PUBLIC RECORD

Australian Government
Anti-Dumping Commission

INVESTIGATION 237

ALLEGED DUMPING OF SILICON METAL EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND ALLEGED SUBSIDISATION OF SILICON METAL EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

VISIT REPORT - IMPORTER

PACIFIC ALUMINIUM

INCLUDING RIO TINTO ALUMINIUM (BELL BAY) LTD, BOYNE SMELTERS LTD & TOMAGO ALUMINIUM COMPANY PTY LTD

THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED THEREIN AND MAY NOT REFLECT THE FINAL POSITION OF THE ANTI-DUMPING COMMISSION

April 2014

CONTENTS

ABBREVIATIONS

$	Australian dollars
ADN	Australian Dumping Notice
The Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
Bell Bay	Rio Tinto Aluminium (Bell Bay) Limited
Boyne Smelters	Boyne Smelters Limited
CFR	Cost and freight
Commission	Anti-Dumping Commission
FOB	Free On Board
NIP	Non-injurious Price
Pacific Aluminium	Collective term for: • Rio Tinto Aluminium (Bell Bay) Limited • Boyne Smelters Limited • Tomago Aluminium Company Pty Ltd
PAD	Preliminary Affirmative Determination
SEF	Statement of Essential Facts
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
Tomago	Tomago Aluminium Company Pty Ltd
USP	Unsuppressed Selling Price

1 BACKGROUND AND PURPOSE

1.1 Background

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

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

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

Public notification of initiation of the investigation was made on 6 February 2014 in *The Australian* newspaper and by Australian Dumping Notice No. 2014/08.

1.2 Purpose of visit

The purpose of the visit was to:

- confirm that Rio Tinto Aluminium (Bell Bay) Limited is the importer of silicon metal attributed to it within the Australian Customs and Border Protection Services's (ACBPS') import database and obtain information to assist in establishing the identity of the exporter(s) of this silicon metal;
- confirm that Boyne Smelters Limited (Boyne Smelters) is the importer of silicon metal attributed to it within the import database and obtain information to assist in establishing the identity of the exporter(s) of this silicon metal;
- confirm that Tomago Aluminium Company Pty Ltd (Tomago) is the importer of silicon metal attributed to it within the import database and obtain information to assist in establishing the identity of the exporter(s) of this silicon metal;
- verify information on imports of silicon metal to assist in the determination of export prices;
- establish whether the purchases of silicon metal were arms-length transactions;
- establish post-exportation costs;
- obtain general information about the Australian market for silicon metal; and

- provide Pacific Aluminium with an opportunity to discuss any issues it believed relevant to the investigation.

1.3 Meeting details

Company	Pacific Aluminium Level 3, 500 Queen Street Brisbane QLD 4000
Date of visit	3 April 2014

The following were present at various stages of the meetings.

Pacific Aluminium	Richard Harrison – Commercial Specialist Richard Woods – Legal Manager Greig Stevens – Manager Procurement Edwina Robinson – Commercial Support Officer
Staughton's	Jack Howard Stephen Pearson
the Commission	Nicole Platt – Manager – Operations 2 Joanne Reid – Director – Operations 2

1.4 Investigation process and timeframes

We advised the company of the investigation process and timeframes as follows.

- The investigation period is 1 January 2013 to 31 December 2013.
- The injury analysis period is from 1 January 2010 for the purpose of analysing the condition of the Australian industry.
- A preliminary affirmative determination (PAD) may be made no earlier than day 60 of the investigation (7 April 2014) and provisional measures may be imposed at the time of the PAD.

  The Commission will not make a PAD until (and if) it becomes satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice.

  This was distinguished from the 'reasonable grounds' threshold for initiation of the investigation.
- The Statement of Essential Facts (SEF) for the investigation is due to be placed on the public record by 27 May 2014, or such later date as the Parliamentary Secretary allows under s.269ZHI of *the Customs Act 1901* (the Act).

