



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

Consideration report number: 350

Application for a dumping duty notice

Submitted by: Marpac Pty Ltd

In relation to resealable can end closures (TRFs) exported to Australia from the Republic of India, Malaysia, the Republic of the Philippines and the Republic of Singapore

May 2016

Abbreviations

Abbreviations/short form	Full reference
the Applicant	Marpac Pty Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	The Commissioner of the Anti-Dumping Commission
the Act	<i>Customs Act 1901</i>
DIBP	Department of Immigration and Border Protection
the goods	the goods under consideration or the goods subject of the application
India	The Republic of India
Malaysia	Malaysia
Parliamentary Secretary	The Assistant Minister for Science and Parliamentary Secretary to the Minister for industry, Innovation and Science
the Philippines	The Republic of the Philippines
Singapore	The Republic of Singapore
TRFs	Resealable can end closures (referred to as tagger, ring and foil ends, or TRFs)

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1. Findings and recommendations

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application (**Public Attachment 1**) under subsection 269TB(1)¹ of the *Customs Act 1901* (Customs Act) by Marpac Pty Ltd (Marpac) for the publication of a dumping duty notice in respect of resealable can ends (TRFs) that have been imported into Australia from the Republic of India (India), Malaysia, the Republic of the Philippines (the Philippines) and the Republic of Singapore (Singapore).

Marpac alleges that there has been injury caused by imported TRFs into Australia from India, Malaysia, the Philippines and Singapore at dumped prices. Marpac also allege that these dumped imports have prevented Marpac from expanding its business to the extent that the establishment of an Australian industry for TRFs has been materially hindered. 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 **Appendix 1**.

1.1. Findings

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

- the application complies with the requirements of subsection 269TB(4) (as set out in section 2.2 of this report);
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in sections 3, 4 and 5 of this report).

1.2. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application and initiate an investigation to determine whether a dumping 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
- details of the Australian market from 1 April 2012 will be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Public Attachment 2**) 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 & receipted by the Commissioner under subsections 269TB(1) and (5)	4 April 2016	The Commission received an application from Marpac (the Applicant) alleging material injury has been caused and that it has been hindered from establishing an Australian industry as a result of dumped TRF imports that have been exported to Australia from India, Malaysia, the Philippines and Singapore.
	8 April 2016	The Commission notified Marpac that the application contained critical and important deficiencies which if left unaddressed, create doubt as to the reasonableness of the grounds for the publication of dumping duty notice.
Applicant provided further information in support of the application under subsection 269TC(2A)	15 April, 22 April, 5 May 2016	Marpac provided additional data and information in support of their application without having been requested to do so. In accordance with subsection 269TC(2A), the application is taken to include that additional information and to have been lodged and received. Accordingly, the 20 day period for consideration of the application was restarted.
Consideration decision due under subsection 269TC(1)	25 May 2016	The Commissioner shall decide whether to reject or not reject the application within 20 days after Marpac provided further information.

2.2. Compliance with subsection 269TB(4)

2.2.1. Finding

Based on the information submitted by Marpac, 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 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)	Marpac 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)	Marpac provided: <ul style="list-style-type: none"> • a completed declaration; • answers to all questions that were required to be answered by Marpac; • all completed appendices; and • sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.
Signed in the manner indicated in the form under subsection 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of Marpac.
Supported by a sufficient part of the Australian industry under subsection 269TB(4)(e) and determined in accordance with subsection 269TB(6)	As detailed in section 2.4, the Commission is satisfied that there is an Australian industry producing like goods. Marpac has provided information concerning its production of TRFs and has stated that it has been the sole manufacturer of TRFs since initiating production in January 2014. Therefore, given that Marpac is the sole Australian manufacturer of TRFs, the Commission is satisfied that the application demonstrates; <ul style="list-style-type: none"> • support by more than 50% (measured by production) of the Australian industry manufacturing TRFs; and • Marpac manufactures more than 25% of the total production of TRFs in Australia.
Lodged in the manner approved under section 269SMS for the purposes of subsection 269TB(4)(f)	The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS ² , being via email to the Commission's nominated email address detailed in that instrument.

2.3. The goods the subject of the application

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

Full description of the goods, as subject of the application
<p>The goods under consideration (the goods) are resealable can end closures (TRFs) comprising:</p> <ul style="list-style-type: none"> • a tinplate outer ring with or without compound; • an aluminium foil membrane for attachment to the outer ring; and • a plug or tagger, which fits into the outer ring.

² A copy of the instrument can be found on the Commission's website at www.adcommission.gov.au

Further information				
<p>TRFs are commonly manufactured by the TRF industry in the following nominal sizes (diameters):</p> <ul style="list-style-type: none"> • 73 mm; • 99 mm; • 127 mm; and • 153/4 mm. <p>The goods may be coated or uncoated and/or embossed or not embossed.</p> <p>The goods are referred to locally as TRF ends (Tagger, Ring and Foil ends, or TRFs) and can also be known as RLTs (Ring, Lid, Tagger), RLFs (Ring, Lid, Foil) or Penny Lever Ends.</p> <p>Goods specifically excluded from this application are TRFs of nominal size:</p> <ul style="list-style-type: none"> • 52 mm; • 65 mm; • 189 mm; and • 198 mm. <p>There are typical specifications of the goods, however there may be some variation in the specifications which does not affect the end use of the TRF. Technical drawings and photographs of the goods are detailed in Marpac's application.</p>				
Tariff classification (<i>Schedule 3 of the Customs Tariff Act 1995</i>)				
<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>	<i>Duty rate</i>
8309.90.00	10	Nil	Stoppers, Caps and Lids (including crown corks, screw caps and pouring stoppers), capsules for bottles. Threaded bungs, bung covers, seals and other packing accessories, of base metal: <i>Other</i>	<p>All countries under AANZFTA = 0%, which include Malaysia, the Philippines and Singapore</p> <p>India = 5%</p>
Previous investigations				
There have been no previous investigations into the dumping of TRFs.				
Other administrations				
The Commission is not aware of other jurisdictions that have completed or are currently undertaking a dumping investigation in relation to TRFs.				

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:

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

2.4.2. 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 is, or is likely to be established, an Australian industry in respect of like goods.

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

2.4.3. Locally produced like goods

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

Factor	The Applicant's claims	The Commission's assessment
Physical likeness	Marpac claims that the goods produced by the Australian industry are physically alike in all practical aspects.	Marpac currently manufacture one size of the goods (73 mm) and based on information provided, has capacity to manufacture the larger sizes. The Commission considers that the goods produced by the Australian industry appear to be physically like to the imported goods, having similar characteristics: <ul style="list-style-type: none"> • raw materials; • size range, insofar as the goods currently manufactured and potentially manufactured; • shape and general appearance; • durability.
Commercial likeness	Marpac claims that the goods produced by the Australian industry are commercially alike as they compete in the same market	The Commission considers that the goods produced by the Australian industry appear to be commercially alike to the imported goods, given that the goods: <ul style="list-style-type: none"> • are price competitive; • have the same customers; • have the same distribution channels.
Functional likeness	Marpac claims that the goods produced by the Australian industry are functionally alike as they are both used for the same purpose.	The Commission considers that the goods produced by the Australian industry appear to be functionally alike to the imported goods, as the goods: <ul style="list-style-type: none"> • have the same end use; • are substitutable.
Production likeness	Marpac claims that the goods produced by the Australian industry are produced in the same method as the imported goods. See section 2.4.4 flowchart of Marpac's manufacturing process.	The Commission considers that the goods produced by the Australian industry appear to be, in all practical aspects, produced in the same or similar method as the imported goods, given that: <ul style="list-style-type: none"> • standardised manufacturing processes for the goods exist; • the technology and machinery used are fit for purpose, with no requirement for modification.

