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Ms Joanne Reid
Director
Anti-Dumping Commission
c/o Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

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Dear Ms Reid

Investigation No. 237 - Dumping and Subsidisation of Silicon Metal exported from P R China to Australia – Comments re Government of China submission of 30 March 20151. Introduction

I refer to the submission on behalf of the Government of China ("GOC") dated 30 March 2015 in response to Statement of Essential Facts ("SEF") and Preliminary Affirmative Determination ("PAD") No. 237.

It is noted by Simcoa Operations Pty Ltd ("Simcoa") that the GOC submission is dated 30 March 2015 and was provided to the Commission 15 days following the scheduled 20-day timeframe permitted in response to SEF and PAD No. 237. The GOC has participated in numerous anti-dumping and countervailing investigations in recent years and is well aware of the Australian investigation timeframes.

Simcoa therefore respectfully requests the Anti-Dumping Commission ("the Commission") to disregard the representations of the GOC due to the lateness of the submission by the GOC by 15 days post the requisite expiry period.

Without detracting from Simcoa's stated position that the GOC submission should be disregarded, Simcoa provides the comments hereunder concerning the submission.

2. Timing of SEF & PAD No. 237

The GOC has complained that with over "417 days" since initiation, it is "unreasonable and unfair" to allow interested parties 20 days to respond to the SEF and PAD. As indicated, the GOC is well-versed with the Australian Anti-Dumping investigation timeframe from its role in numerous investigations and the 20 day timeframe permitted under the legislation is an accepted statutory period.

The GOC's objection concerning an apparent inadequate timeframe in which to respond to SEF and PAD No 237 should be dismissed by the Commission.

3. GOC's participation and best available information

The GOC asserts that it is not obligated to provide information to the Commission in the conduct of its investigation. This comment arose from the Commission's assessment that "*the GOC did not provide a*

response to any of the questions related to the assessment of market situation". Simcoa agrees with the GOC that in the absence of full participation by an interested party, the Commission must rely upon the best available information. The GOC contends that the Commission's reliance on the recent findings of the Canada Border Services Agency ("CBSA") in its investigation (of 5 November 2013) does not represent facts available to the Commission. Simcoa disagrees. The information examined by CBSA and available to the Commission is directly relevant to the matter of whether a market situation for silicon metal prevails in the People's Republic of China ("China"). The Commission has correctly considered the available information from the CBSA inquiry and considered it relevant for the purposes of arriving at SEF and PAD No. 237.

Simcoa would also submit that information relied upon by the Commission for the purposes of determining a market situation for silicon metal in China (including government-influenced low cost inputs) could "be checked from other independent sources".

4. Previous findings on silicon metal in China

The submission on behalf of the GOC references Report No. 81 where the then Australian Customs and Border Protection Service ("ACBPS") made recommendations to the Minister concerning the market conditions for silicon metal in China.

It should be noted that the then ACBPS investigation did not involve a countervailing inquiry nor was it asserted at the time that a market situation prevailed in relation to silicon metal in China. There was limited transparency of information, and applicant industries could not adequately evidence government influence of raw material inputs. In the years that followed the 2004 investigation, improved transparency has occurred, along with findings by other administrations in relation to silicon metal.

The application by Simcoa in 2014 is a substantially different application to that in 2004 and includes supporting evidence in respect of countervailing programs and the assertion of a market situation.

The Commission has available to it in the current investigation a far greater transparency concerning the market conditions for silicon metal than it did in 2014, including enhanced clarity concerning government-influenced input costs into silicon manufacture in China.

The GOC's concerns in respect of the apparent change in the Commission's findings in 2015 when contrasted with the 2004 investigation are driven by the increased transparency of information available to the Commission in this investigation.

5. Market situation for silicon metal

The GOC infers that the explanation for pricing on the Chinese domestic market for silicon metal can be explained by "*comparative advantage*". Respectfully, this is incorrect. The Commission has examined the influences of the pricing behavior for silicon metal and concluded that the GOC's influence on electricity prices in China is a key influencing factor impacting silicon metal prices.

The Commission has validated Chinese domestic electricity prices – including from information that the GOC itself has provided - and concluded that reduced electricity prices in China has been an influencing factor on artificially low Chinese domestic prices for silicon metal.

Simcoa supports the considered assessment of the Commission's examination of raw material input prices for electricity. The input prices have been validated via independent sources and support the Commission's finding of a market situation for silicon metal in China.

The Commission, therefore, has not:

- disregarded Australia's recognition of China as a market economy country;

- ignored its obligation to treat China as an equal WTO member; or
- overlooked the differences between the Anti-Dumping Agreement and the Subsidies and Countervailing Measures Agreement.

6. Available Facts

It is claimed on behalf of the GOC that there is a lack of evidence to support the Commission's finding on the existence of a market situation for silicon metal in China as explained in SEF and PAD No 237. Simcoa strongly refutes this assertion.