  The SEF will set out the material findings of fact on which the Commission intends

to base its recommendations to the Parliamentary Secretary, and will invite interested parties to respond, within 20 days, to the issues raised therein.

- Following receipt and consideration of submissions made in response to the SEF, the Commission will provide its final report and recommendations to the Parliamentary Secretary.

  This final report is due no later than 11 July 2014, unless an extension to the SEF is approved by the Parliamentary Secretary.

1.5 Visit report

We explained to the company that we would prepare a report of our visit (this report) and provide it to the company to review its factual accuracy, and to identify those parts of the report it considers to be confidential.

We explained that, in consultation with the company, we would prepare a non-confidential version of the report, and place this on the investigation's Public Record.

2 THE GOODS

2.1 Description

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

- Silicon metal containing at least 96.00 per cent but less than 99.99 per cent silicon by weight, and
- Silicon metal containing between 89.00 per cent and 96.00 per cent silicon by weight that contains aluminium greater than 0.20 per cent by weight,

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

The application stated:

The goods under consideration (GUC) includes all forms and sizes of silicon metal, including off-specification silicon such as silicon metal with high percentages of other elements, such as aluminium, calcium, iron, etc.

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

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

2.2 Tariff classification

The goods are classified to tariff subheading 2804.69.00 in Schedule 3 to the *Customs Tariff Act 1995* with statistical code 14.

The general rate of duty is currently "free" for goods imported from China.

3 COMPANY DETAILS

3.1 Commercial Operations – Pacific Aluminium

Pacific Aluminium is 100% owned by Rio Tinto Limited and Rio Tinto plc (Rio Tinto). The Pacific Aluminium division was initially set up by Rio Tinto in order to sell the assets it controls. On 8 August 2013 Rio Tinto concluded that the divestment of Pacific Aluminium was not possible in the current environment. Pacific Aluminium was reintegrated into the Rio Tinto Alcan group.[1] Pacific Aluminium is a business division that manages a range of sites across Australia and New Zealand.

Pacific Aluminium's assets include smelter operations in Australia and New Zealand:

- Bell Bay Aluminium
- Boyne Smelters Limited
- Gladstone Power Station
- Tomago Aluminium
- New Zealand Aluminium Smelters Limited

At the verification visit Pacific Aluminium gave a presentation outlining the company's background and position on the current investigation. The presentation included details of the company's pricing formulas, silicon metal purchases by volume and comparisons of the company's export contract pricing with Chinese domestic prices. (**confidential attachment 1**) A non-confidential version of this presentation was placed on the electronic public record.

3.1.1 Rio Tinto Aluminium (Bell Bay) Limited

Bell Bay is situated on the mouth of the Tamar River, approximately five kilometres from George Town and 45 kilometres from the city of Launceston.

Bell Bay has been in operation since 1955 and was the first smelter built in the southern hemisphere. The smelter produces around 180,000 tonnes of aluminium each year and operates 24 hours a day, 365 days per year. Its main metal products are ingot, block and T-bar.

Bell Bay is wholly owned by Rio Tinto. Pacific Aluminium manages Bell Bay, coordinating functions with staff located at the individual site.

3.1.2 Boyne Smelters Limited

Boyne Smelters is the largest aluminium smelter in Australia. Located approximately 20km south of Gladstone at Boyne Island on the Central Queensland coast, Boyne Smelters produces more than 570,000 tonnes of aluminium per annum.

Boyne Smelters produces high quality ingot and billet. The majority of aluminium produced at the smelter is exported to South East Asia and North America and is used in

[1] Rio Tinto Limited 2013 Annual Report, pg. 42.

engineered products for the aerospace, mass transportation, building construction, electricity transmission, wind-power generation, recreation and leisure industries.

When it first opened in 1982, Boyne Smelters produced 210,000 tonnes of aluminium per year. In 1995, $900 million was invested to increase the smelter's capacity to over 540,000 tonnes per year. This capacity came on line when Reduction Line 3 was commissioned in 1997.

