Consideration report number: 316

Application for a dumping duty notice and a countervailing duty notice

Submitted by: Commonwealth Steel Company Pty Ltd (trading as Moly-Cop) and Donhad Pty Ltd

In relation to grinding balls exported to Australia from the People’s Republic of China

12 November 2015
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<td>Australian Border Force</td>
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<td>ADN</td>
<td>Anti-Dumping Notice</td>
</tr>
<tr>
<td>Arrium</td>
<td>Arrium Limited</td>
</tr>
<tr>
<td>AUD</td>
<td>Australian dollars</td>
</tr>
<tr>
<td>China</td>
<td>the People’s Republic of China</td>
</tr>
<tr>
<td>the Commission</td>
<td>Anti-Dumping Commission</td>
</tr>
<tr>
<td>the Commissioner</td>
<td>Commissioner of the Anti-Dumping Commission</td>
</tr>
<tr>
<td>CTMS</td>
<td>Cost to make and sell</td>
</tr>
<tr>
<td>the Customs Act</td>
<td><em>Customs Act 1901</em></td>
</tr>
<tr>
<td>DDP</td>
<td>Delivered duty paid</td>
</tr>
<tr>
<td>Donhad</td>
<td>Donhad Pty Ltd</td>
</tr>
<tr>
<td>DS379</td>
<td><em>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Product from China</em></td>
</tr>
<tr>
<td>Dumping Duty Act</td>
<td><em>Customs Tariff (Anti-Dumping) Act 1975</em></td>
</tr>
<tr>
<td>EXW</td>
<td>Ex-works</td>
</tr>
<tr>
<td>FOB</td>
<td>Free on board</td>
</tr>
<tr>
<td>GOC</td>
<td>Government of China</td>
</tr>
<tr>
<td>Moly-Cop</td>
<td>Commonwealth Steel Company Pty Ltd (trading as Moly-Cop)</td>
</tr>
<tr>
<td>OneSteel</td>
<td>OneSteel Manufacturing Pty Ltd</td>
</tr>
<tr>
<td>NIP</td>
<td>Non-injurious price</td>
</tr>
<tr>
<td>PAD</td>
<td>Preliminary affirmative determination</td>
</tr>
<tr>
<td>SCM</td>
<td>WTO Agreement on Subsidies and Countervailing Measures</td>
</tr>
<tr>
<td>SEF</td>
<td>Statement of essential facts</td>
</tr>
<tr>
<td>Sigdo</td>
<td>Sigdo Koppers S.A.</td>
</tr>
<tr>
<td>SIE</td>
<td>State Invested Enterprises</td>
</tr>
<tr>
<td>SG&amp;A</td>
<td>Selling, general and administrative expenses</td>
</tr>
<tr>
<td>the applicants</td>
<td>Moly-Cop and Donhad</td>
</tr>
<tr>
<td>the goods</td>
<td>the goods the subject of the application (also referred to as the goods under consideration)</td>
</tr>
<tr>
<td>the Parliamentary Secretary</td>
<td>the Parliamentary Secretary to the Minister for Industry, Innovation and Science</td>
</tr>
<tr>
<td>USD</td>
<td>United States Dollars</td>
</tr>
<tr>
<td>USP</td>
<td>Unsuppressed selling price</td>
</tr>
<tr>
<td>VMI</td>
<td>Valmont Industries group of companies</td>
</tr>
<tr>
<td>VAT</td>
<td>Value added tax</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
<tr>
<td>Xiwang</td>
<td>Xiwang Special Steel Company Limited</td>
</tr>
</tbody>
</table>
1. Findings and recommendations

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application under subsection 269TB(1) of the *Customs Act 1901* (the Act) by Commonwealth Steel Company Pty Ltd (trading as Moly-Cop) (Moly-Cop) and Donhad Pty Ltd (Donhad) for the publication of a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from the People’s Republic of China (China).

Moly-Cop and Donhad allege that the Australian industry for grinding balls has suffered material injury caused by grinding balls exported to Australia from China at dumped and subsidised prices.

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

### 1.1. Findings

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

- the application complies with the requirements of subsection 269TB(4) (as set out in section 2.2 of this report);
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application (as set out in sections 3, 4, 5 and 6 of this report).

### 1.2. Recommendations

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

The Commission further recommends that:

- exports to Australia during the investigation period 1 October 2014 to 30 September 2015 be examined to determine whether dumping and/or subsidisation have occurred, and
- details of the Australian market from 1 July 2011 be examined for injury analysis purposes.

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

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1 All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.
1.3. Legislative framework

1.3.1. Authority to make decision

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

1.3.2. Investigation process

Provisional measures

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

In deciding whether to make a PAD, the Commissioner must have regard to the application and any submissions received within 40 days of the initiation of the investigation. The Commissioner may also have regard to any other matters that he considers relevant.

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

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

A PAD or Status Report will be placed on the public record by 18 January 2016.

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

Statement of essential facts

A statement of essential facts (SEF) will be placed on the public record by 7 March 2016, or by such later date as the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) may allow in accordance with paragraph 269ZHI(1)(a). The SEF will set out the essential facts on which the Commissioner will base a recommendation to the Parliamentary Secretary. Interested parties are invited to lodge submissions in response to the SEF within 20 days of the SEF being placed on the public record.

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

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

A recommendation to the Parliamentary Secretary will be made in a report on or before 20 April 2016 (or such later date as the Parliamentary Secretary may allow), unless the investigation is terminated.

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

Anti-Dumping Review Panel

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

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application lodged and received by the Commissioner under subsections 269TB(1) and (5)</td>
<td>5 October 2015</td>
<td>The Commission received an application from Moly-Cop and Donhad that alleged the Australian industry is suffering material injury caused by the importation of grinding balls to Australia from China at dumped and subsidised prices.</td>
</tr>
<tr>
<td></td>
<td>20 October 2015</td>
<td>The Commission notified Moly-Cop and Donhad that the application contained critical and important deficiencies which if left unaddressed, create doubt on the reasonableness of the grounds for the publication of a dumping duty notice and a countervailing duty notice.</td>
</tr>
<tr>
<td>Applicant provided further information in support of the application under subsection 269TC(2A)</td>
<td>23 October 2015</td>
<td>Further information was provided by Moly-Cop and Donhad in support of the application. The further information was lodged and received on 23 October 2015, which meant that the application was taken to be lodged and received on this date.</td>
</tr>
<tr>
<td>Consideration decision due under subsection 269TC(1)</td>
<td>12 November 2015</td>
<td>The Commissioner shall decide whether to reject the application within 20 days after receipt.</td>
</tr>
</tbody>
</table>

2.2. Compliance with subsection 269TB(4)

2.2.1. Finding

Based on the information submitted by Moly-Cop and Donhad, the Commission considers that the application complies with subsection 269TB(4).

2.2.2. Legislative framework

Under paragraph 269TC(1)(a), the Commissioner shall reject an application if not satisfied that it complies with all of the requirements outlined in subsection 269TB(4).

2.2.3. The Commission’s assessment

The table below summarises the Commission’s assessment of compliance with subsection 269TB(4).
<table>
<thead>
<tr>
<th>Requirement for the application</th>
<th>Details</th>
</tr>
</thead>
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<tr>
<td>Lodged in writing under paragraph 269TB(4)(a)</td>
<td>Moly-Cop and Donhad 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 <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a>.</td>
</tr>
<tr>
<td>Lodged in an approved form under paragraph 269TB(4)(b)</td>
<td>The application is in the Commission’s Form B108 for the purpose of making an application under subsection 269TB(1).</td>
</tr>
</tbody>
</table>
| Contains such information as the form requires under paragraph 269TB(4)(c) | Moly-Cop and Donhad provided:  
  - a completed declaration;  
  - answers to all questions that were required to be answered by Moly-Cop and Donhad;  
  - completed appendices; and  
  - sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence. |
| Signed in the manner indicated under paragraph 269TB(4)(d) | The (hard copy) application was signed in the manner indicated in Form B108 by a representative of Moly-Cop and Donhad.                                                                                                                                                       |
| Supported by a sufficient part of the Australian industry under paragraph 269TB(4)(e) as determined in accordance with subsection 269TB(6) | Moly-Cop and Donhad provided information stating that they are the only Australian producers of grinding balls and therefore, the application is supported by a sufficient part of the relevant Australian industry in accordance with the requirements of paragraphs 269TB(6)(a) and 269TB(6)(b).  
As set out in section 2.4.1 the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application. No producers of like goods other than Moly-Cop and Donhad are named in the application and no further such producers or manufacturers of grinding balls in Australia have been identified by the Commission. |
2.3. The goods the subject of the application

The table below outlines the goods as described in the application (referred to as "the goods" throughout this report) and corresponding tariff classification information.

Full description of the goods

"Ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range 22mm to 170mm (inclusive)."

Further information:

The goods covered by this application include all ferrous grinding balls, typically used for the comminution of metalliferous ores, meeting the above description of the goods regardless of the particular grade or alloy content.

Goods excluded from this application include stainless steel balls, precision balls that have been machined and/or polished, and ball bearings.