Commission's assessment

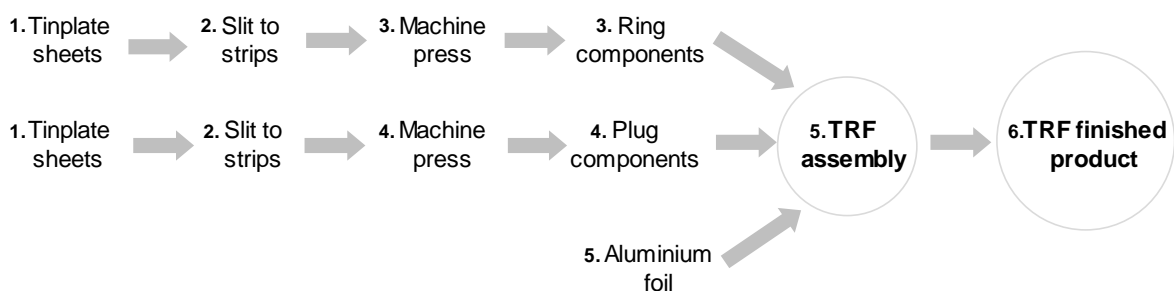
Based on the above assessment, the Commission considers that the goods produced by the Australian industry are like goods to the imported goods.

2.4.4. Manufacture in Australia

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

The Applicant's claims

The following flowchart was provided by Marpac to describe their fundamental manufacturing process of TRFs in Australia.



The two raw material components, tinplate and aluminium foil are imported.

The Commission's assessment

The Commission is satisfied that all TRF manufacturing processes are carried out in Australia and hence TRFs are considered to have been wholly manufactured in Australia.

2.5. Australian industry information

Marpac commenced manufacture of TRFs in January 2014 as a result of perceived quality issues with imported TRFs. Prior to this Marpac imported TRFs for use in its own steel and composite can manufacturing business. Marpac supplied its own needs by internally transferring TRFs to its can manufacture operations, but also identified opportunities to manufacture and sell TRFs to third-party can manufacturers in Australia. Such third-party sales would improve Marpac's return on investment and capacity utilisation.

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

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

A6.2	Cost to make and sell (& profit) – Export sales	Not applicable
A7	Other injury factors	Yes
General administration and accounting information – Marpac Pty Ltd		
History	Marpac commenced operations in 2004 and is a registered entity with the Australian Business Register. Manufacture of TRFs commenced January 2014.	
Ownership	Marpac Pty Ltd is the trading name for the trustee for the Marpac Unit Trust, which is a privately owned company and registered with the Australian Securities and Investment Commission (ASIC). The Marpac Unit Trust is wholly owned by the Maher Family Trust as 100% shareholder.	
Operations	Marpac's head office is located in Melbourne, Victoria and its operations involve the manufacture of food can packaging in the following product lines: <ul style="list-style-type: none"> • Composite cans, with metal end; • Composite cans, with plastic end; • Irregular steel cans; • TRF lids; • Flat panel customer ends; • Stackable customer ends. 	
Financial year	1 July – 30 June financial year	
Audited accounts	Audited accounts were not provided since Marpac is a privately owned company, however independently prepared Financial Accounts for the financial year 2015 were provided at Confidential Attachment A6.3.2 to the application.	
Annual reports	An Annual Report was not provided as Marpac is a privately owned company.	
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 to make and sell information provided.	The Commission has no significant concerns regarding the information provided on other injury factors.
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 since manufacturing commenced in 2014 and the wider Australian market between 1 April 2012 and 31 March 2016.		

2.5.1. Market description

The Commission understands that the broader global food packaging market is highly segmented with horizontal supply chains and intense competition between companies. TRF manufacture is globally diffuse, competitive and is a high volume, generally low margin industry. The applicant claims that raw materials and labour are the major cost inputs into TRF manufacture.

The TRF end is an airtight, resealable closure (lid) used primarily for cans containing dry, powdered products with hygroscopic properties³. TRFs are traditionally used for food products that require a longer shelf life such as gravy, chocolate and milk powders, coffee and nuts. Other lid closures, such as 'easy peel', flat panel or beaded ends are not preferred for longer shelf life products as these ends do not have a higher reclosed hermeticity⁴ as the TRF end. The applicant claimed that there is no market segmentation within the TRF market, other than size. It is a commodity specialist end used for dry products and is not considered to be a high-

³ The propensity to absorb moisture from the atmosphere resulting in powders becoming very hard and sometimes unusable.

⁴ Complete closure or seal that is airtight and ensures perfect waterproofing.

end or low-end commodity.

Historically, TRF components were manufactured by the composite and metal can⁵ industry in Australia, however manufacture slowly declined, ending in 2008. At this point domestic manufacture was totally replaced by imports of TRFs.

The applicant claimed that in Australia today, a canned food producer/filler would typically establish what can properties must exist for its product and these requirements or specifications are sourced back down the supply chain.

The composite and metal can industry typically does not manufacture can components and is the primary customer of the components industry. In Australia today, Marpac is the only manufacturer of TRFs.

The diagram below describes a typical supply chain at a high-level and the market participants in the wider food can packaging industry.

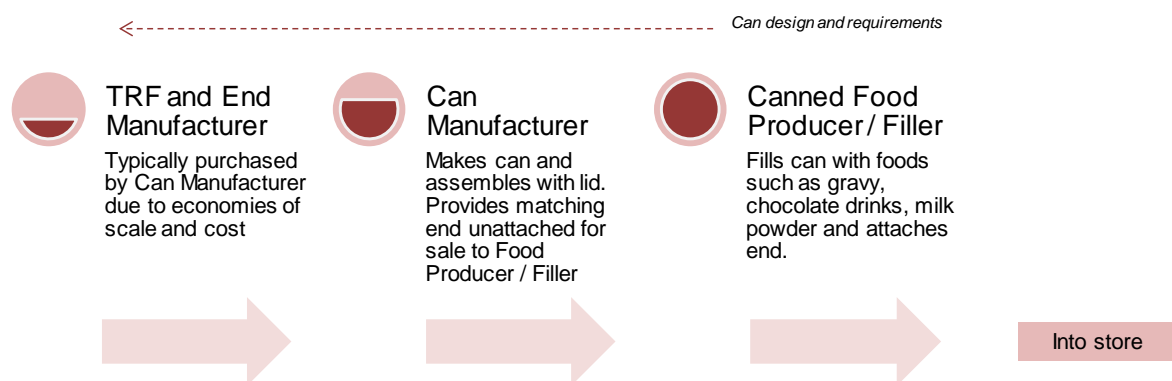


Figure 1: The Commission's understanding of the composite and metal can industry supply chain and market participants

2.5.2. Market size

Marpac provided an estimate of the size of the Australian market for TRFs using:

- Marpac's industry experience and knowledge; and
- Australian Bureau of Statistics (ABS) import data.

The ABS data is unable to distinguish between all the goods under the tariff code, so the Commission examined the data provided in Marpac's application at Confidential Appendix A2 and data from the Department of Immigration and Border Protection (DIBP) import database to prepare an estimate of the size of the Australian TRF market for the period 1 April 2012 to 31 March 2016 on a quarterly basis for *all* sizes of TRFs under the goods description. The Commission notes that the DIBP data also proved to be not completely reliable, as the goods descriptions in the data were not specific enough to identify with certainty that specific shipments entered contained the goods the subject of the application.

The Commission's estimate is presented in the below figure.

⁵ A composite can is typically a can made with cardboard sides or cardboard cylinder with a metal or plastic closure at either end. A metal can is typically made with the sides or cylinder made of metal and a metal closure at both ends.

