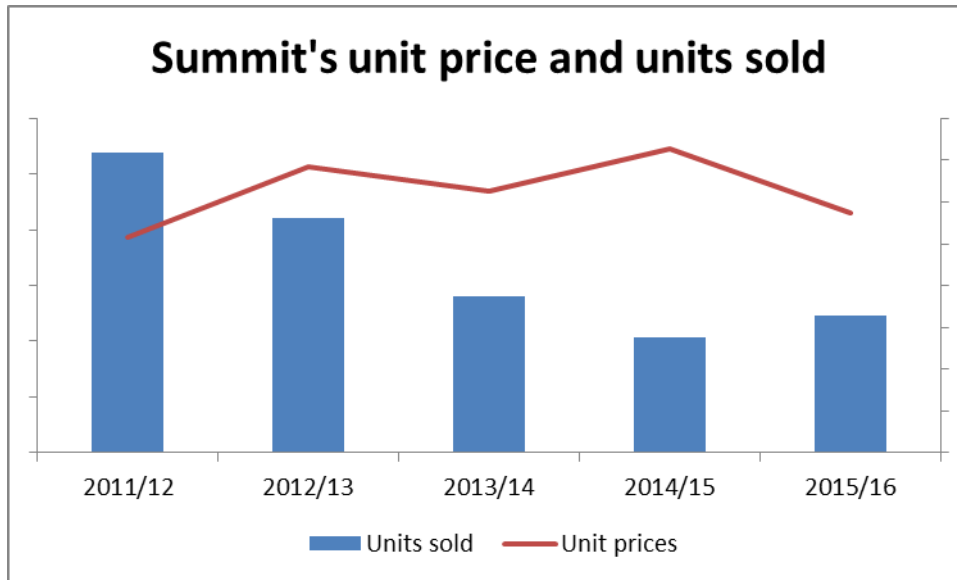


Figure 5: Summit's unit price and units sold over the injury period

The figure above shows that Summit has had a fluctuating unit price over the injury period with a steadier decline in sales volumes. The application claimed that despite an ongoing effort of the applicant to reduce costs and remain competitive, there has been a steady decline in domestic sales. This occurred despite Commission's analysis finding that the market increased over the injury analysis period

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

5.6.1. Conclusion – price effects

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

5.7. Profit and profitability effects

Figure 6, below, shows the total profit and per unit profitability over the injury analysis period.

