



Australian Government
Anti-Dumping Commission

PUBLIC RECORD

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 263

REVIEW INTO ANTI-DUMPING MEASURES

**ALUMINIUM ROAD WHEELS EXPORTED FROM THE
PEOPLE'S REPUBLIC OF CHINA**

30 July 2015

SEF 263 - Aluminium Road Wheels - China

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ABBREVIATIONS

\$	Australian dollars
11 th FYP	<i>Eleventh Five Year (2006 – 2010) Plan of the People’s Republic of China for the National Economic and Social Development</i>
12 th FYP	<i>Guidelines of the 12th Five-Year (2011-2015) Plan of the People’s Republic of China for the National Economic and Social Development</i>
ACBPS	Australian Customs and Border Protection Service
The Act	<i>Customs Act 1901</i>
ADN	Ant-Dumping Notice
Anti-Dumping Regulations	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
The applicant	Jiangsu Yaozhong Aluminium Wheels Co., Ltd
Arrowcrest	Arrowcrest Group Pty Ltd (member of the Australian industry)
ARWs	Aluminium road wheels
Backward Capacities Notice	<i>China’s Notice on Strengthening Work on the Elimination of Backward Production Capacity</i>
CHALCO	Aluminium Corporation of China Limited
CHINALCO	Aluminium Corporation of China
CIF	Cost, insurance and freight
CFR	Cost and freight
CITIC Dicastal	CITIC Dicastal Wheel Manufacturing Co. Ltd
the Commission	The Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 263	Consideration Report 263
CSRB	China State Reserve Bureau
CTM	Cost to make
CTMS	Cost to make & sell
Directory Catalogue	<i>China’s Directory Catalogue on Readjustment of Industrial Structure and the Interim Provisions on Promotion Industrial Structure Adjustment</i>
Dragway	Dragway Performance Engineering
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Entry Requirements Policy	<i>China’s Requirements on Entry into the Aluminium Industry</i>
EXW	Ex-works
FIE Law	<i>Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991</i>
FOB	Free On Board
FYP	Five Year Plan
GAAP	Generally accepted accounting principles
GQ	Government Questionnaire
the guidelines	<i>Guidelines for Accelerating the Restructuring of the Aluminium Industry</i>

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Harbor Aluminium	Harbor Aluminium Intelligence Unit
Interim Measures	China's <i>Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises</i>
International Obligations Regulation	Customs (International Obligations) Regulation 2015
Jiangsu Yaozhong	Jiangsu Yaozhong Aluminium Wheels Co., Ltd (Chinese ARWs exporter and the applicant)
LME	London Metal Exchange
MIIT	China's Ministry of Industry and Information Technology
MJP	Major Japanese Ports Premium
NDRC	China's National Development and Reform Commission
NIP	Non-injurious Price
Nonferrous Metals FYP	Nonferrous Metals Five Year Plan
Normalization Criteria	China's <i>Normalization Criteria on Aluminium Industry</i>
OEM	Original equipment manufacturer
PAD	Preliminary Affirmative Determination
PDW	Zhejiang Shuguang Industrial Co. Ltd (Chinese exporter of ARWs)
Pilotdoer	Pilotdoer Wheel Co., Ltd.
PIR	Preliminary information request
Redundancy Circular	China's <i>Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy</i>
REP 148	Final Report for the investigation into aluminium extrusions exported from China
REP 181	Final Report for the previous investigation into aluminium road wheels exported from China
Review period	1 July 2013 to 30 June 2014
SASAC	China's National State-Owned Assets Supervision and Administration Commission
SASAC Guiding Opinion	<i>Guiding Opinions of the SASAC of the State Council about Promoting the Adjustment of State-owned Capital and the reorganization of State-owned Enterprises</i>
SBMR	State Bureau of Material Reserve
SEF	Statement of Essential Facts
SEF 248	Statement of Essential Facts for the review of measures applicable to aluminium extrusions exported from China
SEF 263	This Statement of Essential Facts
SGQ	Supplementary Government Questionnaire
SHFE	Shanghai Futures Exchange
SIE	State-invested enterprise
SOA Law	China's <i>Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People</i>
SOE	State-owned enterprise
the goods	the goods the subject of the application
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science

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TMRO	Trade Measures Review Officer
USP	Unsuppressed Selling Price
VAT	Value-Added Tax
Zhejiang Yueling	Zhejiang Yueling Co. Ltd (Chinese ARWs exporter)

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This Statement of Essential Facts (SEF) is in relation to a review of anti-dumping measures applicable to exports to Australia of certain aluminium road wheels (ARWs) from the People's Republic of China (China).

The anti-dumping measures applicable to ARWs exported from China were established following an anti-dumping and countervailing investigation completed in 2012 by the then Australian Customs and Border Protection Service (ACBPS). Notification of the then Minister for Home Affairs' decision to apply dumping and countervailing duties to ARWs was given in Australian Customs Dumping Notice No. 2012/33.