Australian market - volume of TRFs

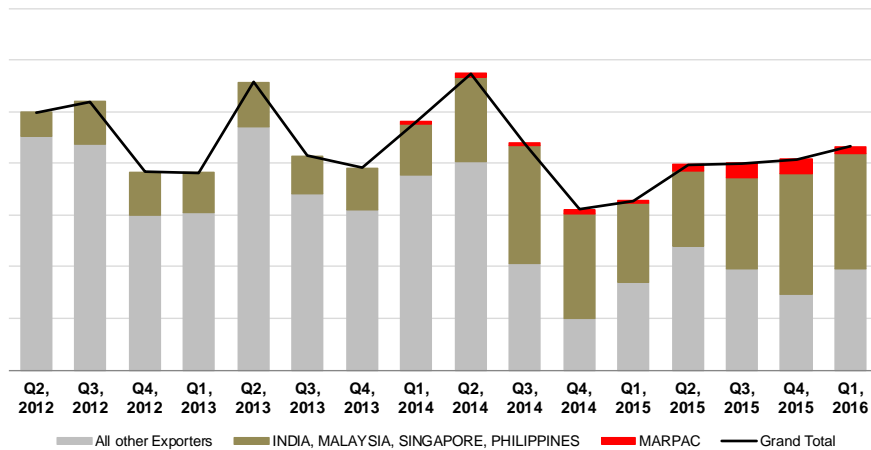


Figure 2: Estimate of the Australian market for imports and domestic manufacture of TRFs

The Commission's assessment of the Australian market size for TRFs forms **Confidential Attachment 1**.

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 Marpac's claims that:

- the goods have been exported to Australia from India, Malaysia, the Philippines and Singapore at allegedly dumped prices;
- the estimated dumping margin for exports from each of India, Malaysia, the Philippines and Singapore is greater than 2% and therefore is not negligible, and
- the estimated volume of goods exported from each of India, Malaysia, the Philippines and Singapore that appear to have been allegedly dumped is greater than 3% 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)⁶ 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 section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

⁶ The Parliamentary Secretary is the relevant decision-maker in relation to the publication of a dumping duty notice. 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 Marpac to estimate export prices and the evidence relied upon.

Country	Basis of estimate	Details
India Malaysia, Philippines, Singapore – <i>all sizes</i> ;	<p>Marpac calculated deductive export price for the calendar year 2015 and using the following data as evidence:</p> <ul style="list-style-type: none"> • Price quotes from Australian customers; • Adjustments for import costs and duties. • ABS data 	<p>Marpac claimed that ABS data was not a preferable source for the purpose of estimating export price as the ABS data would also include a large component of non-TRF products imported under the same general tariff classification.</p> <p>Nonetheless, Marpac interrogated ABS data to calculate an estimated FOB export price per shipment.</p> <p>Marpac also utilised known Australian customer pricing for all sizes of TRFs to estimate an FOB export price by taking into consideration various adjustments relating to import costs from specific countries.</p>

3.3.3. The Commission's assessment

The Commission assessed Marpac's methodology and calculations in accordance with section 269TAB, including the supporting evidence provided. Noting that the information obtained from the DIBP import database was not wholly reliable, insofar as the goods descriptions entered were not specific in all shipment lines and were entered on broad descriptions. The Commission nonetheless assessed the reasonableness of Marpac's data and calculations against the data available in the DIBP import database that appeared to be most reliable. .

The Commission is of the opinion that in this particular case the use of ABS data is not preferred for an estimate of FOB export price due to the large component of non-TRF products imported under the same general tariff classification as TRFs.

The Commission understands that the known Australian customer prices provided by Marpac and used as the basis for calculating export prices is for future pricing and may not be indicative of the actual prices paid by Australian customers during the investigation period. Hence, the Commission utilised the data in the DIBP database to estimate FOB export prices based on import transactions that were reasonably identifiable as TRFs.

The Commission then calculated an export price for each country, where possible.

The Commission accepts that an applicant can only provide information that is reasonably available to it. The Commission tested Marpac's export price calculations and considers that Marpac's approach has been reasonable for the purposes of this application.

The Australian industry's calculation of export price and the Commission's comparative calculations form **Confidential Attachment 2**.

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
- whether 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 Marpac to estimate normal values and the evidence relied upon.

Country	Basis of estimate	Details
India Malaysia, Philippines Singapore - all sizes	Constructed normal value under subsection 269TAC(2)(c).	<p>Marpac did not have access to domestic TRF selling prices and accordingly constructed the normal value in accordance with subsection 269TAC(2)(c). Marpac sourced independent data and quotes where necessary to calculate:</p> <p><i>Cost to make:</i></p> <ul style="list-style-type: none"> • raw materials, including import duties and transport; • employee and labour expenses; • overheads; and • packaging and domestic freight. <p><i>Selling, general & administrative expenses:</i></p> <ul style="list-style-type: none"> • SG&A expenses, • depreciation; and • finance. <p><i>Profit:</i></p> <ul style="list-style-type: none"> • based on publicly available financial statements of TRF manufacturers <p>Duty drawback (India only):</p> <ul style="list-style-type: none"> • India operates the CENVAT duty drawback scheme <p>SG&A, profit and operational expenses were calculated from publicly available 2014-2015 financial statements of manufacturers of each country, or where this was not possible, a reasonable substitute manufacturer was used.</p>

3.4.3. The Commission's assessment

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

In the absence of domestic price lists for the countries of export, the Commission considers that the approach used to estimate normal value is reasonable. Marpac provided evidence and rationale to support the treatment of calculation inputs.

The Commission tested Marpac's calculations and considers that the source and degree of evidence provided is reasonable for the purposes of this application.

At the investigation stage, the Commission will seek pertinent information from manufacturers and exporters so that Marpac's claims can be thoroughly assessed.

The Australian industry's estimate of normal value and the Commission's assessment forms **Confidential Attachment 3**.

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 table below summarises the dumping margins estimated by Marpac. Dumping margins are expressed as a percentage of the export price.

Country	The Applicant's estimate
India	46%
Malaysia	60%
The Philippines	86%
Singapore	102%

Assessed at the levels above, the dumping margins for all nominated countries are not negligible.

The Commission tested Marpac's preliminary dumping margins using data from the DIBP import database. The Commission considers that whilst the information in the DIBP import database is inconclusive, it is not unreasonable to utilise all information available to perform its assessment of Marpac's calculations.

The Commission considers that the data and calculations provided in Marpac's application are reasonable for the purpose of assessing whether there appear to be reasonable grounds for the publication of a dumping duty notice.

The Commission's assessment of Marpac's dumping margin calculations forms **Confidential Attachment 4**.

4. Reasonable grounds – injury to the Australian industry

4.1. Findings

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

- loss of sales volume;
- reduced market share;
- price suppression; and
- reduced profits;

Other factors:

- reduced employment;
- reduced return on investment;
- reduced capacity utilisation; and
- reduced cash flow.

Hindrance to the establishment of an Australian industry:

- unrealised sales volume;
- unrealised market share;
- unrealised profits;
- unrealised profitability;
- unrealised cash flow;
- unrealised return on investment;
- unrealised employment; and
- unrealised capacity utilisation.

The Commission notes that on the evidence provided in Marpac's application there are reasonable grounds to pursue an enquiry into the hindrance to the establishment of an Australian industry during the course of the investigation.

The Commission's assessment of injury can be found in **Confidential Attachment 5**.

4.2. Legislative framework

Under section 269TG of the Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the Australian industry has experienced material injury or that the establishment of an Australian industry has been or may be materially hindered. This issue is considered in the following sections.

4.3. The applicant's claims

Marpac claims that the Australian industry has been injured through:

Economic factors:

- loss of sales volume;
- reduced market share;
- price suppression; and
- reduced profits.

Other factors:

- reduced return on investment;
- reduced ability to raise capital;
- reduced investment; and
- reduced capacity utilisation.

Hindrance to the establishment of an Australian industry:

- unrealised sales volume;
- unrealised market share;
- unrealised profits;
- unrealised profitability;
- unrealised cash flow;
- unrealised return on investment;
- unrealised employment; and
- unrealised capacity utilisation.

Marpac claims that the point of significant injury commenced in the third quarter (Q3) of 2015 (July to September 2015), as a result of the revision of previously agreed to pricing and volumes between Marpac and Australian customers and the request to better lower price quotes offered by exporters. The effect of this price revision and Marpac's inability to meet the lower prices initiated Marpac's injury and hindrance to its establishment.