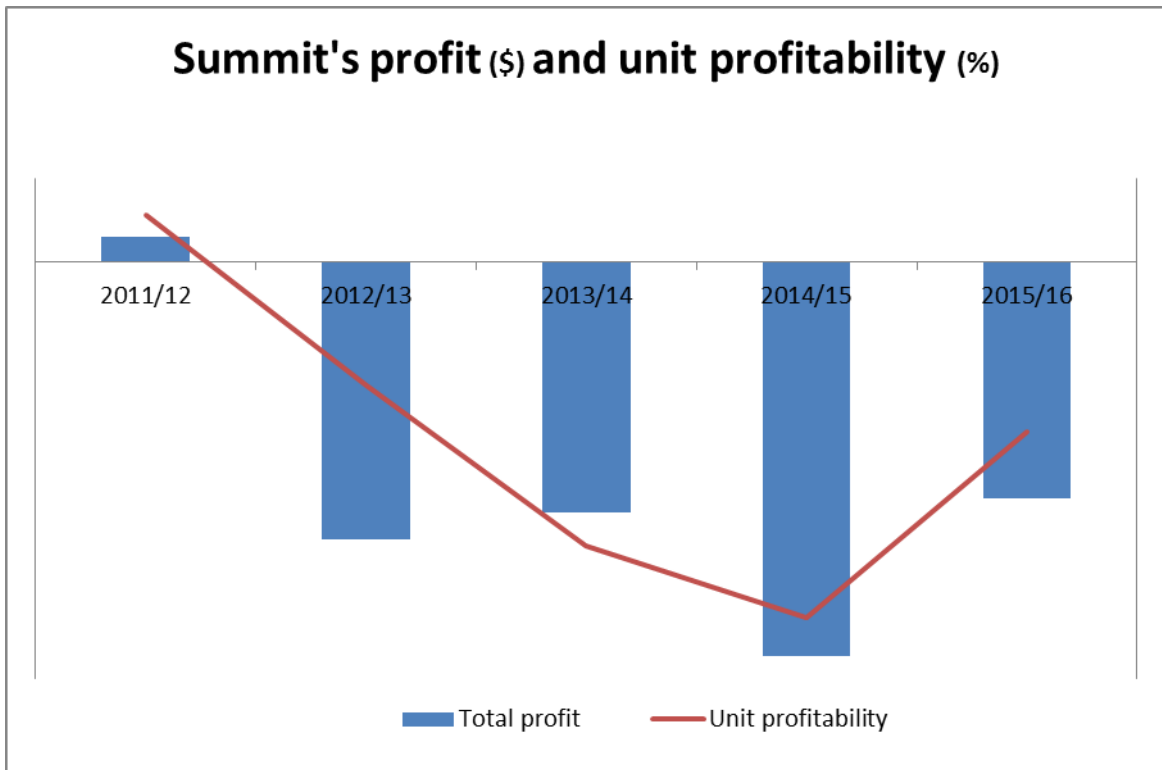


Figure 6: Summit's domestic profit and unit profitability over the injury period

This figure shows that Summit has experienced a continual decline in profit for like goods and unit profitability from the start of the injury analysis period. This is despite unit prices not demonstrating a similar pattern. This is likely due to corresponding fall in sales volumes in the same period. Both profit and profitability experienced an increase in 2015/16, though still remained negative.

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

5.7.1. Conclusion – profit and profitability effects

Based on the above there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of loss of profits and reduced profitability.

5.8. Other injury factors

Summit completed Confidential Appendix A7 as part of its application. This appendix contained annual data for the injury analysis period concerning other relevant injury factors set out below. Summit provided this data by financial year (FY) rather than quarterly. This means that the graphs below use a timeline per FY and include a period of three quarters to the end of the investigation period.

Figure 7, below, shows the reduction in capacity utilisation over the course of the injury analysis period.

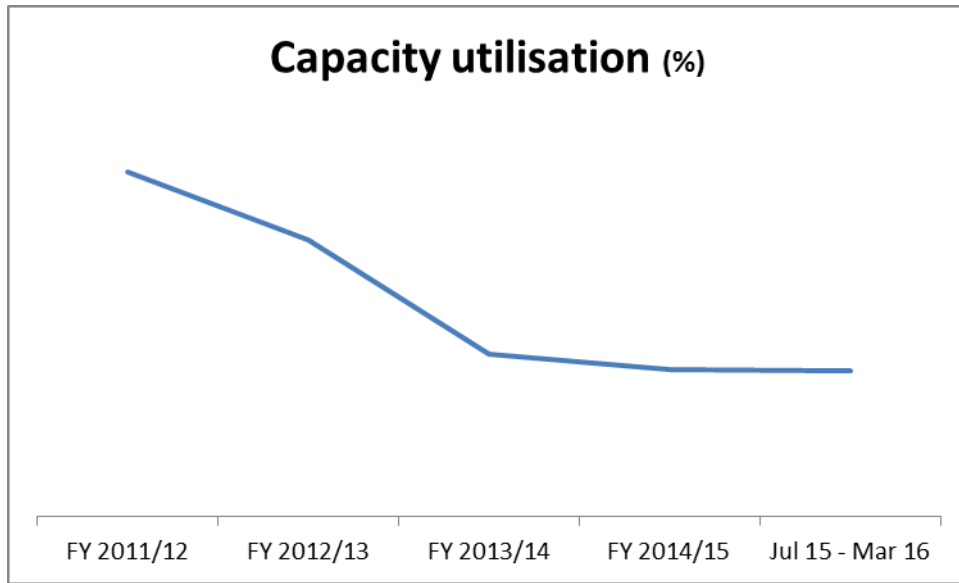


Figure 7: Summit's capacity utilisation over the injury analysis period

The figure above demonstrates that there was a consistent decline in the capacity utilisation of Summit for like goods over the injury period.