This review of measures is in response to an application lodged by Jiangsu Yaozhong Aluminium Wheels Co., Ltd (Jiangsu Yaozhong), which stated that significant changes to the price for primary aluminium sold via the London Metal Exchange (LME) – which underpinned an aluminium cost substitute used in the previous investigation – have caused a change in normal values and subsidy margins for exporters.

The Commission identified that the changes in variable factors upon which Jiangsu Yaozhong's application was based would likely have implications for all exporters, and hence the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary) extended this review of measures to all exporters.

1.2 Applicable law

Division 5 of Part XVB of the *Customs Act 1901* (Act) enables affected parties to apply for a review of anti-dumping measures.¹ The Division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Parliamentary; and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

After conducting a review of anti-dumping measures, the Commissioner must give the Parliamentary Secretary a report containing recommendations in relation to the review of measures.

¹ All references to legislation in this report are references to the *Customs Act 1901*, unless otherwise specified.

1.3 Findings and conclusions

The Commissioner is satisfied that all variable factors relevant to the taking of anti-dumping measures have changed for all exporters of ARWs. The Commissioner is satisfied that there have been changes to the:

- export prices and normal values;
- countervailable subsidies; and
- non-injurious prices

applicable to all Chinese exporters of ARWs.

In considering whether there has been a change to the normal values, the Commissioner has found that a market situation exists in the Chinese domestic market for ARWs such that sales in that market are not suitable for the purpose of determining a normal value.

1.4 Recommendations

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice and countervailing notice have effect in relation to:

- CITIC Dicastal Wheel Manufacturing Co. Ltd (CITIC Dicastal; dumping only);
- Pilotdoer Wheel Co., Ltd. (Pilotdoer);
- Zhejiang Jinfei Kaida Co., Ltd. (Jinfei Kaida);
- Zhejiang Yueling Co., Ltd (Yueling);
- Jiangsu Yaozhong;
- Residual exporters; and
- Uncooperative and all other exporters

as if different variable factors had been ascertained.

The Commissioner further proposes to recommend to the Parliamentary Secretary that:

- the NIP be altered; and
- the Parliamentary Secretary have regard to the desirability of imposing a NIP as part of this review.

2 BACKGROUND

2.1 Initiation

On 4 August 2014, Jiangsu Yaozhong Aluminium Wheels Co., Ltd (Jiangsu Yaozhong) lodged an application under s. 269ZA of the Act, requesting a review of the anti-dumping measures as they apply to its exports of ARWs to Australia from China. Jiangsu Yaozhong claimed that certain variable factors relevant to the taking of the dumping and countervailing duties had changed.

On 15 September 2014, the Commissioner initiated a review of the anti-dumping measures in respect of ARWs exported from China by all exporters. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping and countervailing measures as they affect the goods exported from China by all exporters, have changed.

2.1.1 Extending the review to include all exporters

Subsection 269ZC(4)(b) provides that if the Commissioner decides not to reject an application for review of anti-dumping measures, the Commissioner may, if he or she considers that the review applied for should be extended to include any additional matter, recommend to the Parliamentary Secretary that the review be extended accordingly.

After considering Jiangsu Yaozhong's application, the Commissioner determined it was appropriate to recommend to the Parliamentary Secretary that the scope of the review be extended to all exporters of the goods currently subject to measures. This decision was based on the fact that the modification to variable factors identified in Jiangsu Yaozhong's application would have applied equally to all exporters of the goods. The former Parliamentary Secretary accepted that recommendation and accordingly, the review was extended to all exporters of the goods from China.

A notice advising the initiation of the review was published in *The Australian* newspaper on 15 September 2014. The review will examine whether the variable factors relevant to the taking of measures have changed. The review period is 1 July 2013 to 30 June 2014.

2.2 Existing measures

On 7 November 2011, the then ACBPS² initiated an investigation into the alleged dumping and subsidisation of ARWs exported to Australia from China following an application by Arrowcrest Group Pty Ltd (Arrowcrest). In that investigation (referred to hereon as the 'previous investigation'), and as outlined in International Trade Remedies Report No. 181 (REP 181), it was found that:

- with the exception of one exporter, Zhejiang Shuguang Industrial Co. Ltd (PDW) the goods were exported from China at dumped prices;
- with the exception of two exporters, PDW and CITIC Dicastal, the goods exported from China were subsidised;

² Prior to 1 July 2013, dumping matters were the responsibility of the then ACBPS.

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- the Australian industry producing like goods had suffered material injury as a result of those dumped and subsidised goods; and
- future exports from China may be dumped and subsidised and that continued dumping and subsidisation may cause further material injury to the Australian industry.³

The then ACBPS recommended that the then Minister for Home Affairs impose anti-dumping measures on the goods exported from China. On 5 July 2012, the then Minister for Home Affairs published a dumping duty notice and a countervailing duty notice applying to ARWs exported to Australia from China (with the exception of the two exporters named above). Details of the dumping duty notice and the countervailing duty notice are in Australian Customs Dumping Notice No. 2012/33.