Tariff classification (Schedule 3 of the Customs Tariff Act 1995)\(^3\)

<table>
<thead>
<tr>
<th>Tariff code</th>
<th>Statistical code</th>
<th>Unit</th>
<th>Description</th>
<th>Duty rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>7325.91.00</td>
<td>28</td>
<td>Tonnes</td>
<td>&quot;Other cast articles of iron or steel, grinding balls and similar articles for mills&quot;</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>DCS: 4%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>DCT: 5%</td>
</tr>
<tr>
<td>7326.11.00</td>
<td>29</td>
<td>Tonnes</td>
<td>&quot;Other articles of iron or steel, forged or stamped but not further worked, grinding balls and similar articles for mills&quot;</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>DCS: 4%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>DCT: 5%</td>
</tr>
</tbody>
</table>

Previous investigations

None

Other administrations

None

Cast grinding balls are classified to 7325.91.00.26, whereas forged grinding balls are classified to 7326.11.00.29.

The rate of duty applicable to goods exported from China under the above classifications is currently 4 per cent, as China is designated as DCS origin.

The applicants also noted that some imported products such as high chrome cast grinding media have different chemical specifications that alter the abrasion resistance of these products. The applicants asserted that these types of product typically demonstrated superior wear performance in application compared to forged steel grinding media, however the higher price payable for this type of grinding media generally negated the wear performance in an overall cost benefit analysis. The applicants contended that high chrome grinding media and forged steel grinding media can be considered like for like in application based on the total cost to operate,

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\(^3\) Current as of the publication date of this report.

\(^4\) ‘DCS’ denotes the rate for countries and places listed in Part 4 of Schedule 1 of the Customs Tariff Act 1995.

\(^5\) ‘DCT’ denotes the rate for Hong Kong, the Republic of Korea, Singapore and Taiwan.
and as such the inclusion of high chrome grinding balls is contemplated within the goods description

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:

- Moly-Cop and Donhad produce goods that have characteristics closely resembling the goods the subject of the application; and
- those goods produced by Moly-Cop and Donhad are wholly manufactured in Australia.

2.4.2. Legislative framework

Subsection 269TC(1) requires the Commissioner to reject an application for a dumping duty notice and countervailing duty notice if, _inter alia_, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods. The term “like goods” is defined under subsection 269T(1). Subsections 269T(2), 269T(3), 269T(4), 269T(4A), 269T(4B) and 269T(4C) determine whether the like goods are produced in Australia.

2.4.3. Locally produced like goods

The following table 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.

<table>
<thead>
<tr>
<th>Factor</th>
<th>The applicant’s claims</th>
<th>The Commission’s assessment</th>
</tr>
</thead>
</table>
| Physical likeness    | the goods produced by the Chinese exporters are in similar grades, weights, and physical appearance. | Based on information provided by the applicants, the Commission is satisfied with the reasonableness of the claims in relation to physical likeness between the goods the subject of the application and locally produced grinding balls as indicated in product brochures. In particular:  
  - grinding balls appear similar, are manufactured in an identical shape, are available in a similar range of diameters and include similar steel/alloy compositions.  
  - the goods the subject of the application were imported under tariff classifications relevant to cast and forged grinding balls. |
<table>
<thead>
<tr>
<th>Factor</th>
<th>The applicant’s claims</th>
<th>The Commission’s assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial likeness</td>
<td>the imported goods compete directly with the locally produced goods and are interchangeable. The selling prices of the imported goods are similar to the selling prices of the goods manufactured by the local industry.</td>
<td>The Commission reviewed import pricing data from the Australian Border Force (ABF) import database in conjunction with the information within the application and is satisfied that price competition exists in the market between the imports of grinding balls and the Australian produced goods, which suggests low product differentiation. In this context, the Commission is satisfied with the reasonableness of the claims by the applicants that there is a close commercial likeness between the imported goods and the locally produced goods.</td>
</tr>
<tr>
<td>Functional likeness</td>
<td>the imported goods and the locally produced goods are used to perform the same function and have the same end-uses</td>
<td>The Commission is satisfied that imported grinding balls and grinding balls produced by the applicants perform the same functions and have the same or similar end uses. The Commission is further satisfied that end users did not consider any alternative products as a suitable substitute for grinding balls.</td>
</tr>
</tbody>
</table>
| Production likeness | the imported and locally produced grinding balls are manufactured via similar production processes. | Company websites and brochures indicate that grinding balls produced by the applicants in Australia and grinding balls produced in China:  
- were manufactured in a similar manner to ISO 9001 Quality Management System standard;  
- had the same or similar raw material inputs.  
The Commission therefore considers it is reasonable for the applicants to submit that there is a production likeness between the goods, and the locally produced grinding balls. |

**The Commission’s overall assessment**

Based on the analysis above, the Commission considers it is reasonable for Moly-Cop and Donhad to claim that locally produced grinding balls closely resemble the goods the subject of the application and therefore are like goods. The Commission will further examine the issue of like goods during the course of the dumping and countervailing investigation.

### 2.4.4. Manufacture in Australia

The table below summarises the Commission’s assessment of whether the goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been produced in Australia (subsection 269T(2)).
**Applicant’s claims**

Moly-Cop summarises its manufacturing processes for grinding balls as follows:

- Production of liquid steel is undertaken through electric arc furnace steelmaking at the Waratah (Newcastle) facility. Steel scrap is the primary raw material.
- The molten metal is then cast into billet form which provides the feed material into the rolling process.
- The appropriate grade of billet is reheated and rolled through a series of roll-stands in a bar mill to produce lengths of bar with a circular cross-section, referred to as “grinding bar”.
- The grinding bar is used as the feed material for the grinding media production process which involves forging of grinding balls through either a roll-forming or upset forge process (depending on the size of ball required).
- The roll-formed forging (casting) process involves feeding round (bar) feedstock through an induction heating process and then between two specially designed opposing rolls that rotate continuously. The material is shaped by each of the grooves in the rolls and emerges from the end as a metal ball where it is then fed into a quenching and heat treatment process prior to packaging.
- The upset forging (forging) process involves reheating feed bar material. The bars are then fed into the upset forger where they are cut into specified lengths called “slugs” and forged between 2 shaped dies into the finished ball shape.
- The balls follow a cooling process and are then fed into a quenching drum and allowed to cool to a specified temperature. Further tempering and heat treatment are dependent on specific grade and desired properties. Once these relevant processes are complete, the finished product is transferred for packaging.

The application also states that Donhad’s forging process is very similar to Moly-Cop’s operation. Donhad does not however have steelmaking or hot-rolling facilities. The feed material for Donhad’s grinding media production process is grinding bar purchased from OneSteel Manufacturing Pty Ltd (OneSteel) which has been produced from billet sourced from the blast furnace operation at Whyalla that has subsequently been rolled through the bar mill at Moly-Cop’s Waratah facility.

**Commission’s assessment**

Based on the description of the manufacturing process above and the fact that these processes takes place at manufacturing facilities in Australia, the Commission is satisfied that grinding balls are wholly manufactured in Australia by the applicants.

### 2.5. Australian industry information

The table below summarises the Commission’s assessment of whether the applicants have provided sufficient information in the application to analyse the performance of the Australian industry.

<table>
<thead>
<tr>
<th>Have the relevant appendices to the application been completed?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>Australian production</td>
</tr>
<tr>
<td>A2</td>
<td>Australian market</td>
</tr>
<tr>
<td>A3</td>
<td>Sales turnover</td>
</tr>
<tr>
<td>A4</td>
<td>Domestic sales</td>
</tr>
<tr>
<td>A5</td>
<td>Sales of other production</td>
</tr>
<tr>
<td>A6.1</td>
<td>Cost to make and sell (and profit) – Domestic sales</td>
</tr>
<tr>
<td>A6.2</td>
<td>Cost to make and sell (and profit) – Export sales</td>
</tr>
<tr>
<td><strong>General administration and accounting information – Moly-Cop and Donhad</strong></td>
<td></td>
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<tr>
<td>---</td>
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</tr>
<tr>
<td><strong>History</strong></td>
<td>Moly-Cop’s Australian operations began with the Commonwealth Steel Company which established its original facility at Waratah, Newcastle in 1917. Donhad Pty Ltd was founded in 1965.</td>
</tr>
<tr>
<td><strong>Ownership</strong></td>
<td>Commonwealth Steel Company Pty Limited which sells grinding media under the Moly-Cop brand is part of the Arrium Mining Consumables Division within Arrium Limited (Arrium) (ABN 63 004 410 833). Donhad is a wholly owned subsidiary of Valmont Industries Inc., part of the Valmont Industries (VMI) group of companies based in Omaha, USA and listed on the New York Stock Exchange. Donhad manufactures and markets grinding balls under its company name.</td>
</tr>
</tbody>
</table>
| **Operations** | **Moly-Cop**
- The Commonwealth Steel Company Pty Limited produces grinding media under the brand name Moly-Cop.
- Arrium Limited (operating mainly as OneSteel) manufactures a wide range of steel products including structural, rail, rod, bar, wire and pipe and tube products; and
- OneSteel distributes sheet and coil, piping systems, plate and aluminium products.

**Donhad**
- Is a manufacturer of forged steel grinding media, engineering forgings and a range of specialised fasteners for use in the mining and mineral processing industry; and
- Operates three grinding media manufacturing operations in Perth, Newcastle and Townsville. |
| **Financial year** | Moly-Cop’s accounting period is 1 July to 30 June. Donhad’s accounting period is 1 January to 31 December. |
| **Audited accounts** | Audited accounts were provided with the application for each entity’s most recently audited financial year. |

<table>
<thead>
<tr>
<th><strong>Production and sales information</strong></th>
<th><strong>Cost to make and sell information</strong></th>
<th><strong>Other injury factors</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidential Appendix A2 to the application contains required data.</td>
<td>Confidential Appendix A6 to the application contains required data.</td>
<td>Confidential Appendix A7 to the application contains required data.</td>
</tr>
</tbody>
</table>

**The Commission’s assessment**

Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse the performance of the Australian industry between 1 July 2011 and 30 June 2015.