Figure 8, below, shows the reduction in revenue over the injury period.

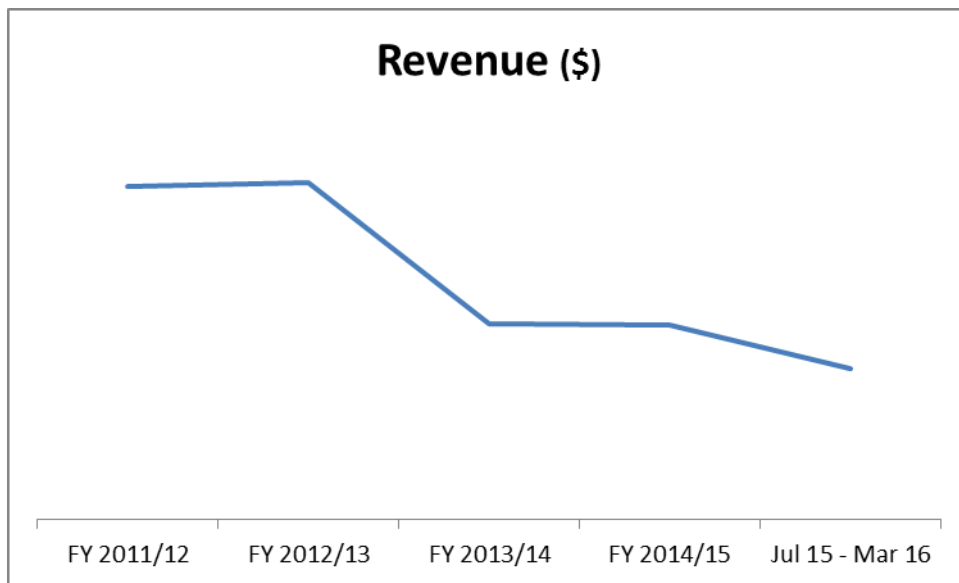


Figure 8: Summit's revenue over the injury analysis period

There has been a considerable decline in the revenue for like goods over the injury period.

Figure 9, below, shows the decline in employment index over the course of the injury period.

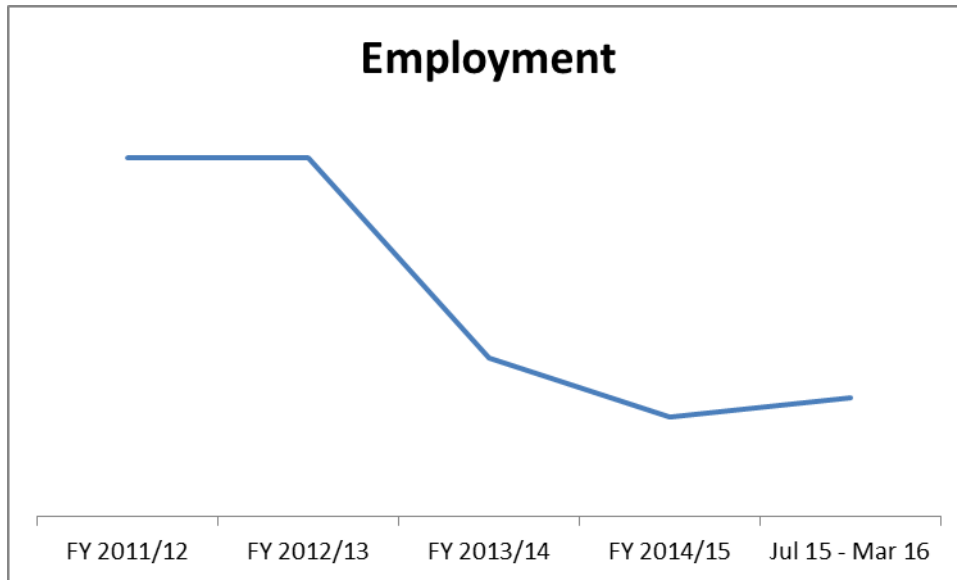


Figure 9: Summit's employment index over the injury analysis period

The applicant made reductions to employee numbers over the injury analysis period. However, the Commission notes that overall employee numbers were originally low for the company and production of like goods.