In June 2012, the company completed a $720 million upgrade that included re-building one of three existing carbon bake furnaces and replaced its two other carbon bake furnaces with a new furnace.

Boyne Smelters Limited's joint venture partners are comprised as follows:

	Project voting percentage in Boyne Smelters
Rio Tinto Aluminium	59.39%
UACJ Australia	9.29%
SLMA No.2	7.71%
Ryowa Development	5.19%
Ryowa Development II	6.46%
YKK Aluminium	9.5%
Sumitomo Chemical	2.46%

- UACJ is owned by Sumitomo Light Metal Industries and Furukawa-Sky Aluminium Corp
- SLMA No. 2 is owned by Sumitomo Light Metal Industries, Marubeni and Sumitomo Corporation
- Ryowa Development is owned by Mitsubishi Corporation and Mitsubishi Australia
- Ryowa Development II is owned by Mitsubishi Corporation and Mitsubishi Materials Corporation

3.1.3 Tomago Aluminium Company Pty Ltd

Tomago Aluminium is located about 13km north-west of Newcastle. The smelter produces approximately 550,000 tonnes of remelt ingot, T-ingot, extrusion billet and rolling slab per year.

Most of Tomago's product is exported to South East Asia, Japan and China. Tomago is a joint venture with the following joint venture interests:

Ownership	51.55% Pacific Aluminium 36.05% Gove Aluminium Finance Ltd 12.40% Hydro Aluminium

Tomago has its own management and reporting systems and conducts its own procurement functions, but utilises Pacific Aluminium's corporate resources.

3.2 Accounting structure and details of accounting systems

The head office for Pacific Aluminium is located in Brisbane. The corporate procurement function is operated from this head office, however the head office coordinates its functions with the individual company sites. Each company keeps its own records which are then consolidated into financial statements for the Rio Tinto group.

Pacific Aluminium companies' financial year is from January to December. Pacific Aluminium advised that the financial statements for 2013 have been prepared, however have not yet been finalised.

3.3 Relationship with suppliers and customers

3.3.1 Suppliers

Pacific Aluminium currently sources silicon metal from two suppliers in China. It claims that both are traders and not the manufacturer of the goods. Pacific Aluminium has a 12 month contract with each. Contracts provide indicative volumes only and orders are placed as needed as the year progresses. Pacific Aluminium approaches the market on an annual basis and conducts a sourcing process similar to a tender.

Pacific Aluminium advised that ideally it would be beneficial to source product from established and known suppliers, however price is the key factor in all supply decisions. Pacific Aluminium seeks the best price and then establishes a supply relationship and contract for the following year.

3.3.2 Customers

Pacific Aluminium uses silicon metal to produce certain grades of aluminium. The silicon metal is used only in the production process of another product and is therefore not sold after importing. The individual smelters make the aluminium, which is then placed into holding yards. Once the final aluminium product is produced, sale of that product is co-ordinated by Rio Tinto for sale either domestically or overseas.

3.4 Like goods

Pacific Aluminium turns alumina, sourced from Rio Tinto in Gladstone, into aluminium using silicon metal in the process for certain grades, then manufactures the aluminium into different shapes and sizes for sale.

All grades of silicon imported by Pacific Aluminium are used to make primary aluminium.

Pacific Aluminium advised that the highest grade silicon metal it uses in its manufacturing processes is grade 2202, which the Australia industry can produce. In 2012 Pacific Aluminium shifted approximately [redacted]% of its silicon metal grade needs from the more purified grades to a lower grade known as 441. [redacted] [research and development details] Pacific Aluminium claims that it approached Simcoa to provide a quote for the supply of this lower grade product, however Simcoa was unable to produce it and could only provide prices for the higher grade products (**confidential attachment 2**). Further examination of this negotiation is at chapter 8.