### 2.5.1. Market size

The applicants estimated the size of the Australian market for grinding balls using Australian Bureau of Statistics (ABS) import data, trade data from a known published source, and its own sales to external customers. The applicants completed Confidential Appendix A2 to the application, using the data obtained to estimate the size of the Australian market.

Data gathered by the applicants is set out below in Figure 1.
Figure 1: Australian market for grinding balls (tonnes)

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

The Commission considers that the information submitted by the applicants is reliable, relevant and suitable for estimating the size of the Australian market for grinding balls. The Commission’s assessment of the Australian market for grinding balls is attached at Confidential Attachment 2.
3. Reasonable grounds – dumping

3.1. Findings

Having regard to the matters contained in the application and to other information considered relevant, pursuant to paragraph 269TC(1)(c), the Commission considers that there appears to be reasonable grounds to support the claims that:

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

3.2. Legislative framework

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

Under section 269TG, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, 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.

3.3.2. The applicants’ estimates

The applicants have relied upon the ABS free on board (FOB) prices for the relevant tariff classifications to estimate the export price of grinding balls exported to Australia. The applicants state that while they believe that the ABS data may contain forged grinding balls misclassified as cast balls, they do not have any reason to believe that the export prices as declared in ABS import clearance data are unreliable.

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

<table>
<thead>
<tr>
<th>Basis of estimate</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price payable by an importer other than any part of the price that represents a charge for transport or any other matter after exportation - Paragraph 269TAB(1)(a)</td>
<td>ABS FOB price for the relevant tariff classifications for grinding balls</td>
</tr>
</tbody>
</table>
3.3.3. Export prices in application

The applicants’ estimate of the monthly FOB export prices in AUD per tonne, for the period July 2014 to June 2015 are shown in the table below.

<table>
<thead>
<tr>
<th>Month</th>
<th>Weighted average Export price AUD/FOB per tonne</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jul 2014</td>
<td>940</td>
</tr>
<tr>
<td>Aug 2014</td>
<td>888</td>
</tr>
<tr>
<td>Sep 2014</td>
<td>837</td>
</tr>
<tr>
<td>Oct 2014</td>
<td>889</td>
</tr>
<tr>
<td>Nov 2014</td>
<td>906</td>
</tr>
<tr>
<td>Dec 2014</td>
<td>964</td>
</tr>
<tr>
<td>Jan 2015</td>
<td>1003</td>
</tr>
<tr>
<td>Feb 2015</td>
<td>955</td>
</tr>
<tr>
<td>Mar 2015</td>
<td>982</td>
</tr>
<tr>
<td>Apr 2015</td>
<td>1023</td>
</tr>
<tr>
<td>May 2015</td>
<td>1021</td>
</tr>
<tr>
<td>Jun 2015</td>
<td>820</td>
</tr>
</tbody>
</table>

3.3.4. The Commission’s assessment

The Commission examined the calculations and supporting evidence provided by the applicants.

To verify the reliability of the export price calculated by the applicants, the Commission compared the export price in the application to data obtained from the ABF import database. In undertaking this comparison, the Commission applied the following methodology to calculate its own weighted average AUD/tonne FOB export price for the investigation period:

- Extracted data from the ABF import database based on relevant tariff classifications and statistical codes;
- Filtered the data based on the goods description to exclude import transactions that appeared not to be the goods under consideration; and
- Applied a FOB price per tonne range of $500 to $3,000 AUD in order to filter out outlying data, noting that the goods description includes high chrome grinding balls which are significantly more expensive than standard unalloyed grinding balls.

The Commission identified a variance between the applicants’ estimated average FOB export price and the weighted average FOB export price observed from the ABF import data. Whilst this variance was material, the Commission notes that an applicant can only provide information in its application that is reasonably available to it. Accordingly, the Commission considers that the applicants’ use of the methodology outlined in 3.3.1 to estimate the export prices of grinding balls exported from China was reasonable.

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6 While this section assesses dumping for the period July 2014 to 2015, as outlined in section 1.2, the Commission will examine the period 1 October 2014 to 30 September 2015 to determine whether dumping has occurred in conducting the investigation
Notwithstanding, given the materiality of the variance, the Commission has relied on the AB import data FOB export prices which were higher. The impact on dumping margin calculations is further outlined in section 3.5.

The Australian industry’s calculation of export price and the Commission's comparison are at Confidential Attachment 3.

3.4. Normal value

3.4.1. Legislative framework

Normal value is determined by applying the requirements of section 269TAC taking into account whether the purchase or sale of the goods was an arms length transaction under section 269TAA, whether the goods were sold in the ordinary course of trade under section 269TAAD, whether 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.

3.4.2. The applicants’ estimates

The application included calculations of constructed normal values under paragraph 269TAC(2)(c) as they claimed that it was inappropriate to calculate normal values under subsection 269TAC(1) for the reasons set out below.

Market situation and raw material claims

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

In the application, the applicants submit that the domestic selling prices for grinding balls sold in China are artificially low due to the influence of Government of China (GOC) on key raw material inputs used to manufacture grinding balls.

The application includes references to findings in the Commission’s previous investigations involving steel products, whereby it was found that a ‘particular market situation’ exists in China in relation to hollow structural steel, galvanised steel, aluminium zinc coated steel and plate steel as a result of GOC’s intervention in the Chinese iron and steel industry. The applicants contend that the GOC continues to influence the prices of the raw material inputs in the Chinese iron and steel industry through various forms of interventions, and make reference to the GOC’s previous and current:

- Macroeconomic policies and plans; and
- Implementation measures aimed at executing the aims and objectives of the macroeconomic policies and plans. The implementation measures include import regulations that affect China’s domestic prices of various steel products, import and export regulations that affect China’s domestic price of raw material inputs into the production of billet and subsidies paid to iron and steel producers.

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The Commission’s Final Report Nos. 177, 190 and 198 and SEF No. 285 refers.
To demonstrate the GOC influence on domestic grinding ball input prices, the application includes a comparison of the USD per tonne ex-works (EXW) domestic Northern China, Indian and Turkish steel billet prices. The applicants state that:

“Steel billet accounts for a significant proportion of the total production cost of grinding balls. The following graph demonstrates that Chinese domestic billet prices are lower than domestic prices for billet in certain market-economy countries, e.g. India and Turkey.

Figure 2: Independently Sourced billet domestic ex-works prices

Based on a comparison of the prices in the above graph, the applicants submit that:

“the GOC’s policies and regulations influence the domestic selling price for billet rendering the prices “artificially low”. Domestic selling prices in China for grinding balls that are based upon artificially low billet prices (billet being the principal raw material input into grinding ball manufacture accounting for in excess of 80 per cent of production cost) are unsuitable for normal value purposes.

The Commission’s assessment of the applicants’ market situation claims

The Commission observes that the applicants rely on the previous dumping and countervailing investigation findings in relation to steel products exported from China in submitting its claims on the existence of a market situation in the Chinese domestic market for raw material inputs into grinding balls. The application outlines certain factors, provides relevant evidence in support of its claims and draws reasonable conclusions as to how the factors may have affected the Chinese domestic selling prices of grinding balls.

Based on an assessment of the information set out in the application and the information gathered by the Commission in previous investigations concerning Chinese iron and steel industries, the Commission considers that it is appropriate to examine the applicants’ market situation claims during the course of the investigation.8

8 REP 177, REP 190, REP 198 and REP 238, refers.
The Commission’s assessment of the applicants’ claims of a market situation in the domestic market for grinding balls is in Confidential Attachment 4.

**Constructed normal value methodology**

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

<table>
<thead>
<tr>
<th>Basis of estimate</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constructed normal value</strong></td>
<td><strong>Raw materials</strong></td>
</tr>
<tr>
<td></td>
<td>• Indian billet price (ex-works); ⁹ and</td>
</tr>
<tr>
<td></td>
<td>• Uplift for alloys; ¹⁰</td>
</tr>
<tr>
<td></td>
<td><strong>Conversion costs</strong></td>
</tr>
<tr>
<td></td>
<td>• Bar mill production costs, including bar mill selling, general and administrative (SG&amp;A) allocation;</td>
</tr>
<tr>
<td></td>
<td>• Grinding media fixed production costs (labour and maintenance);</td>
</tr>
<tr>
<td></td>
<td>• Grinding media variable production costs (electricity and other variables); and</td>
</tr>
<tr>
<td></td>
<td>• Depreciation.</td>
</tr>
<tr>
<td></td>
<td><strong>Selling, general and administrative expenses</strong></td>
</tr>
<tr>
<td></td>
<td>• Applicants’ SG&amp;A from earlier periods. ¹²</td>
</tr>
<tr>
<td></td>
<td><strong>Profit</strong></td>
</tr>
<tr>
<td></td>
<td>• 10 per cent profit applied. ¹³</td>
</tr>
<tr>
<td></td>
<td><strong>Adjustment</strong></td>
</tr>
<tr>
<td></td>
<td>• Upward adjustment of $25 AUD per tonne to normal values to account for domestic inland freight, handling and loading charges (refer to section 3.4.4 below).</td>
</tr>
</tbody>
</table>

For further information on the applicants’ claims and methodology regarding normal value, refer to pages 42 and 43 in the non-confidential application.