4.4. Approach to injury analysis

4.4.1. Legislative framework

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

4.4.2. The Commission's approach

The Commission performed its injury analysis with regard to:

- Sales, cost and financial data provided by Marpac; and
- DIBP import data.

4.5. Volume effects

4.5.1. Sales volume

Marpac has claimed that dumped imports of TRFs have caused a loss of business due to Marpac's inability to meet (or better) dumped prices, resulting in loss of major new contract volumes with third party customers since Q3, 2015. This particular point in time is evidenced by an Australian customer negotiating reduced TRF pricing with Marpac based on price offers from an exporter of TRFs from one of the nominated countries.

As can be observed in the below figure, Marpac's sales volume to third party customers increased significantly since commencing TRF manufacture to become its major source of business.

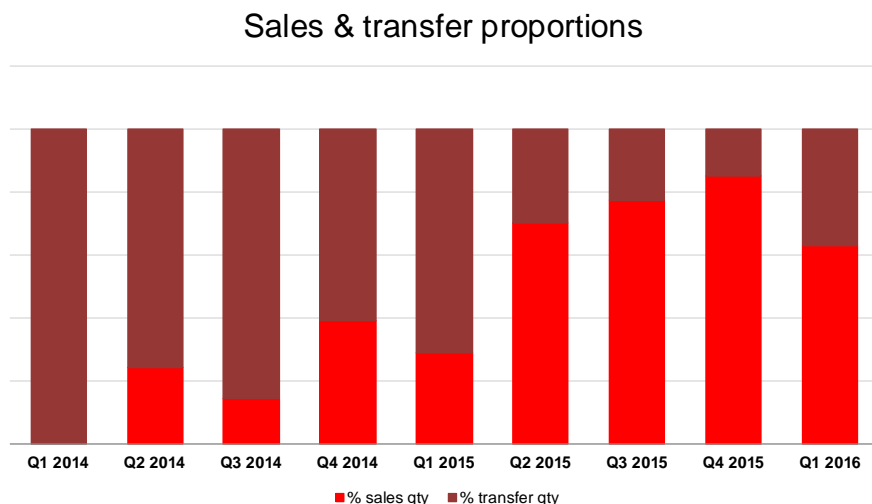


Figure 3: Marpac's sales volumes – proportion between sales and transfers

The below figure shows domestic quarterly sales volumes since Marpac commenced TRF manufacture.

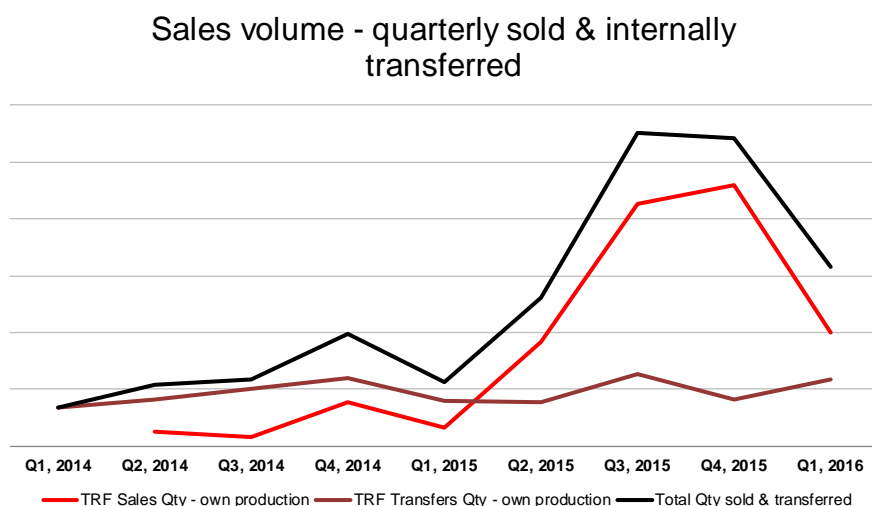


Figure 3: Marpac's sales volumes since commencing TRF manufacture

The Commission observes that the volume of TRFs internally transferred for use in Marpac's composite can business has been relatively stable (despite fluctuations) since TRF manufacture commenced. On the other hand, TRF sales to third party customers experienced strong growth in early 2015 and a reasonably sharp decline from Q4, 2015. The

Commission also notes that third party TRF sales are the main driver of Marpac's TRF business.

4.5.2. Market share

Marpac claims that dumped imports have caused a decline in its market share over the investigation period. The below figure shows relative market share over the period and the Commission notes that Marpac's share increased from Q2, 2015 and appeared to stabilise until a decline in Q1, 2016. It is also observed that whilst allegedly dumped imports from nominated countries also declined in Q1, 2016, the overall market share during the investigation period increased.

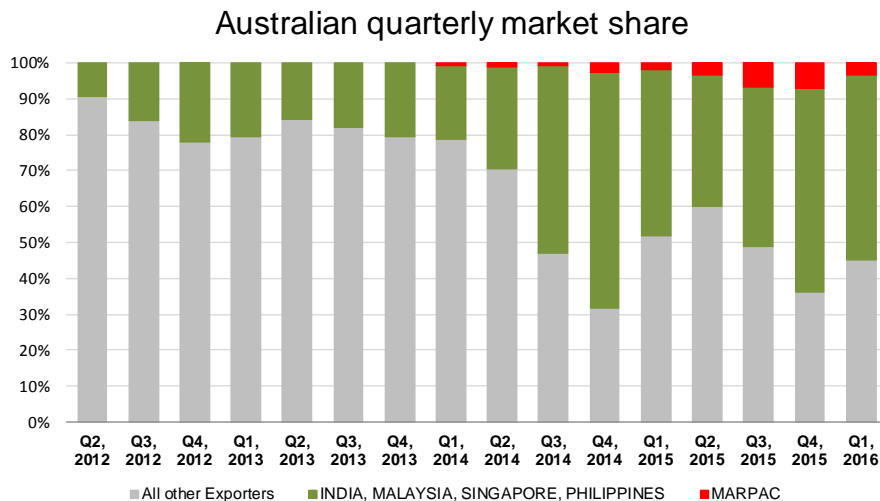


Figure 4: Market share of TRFs in Australia

The Commission notes that from Q4, 2015 Marpac's market share has declined materially. The Commission's market analysis forms **Confidential Attachment 5**.

4.5.3. Conclusion – volume effects

Imported TRFs continue to hold the majority share of the Australian market, with allegedly dumped imports gradually increasing the share of those imports. Based on the information available, the Commission considers that there appear to be reasonable grounds for Marpac's claims that it after an initial increase in sales volumes and market has suffered loss of sales volume and retracted market share in the first quarter of 2016.

4.6. Price effects

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

The below figure shows quarterly unit cost to make and sell (CTMS) is closely aligned with quarterly unit revenue, for all production.

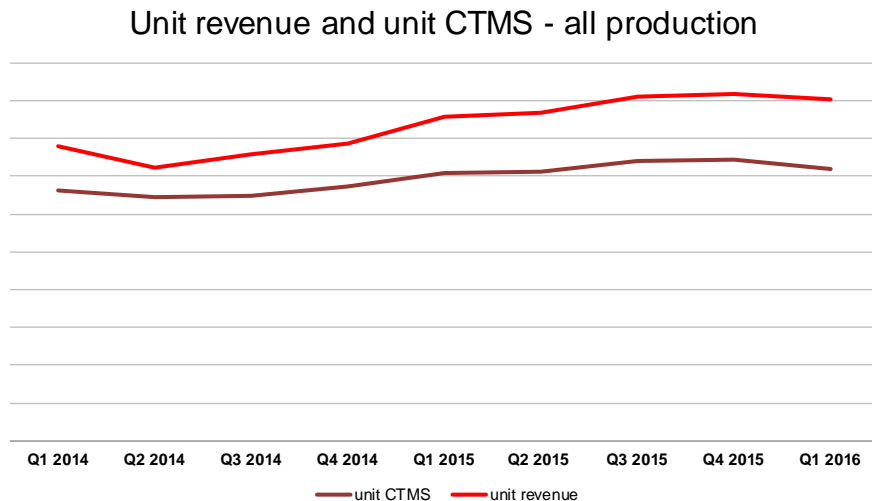


Figure 5: Marpac's unit revenue and unit CTMS

The Commission notes that as Marpac was unsuccessful with potential contracts, on the claim of not being able to meet or better dumped prices, it has lost sales volume and total revenue it would otherwise have achieved. However, the Commission observes that whilst unit revenue and CTMS are relatively flat, unit revenue in the last quarter of the investigation period is below Q3, 2015 price.