Pacific Aluminium provided a presentation of the products it produces and the relevant silicon metal grades used in each (**confidential attachment 4**). The switch to a 441 grade product was a pure cost saving measure and has allowed Pacific Aluminium to produce its product in a more cost effective way by not over loading products with high specification inputs where it isn't required.

Pacific Aluminium advised that generally there is no significant quality differences between the imported silicon metal and locally produced silicon metal (in equivalent grades) to warrant the premium price set by the Australian industry.

Pacific Aluminium submitted that grade 441 silicon metal should be excluded from the investigation as the applicant does not produce like goods to the imported goods.

4 AUSTRALIAN MARKET

Pacific Aluminium provided a general overview of the current Australian market for silicon metal. Pacific Aluminium advised that aluminium smelters are shutting down worldwide. In order to remain viable, a smelter must source products at low cost and streamline to increase efficiency. Pacific Aluminium works with site teams from each of the entities it manages to source suitable product and ensure needs are met by each plant to operate at the highest level of efficiency.

Different sites manufacture different products to ensure a streamlined process. Boyne Smelters and Tomago are larger smelters which provide better economies of scale. They are able to produce large quantities of particular products. Bell Bay is a smaller smelter on the world scale and produces products for a more niche market. It is able to service smaller, less frequent orders and specialised product requests.

Pacific Aluminium advised that in 2004, 80% of its silicon metal supplies came from Simcoa with the balance sourced from China. It stated that today China has improved processes and can produce a better quality 2202 grade product with a lower calcium content, at a cheaper price.

Pacific Aluminium advised that the market for silicon metal has changed over the last five years. China is no longer a minor contributor with small silicon metal production facilities. When it began looking into supplies from China, Pacific Aluminium examined three regions within China as a possible source. One major consideration for Chinese suppliers is power supply.

Power supply is a critical factor to produce silicon metal and there are some geographical issues which can affect power supply in China at different times of the year depending on whether the plant uses hydro power for electricity. Pacific Aluminium advised it understands that the Government of China regulates power usage for silicon plants and has begun implementing environmental controls which has increased the reliability of supply of silicon metal from China. Instead of many small silicon metal plants, China is moving to bigger plants with larger capacity furnaces. These can produce the required silicon metal grades at a cheaper price than can be provided by the Australian industry.

When sourcing silicon metal, Pacific Aluminium does not conduct a tender process as such, rather it approaches particular silicon metal suppliers seeking a price offering from each before selecting which ones to establish contracts with. Pacific Aluminium maintains an approved supplier list, which contains more suppliers than just the two currently being utilised.

Pacific Aluminium stated that silicon metal prices are driven by the global market. They advised that the Australian industry has been given the opportunity to meet prices in the market but it has been unable to do so. Therefore Pacific Aluminium continues to source silicon metal from China.

5 IMPORTS

5.1 Ordering and pricing

Initially when the Pacific Aluminium division was established by Rio Tinto, all sourcing was handled by a central procurement office based in Singapore (Rio Tinto Singapore). Pacific Aluminium purchased its silicon metal products directly from Rio Tinto Singapore. The procurement office in Singapore handled all price and supply negotiations with the suppliers and then supplied the individual importers in Australia. Raw materials were stocked in China. Rio Tinto Singapore sourced supply from the Chinese stocks and sent them to Pacific Aluminium. This arrangement ceased in 2012 (when Pacific Aluminium established its own procurement function) and now Pacific Aluminium deals directly with its suppliers as outlined at paragraph 3.3.1.

Pacific Aluminium's head office in Brisbane conducts all the supplier negotiations and establishes the supply contracts. Individual smelter sites then place their orders with each selected supplier as needed. When considering supply sources, Pacific Aluminium consider the delivered cost of the product. A cost per tonne may be cheaper than another source, however once the delivery cost is factored in, it may no longer be the cheapest option.