### 3.4.3. Normal values in application

The applicants’ monthly estimates of normal values for the period July 2014 to June 2015 at an EXW level in AUD per tonne, are shown in the table below.

<table>
<thead>
<tr>
<th>Month</th>
<th>Normal Value AUD/EXW per tonne</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jul 2014</td>
<td>1049</td>
</tr>
<tr>
<td>Aug 2014</td>
<td>1038</td>
</tr>
<tr>
<td>Sep 2014</td>
<td>1052</td>
</tr>
<tr>
<td>Oct 2014</td>
<td>1068</td>
</tr>
</tbody>
</table>

---

⁹ Independently sourced and included in application.

¹⁰ As detailed in confidential attachment B.4.2 to the application and based on the applicant’s costs.

¹¹ Ibid.

¹² As detailed in Appendix A.6.1 to application.

¹³ Determined using Xiwang Special Steel Company 2015 interim results (sourced from Vitalink Consultants Limited), Sigdo Koppers profits (sourced from a corporate presentation dated September 2014) and applicants’ prior year profits as detailed in Appendix A6.1 to the application.
3.4.4. The applicants’ claims - Adjustments

The applicants noted that the ABS export prices for grinding balls are published at the FOB level and include domestic inland freight and handling and loading charges in the port of export, whereas the normal values above were determined at the EXW level. As such the applicants have applied an upward adjustment of $25 AUD per tonne to normal values to account for domestic inland freight, handling and loading charges to ensure fair comparison to the export prices.

In support of this claimed adjustment, the applicants have supplied a freight estimate obtained from the Yiwu Market Guide, relating to inland freight from Yiwu to Ningbo.

3.4.5. The Commission’s assessment

The calculations and supporting evidence provided by the applicants were examined.

In light of the Commission’s assessment of market situation claims, the Commission considers it to be reasonable for the applicants to have submitted constructed normal values as a basis for establishing reasonable grounds that dumping has occurred for the purposes of its application.

Cost to make

The Commission accepts the applicants’ contention that there is no readily available independent source for alloyed billet or bar prices, and considers it reasonable for the applicants to apply an alloy uplift and conversion cost to a published billet price in deriving an alloyed bar price for the purposes of constructing normal values. For the purposes of this calculation, the applicants:

- substituted independently sourced Chinese billet prices with Indian billet prices. The Commission benchmarked the independently sourced data supplied by the applicants with data from Platts SBB steel pricing\(^{14}\) and was satisfied that the independently sourced data was reasonable and contemporaneous. As such, the Commission considers the applicants’ use of independently sourced Indian billet prices to be a reasonable substitute for Chinese billet prices; and

- to arrive at an alloyed bar price, uplifted the Indian billet price by the average alloying cost incurred by OneSteel in converting steel billet to alloyed bar ready for use in the production of grinding balls. In the absence of a specific Chinese domestic grinding ball manufacturer’s conversion costs, the Commission considers that the applicants’ use of OneSteel’s conversion costs to be reasonable.

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\(^{14}\) The Commission notes that substituting the applicant’s independently sourced data for Platts SBB data would bring about almost exactly the same outcome as in section 3.5.2
SG&A

The Commission notes that the applicants have applied an SG&A amount equal to the lowest yearly SG&A amount for either of the applicants over the proposed injury analysis period, and further, that this amount is lower than the SG&A amount estimated based on the financial accounts of a Chinese grinding ball producer which was submitted in the application. The Commission is satisfied that the SG&A applied represents a conservative estimate for the purposes of constructing normal values.

Profit

The Commission notes that the applicants applied a ten per cent profit uplift which was consistent with historical profits of the Australian industry prior to the alleged emergence of dumped goods from China, the 2013 profit of Sigdo Koppers S.A. (Sigdo), a global player in the Industrial Services sector and parent company of grinding media manufacturer Magotteaux, and the annualised gross profit of Xiwang Special Steel Company Limited (Xiwang) in China for the six months ended 30 June 2015.

The Commission considers that while the profit achieved by the Australian industry and Sigdo is useful as a point of comparison, it is not sufficiently relevant for the purposes of estimating profits for the domestic Chinese grinding ball market as required by the Customs (International Obligations) Regulation 2015. However, the Commission is satisfied that Xiwang represents a reasonable surrogate for the purposes of profit estimation. In this regard, the Commission considers that, while Xiwang is not an identified manufacturer of grinding balls, it is a manufacturer in higher end steel production activities and accepts that grinding balls are a higher end steel product. The Commission considers that Xiwang’s net profit is an appropriate measure in the absence of a specific Chinese domestic grinding ball manufacturer’s conversion costs and has amended the applicants’ constructed normal values downwards to include a 6.1 per cent profit.

Adjustments

The Commission considers that the claimed upward adjustment of $25 AUD per tonne to normal values to account for domestic inland freight, handling and loading charges based on the Yiwu Market Guide for inland freight from Yiwu to Ningbo is reasonable in the circumstances.

Overall assessment

The Commission is of the view that the applicants’ sources of information are reasonable and contemporaneous for the purposes of the application. The Commission notes however, that the applicants’ claims in regard to the intervention of the GOC in the iron and steel industry will need to be further examined during the course of the investigation.

After amending the amount for profit, the Commission has found the constructed normal value calculated by the applicants to be reasonable.

The applicants’ estimation of normal value forms Confidential Attachment 5.

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

Dumping margins

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Dumping Margin (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jul 2014</td>
<td>14.3</td>
</tr>
<tr>
<td>Aug 2014</td>
<td>20.9</td>
</tr>
<tr>
<td>Sep 2014</td>
<td>27.1</td>
</tr>
<tr>
<td>Oct 2014</td>
<td>19.7</td>
</tr>
<tr>
<td>Nov 2014</td>
<td>20.7</td>
</tr>
<tr>
<td>Dec 2014</td>
<td>10.2</td>
</tr>
<tr>
<td>Jan 2015</td>
<td>6.9</td>
</tr>
<tr>
<td>Feb 2015</td>
<td>13.6</td>
</tr>
<tr>
<td>Mar 2015</td>
<td>13.0</td>
</tr>
<tr>
<td>Apr 2015</td>
<td>6.1</td>
</tr>
<tr>
<td>May 2015</td>
<td>5.4</td>
</tr>
<tr>
<td>Jun 2015</td>
<td>24.8</td>
</tr>
<tr>
<td>Full year</td>
<td>15.8</td>
</tr>
</tbody>
</table>

The Commission compared the applicants dumping margin calculations for the period 1 July 2014 to 30 June 2015 using the ABF import data for export prices, and normal values as constructed by the applicants with an amendment for profit as detailed above.

Notwithstanding differences between calculations undertaken by the Commission and the applicants, the Commission found dumping margins that were not negligible as defined in subparagraph 269TDA(1)(b)(ii). The Commission calculated a weighted average annualised dumping margin of 8.3 per cent.

A comparison of the applicants’ dumping margin and the Commission’s dumping margin calculations forms Confidential Attachment 6.

Volumes

Based on the information in the application and the ABF import database, the Commission determined that imports of grinding balls from China represent more than 3 per cent of the total import volume of grinding balls for the period 1 July 2014 to 30 June 2015, and are therefore not negligible as described in subsection 269TDA(4).
4. Reasonable grounds – countervailing

4.1. Findings

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

- countervailable subsidies have been received in respect of grinding balls (refer section 4.5);
- the total volume of grinding balls exported to Australia from China over a reasonable examination period in respect of which a countervailable subsidy has been received is greater than 4 per cent of the total Australian import volume, and is therefore not negligible (refer section 4.6); and
- the total amount of the subsidy received in respect of grinding balls exported to Australia from China over a reasonable examination period is likely to be greater than 2 per cent and is therefore not negligible (refer section 4.7).

4.2. Legislative framework

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

Under section 269TJ, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a countervailing duty notice is that subsidisation has taken place (to an extent that is not negligible). This issue is considered in the following sections.

4.3. Subsidy programs

4.3.1. Legislative framework

To determine whether there is a countervailable subsidy, there must be a subsidy as defined under subsection 269T(1) which:

- confers a benefit as assessed under section 269TACC, and
- is specific as assessed under section 269TAAC.