As a just-in-time manufacturer, Marpac's revenue and production costs are directly related to sales volumes. In the case of TRF manufacture, whilst price points can dictate who wins or retains business, in terms of production, raw materials and labour are the major inputs and unit prices can remain relatively stable due to fixed manufacturing costs and the ongoing production of TRFs for internal transfer. This can be observed in the below figure.

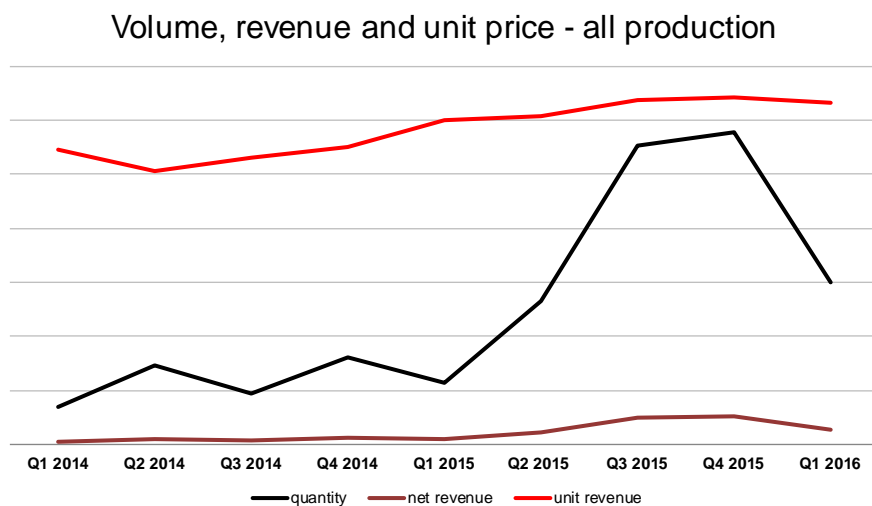


Figure 6: Marpac's sales volume, revenue and unit prices

Please note unit price is on a different scale

4.6.1. Conclusion – price effects

Based on analysis of Marpac's sales and CTMS data, the Commission considers that there appear to be reasonable grounds for Marpac's claims that it has suffered price suppression in the last quarter of the proposed investigation period.

4.7. Profit and profitability effects

Marpac has claimed that there is market pressure for it to reduce its prices (and hence margins) in order to retain current and win new business. As was observed above, sales volume has an influence on customer price/revenue and the same effect can be observed in the below figure showing Marpac's net profit for sales and transfers.

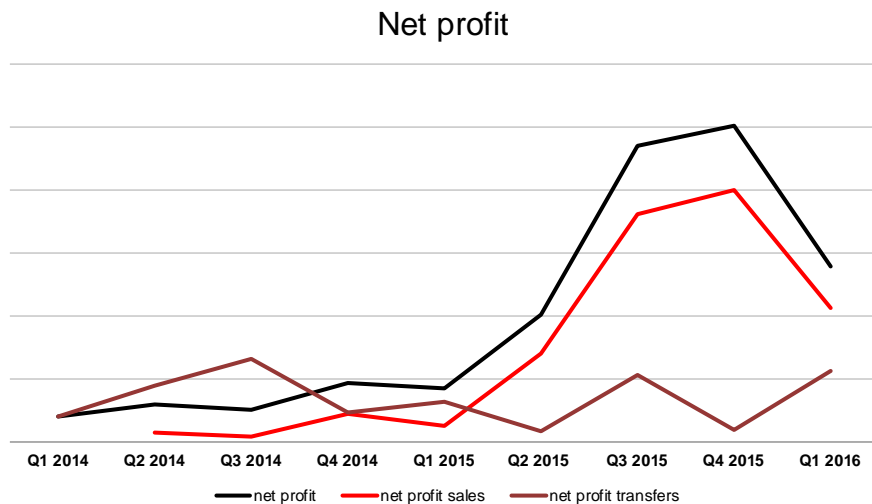


Figure 7: Marpac's net profit

Total net profit is influenced by profits obtained from third party customer sales volumes. In contrast, net profits for internal transfers behave differently and do not show the same level of volume sensitivity due to Marpac's contracted customer supply arrangements. This can be observed in the below figure which provides Marpac's unit profit.

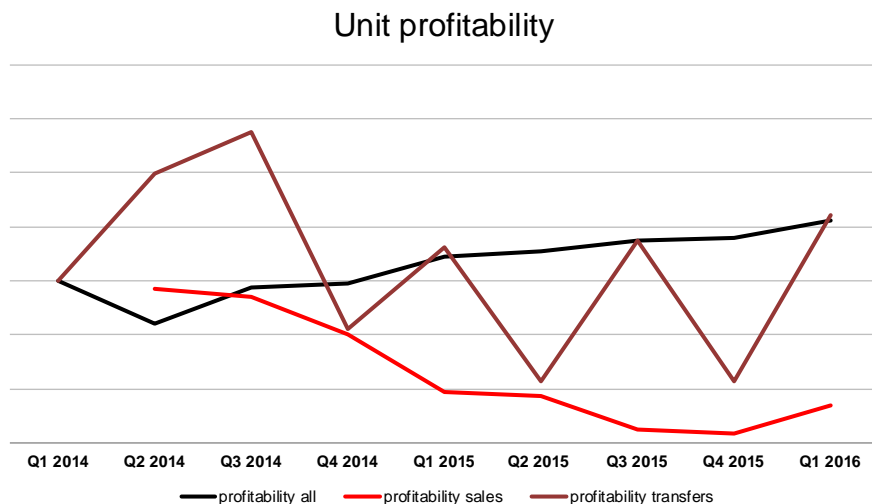


Figure 8: Marpac's unit profitability

As can be observed, the profitability of TRFs sold to third party customers commenced a rapid decline from Q2, 2015 with a recovery indicated in 2016.

4.7.1. Conclusion – profit and profitability effects

The Commission concludes that Marpac has suffered a loss of profits and profitability particularly in relation to TRF sales to third party customers.

4.8. Other injury factors

Marpac completed Confidential Appendix A7 as part of its application. This appendix contained quarterly data and sought to demonstrate injury to the below considerations.

4.8.1. Capacity utilisation

The figure below demonstrates growth and then sharp decline in Marpac's capacity utilisation over the course of the injury and investigation period.

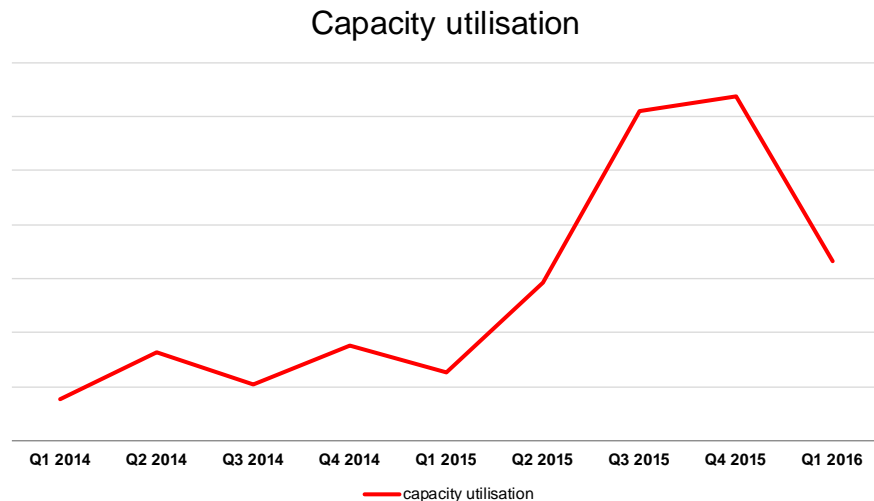


Figure 9: Marpac's capacity utilisation

4.8.2. Return on investment

The figure below details Marpac's declining return on investment after positive growth.