Pacific Aluminium produces a forecast of silicon metal needs annually at the end of each calendar year. Each month the central office in Brisbane receives updated sales forecasts from each of the sites. Once this forecast is received by the head office, it calculates and sets the price for the month, referred to as a "COAP" (contract on a page) and issues the COAP to each of the sites in preparation for finalising individual site orders of silicon metal. Pacific Aluminium provided a copy of several months of COAP calculations to support the data in its questionnaire response (**confidential appendix 1**).

When placing an order, each site prepares its own purchase order, which remains a price suppressed order until the COAP is circulated by the head office. The purchase order is issued to the supplier and once the COAP is released the purchase order is updated with the set price. Once the vendor agrees to the price set and purchase order details, the order is finalised. Each individual site deals directly with the freight companies for delivery of their orders. Any supply or order issues are dealt with by head office.

Each site manages its own invoices and documents. Tomago organises payments to suppliers directly, while Pacific Aluminium's head office handles payments for Bell Bay and Boyne Smelters. Payment terms are [redacted] days from the date of bill of lading. Pacific Aluminium advised that it is approximately [redacted] months from the date of the purchase order to the date of delivery.

Bell Bay and Boyne Smelters purchase silicon metal on an FOB basis and a separate logistics team organise the freight and distribution of goods. Tomago purchases its silicon metal needs on a CFR basis. Pricing is a transparent formula base taking into account market movements. The method of calculation for the price is as follows:

Product pricing is determined on a monthly basis. A calculation is made [redacted]

[redacted].[2] [pricing formula]

Pacific Aluminium is reliant upon a robust logistics system. None of the sites maintain large stocks and goods can be shipped between plants if needed. Once an order is placed and a supply schedule is confirmed, Pacific Aluminium monitors the progress of that order at every stage. At times Pacific Aluminium arranges smaller order sizes at bi-monthly intervals to ensure a regular supply of silicon metal is available without the need to stock pile.

5.2 Volume of trade

Prior to the visit, the Commission forwarded each company a download from ACBPS' import database (CRE) of all listed imports under the relevant tariff sub-heading for the investigation period 1 January 2013 to 31 December 2013. This was included with the Importer Questionnaire.

This download indicated import volumes for each company was as follows:

Company	Quantity (Tonne)
Bell Bay	[redacted]
Boyne Smelters	[redacted]
Tomago	[redacted]

In each company's response to Part B of the Importer Questionnaire, it confirmed that all listed imports provided in the imports listing provided by ACBPS were the goods.

At the verification visit we detected a variance between the CRE data and one actual volume purchase by Bell Bay. An amount was incorrectly entered in CRE that made the total volume overstated by [redacted] tonnes, therefore the total volume imported by Bell Bay was [redacted] tonnes.

5.3 Verification of imports

Prior to the visit, we selected 17 shipments across the three smelters and asked Pacific Aluminium to prepare a listing of all associated costs for these shipments (import sales listing).

- 8 shipments were selected for Bell Bay;
- 4 shipments were selected for Boyne Smelters (being the total number of shipments during the investigation period); and
- 5 shipments were selected for Tomago (being the total number of shipments during the investigation period).

[2] Schedule B of supply contracts. (confidential attachment 5)

At our visit, we asked Pacific Aluminium to provide the Commission with the following source documents for these shipments:

- commercial invoices;
- packing lists;
- purchase orders;
- bills of lading;
- Customs broker and domestic freight invoices; and
- Proof of purchase

Pacific Aluminium provided us with the source documents for all 17 shipments (**confidential attachment 3)**.

For each shipment we used the source documents provided to check the listed quantity, invoice value, ocean freight and insurance, customs duty and importation costs to the import sales listing, and ACBPS's import database. The proofs of payment for the selected shipments were provided subsequent to the visit.

5.3.1 Supplier invoice details

Commercial invoices are issued by the respective traders, not the manufacturers of the silicon metal. Pacific Aluminium sourced silicon metal from the following two traders during the investigation period:

- [redacted] and
- [redacted]

On most of the import documentation provided the trader was listed as the supplier, however on the certificate of origin documents for supplies from [redacted] the manufacturer was listed as the exporter. Supplies from [redacted] listed [redacted] as the supplier, even on the certificate of origin.