4.3.2. The Applicant’s claims

The table below summarises the applicants’ claims that the goods exported to Australia have benefited from countervailable subsidies and the evidence relied upon to support those claims.
<table>
<thead>
<tr>
<th>Basis of claims</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicants note that in Report No. 198, the Commission identified 41 subsidy programs that provided a benefit to Chinese steel producers involved in the manufacture and export of steel plate, and contend that the Chinese manufacturers of steel billet would benefit under the same programs that are generally applicable to participants across all of the Chinese steel industry. The applicants note that in Report No. 237 the Commission referred to subsidy programs that have previously been investigated and were determined to provide countervailable subsidies. The applicants contend that 31 of these programs are applicable to the Chinese steel billet, bar and grinding ball industries.</td>
<td></td>
</tr>
<tr>
<td><strong>Program 1 – steel billet at less than adequate remuneration</strong> The applicants assert that under this program, a benefit in respect of exported grinding balls is conferred by steel billet being provided by the GOC, through state invested enterprises (SIE’s) at an amount reflecting less than adequate remuneration. The applicants demonstrated, with reference to independently sourced data, that domestic selling prices for steel billet in China were on average US$102 per tonne below the average Indian domestic steel price during financial year 2015. The applicants contend that the benefit conferred amounts to the difference between the purchase price for the steel billet domestically in China by the producer/exporter and the adequate remuneration (i.e. the ‘benchmark’ Indian domestic price for steel billet).</td>
<td></td>
</tr>
<tr>
<td><strong>Program 2 – electricity at less than adequate remuneration</strong> The applicants assert that steel billet production is an energy intensive process that consumes significant electricity and note Report No. 237 (Silicon Metal exported from China) which identified that Chinese producers of silicon metal (also a significant electricity consuming process) received benefits in the form of electricity at less than adequate remuneration. As the electricity is consumed in the manufacture of steel billet, alloyed bar and grinding balls, it is considered by the applicants that this financial contribution is made in respect of the production, manufacture or export of the goods, and is provided by a public body that is controlled and influenced by the GOC. The applicants assert that the benefit afforded to grinding ball producers in China is an amount equal to the difference between the purchase price and the adequate remuneration.</td>
<td></td>
</tr>
<tr>
<td><strong>Other Programs considered to have conferred benefits</strong> The applicants reference Report No. 237 and assert that the programs identified as providing countervailable subsidies therein are equally likely to afford a benefit to producers of grinding balls in China as the sector is a key value-add downstream sector of the Chinese iron and steel industry. The applicants request the Commission to investigate whether benefits accrue to Chinese grinding ball exporters from 29 programs as listed in the table below.</td>
<td></td>
</tr>
<tr>
<td><strong>Amount of subsidisation</strong> The applicants assert that the cumulative value of the identified subsidy programs afford benefits to Chinese manufacturers of grinding balls that exceed negligible levels and are therefore actionable under the subsidy provisions.</td>
<td></td>
</tr>
<tr>
<td>Program Number</td>
<td>Program Name</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3</td>
<td>Preferential Tax Policies in the Western Regions</td>
</tr>
<tr>
<td>4</td>
<td>Land Use Tax deduction</td>
</tr>
<tr>
<td>5</td>
<td>Preferential Tax Policies for High and New Technology Enterprises</td>
</tr>
<tr>
<td>6</td>
<td>Tariff and VAT Exemptions on Imported Materials and Equipment</td>
</tr>
<tr>
<td>7</td>
<td>One-Time Awards to Enterprises Whose Products Qualify for “Well-Known TradeMarks of China” and “Famous Brands of China”</td>
</tr>
<tr>
<td>8</td>
<td>Matching Funds for International Market Development for Small and Medium Enterprises</td>
</tr>
<tr>
<td>9</td>
<td>Superstar Enterprise Grant</td>
</tr>
<tr>
<td>10</td>
<td>Research &amp; Development (“R&amp;D”) Grant</td>
</tr>
<tr>
<td>11</td>
<td>Innovative Experimental Enterprise Grant</td>
</tr>
<tr>
<td>12</td>
<td>Special Support Fund for Non-State Owned Enterprises</td>
</tr>
<tr>
<td>13</td>
<td>Venture Investment Fund of Hi-Tech Industry</td>
</tr>
<tr>
<td>14</td>
<td>Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment</td>
</tr>
<tr>
<td>15</td>
<td>Grant for key enterprises in equipment manufacturing industry of Zhongshan</td>
</tr>
<tr>
<td>16</td>
<td>Water Conservancy Fund Deduction</td>
</tr>
<tr>
<td>17</td>
<td>Anti-Dumping Respondent assistance</td>
</tr>
<tr>
<td>18</td>
<td>Technology Project assistance</td>
</tr>
<tr>
<td>19</td>
<td>Capital Injections</td>
</tr>
<tr>
<td>20</td>
<td>Environmental Protection Grant</td>
</tr>
<tr>
<td>21</td>
<td>High and New Technology Grant</td>
</tr>
<tr>
<td>22</td>
<td>Independent Innovation and High-Tech Industrialisation Program</td>
</tr>
<tr>
<td>23</td>
<td>Environmental Prize</td>
</tr>
<tr>
<td>24</td>
<td>Provincial emerging industry and key industry development special fund</td>
</tr>
<tr>
<td>25</td>
<td>Environmental Protection Fund</td>
</tr>
<tr>
<td>26</td>
<td>Intellectual Property licensing</td>
</tr>
<tr>
<td>27</td>
<td>Financial resources construction special fund</td>
</tr>
<tr>
<td>28</td>
<td>Reducing pollution discharging and environmental improvement assessment award</td>
</tr>
<tr>
<td>29</td>
<td>Comprehensive utilisation of resources – VAT refund upon collection</td>
</tr>
<tr>
<td>30</td>
<td>Grant of elimination of out dated capacity</td>
</tr>
<tr>
<td>31</td>
<td>Grant from Technology Bureau</td>
</tr>
</tbody>
</table>
4.4. Consultation with the Government of China

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

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

The GOC advised the Commission that it wished to participate in consultations during the consideration phase and a teleconference was held on 21 October 2015 between representatives of the Commission and the GOC. The GOC provided a written submission by email at the conclusion of the teleconference. The issues below were raised by the GOC.

General matters discussed

The GOC brought to the attention of the Commission Article 11.2 of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement), which requires that an application should include sufficient evidence of the existence of subsidy, injury and a causal link between the subsidized imports and the alleged injury. The GOC contended that the application neither provided sufficient evidence to prove the existence of the alleged subsidies, nor did it demonstrate that during the investigation period, Chinese grinding balls exporters benefited from the alleged subsidies, and therefore the requirements of Article 11.2 of the SCM Agreement were not met in the application.

The GOC further asserted that the treatment of confidential information in the application did not meet the requirements of Article 12.4 of the SCM Agreement which provides that the non-confidential summaries shall be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

Specific subsidy allegations

1. Steel billet and electricity at less than adequate remuneration

The GOC asserted that the applicants neither conducted analysis on the nature of these programs, nor provided any positive evidence as required by Article 2 of the SCM Agreement to prove the existence of the alleged programs are specific to the Chinese grinding balls industry. The GOC asserted that specificity is a key element for determining a countervailable subsidy and a program without specificity is not countervailable.

In relation to steel billet, the GOC asserted that the applicant failed to credibly demonstrate why surrogate billet prices were selected to support its allegation instead of the Chinese market price itself. The GOC argued that the Chinese market price of steel billet is the result of sufficient competition and the alleged subsidy does not exist.

In relation to electricity, the GOC asserted that the applicants have quoted the findings of previous investigations by the Commission without providing any evidence or reasonable analysis. The GOC noted that in the United States – Definitive Anti-Dumping and Countervailing Duties on Certain Product from China case (DS379) the WTO Appellate Body stated that the findings in other countervailing investigations usually cannot be considered as sufficient evidence and as such the Commission’s findings in previous investigations cannot be directly copied for the application.
2. Other programs alleged to have conferred benefits

The GOC asserted that, in relation to the other 29 programs identified, the applicants have provided no evidence, instead relying on the assumption that the programs identified as countervailable by the Commission in Report No. 237 were equally likely to afford a benefit to Chinese grinding balls producers as the sector is a downstream sector of iron and steel industry.

The GOC reasserted its position (as detailed above) that the findings in other countervailing investigations usually cannot be considered as sufficient evidence.

The GOC asserted that in the absence of sufficient evidence, the Commission should not initiate the investigation in respect of the alleged subsidy programs.

4.5. The Commission’s assessment

The Commission has examined the evidence provided by the applicants to suggest that Chinese steel producers benefit from a range of subsidies that assist in minimising production costs and selling prices in China.

In doing so the Commission has reviewed its recent findings published within Report No. 237, in relation to silicon metal exported to Australia from China, and Report No. 238, in relation to deep drawn stainless steel sinks exported to Australia from China, as well its earlier findings in Report Nos. 177, 190 and 198.

Steel billet at less than adequate remuneration

The Commission has examined the evidence provided by the applicants to suggest that Chinese steel billet used in the production of grinding balls is being provided by the GOC (through SIEs) at an amount reflecting less than adequate market remuneration.

The Commission considers that it is reasonable to compare Chinese steel billet prices with Indian and Turkish steel billet prices. This comparison shows significant disparity, with the monthly Chinese billet prices between 13 and 28 per cent lower the Indian and Turkish billet prices over the period July 2014 to June 2015.

Having particular regard to this comparison, within the context of:

- the assertions discussed throughout this report that the domestic Chinese billet prices are affected by GOC influence that causes these prices to be lower than they would have been without these influences; and
- the finding from previous investigations that SIEs are significant suppliers of raw material inputs to the Chinese steel industry,

the Commission considers it likely that Chinese exporters of the goods have purchased steel billet in China from SIEs, and that this price can reasonably be considered to be less than adequate remuneration.

The Commission therefore considers that there appears to be reasonable grounds that benefits have been received from this program in relation to grinding balls, and considers that investigations into this program should be initiated.

Electricity at less than adequate remuneration

The Commission has examined the evidence provided by the applicants to suggest that electricity consumed in the production of grinding balls is being provided by the GOC at an amount reflecting less than adequate remuneration.

The Commission has reviewed the findings contained in Report No. 237. In Report No. 237, the Commission concluded that there was evidence to show that the
GOC exercised meaningful control over the provision of electricity and the regulation of prices, and that as a result Chinese producers of silicon metal received a benefit in the form of electricity at less than adequate remuneration.