5.8.1. Conclusion – other injury factors

The Commission has considered the other injury factors outlined above and there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury with respect to several injury factors. These will be considered further during the course of the investigation.

The Commission's assessment of the other injury factors of the Australian industry is contained in **Confidential Appendix 5**.

6. Reasonable grounds – causation factors

6.1. Findings

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

6.2. Cause of injury to the Australian industry

6.2.1. Legislative framework

Under section 269TG and 269TJ, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty and countervailing duty notice is that the material injury suffered by the Australian industry was caused by dumping and subsidisation. This issue is considered in the following sections.

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

6.3. The Applicant's claims

The table below summarises the causation claims of the applicant.

Injury caused by dumping and/or subsidisation
<p><u>Price Effects</u></p> <ul style="list-style-type: none"> • Price undercutting by Chinese imports has caused Summit to either reduce prices or prevent normal price increases. <p><u>Volume effects</u></p> <ul style="list-style-type: none"> • As a result of price undercutting by Chinese exporters, sales volumes have been lost. <p><u>Market Share</u></p> <ul style="list-style-type: none"> • As a result of price undercutting from imported steel shelving from China, the market share of the Australian industry has decreased over the injury analysis period. <p><u>Profit Effects</u></p> <ul style="list-style-type: none"> • Reduced sales volumes and revenues have had a direct impact on profits and profitability; and • Reduced utilisation of production capacity and reduced sales have contributed to an increase in unit CTMS, thus impacting profitability.
Injury caused by other factors
<p><u>Other anti-dumping duties</u></p> <ul style="list-style-type: none"> • Summit has claimed that anti-dumping duties applied by Australia on galvanised steel imports from China have caused injury to the Australian industry by increasing the price of galvanised steel for downstream users such as Summit.

6.3.1. The Commission's assessment

6.3.1.1. Price effects

The Commission notes that the market for steel shelving appears to have expanded significantly in the past two financial years. The Commission accepts that customers can purchase either from the applicant or from an import supply source. Import offers and movement in the price of import offers can therefore be used to negotiate prices with the applicant. The Commission considers that the applicant is obliged to respond to the price of imports in order to remain price competitive.

Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian industry.

The evidence in the application supporting price undercutting relies on market intelligence gathered by the applicant and DIBP import data.

Figure 10 below, shows the weighted average export price per unit (at cost, insurance and freight (CIF) terms) from China compared to Summit's per unit price from FY2011 to FY2015. The export price data was sourced from the imports database of the DIBP.