All invoices were issued in US dollars and Pacific Aluminium advised that it made payments in US dollars as well. The Commission converted these figures to Australian dollars using the Reserve Bank of Australia's exchange rates as at the date of the invoice.

Pacific Aluminium provided copies of the supply contracts established with each of the traders listed above (**confidential attachment 5**). The contracts provided details of:

- terms of sales;
- product range to be supplied;
- approved producers to source products from;
- pricing formula;
- packing requirements; and
- minimum purchase quantities.

5.3.2 Shipment costs

We examined the freight costs entered on the importer questionnaire Part B response and compared them with the actual freight invoices for each selected shipment. We

found that the incorrect amount had been entered for the freight cost by the broker in the Customs entry and this was the amount that had been provided on the Part B response. Pacific Aluminium provided a revised Part B response for each company after the visit incorporating the correct freight amount (**confidential appendix 2**), which cross matched to the freight invoices provided at the visit.

5.3.3 Importation costs

We calculated the average post FOB expenses for the selected shipments, which are summarised in Table 1 below.

Cost item	Weighted average unit price (AUD/MT)
BELL BAY	
Ocean freight	[redacted]
Marine Insurance ([redacted]% of the selling price)	[redacted]
Australian importation costs (excluding GST)	[redacted]
Total importation costs	[redacted]
BOYNE SMELTERS	
Ocean freight	[redacted]
Marine Insurance ([redacted]% of the selling price)	[redacted]
Australian importation costs (excluding GST)	[redacted]
Total importation costs	[redacted]
TOMAGO	
Ocean freight	[redacted]
Marine Insurance [redacted]% of the CFR selling price [redacted])	[redacted]
Australian importation costs (excluding GST)	[redacted]
Total importation costs	[redacted]

Table 1: Pacific Aluminium's import costs

These calculations are at **confidential appendix 2.**

5.4 Export prices for selected shipments

We calculated the weighted average FOB export price for the selected shipments for each company as follows:

Entity	Weighted Avg Export Price per tonne in USD	Weighted Avg Export Price per tonne in AUD
Bell Bay	[redacted]	[redacted]
Boyne Smelters	[redacted]	[redacted]
Tomago	[redacted]	[redacted]

Table 2: Summary of weighted average FOB export price per tonne

6 WHO IS THE IMPORTER AND EXPORTER

6.1 Who is the importer?

We reviewed the documents provided in respect of the selected shipments. We note that:

- Boyne Smelters, Bell Bay and Tomago are named as the customers on the respective supplier invoices;
- Boyne Smelters, Bell Bay and Tomago are named as the consignees on the respective bill of lading documents; and
- Boyne Smelters, Bell Bay and Tomago each pay for delivery of the goods to their respective sites either in the purchase price if CFR terms or separately if FOB terms.

We consider Boyne Smelters, Bell Bay and Tomago to be the beneficial owner of the goods for the respective shipments at the time of importation, and therefore the importers.

6.2 Who is the exporter?

The Commission will generally identify the exporter as:

- a principal in the transaction, located in the country of export from where the goods were shipped, who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal in the transaction, located in the country of export, who owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

It is common for traders and other intermediaries to play a role in the exportation of the goods. These parties will typically provide services such as arranging transportation, conducting price negotiations, arrange contacts with the producer, etc.

In such cases, the trader typically acts as an intermediary who, although one of the principals, is essentially a facilitator in the sale and shipment of the goods on behalf of the manufacturer. Typically the manufacturer as a principal who knowingly sent the goods for export to any destination will be the exporter.

Therefore, depending on the facts, the Commission considers that only in rare circumstances would an intermediary be found to be the exporter. Typically this will occur where the manufacturer has no knowledge that the goods are destined for export to any country and the essential role of the intermediary is that of a distributor rather than a trader.