The Commission accepts that, like silicon metal production, steel billet production is an energy intensive process that consumes significant electricity. The Commission considers it reasonable to conclude that producers of steel billet have likely received electricity at a price that can reasonably be considered to be less than adequate remuneration.

The Commission therefore considers that there appears to be reasonable grounds that benefits have been received from this program in relation to grinding balls, and considers that investigations into this program should be initiated.

General programs
The Commission considers that for the remaining 29 programs countervailed within the silicon metals case, there appears to be reasonable grounds that countervailable subsidies have been received for these programs in relation to grinding balls. Consequently, the Commission considers that investigations into these 29 programs should be initiated.

In making this determination, the Commission notes its findings within Report No. 237 that these programs meet the definition of a subsidy as defined in section 269T and are considered to be countervailable subsidies pursuant to section 269TAAC. The Commission also considers that these programs may still be in operation in China, and that due to:

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

it is possible that exporters of grinding balls have received benefits under these programs, and hence their investigation is warranted.

Assessment of GOC Submission
The Commission notes the GOC’s submission that the application did not include sufficient evidence of its assertions. The Commission’s view is that, for the reasons outlined throughout this report, the Commissioner can be satisfied, having regard to the matters contained in the application and to other relevant information, that there appear to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application. As the application meets the requirements of subsection 269TC(1), the Commission recommends that the Commissioner not reject the application.

Regarding the requirements of Article 12.4 of the SCM Agreement, and subsection 269ZJ(2), the Commission considers that the summaries in the non-confidential version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information claimed by the applicant to be confidential.

The Commission is satisfied that it is open to the Commissioner to consider the conclusions reached in recent countervailing investigations, such as Report No. 237, where those conclusions may be relevant to this application. In particular, the Commission notes the high degree of similarity between the raw materials examined in that investigation and those relevant to the current application.
The Commission notes that Australia’s domestic laws do not prevent findings from previous investigations from being relevant to the consideration of new applications. Accordingly, the Commission has, for the purposes of determining whether there appears to be reasonable grounds for the publication of a countervailing duty notice in relation to grinding balls, considered relevant past reports of the Commissioner.

Within this context, and noting the provisions of subsection 269TAAC(4) which details the grounds upon which the Parliamentary Secretary may determine that a subsidy is specific, the Commission is satisfied that there appear to be reasonable grounds for the publication of a countervailing duty notice.

Import volumes

From the information available from the ABF import database, imports of grinding balls from China represent more than 4 per cent of the total import volume of grinding balls in the 12 month period ending 30 June 2015 and are therefore not in negligible volumes as defined in section 269TDA.

4.6. Amount of subsidisation

The Commission is satisfied following preliminary analysis of:

- the amount of the benefits received under countervailable subsidies investigated in previous investigations conducted by the Commission;
- the proportion of the total cost of production of grinding balls constituted by alloyed steel billet as set out in the constructed normal value; and
- the export prices of grinding balls during the 12 months ended 30 June 2015, taken from the ABF import database,

that the benefit received by Chinese exporters under the programs found to warrant investigation is likely to result in subsidy margins that are above negligible levels.
5. Reasonable grounds – injury to the Australian industry

5.1. Findings

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

- Price depression;
- Price suppression;
- Loss of profits; and
- Reduced profitability.

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

- Lost sale volume;
- Reduced revenue;
- Reduced return on investment;
- Reduced capacity utilisation; and
- Reduced employment.

During the course of the investigation, this data may become available to enable the Commissioner to make a determination regarding the above.

5.2. The applicants’ claims of injury

The table below summarises the applicants’ claims of injury.

<table>
<thead>
<tr>
<th>Injury claims</th>
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</thead>
<tbody>
<tr>
<td>Price effects[^15]</td>
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<tr>
<td>• Price depression; and</td>
</tr>
<tr>
<td>• Price suppression.</td>
</tr>
<tr>
<td>Volume effects[^16]</td>
</tr>
<tr>
<td>• Lost sales volume.</td>
</tr>
<tr>
<td>Profit effects[^17]</td>
</tr>
<tr>
<td>• Loss of profits; and</td>
</tr>
<tr>
<td>• Loss of profitability.</td>
</tr>
<tr>
<td>Other injury factors claims[^18]</td>
</tr>
<tr>
<td>• Reduced revenue;</td>
</tr>
<tr>
<td>• Reduced return on investment;</td>
</tr>
<tr>
<td>• Reduced capacity utilisation; and</td>
</tr>
<tr>
<td>• Reduced employment.</td>
</tr>
</tbody>
</table>

[^15]: Non-confidential application pp. 15-17 refers.
[^16]: Non-confidential application p. 23 refers.
[^17]: Non-confidential application p. 24 refers.
[^18]: Non-confidential application pp. 25-28 refers.
The applicants contended that had it not been for the allegedly dumped and subsidised goods, they would have experienced higher prices, greater sales volume, higher revenue, and improved profits and profitability.

5.3. Approach to injury analysis

5.3.1. Legislative framework

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

5.3.2. Evidence provided by the Australian industry

Donhad provided production, cost and sales data for grinding balls on a six monthly basis for financial years between 1 July 2011 and 30 June 2015, while Moly-Cop provided the data on a quarterly basis for this period.

Donhad also provided a summary of examples of where it has encountered pricing pressures from dumped imported Chinese grinding balls, including instances where it believes it had lost volumes to Chinese exporters through price undercutting. 19

Moly-Cop provided a summary of the revenue impact of its responses to pricing pressures from the dumped Chinese grinding balls, including a copy of detailed correspondence reflecting negotiations with key customers. 20

5.3.3. The Commission’s approach

The following injury analysis is based on:

- the applicants’ submitted costs, sales and other financial data; and
- ABF import data.

5.3.4. Commencement of injury

In its application, the applicants allege that that Australian industry has suffered material injury caused by grinding balls exported to Australia from China at dumped prices. The applicants contend that this material injury commenced in the 2013/14 financial year.

For the purposes of the following injury analysis, the Commission has analysed the applicants’ injury claims from 1 July 2011 to 30 June 2015 (referred to below as the injury analysis period). 21 Any references to financial years are for the period 1 July to 30 June.

5.4. Volume effects

5.4.1. Sales volume

For the purposes of assessing volume effects the Commission has separated its analysis of sales volume below into:

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

19 Donhad Confidential Attachment A9.2.

20 Moly-Cop Confidential Attachment A-9.2.

21 In conducting the investigation, the Commission will conduct an injury analysis assessment for the period 1 July 2011 to 30 September 2015.
Lost volume

In its application, the applicants submitted that the Australian industry has experienced lost sales volume due to growth in the volume of dumped and subsidised imports of grinding balls from China.

Figure 3, below, illustrates the volume of Australian industry sales for grinding balls over the injury analysis period.

Figure 3 – The applicants’ domestic sales volume of grinding balls

The Commission observes that after a drop in sales volume in financial year 2012/13, the applicants have achieved an increased level of domestic sales in both the 2013/14 and 2014/15 financial years.

Lost sales

Despite the growth in sales volume, the applicants contend that the Australian industry has lost sales in financial year 2014/15 as a result of the allegedly dumped and subsidised imports. The Commission has assessed the information supplied by the applicants at Confidential Attachment A-9.2, particularly in regard to allegations that sales have been lost to China. The Commission was unable to make a determination on the validity of these claims on the available information. These claims will be further considered during the course of the investigation.

5.4.2. Market share

The applicants note that the Australian market size for grinding balls has remained reasonably stable over the injury analysis period, and that the increase in volume of Chinese imports during financial year 2014/15 has displaced imports from other sources. The applicants assert that the Australian industry has responded to price pressures from China by lowering prices to maintain sales volumes and market

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22 The scale has been adjusted to better show the trend evidenced by the data, however in percentage terms, sales during the period 2012/13 to 2014/15 have varied by approximately one per cent only.
share. The applicants contend that further growth in Chinese imports at dumped and subsidised prices will place further price pressure on the Australian industry and will likely result in lost sales and market share in future years.

Figure 4 below, depicts the yearly market shares (measured by reference to volume in tonnes) for the injury analysis period.

![Australian Market Share (%)](image)

Figure 4: Proportion of the Australian grinding balls market

Figure 4 is supportive of the applicants’ claims that Chinese imports have displaced the market share of imports from other sources, without significantly impacting the market share of the Australian industry at this stage.

The Commission’s market share analysis is at Confidential Attachment 7.

5.4.3. Conclusion – volume effects

Based on the information available, the Commission has concluded that the applicants have not demonstrated lost sales volume. This claim will be further analysed during the course of the investigation.

The Commission’s assessment of the Australian industry’s sales volume and market share are at Confidential Attachment 7.

5.5. Price effects

5.5.1. Price depression and price suppression

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

Figure 5 below, illustrates the movements in and relationship between the applicants’ combined unit cost to make and sell (CTMS) and unit selling prices for grinding balls.
Figure 5: The applicants’ combined unit selling price and unit CTMS

Figure 5 demonstrates that the Australian industry has experienced a narrowing margin between unit price and unit CTMS over the injury analysis period. This narrowing is consistent with the applicants’ contention that unit prices have been reduced to compete with the lower priced Chinese offerings, while unit costs have increased from the 2012/13 levels due to a reduction in production utilisation.