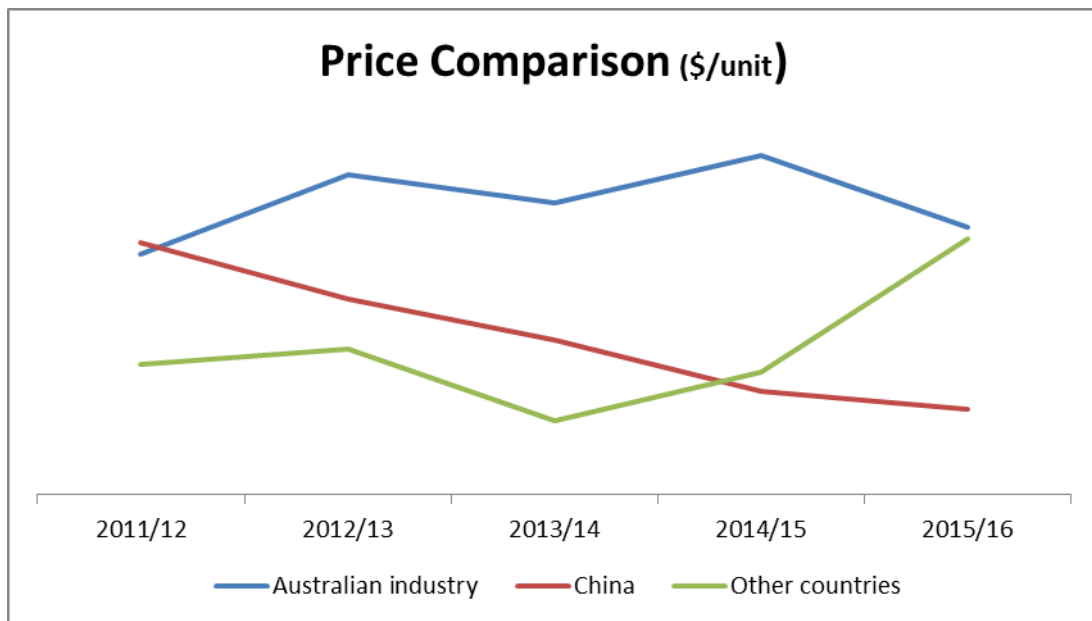


Figure 10: Comparison of import price and domestic Australian price

As shown above in Figure 10, the weighted average CIF export price of steel shelving from China has been lower than that of the Australian industry, with one exception in 2011/12. However, since that time, the difference between prices has increased. The prices of Chinese goods fell again in 2015/16, which is the investigation period.

The Commission also observes that unit prices of imports from other countries are also significantly lower than the Australian industry. However, in 2015/16, the unit prices increased significantly, almost being comparable to the Australian industry's prices. Volumes of goods imported from other countries have been significantly lower, especially since 2011/12. During the investigation, the Commission will look to further refine import data in order to obtain a clearer picture of the market.

Based on this analysis, there appears to be reasonable grounds to support the claim that imports from China have consistently undercut the Australian industry's prices. The Commission notes that imports from countries other than China were also consistently below Australian prices, however, the volume of imports from these countries is low and would not be expected to have significant impacts on the prices in Australia.

6.3.1.2. Volume effects

In Figure 11, below, the Commission has charted the volume of dumped imports against the weighted average FOB export price per unit for Chinese imports over the injury analysis period. As illustrated, over the injury analysis period, the price of allegedly dumped imports has been falling steadily, while volume has increased, especially from 2012-13.

During the injury analysis period, sales volumes for the Australian industry have trended downward, while Chinese import volumes increased significantly, though experiencing a drop during 2015/16. During the same period, the price per unit of Chinese steel shelving fell, undercutting the Australian industry's prices. In the absence of price undercutting by exports from China, there are reasonable grounds to consider that the Australian industry's sales volumes would not have declined as much during the injury analysis period.