Pacific Aluminium advised it understands that in this case the manufacturer of the goods has no knowledge that the goods produced will be on-sold to Australia and therefore the trader should be considered the exporter.

We examined the import source documentation and note that on all relevant documents, the trader is listed as the supplier/consignor, except for shipments from [redacted]. The documentation for shipments from [redacted] show the manufacturer listed as the exporter on the certificate of origin, with [redacted] listed as the supplier on all other documents. The Commission will further investigate who is the exporter.

7 ARMS LENGTH

In determining export prices under s. 269TAB(1)(a) and normal values under s. 269TAC(1), the Act requires that the relevant sales are arms length transactions.

S.269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price;
- the price is 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; and
- in the opinion of the Parliamentary Secretary, the buyer, or an associate of the buyer, will, 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.

We reviewed the documentation for the selected shipments and did not find any evidence, in respect of the purchase of silicon metal, that:

- there is any consideration payable for or in respect of the goods other than price;
- the price was influenced by a commercial or other relationship between Pacific Aluminium or an associate of Pacific Aluminium, and its suppliers or an associate of the supplier; and/or
- Pacific Aluminium or an associate of Pacific Aluminium was directly or indirectly reimbursed, compensated or otherwise received a benefit for or in respect of the whole or any part of the price.

We are satisfied that import transactions between Pacific Aluminium and its suppliers are at arms length in terms of s. 269TAA.

8 GENERAL COMMENTS

Pacific Aluminium advised it was shifting towards the use of a lower grade silicon metal wherever possible to ensure cost savings. Pacific Aluminium maintains that if the Australia industry cannot or will not produce the grade 441 it should be excluded from the investigation.

As noted in paragraph 3.4, the last time Pacific Aluminium approached the market was in 2012. Pacific Aluminium advised that Simcoa participated in that process, however was unsuccessful due to Simcoa's inability to supply a particular grade of silicon metal - grade 441. In addition, the prices for the other grades Simcoa provided quotes for were higher than those provided by Chinese suppliers and so Pacific Aluminium opted to source all its silicon metal from China. Pacific Aluminium provided copies of correspondence between it and Simcoa and copies of Simcoa's price offerings during the process (**confidential attachment 2**). We examined the documentation provided. Simcoa provided price offerings for silicon metal grade 3303 in various packaging sizes. The correspondence shows a request from Pacific Aluminium to Simcoa for prices for both silicon metal grades 2202 and 3303 and also provided an indicative price obtained for both 2202 and 3303 grade product. The indicative prices provided in the correspondence are below the price offered by Simcoa in its response. We note that there does not appear to be a request for pricing of a 441 graded silicon metal in the correspondence provided.

Pacific Aluminium also noted that the application of duty draw back provisions would provide an additional administrative burden to the company while negating the effect of any dumping and countervailing duties if they were to be imposed. Up to 70% of the product produced by Pacific Aluminium using imported silicon metal is exported so it would be eligible to apply for the duty draw back in those circumstances.

9 RECOMMENDATIONS

From our investigations, we are of the opinion that, for the goods imported by Pacific Aluminium from [redacted] and [redacted]:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporters; and
- the purchases of the goods by the importer were arms length transactions.

Subject to further inquiries with these exporters and the relevant manufacturers, we recommend that the export price for silicon metal imported by Pacific Aluminium from [redacted] and [redacted] can be established under s.269TAB(1)(a) of the Act, using the invoiced price, less deductions to the FOB level as required.

10 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Pacific Aluminium COAP calculations
Confidential Appendix 2	Import cost calculations
Confidential Attachment 1	Presentation by Pacific Aluminium
Confidential Attachment 2	Copies of correspondence with Simcoa of price offers in 2012
Confidential Attachment 3	Source documents for selected imports
Confidential Attachment 4	Presentation of products produced
Confidential Attachment 5	Supply contracts