The GOC correctly cites that the Commission can rely upon secondary information from the CBSA inquiry if it is the "best available information available". It should be noted, however, that the CBSA information was not the sole information relied upon by the Commission. Simcoa had included information from [source] in relation to electricity prices in China which supported the findings of the CBSA that electricity was sold at artificially low prices in China (by up to 30 per cent).

The GOC has further cited selective aspects of the information relied upon by the Commission in Appendix 1 of SEF and PAD No. 237 to support its claim that the facts do not support the existence of a market situation. For example, the GOC argues that export quotas do not apply to silicon metal, however, the Commission has evidenced information supporting its finding that quotas do exist (refer P. 53 of SEF and PAD No 237). The GOC submission does not address the absence of a VAT rebate on export for silicon metal – designed to ensure maximum volumes of silicon metal are diverted to domestic supply. It is also contended that the information relied upon by the Commission concerning regulatory inference is "outdated". This is not the case. The GOC has not provided any information in support of its position that the export restrictions no longer apply.

The GOC refers to the cited government influences on the Chinese silicon metal industry as a "collection of observations and opinions". Simcoa rejects this assessment as an attempt to downplay the significance of the GOC's policies and regulations designed to shift production capacity to large scale silicon production facilities. Simcoa does not agree with the GOC's claim that the policies and regulations are nothing more than aspirational but, rather, clear directives that are aimed at influencing production capacity of silicon metal in China.

The information relied upon by the Commission has been validated with independent sources (i.e. as reported in source) and reflected in the CBSA findings. The information relied upon, therefore, is representative of best "facts available".

7. Competitive market costs

The GOC submission refers to the requirements of Regulation 180 (2)(b)(ii) and specifically the wording "*reasonably reflect competitive market costs associated with the production or manufacture of like goods*".

The Commission has correctly had regard to the provision of Regulation 180(2)(b)(ii) in determining that electricity costs in China as supplied to the ferro-alloy industry are not supplied in a competitive manner.

The Commission has not erred in its findings on electricity costs in China that are in accord with Regulation 180(2)(b)(ii).

It is further suggested by the GOC that a differential in electricity pricing between industry sectors does not indicate an absence of competitive costs. However, the Commission has access to supporting information that indicates Chinese electricity suppliers have adjusted electricity prices for the high-usage ferro-alloy industry at rates that are substantially reduced rates tailored to the competitiveness of the ferro-alloy producers. Additionally, the GOC provided electricity prices to the Commission in its

questionnaire response for large industry sectors that were at higher prices than the ferro-alloy industry's electricity prices.

The available information supports the findings that silicon metal manufacturers in China have benefited from artificially low electricity prices.

8. Subsidy program – electricity at less than adequate remuneration

In its submission the GOC does not seek to challenge the Commission's position that the electricity suppliers in China are 'public bodies' and that these state-invested entities ("SIEs") are performing activities on behalf of the GOC.

Simcoa supports the Commission's findings at Non-Confidential Appendix 3, Part III (i) that the GOC exercises meaningful control over electricity prices as per the *Electric Power Law of the Government of China*. Electricity prices in China are regulated by the GOC, along with other utilities in China (e.g. water, gas). It is evidenced in the *Electric Power Law* that the GOC exercises significant control over the supply and prices of the more than 90 per cent state-owned enterprises in the Chinese electricity industry.

The Commission, therefore, has correctly concluded that electricity in China has been supplied to the ferro-alloy industry at prices which are significantly less than other "large industrial" users.

9. Conclusions

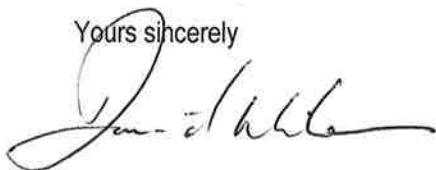
Simcoa does not consider that the Commission is obliged to take account of the GOC's submission due to it having been lodged with the Commission some 15 days post the response to SEF and PAD No 237 submission deadline. The GOC's assertions that the information relied upon by the Commission do not represent the best available information and are wholly reliant on the CBSA's findings are incorrect and must be rejected. Additionally, the findings contained in Report No. 81 are not based on the same findings and requirements as considered in SEF and PAD no 237 and therefore are not relevant to this inquiry.

Finally, the Commission's finding in relation to the subsidy program concerning the provision of electricity at less than adequate remuneration is based upon information supplied by the GOC for large industrial users which when contrasted with ferro-alloy electricity prices confirm favorable prices to the this industry (i.e. silicon metal manufacturers).

Simcoa therefore requests the Commission to disregard the objections of the GOC and recommend to the Parliamentary Secretary that interim dumping duty and countervailing measures are required to remove the threat of future material injury to the Australian industry manufacturing silicon metal.

If you have any questions concerning the attached submission, please do not hesitate to contact me on (08) 9780 6762, or Simcoa's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



David Miles
Vice President
Site Services and Marketing