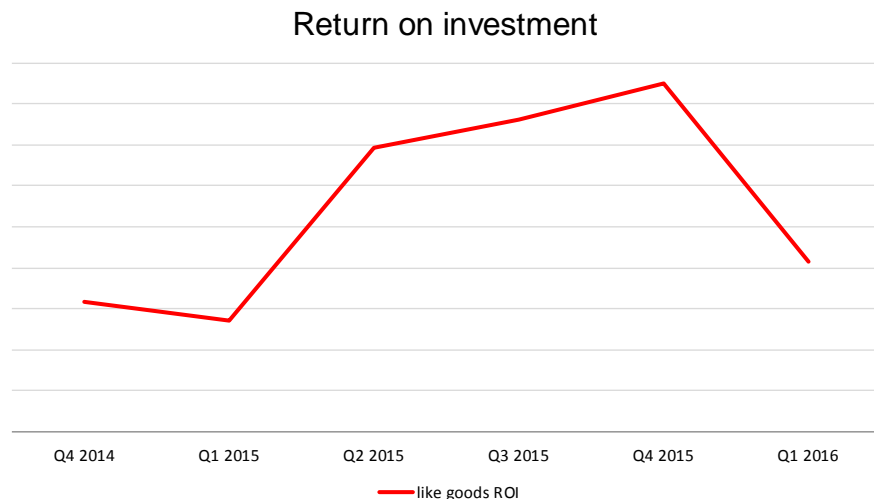


Figure 10: Marpac's return on investment

4.8.3. Reduced employment

Marpac claims that staff have been lost as a result of lost sales caused by dumped TRFs. The figure below shows that staff numbers employed in the manufacture of TRFs grew and stabilised in 2015 and has subsequently declined and returned to staffing numbers at the commencement of 2015.



Figure 11: Marpac's staff numbers

4.8.4. Reduced employee wages

Marpac claims that the average wage for staff employed in TRF manufacture has declined. The below figure shows the annual average wage for staff employed in TRF manufacture. After a sharp decline in early 2015, average wages gradually increased over the 2015 calendar year and have subsequently declined again in 2016.



Figure 12: Average wage of employees

4.8.5. Reduced cash flow

Marpac claims that as a result of lost sales volumes and revenues, the business is experiencing reduced cash flow.

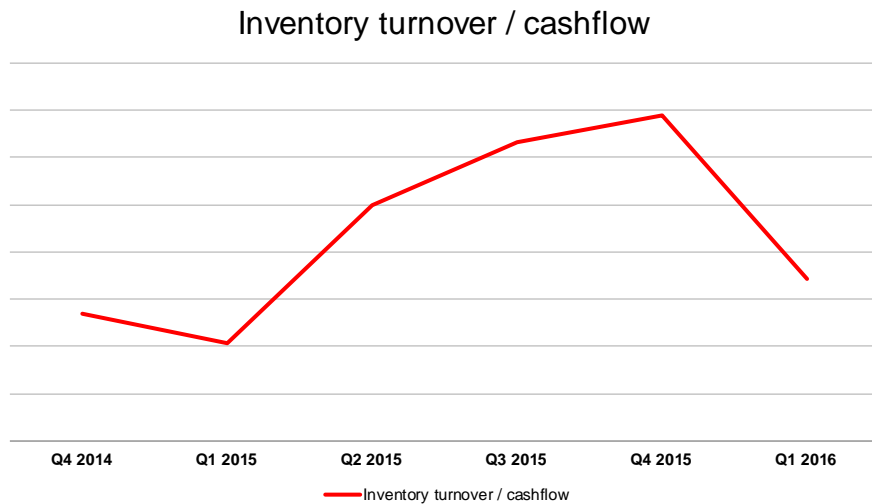


Figure 13: Marpac's cash flow

4.8.6. 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 economic factors. These will be considered in more detail during the investigation.

4.8.7. The Commission's assessment

The Commission's assessment of the economic condition of the Australian industry forms **Confidential Appendix 5**.

5. Reasonable grounds – causation factors

5.1. Findings

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

Further, the Commission considers that there appear to be reasonable grounds to suggest that the establishment of an Australian industry has been materially hindered.

The Commission's assessment of causation forms **Confidential Appendix 6**.

5.2. Cause of injury to the Australian industry

5.2.1. Legislative framework

Under section 269TG of the Customs Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the material injury suffered by the Australian industry or the material hindrance to the establishment of an Australian industry was caused by dumping. 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.

5.3. The Applicant's claims

The table below summarises the causation claims of the applicant.

Injury caused by dumping
<i>Price effects:</i> price pressure from undercutting has caused Marpac to not win new business.
<i>Sales volume:</i> volumes have been lost to TRF exports from India, Malaysia and Singapore
<i>Market share:</i> as a result of price undercutting from India, Malaysia and Singapore Marpac's Australian market share has decreased.
<i>Revenue effects:</i> Marpac has experienced lost revenue as a result of reduced sales volumes from imports of dumped TRFs from India, Malaysia and Singapore.
<i>Profit effects:</i> reduced sales volumes and revenues have had a direct impact on profits and profitability
<i>Capacity utilisation:</i> loss of sales volume has resulted in under capacity utilisation
<i>Return on investment:</i> loss of sales volume and revenues has affected Marpac's return on investment
<i>Reduced employment:</i> Marpac has lost FTE as a result of reduced sales volumes
<i>Reduced wages:</i> average wages at Marpac have decreased due to reduced employment and sales volumes
<i>Reduced cashflow:</i> loss of revenue and sales volumes has decreased Marpac's cashflow.
Injury caused by other factors
Marpac did not identify any other possible causes of injury.

5.3.1. Price undercutting

To illustrate price sensitivity in the Australian market, Marpac provided information regarding the FOB price decrease of TRFs in a six month period (January to June) in 2015. This data was obtained from supplier and customer quotes and relates to one exporter only.

73 mm	- 35.70%
99 mm	- 32.10%
127mm	- 33.30%
153/4 mm	- 52.20%

Figure 14: Marpac's claimed TRF price reduction

Marpac claims that it has been unable to meet the dumped prices and has not currently sold TRFs at or below the dumped prices in order to attract new business. Marpac's claim in relation to price effects relates to market pressure to reduce margins in order to retain and win business. In this regard, Marpac claims that if it wasn't for dumped imports, it would not experience this market pressure to reduce prices (at least to this extent).

The Commission also notes that allegedly dumped imports have increased market share since Q3, 2015, which correlates to Marpac's decrease in sales volume and market share.

The Commission also performed a preliminary price under-cutting analysis for the investigation period. Price undercutting occurs when imported goods are sold at a price below that of the Australian industry.

The Commission utilised the evidence provided in Marpac's application, which predominately relied upon market intelligence and point in time price quotes from importers and exporters. The Commission was unable to determine a complete historical price undercutting analysis for all nominated countries, but does note that the evidence of Australian customers requesting Marpac to better allegedly dumped prices in order to win business suggests that the price of alleged dumped imports has caused Marpac's loss of sales volume and market share.

5.3.2. Non-injurious price

The Commission estimated an unsuppressed selling price (USP) for Marpac's sales of TRFs, being a price that Marpac could be expected to achieve in the absence of dumping. The USP is based on agreed prices between Marpac and an Australian customer just prior to the investigation period.