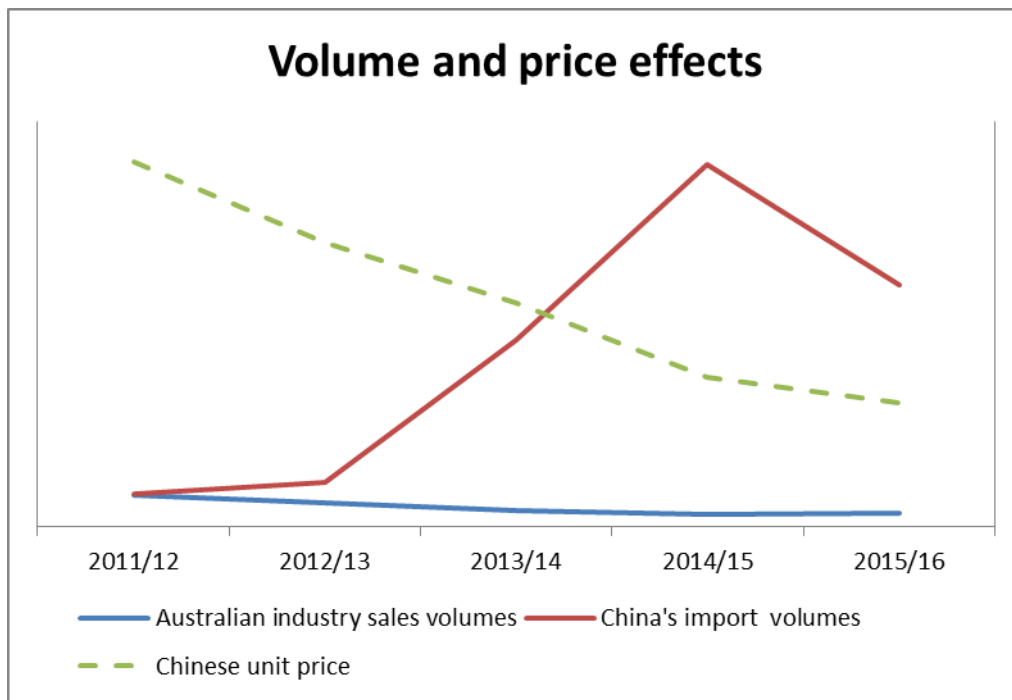


Figure 11: Effect on volume over the injury period

6.3.1.3. Market share

As demonstrated by the above analysis, Chinese imports of steel shelving significantly undercut the Australian industry's prices. At the same time, import volumes of Chinese goods increased significantly from 2012/13. The Commission considers it reasonable that the combination of these two factors resulted in the Australian industry losing significant market share over the injury analysis period.

6.3.1.4. Profit effects

Summit's unit profit over the injury analysis period contrasts with its unit price, as discussed in section 5.7. The Australian industry's sales volumes declined significantly over the injury analysis period, despite prices not falling as quickly.

In its application, Summit claimed that its profits started declining as a result of its prices being undercut by Chinese imports. Summit claims that it worked to reduce unit costs, but could not reduce them below unit prices.

Based on the Commission's finding that Chinese imports have undercut the Australian industry, as well as significantly increasing sales volumes, the Commission considers it reasonable that the resultant sharp fall in sales volumes and market share for the Australian industry, led to a decline in profit and profitability.

6.3.1.5. Comparison of export price and non-injurious price

As an additional test to establish whether there is a causal link between the alleged dumped and subsidised goods and material injury, the Commission sought to compare weighted average export prices of alleged dumped imports with an estimate of a non-injurious price (NIP) for the 12 months ending 31 March 2016.

To calculate the estimated NIP, the Commission estimated the unsuppressed selling price (USP) for steel shelving using the unit sales revenue of Summit. The Commission used a USP based on a period when Summit last recorded a per unit profit, and just before the significant increase of Chinese goods into the Australian market.

The Commission then deducted amounts from that USP for importer SG&A and profit, including into-store costs, Customs duty and overseas freight. These amounts were based on data from Summit, based on reasonable estimations of its own costs and market intelligence. These calculations provided for a NIP at the FOB level.

The weighted average export price for the investigation period was lower than the NIP.

The Commission considers the comparison of export price to the NIP to be a reasonable indicator of injury to the Australian industry.

The Commission's calculations of the NIP and the comparison with export price are at **Confidential Appendix 5**.

6.3.2. Conclusion – material injury caused by dumping and subsidisation

The applicant did not provide any evidence of other potential causes of injury other than alleged dumped goods. The Commission will consider other potential injury factors during the investigation.

The Commission considers that based on:

- the size of the dumping margins;
- the likelihood that Chinese exporters of steel shelving have benefited from countervailable subsidies; and
- the preliminary assessment of price undercutting

there appear to be reasonable grounds to support the claim that dumping and subsidisation of steel shelving exported from China has caused material injury to the Australian industry.

7. Appendices and attachments

Appendices	Confidentiality	Title
Appendix 1	Public	Legislative framework
Appendix 2	Confidential	Market and volume
Appendix 3	Confidential	Commission's calculations of export price
Appendix 4	Confidential	Commission's calculations of normal value
Appendix 5	Confidential	Commission's injury analysis

Attachments	Confidentiality	Title
Attachment 1	Public	Public notice ADN 2016/65
Attachment 2	Public	History of anti-dumping investigations on steel shelving
Attachment 3	Public	List of countervailable US subsidies
Attachment 4	Public	Summit's manufacturing process

Appendix 1 – Legislative framework

Part XVB of the *Customs Act 1901*

Division 1A – Anti-Dumping Commission and Commissioner

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

269T Definitions

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

...⁴

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 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

⁴ 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.

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- (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*.

269TAAC Definition—countervailable subsidy

- (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

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- (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.

...