Figure 6 below, demonstrates the relationship between unit prices achieved by the Australian industry and volumes sold.

Figure 6: Domestic unit sale price and units sold for injury analysis period

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23 The scale has been adjusted to better show the trend of the data.

24 CON 316 – Grinding Balls – China
Figure 6 indicates that volumes have remained relatively stable over the final three years of the injury analysis period while unit prices have declined. This is supportive of the applicants’ claims that prices have been reduced to maintain sales volumes.

The Commission notes the spike in unit costs in 2013/14 may partly relate to one-off restructuring costs incurred by Moly-Cop, however the benefits of this restructure appear to have been eroded by the continued reduction in unit prices achieved.

The decline in unit selling price over the injury analysis period are supportive of the applicants’ claims of price depression, while the narrowing of the margin between unit prices and unit costs is supportive of the applicants’ claims of price suppression.

The Commission’s assessment of the Australian industry’s price effects are at Confidential Attachment 7.

5.5.2. Conclusion – price effects

Based on the above analysis, there appear to be reasonable grounds to support the claim that the applicants have suffered injury in the form of price depression and price suppression.

5.6. Profit and profitability effects

The applicants contend that profit on domestic sales of grinding balls commenced to decline in 2013/14 and has reduced further in 2014/15 as export volumes of Chinese grinding balls to Australia have increased and the Australian industry has reduced selling prices to key customers in an attempt to retain volumes.

The applicants further contend that the reduced sales volumes on the Australian market and overall reduction in production utilisation in 2014/15 contributed to an increase in unit CTMS over the injury analysis period 2012/13 to 2014/15, with a consequent impact on profitability.

Figure 7 below, charts the relationship between the applicants’ combined total profit and unit profitability over the injury analysis period.

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24 The scale has been adjusted to better show the trend of the data
Figure 7: The applicant’s domestic profit and unit profitability

The Commission notes that the Australian industry’s profit and profitability were impacted by one-off restructuring costs incurred by Moly-Cop during financial year 2013/14. From Figure 7 above, it appears that the Australian industry has experienced further reduction in profit and profitability during financial year 2014/15 despite undertaking significant restructuring.

The combination of reduced selling prices and the impact of reduced production utilisation on unit CTMS appears to have led to the applicants’ injury in the form of lost profit and profitability.

The Commission’s assessment of the Australian industry’s profit and profitability effects are at Confidential Attachment 7.

5.6.1. Conclusion – profit and profitability effects

Based on the above analysis, there appear to be reasonable grounds to support the claim that dumped and subsidised imports have caused injury to the applicant in the form of reduced profit and reduced profitability.

5.7. Other injury factors

The applicants completed Confidential Appendix A7 for each of the financial years from 2012 to 2015. In relation to the other injury factors, the applicants identified a decline in the following economic indicators:

- Reduced revenues;
- Return on investment;
- Capacity utilisation; and
- Reduced employment.

The applicants’ performance in relation to the other injury factors will be further examined during the course of the investigation.
6. Reasonable grounds – causation factors

6.1. Findings

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

6.2. Cause of injury to the Australian industry

6.2.1. Legislative framework

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

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

6.2.2. The applicants’ claims

The table below summarises the causation claims of the applicants.

<table>
<thead>
<tr>
<th>Injury caused by dumping</th>
</tr>
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<tbody>
<tr>
<td><strong>Volume effects</strong></td>
</tr>
<tr>
<td>• Volumes have been lost to Chinese exporters due to price undercutting.</td>
</tr>
<tr>
<td><strong>Price effects</strong></td>
</tr>
<tr>
<td>• Chinese exports consistently undercut the prices of other sources of the goods including the prices of the applicants; and</td>
</tr>
<tr>
<td>• The applicants have reduced prices in response to price undercutting by Chinese exporters in an attempt to retain sales volumes.</td>
</tr>
<tr>
<td><strong>Profit effects</strong></td>
</tr>
<tr>
<td>• Reduced sales volumes and revenues have had a direct impact on profits and profitability; and</td>
</tr>
<tr>
<td>• Reduced utilisation of production capacity and reduced sales have contributed to an increase in unit CTMS, thus impacting profitability.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Injury caused by other factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicants contend that China is the main source of the injury and did not provide any further evidence of other factors.</td>
</tr>
</tbody>
</table>

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25 Non-confidential application pp. 15-17 and pp.27-29 refers.

26 Non-confidential application pp. 23 and pp.27-29 refers.

27 Non-confidential application pp. 24 and pp.27-29 refers.
6.3. The Commission's assessment

6.3.1. Price effects

The Commission is satisfied that the market size for grinding balls has been stable across the injury analysis period. The Commission accepts that as customers can purchase either from the applicants or from an import supply source, import offers and movement in price of import offers can be used to negotiate prices with the applicants. The Commission considers that the applicants are obliged to respond to the price of imports in order to remain price competitive.

Price undercutting

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

The evidence in the application supporting price undercutting predominantly relies on market intelligence gathered by the applicants. The applicants claimed that the price undercutting information it has obtained supported its position that it has lost sales volumes to imported grinding balls sourced from China.

Figure 8 below shows the weighted average delivered duty paid (DDP) price over the injury analysis period compared with the Australian industry's per unit sales revenue. The DDP price was estimated by adding relevant post exportation expenses to FOB export prices as reported in the ABF import database. For the purposes of the analysis, the Commission used the most efficient verified post exportation costs from Investigation 240 for fair comparison.28

![Graph](image)

**Australian industry unit sales revenue v WA DDP export price**

<table>
<thead>
<tr>
<th>FY11-12</th>
<th>FY12-13</th>
<th>FY13-14</th>
<th>FY14-15</th>
</tr>
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<tbody>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

- Australian industry
- China

Figure 8: Weighted average DDP export price compared to applicants' sales prices

Based on this analysis, there appears to be reasonable grounds to support the claim that the Australian industry has experienced price undercutting by exports of Chinese grinding balls.

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28 The importation costs were verified during importer visits conducted by the Commission as part of Investigation 240, the most recently completed investigation involving steel products from China.
In Figure 9, below, the Commission has further charted the volume of imports from China against the weighted average FOB export price per tonne for China over the injury analysis period.

**Figure 9: Imports of grinding balls from China – volume and FOB export price**

Figure 9 indicates that the escalation in imports of Chinese grinding balls in financial year 2014/15 coincides with a reduction in FOB export pricing. This supports the applicants’ claim that it has been compelled to reduce its prices in response to an increasing volume of lower priced Chinese imports, and has therefore suffered injury in the form of price depression caused by dumped and subsidised exports from China.

Furthermore, the applicants have not been able to increase the margin between unit price and unit costs due to price reductions exceeding the rate of cost reduction, despite one of the applicants undertaking significant restructuring during financial year 2013/14. The Commission considers it is therefore reasonable to conclude that the Australian industry has suffered injury in the form of price suppression caused by dumped and subsidised exports from China.

The Commission will further evaluate price undercutting claims during the course of the investigation process, through verification of actual selling prices in Australia by importers and comparing these with the selling prices of the applicants, for sales transactions made under the same conditions.

**6.3.2. Profit effects**

While the Commission does not consider at this stage that the applicants have experienced injury in the form of lost sales volumes, as discussed in 6.3.1 above, it appears that dumping and subsidisation has caused injury to the applicants in the form of price depression and price suppression. As profit is a function of volume and profit margin, it appears that dumping and subsidisation has also caused the applicants to experience reduced profit and reduced profitability.
6.3.3. Comparison of export price and non-injurious price

As an additional test to establish whether there is a causal link between the alleged dumping and material injury, the Commission sought to compare export prices from China with estimates of a non-injurious price (NIP) for financial year 2014/15.

To calculate the NIP, the Commission estimated the unsuppressed selling price (USP) for grinding balls for financial year 2014/15 using the weighted average CTMS of the Australian industry. At this stage, the Commission has not applied a profit to this CTMS.

The Commission then deducted amounts from that USP for importer SG&A and profit, including into-store costs, Customs duty and overseas freight from investigation 240. These calculations provided for a NIP at the FOB level.

The weighted average export price for the period 1 July 2104 to 30 June 2015 was below the NIP. The Commission considers this finding is consistent with the applicants’ claim that the allegedly dumped goods have caused material injury.

The Commission’s calculations of the NIP and the comparison with export price are at Confidential Attachment 8.

6.3.4. Other possible causes of injury

The applicants contend that China is the main source of the injury and did not provide any further evidence of other possible causes of injury.

The Commission has, however, considered the impact of imports from other sources in conducting its injury analysis. The Commission notes that over the injury analysis period imports from other sources have declined by 29 per cent, while imports from China have increased by 30 per cent. This finding is supportive of the Commission’s preliminary view that rather than contributing to the applicants’ injury, imports from other sources have in fact been displaced by imports from China.

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

6.3.5. Conclusion – material injury caused by dumping and subsidisation

The Commission considers that:

• the level of the dumping indicated in the application;
• the likelihood that grinding ball exporters have benefited from countervailable subsidies; and
• the preliminary assessment of price depression and price suppression, particularly demonstrated through the price undercutting analysis,

reasonably supports a conclusion that dumping and subsidisation from China has caused material injury to the Australian industry.