The Commission then estimated a non-injurious price (NIP) by deducting amounts for importer profit, SG&A, import costs and overseas freight and insurance. The Commission compared this price to FOB export prices and found that the NIP was higher than the export prices. This supports the conclusion that dumping is causing the injury to the Australian industry.

5.3.3. Conclusion – material injury caused by dumping

The Commission considers that the preliminary assessment of:

- the level of dumping indicated via the Commission's assessment;
- reduced sales volume, market share and reduction in revenue;
- reduced profits; and

- other injury factors,

reasonably supports a conclusion that dumping from India, Malaysia, the Philippines and Singapore has caused material injury to the Australian industry and that the establishment of an Australian industry has been materially hindered by allegedly dumped imports from those countries.

6. Appendices and attachments

Appendices	Title
Appendix 1	Legislative framework

Attachments	Confidentiality	Title
Attachment 1	Public	Marpac's application (redacted)
Attachment 2	Public	Public notice
Attachment 3	Confidential	The Commission's assessment of the Australian market
Attachment 4	Confidential	Australian industry's calculation of export price and the Commission's assessment
Attachment 5	Confidential	Australian industry's estimate of normal value and the Commission's assessment
Attachment 6	Confidential	Australian industry's estimate of dumping margins and the Commission's assessment
Attachment 7	Confidential	The Commission's assessment of injury factors
Attachment 8	Confidential	The Commission's assessment of causation

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:

...⁷

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
 - (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

⁷ 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.

- (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
 - (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
 - (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
 - (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
 - (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);

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;
 - (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;
- (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):

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

- (aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
 - (b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
 - (c) use:
 - (i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and
 - (ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period.
- (2A) If paragraph (2)(aa) or (c) applies:
- (a) each part of the investigation period referred to in the paragraph must not be less than 1 month; and
 - (b) the parts of the investigation period as referred to in paragraph (2)(aa), or as referred to in subparagraphs (2)(c)(i) and (ii), must together comprise the whole of the investigation period.
- (3) If the Minister is satisfied:
- (a) that the export prices differ significantly among different purchasers, regions or periods; and
 - (b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;
- the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.
- (4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:
- (a) the goods exported to Australia during that period are taken to have been dumped; and
 - (b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.
- (4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.
- (5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:
- (a) the goods exported to Australia in that transaction are taken to have been dumped; and
 - (b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.
- (6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:
- (a) the goods exported to Australia in each such transaction are taken to have been dumped; and

- (b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.
- (10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

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;
 - (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:
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
 - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
 - (h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.
- (2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of

goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:

- (aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
 - (ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
 - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
 - (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
 - (c) any change or likely change, during a particular period, in the proportion that:
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;
 bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
 - (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
 - (e) the difference between:
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
 - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
 - (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.
- (2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:
- (a) the volume and prices of imported like goods that are not dumped; or
 - (b) the volume and prices of importations of like goods that are not subsidised; or
 - (c) contractions in demand or changes in patterns of consumption; or
 - (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or
 - (e) developments in technology; or
 - (f) the export performance and productivity of the Australian industry;
- and any such injury or hindrance must not be attributed to the exportation of those goods.

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- (2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.
- (2B) In determining:
- (a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or
 - (b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;
- because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.
- (2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:
- (a) each of those exportations is the subject of an investigation; and
 - (b) either:
 - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
 - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
 - (c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
 - (d) if the determination is being made for the purposes of section 269TG or 269TH—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
 - (da) if the determination is being made for the purposes of section 269TJ or 269TK:
 - (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
 - (ii) the volume of each of those exportations is not negligible; and
 - (e) it is appropriate to consider the cumulative effect of those exportations, having regard to:
 - (i) the conditions of competition between those goods; and
 - (ii) the conditions of competition between those goods and like goods that are domestically produced.
- (3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:
- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and
 - (b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and

- (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:
 - (i) for which there are sales or forward orders; or
 - (ii) which are held as stocks; and
- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and
- (e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and
- (f) the level of return on investment in the industry; and
- (g) cash flow in the industry; and
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and
- (k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
- (m) investment in the industry.

...

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

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
 - (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:

- (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
- (ii) for the publication of such a notice upon the importation into Australia of such goods;

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

- (2A) If an applicant, after lodging an application under section 269TB, decides to give the Commissioner further information in support of that application without having been requested to do so:
- (a) the information must be lodged with the Commissioner, in writing, in the manner in which applications under that section must be lodged; and
 - (b) the information is taken to have been received by the Commissioner when the information is first received by a Commission staff member doing duty in relation to dumping applications; and
 - (c) this Part has effect as if:
 - (i) the application had included that further information; and
 - (ii) the application had only been lodged when that further information was lodged; and
 - (iii) the application had only been received when that further information was received.
- (3) Where, in accordance with subsection (1) or (2), the Commissioner rejects an application, the notice informing the applicant of that rejection:
- (a) shall state the reasons why the Commissioner was not satisfied of one or more of the matters set out in that subsection; and
 - (b) shall inform the applicant of the applicant's right, within 30 days of the receipt of the notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.
- (4) If the Commissioner decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Commissioner must give public notice of the decision:
- (a) setting out particulars of goods the subject of the application; and
 - (b) setting out the identity of the applicant; and
 - (ba) setting out the countries of export known to be involved; and
 - (bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and
 - (bc) setting a date, which should be the date or estimated date of publication of the notice, as the date of initiation of the investigation; and
 - (bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and
 - (be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and
 - (bf) indicating that a report will be made to the Minister:
 - (i) within 155 days after the date of initiation of the investigation; or
 - (ii) within such longer period as the Minister allows under section 269ZHI;

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

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- (c) inviting interested parties to lodge with the Commissioner, within 37 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought in the application; and
 - (d) stating that if the Commissioner, in accordance with section 269TD, makes a preliminary affirmative determination in relation to the application, he or she may apply provisional measures, including the taking of securities under section 42, in respect of interim duty that may become payable on the importation of the goods the subject of the application; and
 - (e) stating that:
 - (i) within 110 days after the date of initiation of the investigation; or
 - (ii) such longer period as the Minister allows under section 269ZHI;
 the Commissioner, in accordance with section 269TDAA, will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation to the Minister; and
 - (f) inviting interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
 - (g) indicating the address at which, or the manner in which, submissions under paragraph (c) or (f) can be lodged; and
 - (h) stating that if the Minister decides to publish or not to publish a dumping duty notice or a countervailing duty notice after considering the report referred to in paragraph (bf), certain persons will have the right to seek review of that decision in accordance with Division 9.
- (5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.
- (5A) The Commissioner cannot vary the length of the investigation period.
- (6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the Commissioner, if the Commissioner is satisfied, by representation in writing by an interested party:
- (a) that a longer period is reasonably required for the party to make a submission; and
 - (b) that allowing a longer period will be practicable in the circumstances;
- the Commissioner may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.
- (7) As soon as practicable after the Commissioner decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Commissioner must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:
- (a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or
 - (b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.
- (8) If the Commissioner is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a countervailing duty notice has an economy in transition, the Commissioner must, as soon as practicable after deciding not to reject the application:

- (a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and
- (b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and
- (c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:
 - (i) the exporter does not give the answers to the Commissioner within the period; or
 - (ii) the exporter gives the answers to the Commissioner within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.

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

- (9) Despite the fact that, under subsection (8), the Commissioner has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the Commissioner is satisfied, by representation in writing by the exporter:
 - (a) that a longer period is reasonably required for the exporter to answer the questions; and
 - (b) that allowing a longer period will be practicable in the circumstances;
 the Commissioner may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.
- (10) If, during an investigation in respect of goods the subject of an application under section 269TB, the Commissioner becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods, the Commissioner may examine that issue as part of the investigation.