269TAAD Ordinary course of trade

- (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

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- (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.

269TAA Arms length transactions

- (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

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- (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.

269TAB Export price

- (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

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- (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.

269TAC Normal value of goods

- (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);

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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 arms 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 arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;

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- (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 arms 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;

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- (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.

...

269TACB Working out whether dumping has occurred and levels of dumping

(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):

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- (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

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- (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.

269TACC Working out whether a financial contribution or income or price support confers a benefit

- (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;

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- (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.

269TACD Amount of countervailable subsidy

- (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.

269TAE Material injury to industry

- (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:

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- (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:

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- (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:

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- (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

269TB Application for action under Dumping Duty Act

- (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

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- (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.

269TC Consideration of application

- (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:

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- (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

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- (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:

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- (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

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(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.

269TDA Termination of investigations

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?

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- (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;

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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:

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- (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;

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(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 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 that has been, or may be, caused by those exports is negligible – subsection (14) does not apply in relation to those countries;
- (b) if the Commissioner is satisfied that such injury 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 (14) applies to that country.

Cumulative assessment of injury or hindrance

(14B) For the purpose of subsection (13A) or (14A), the Commissioner must consider the cumulative effect of exportations of goods to Australia from 2 or more countries of export if the Commissioner is satisfied that:

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

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- (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) for the purposes of subsection (13A)—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) for the purposes of subsection (13A)—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
- (e) for the purposes of subsection (14A):
 - (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
- (f) 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.

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:

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- (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;

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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

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- (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: <ul style="list-style-type: none"> (a) in response to market signals; and (b) without significant interference by a government of the country of export (see

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Matters to which the Minister must have regard	
Item	Matter
	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

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- (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.

Attachment 2: History of anti-dumping investigations on steel shelving

22 August 2000	Summit lodges application requesting that the Minister publish a dumping duty notice in respect of certain steel framed storage shelves in kit form exported to Australia from the People's Republic of China (China).
15 September 2000.	Case 031 – Certain steel shelves exported from China – initiated by the then Australian Customs Service.
15 March 2001	Final report for Case 031 published. Customs found that steel shelving kits were exported to Australia from China at dumped prices and that this has caused material injury to the Australian industry. Dumping margins between 22 per cent and 105 per cent were established.
19 April 2001	Case 044 – Certain steel shelves exported from Thailand – initiated by the then Australian Customs Service.
16 August 2001	Final report for Case 044 published. Customs found that the majority of steel shelving exported to Australia from Thailand over the investigation period was at dumped prices. The weighted average dumping margin was 47.83 per cent.
2006	Duty measures on steel shelves imported from China and Thailand expire. There was no request for a continuation enquiry.

Attachment 3: List of countervailable subsidies considered in US case

China [C-570-019] - Programs Determined to Be Countervailable

1. Two Free, Three Half
2. Provision of Hot Rolled Coil Steel
3. Provision of Electricity for LTAR
4. Foreign Trade Bureau Award
5. Export Credit Insurance Subsidy
6. Export Subsidy for High-Tech Merchandise
7. Clean Energy Measure Subsidy
8. Innovative Growth Grant

Programs Not Determined to Confer a Benefit or Not Used During the Period of Investigation

9. Income Tax Reductions for Export Oriented FIEs
10. Income Tax Benefits for FIEs Based on Geographic Location
11. Local Income Tax Exemption and Reduction Programs for Productive FIEs
12. Income Tax Reduction for High or New Technology Enterprises
13. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
14. Export Seller's Credits from the Export Import Bank of China
15. Export Buyer's Credits from the Export Import Bank of China
16. Import Tariff and VAT Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
17. Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone
18. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
19. VAT Refunds for FIEs Purchasing Domestically Produced Equipment
20. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands
21. Special Fund for Energy Savings Technology Reform
22. International Market Exploration (SME) Fund
23. Export Assistance/Outward Expansion Grants in Guangdong Province
24. Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises
25. Technology to Improve Trade Research and Development Fund
26. Rental/Purchase Assistance in Ningbo Municipality Yinzhou District Southern Commercial Zone
27. Exhibition Subsidy