The Commissioner will also examine whether the trade in the dumped or subsidised goods provides a basis for any dumping duty and/or countervailing duty notice to apply retrospectively, pursuant to section 269TN.
7. Appendices and Attachments

<table>
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<tr>
<th>Appendices</th>
<th>Title</th>
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<tr>
<td>Appendix 1</td>
<td>Legislative framework</td>
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<tr>
<th>Attachments</th>
<th>Confidentiality</th>
<th>Title</th>
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<tr>
<td>Attachment 1</td>
<td>Public</td>
<td>Public notice</td>
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<td>Attachment 2</td>
<td>Confidential</td>
<td>Market analysis</td>
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<td>Attachment 3</td>
<td>Confidential</td>
<td>Export price analysis</td>
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<td>Attachment 4</td>
<td>Confidential</td>
<td>Market situation analysis</td>
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<td>Attachment 5</td>
<td>Confidential</td>
<td>Normal value analysis</td>
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<td>Attachment 6</td>
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<td>Dumping margin analysis</td>
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<td>Attachment 7</td>
<td>Confidential</td>
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<td>Attachment 8</td>
<td>Confidential</td>
<td>USP and NIP analysis</td>
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</table>
Appendix 1 – Legislative framework
Part XVB of the Customs Act 1901

Division 1 – Definitions and role of Minister

Definitions

269T

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

... 29

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

(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.

29 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.
(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.

(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.

**Definition—countervailable subsidy**

269TAAC

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

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
   (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
   (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
   (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
   (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if:
   (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
   (b) eligibility for the subsidy is automatic; and
   (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) The Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or
(b) the fact that the subsidy program predominantly benefits particular enterprises; or
(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

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

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

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

…

Ordinary course of trade

269TAAD

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

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

   (i) for home consumption in the country of export; or
   (ii) for exportation to a third country;

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

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

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

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

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

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

(a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and
(b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.

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

Arms length transactions

269TAA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and
(c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and

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

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

(a) both being natural persons:
   (i) they are members of the same family; or
   (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:
   (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
   (ii) both of them together control, directly or indirectly, a third body corporate; or
   (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or

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

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

(e) they are members of the same partnership.

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

Export price

269TAB

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

(a) where:
   (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
   (ii) the purchase of the goods by the importer was an arms length transaction;

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

(b) where:
   (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
   (ii) the purchase of the goods by the importer was not an arms length transaction; and
(iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

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

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

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

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

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

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

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

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

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

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

Normal value of goods

269TAC

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

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

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

(a) is satisfied that:

(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or
(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

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

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

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

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

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

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

(d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.

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

(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.

Working out whether dumping has occurred and levels of dumping

269TACB

(1) If:

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

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

(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;
the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.

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

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

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

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

(c) use:

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

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

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

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

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

(3) If the Minister is satisfied:

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

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

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

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

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

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

(4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.
(5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:

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

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

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

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

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

(10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

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

269TACC

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

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

(a) a government of a country;

(b) a public body of a country;

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

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

Guidelines for financial contributions

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

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

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

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

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

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

**Amount of countervailable subsidy**

**269TACD**

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

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

**Material injury to industry**

**269TAE**

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

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

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

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

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

(c) any change or likely change, during a particular period, in the proportion that:
(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

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

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

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

(e) the difference between:

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

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

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

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

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

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

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

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

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

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
(c) any change or likely change, during a particular period, in the proportion that:
   (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
   (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;
   bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

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

(e) the difference between:
   (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
   (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

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

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

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

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

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

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

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

(e) developments in technology; or

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

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

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

(2B) In determining:
for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or

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

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

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

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

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

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

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

(da) if the determination is being made for the purposes of section 269TJ or 269TK:
   (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
   (ii) the volume of each of those exportations is not negligible; and

(e) it is appropriate to consider the cumulative effect of those exportations, having regard to:
   (i) the conditions of competition between those goods; and
   (ii) the conditions of competition between those goods and like goods that are domestically produced.
(3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:

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

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

(c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:
   (i) for which there are sales or forward orders; or
   (ii) which are held as stocks; and

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

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

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

(g) cash flow in the industry; and

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

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

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

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

(m) investment in the industry.

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

Application for action under Dumping Duty Act

269TB

(1) Where:

(a) a consignment of goods:
   (i) has been imported into Australia;
   (ii) is likely to be imported into Australia; or
   (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;

(b) there is, or may be established, an Australian industry producing like goods; and
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 in accordance with subsection (5), 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; and

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

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

…

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

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

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

Consideration of application

269TC

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

(a) that the application complies with subsection 269TB(4); or
(b) that there is, or is likely to be established, an Australian industry in respect of like goods; or
(c) that there appear to be reasonable grounds:
   (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
   (ii) for the publication of such a notice upon the importation into Australia of such goods;

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

(2) The Commissioner shall, within 20 days after receiving an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:
   (a) that the application complies with subsection 269TB(4); or
   (b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or
   (c) that there appear to be reasonable grounds:
      (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
      (ii) for the publication of such a notice upon the importation into Australia of such goods;

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

(2A) If an applicant, after lodging an application under section 269TB, decides to give the Commissioner further information in support of that application without having been requested to do so:
   (a) the information may be lodged with the Commissioner, in writing, in accordance with section 269TB; and
   (b) the information is taken to have been received by the Commissioner in accordance with subsection 269TB(5); and
   (c) this Part has effect as if:
      (i) the application had included that further information; and
      (ii) the application had only been lodged when that further information was lodged; and
      (iii) the application had only been received when that further information was received.

(3) Where, in accordance with subsection (1) or (2), the Commissioner rejects an application, the notice informing the applicant of that rejection:
   (a) shall state the reasons why the Commissioner was not satisfied of one or more of the matters set out in that subsection; and
(b) shall inform the applicant of the applicant’s right, within 30 days of the receipt of the notice, to apply for a review of the Commissioner’s decision by the Review Panel under Division 9.

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

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

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

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

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

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

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

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

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

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

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

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

(c) inviting interested parties to lodge with the Commissioner, within a specified period of not more than 40 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.

(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.

Termination of investigations

269TDA

Commissioner must terminate if all dumping margins are negligible

(1) If:
   (a) application is made for a dumping duty notice; and
   (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
      (i) there has been no dumping by the exporter of any of those goods; or
      (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;
the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if countervailable subsidisation is negligible

(2) If:
   (a) application is made for a countervailing duty notice; and
   (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
      (i) no countervailable subsidy has been received in respect of any of those goods; or
      (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation
period, exceeded the negligible level of countervailable subsidy under subsection (16);
the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if negligible volumes of dumping are found

(3) If:
   (a) application is made for a dumping duty notice; and
   (b) in an investigation for the purposes of the application the Commissioner is satisfied that the total volume of goods the subject of the application:
      (i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and
      (ii) that have been, or may be, dumped;
      is negligible;
   the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of dumped goods?

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

Aggregation of volumes of dumped goods

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

Negligible dumping margins to count in determining volume

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

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

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

Commissioner must terminate if negligible volumes of countervailable subsidisation are found

(7) If:

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

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

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

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

is negligible;

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

What is a negligible volume of subsidised goods?

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

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

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

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

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

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

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

(b) the volume of such goods:

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

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

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

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

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

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

Aggregation of volumes of subsidised goods from developing countries

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

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

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

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

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

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

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

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

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

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

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

(b) the volume of such goods:

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

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

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

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

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

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

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

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

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

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

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

**Negligible countervailable subsidies to count in determining volume**

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

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

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

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.

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.

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.

<table>
<thead>
<tr>
<th>Item</th>
<th>Matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Whether the entity makes decisions about prices, costs, inputs, sales and investments:</td>
</tr>
<tr>
<td></td>
<td>(a) in response to market signals; and</td>
</tr>
<tr>
<td>Item</td>
<td>Matter</td>
</tr>
<tr>
<td>------</td>
<td>--------</td>
</tr>
<tr>
<td>(b)</td>
<td>without significant interference by a government of the country of export (see subsection (2)).</td>
</tr>
<tr>
<td>2</td>
<td>Whether the entity keeps accounting records in accordance with generally accepted accounting standards in the country of export.</td>
</tr>
<tr>
<td>3</td>
<td>Whether the generally accepted accounting standards in the country of export are in line with:</td>
</tr>
<tr>
<td></td>
<td>(a) international financial reporting standards developed by; and</td>
</tr>
<tr>
<td></td>
<td>(b) international accounting standards adopted by;</td>
</tr>
<tr>
<td></td>
<td>the International Accounting Standards Board.</td>
</tr>
<tr>
<td>Note:</td>
<td>The international financial reporting standards and international accounting standards could in 2015 be viewed on the International Accounting Standards Board’s website (<a href="http://www.ifrs.org">http://www.ifrs.org</a>).</td>
</tr>
<tr>
<td>4</td>
<td>Whether the accounting records mentioned in item 2 are independently audited.</td>
</tr>
<tr>
<td>5</td>
<td>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.</td>
</tr>
<tr>
<td>6</td>
<td>Whether the country of export has laws relating to bankruptcy and property.</td>
</tr>
<tr>
<td>7</td>
<td>Whether the entity is subject to the bankruptcy and property laws mentioned in item 6.</td>
</tr>
<tr>
<td>8</td>
<td>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.</td>
</tr>
<tr>
<td>9</td>
<td>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.</td>
</tr>
<tr>
<td>10</td>
<td>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.</td>
</tr>
<tr>
<td>11</td>
<td>Whether the entity has the right to hire and dismiss employees and to fix the salaries of employees.</td>
</tr>
</tbody>
</table>

(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.