269TD Preliminary affirmative determinations

- (1) At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application under section 269TB, the Commissioner may, if he or she is satisfied:
 - (a) that there appears to be sufficient grounds for the publication of such a notice; or
 - (b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;
 make a determination (a *preliminary affirmative determination*) to that effect.
- (2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the Commissioner:
 - (a) must have regard to:
 - (i) the application concerned; and
 - (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
 - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to any submission that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to

do so would, in the Commissioner's opinion, prevent the timely consideration of the question whether or not to make a preliminary affirmative determination.

- (4) If the Commissioner makes a preliminary affirmative determination:
 - (a) the Commissioner must give public notice of that determination; and
 - (b) the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.
- (5) If the Commonwealth decides to require and take securities under subsection (4), the Commissioner must give public notice of that decision.

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

- (1) The Commissioner must, within 110 days after the date of initiation of an investigation arising from an application under section 269TB or such longer period as the Minister allows under section 269ZHI, place on the public record a statement of the facts (the *statement of essential facts*) on which the Commissioner proposes to base a recommendation to the Minister in relation to that application.
- (2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:
 - (a) must have regard to:
 - (i) the application concerned; and
 - (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
 - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to a submission received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

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?

- (4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:
 - (a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and
 - (b) subsection (5) does not apply in relation to those first mentioned goods.

Aggregation of volumes of dumped goods

- (5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:
 - (a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and
 - (b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and
 - (c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

Negligible dumping margins to count in determining volume

- (6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:

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

Commissioner must terminate if negligible volumes of countervailable subsidisation are found

(7) If:

- (a) application is made for a countervailing duty notice; and
- (b) in an investigation for the purposes of the application, the Commissioner is satisfied that the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia from a particular country of export during a reasonable examination period; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

is negligible;

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

What is a negligible volume of subsidised goods?

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

- (a) that country of export is not a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 3%; or
- (b) that country of export is a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 4%;

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

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

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

- (a) the country of export is not a developing country; and
- (b) the volume of such goods:
 - (i) that have been, or may be, exported to Australia over that period from that country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

- (c) the volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from another country that is not a developing country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

- (d) the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

Aggregation of volumes of subsidised goods from developing countries

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

- (a) the country of export is a developing country; and
- (b) the volume of such goods:
 - (i) that have been, or may be, exported to Australia over that period from that country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

- (c) the volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from another country that is a developing country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

- (d) the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

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

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

- (a) the country of export is a member country and a developing country; and
- (b) the volume of such goods:
 - (i) that have been, or may be, exported to Australia over that period from that country; and

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

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

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

- (i) that have been, or may be, exported to Australia over that period from another member country that is a developing country; and
- (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

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

- (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
- (ii) in respect of which a countervailable subsidy has been, or may be, received;

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

Negligible countervailable subsidies to count in determining volume

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

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

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

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

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

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

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

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

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

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

Commissioner must terminate countervailable subsidy investigation if export causes negligible injury

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

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

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

(14A) If, in relation to the investigation referred to in subsection (14), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in 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
- (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:
 - (a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or
 - (b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or
 - (c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

Definition—reasonable examination period

- (17) In this section:

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

 - (a) the whole or a substantial part of the investigation period; or
 - (b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.

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

Customs (International Obligations) Regulation 2015

Part 8—Anti dumping duties

Division 1—Ordinary course of trade

43 Determination of cost of production or manufacture

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
 - (a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the amount) to be the cost of production or manufacture of like goods in a country of export; and
 - (b) factors that the Minister must take account of for that purpose.
- (2) If:
 - (a) an exporter or producer of like goods keeps records relating to the like goods; and
 - (b) the records:
 - (i) are in accordance with generally accepted accounting principles in the country of export; and
 - (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.
- (3) The Minister must take account of the information available to the Minister about the allocation of costs in relation to like goods, in particular to establish:
 - (a) appropriate amortisation and depreciation periods; and
 - (b) allowances for capital expenditures and other development costs.
- (4) For subsection (3), the information includes information given by the exporter or producer of the goods mentioned in subsection (1) that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
- (5) If:
 - (a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of the goods mentioned in subsection (1); and
 - (b) the information mentioned in subsection (3) does not identify the item;

the Minister must adjust the costs identified by the exporter or producer to take that item into account.
- (6) Subsection (7) applies if:
 - (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and
 - (b) the information mentioned in subsection (3) does not identify the circumstance.
- (7) The Minister must adjust the costs identified in the information:
 - (a) to take the circumstance into account; and
 - (b) to reflect:
 - (i) the costs at the end of the start up period; or

- (ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
- (8) For this section, the Minister may disregard any information that he or she considers to be unreliable.

44 Determination of administrative, selling and general costs

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
 - (a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the amount) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and
 - (b) factors that the Minister must take account of for that purpose.
- (2) If:
 - (a) an exporter or producer of like goods keeps records relating to the like goods; and
 - (b) the records:
 - (i) are in accordance with generally accepted accounting principles in the country of export; and
 - (ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;

the Minister must work out the amount by using the information set out in the records.
- (3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:
 - (a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or
 - (b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or
 - (c) using any other reasonable method and having regard to all relevant information.
- (4) The Minister must take account of the information available to the Minister about the allocation of costs, in particular to establish:
 - (a) appropriate amortisation and depreciation periods; and
 - (b) allowances for capital expenditures and other development costs.
- (5) For subsection (4), the information includes information given by the exporter or producer of goods that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
- (6) If:
 - (a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of goods; and
 - (b) the information mentioned in subsection (4) does not identify the item;

the Minister must adjust the costs identified by the exporter or producer to take that item into account.
- (7) Subsection (8) applies if:
 - (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and
 - (b) the information mentioned in subsection (4) does not identify the circumstance.

- (8) The Minister must adjust the costs identified in the information:
 - (a) to take the circumstance into account; and
 - (b) to reflect:
 - (i) the costs at the end of the start up period; or
 - (ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
- (9) For this section, the Minister may disregard any information that he or she considers to be unreliable.
- (10) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

Division 2—Normal value of goods

45 Determination of profit

- (1) For subsection 269TAC(5B) of the Act, this section sets out:
 - (a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the amount) to be the profit on the sale of goods; and
 - (b) factors that the Minister must take account of for that purpose.
- (2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.
- (3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:
 - (a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
 - (b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
 - (c) using any other reasonable method and having regard to all relevant information.
- (4) However, if:
 - (a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and
 - (b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;

the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.
- (5) For this section, the Minister may disregard any information that he or she considers to be unreliable.
- (6) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

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

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

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

- (2) In assessing whether there is significant interference for paragraph (b) of item 1 in the table in subsection (1), the Minister must have regard to the following:
- (a) whether a genuinely private company or party holds the majority shareholding in the entity;
 - (b) if officials of a government of the country of export hold positions on the board of the entity—whether those officials are a minority of the members of the board;
 - (c) if officials of a government of the country of export hold significant management positions within the entity—whether those officials are a minority of the persons holding significant management positions;
 - (d) whether the entity's ability to carry on business activities in the country of export is affected by:
 - (i) a restriction on selling in the domestic market; or

- (ii) the potential for the right to do business being withdrawn other than under contractual terms; or
 - (iii) if the entity is a joint venture in which one of the parties is a foreign person, or is carried on in the form of such a joint venture—the ability of the foreign person to export profits and repatriate capital invested;
- (e) whether the entity's significant production inputs (including raw materials, labour, energy and technology) are supplied:
 - (i) by enterprises that are owned or controlled by a government of the country of export; and
 - (ii) at prices that do not substantially reflect conditions found in a market economy.
- (3) In this section:

entity, in relation to goods, means:

 - (a) the exporter of the exported goods mentioned in subsection 269TAC(5D) of the Act; or
 - (b) if the exporter of the goods is not the producer of the goods, but the goods are produced in the country of export—the producer of the goods.

government, of a country, includes any level of government of the country.

47 Determination of value—countries to which subsection 269T(5D) of the Act does not apply

For subsection 269TAC(5J) of the Act, Schedule 2 prescribes countries to which subsection 269TAC(5D) of the Act does not apply.