Following a review by the then Trade Measures Review Officer (TMRO), the then ACBPS conducted a reinvestigation into certain findings made in REP 181. International Trade Remedies Report No. 204 (REP 204) sets out the findings affirmed and new findings made by the ACBPS as a result of the reinvestigation.

The then Minister for Home Affairs accepted the recommendations in REP 204 and published a new notice under s. 269ZZM which revised the level of the measures for one exporter, YHI Manufacturing Co. Ltd.

Jiangsu Yaozhong exported ARWs to Australia during the previous investigation period. However, it did not make itself known to the previous investigation and did not respond to the Exporter Questionnaire. As such Jiangsu Yaozhong was considered what was then termed a 'selected non-cooperating' exporter and is subject to the current anti-dumping and countervailing measures for 'selected non-cooperating exporters'.

The Commission notes that certain findings made in the original investigation relating to the categorisation of certain exporters as "selected non-cooperating exporters" are currently being reconsidered by the Parliamentary Secretary following Federal Court Orders handed down in the matter of *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708.

2.2.1 Market situation

One of the key findings made in REP 181 was that because a situation applied to the Chinese ARWs market during the investigation period, sales in that market were not suitable for use in determining normal values under subs. 269TAC(1).

This finding was based on the determination that key raw materials used in ARW production in China – aluminium and aluminium alloy – did not reasonably reflect competitive market costs because of the nature and degree of government intervention in that market.

³ REP 181 is accessible at <http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR181.aspx>.

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As a consequence:

- Normal values were constructed in accordance with subs. 269TAC(2)(c) of the Act.
- In determining normal values for all exporters, the actual cost incurred by exporters for aluminium and aluminium alloy were substituted with international benchmark aluminium prices, based on:
 - LME primary aluminium prices; and
 - An upwards adjustment to account for additional costs of alloys.

This approach had the effect of increasing normal values and therefore dumping margins.⁴

2.2.2 Countervailable subsidy Program 1

The then ACBPS further determined in the previous investigation that Chinese exporters of ARWs received countervailable subsidies under Program 1 - Aluminium provided by government at less than fair value.

This finding was based on the determination that Chinese exporters of ARWs purchased primary and/or alloyed aluminium from state-invested enterprises (SIEs; acting as public bodies) at less than adequate remuneration. As such, it was found that Chinese exporters of ARWs had received a financial contribution from a public body involving the provision of goods (otherwise than in the course of providing normal infrastructure) that conferred a benefit (subs. 269T(1) definition of 'subsidy' and what was then subs. 269TACC(4)(d) of the Act).

As a result, the then ACBPS used the same competitive aluminium price benchmark as used for the purposes of determining normal values, for the purpose of determining the value of any benefits received by exporters under this countervailable subsidy program.

The previous investigation calculated the amount of benefit attributable to Program 1 as:

- for what were then termed 'selected cooperating exporters', the difference between adequate remuneration (determined by reference to the benchmark LME aluminium prices) and the actual purchase price paid for primary and/or alloyed aluminium by 'selected cooperating exporters'; and
- for what were then termed 'non-cooperating exporters', the highest subsidy rate of the 'selected exporters'.

Because the use of a competitive LME-based aluminium cost substitute impacted both subsidy and dumping margins, the then ACBPS avoided double-count of the raw materials cost uplift associated with the use of the cost substitute through removing the uplift value in exporters' dumping margins.⁵

⁴ Refer to Appendix A of REP 181.

⁵ Refer to Appendix B of REP181.

2.2.3 Other subsidy programs

In the previous investigation, the then ACBPS investigated 56 subsidy programs in total and made positive findings in relation to 31 programs. These 31 programs have been investigated by the Commission as part of this review.

Report 181 contains detailed information regarding the findings made by the then ACBPS in the previous investigation in relation to countervailable subsidisation.

2.3 Claims made by the applicant

The Commission has summarised the key issues raised in Jiangsu Yaozhong's application for this review in the sections below (along with the Commission's findings in relation to the company's application, as outlined in Consideration Report 263 (CON 263)).

Both CON 263 and the public record version of Jiangsu Yaozhong's application are also available on the public record for this investigation (accessible at <http://adcommission.gov.au/cases/Pages/CurrentCases/EPR263.aspx>).

2.3.1 LME price impact - normal values and subsidy Program 1

As mentioned in section 2.2.1 above, in the previous investigation the then ACBPS used as part of its normal values calculations, an LME-based aluminium pricing benchmark as a substitute for the actual prices of aluminium as paid by Chinese exporters of the goods.

Jiangsu Yaozhong asserted in its application that the normal values calculated for 'selected non-cooperating exporters' in the previous investigation did not reflect the actual normal values of Jiangsu Yaozhong, claiming that using the company's actual data would result in lower normal values. Jiangsu Yaozhong's claims focussed on the impact that lower aluminium prices, as set via the LME, would have on the normal values of ARWs.

Jiangsu Yaozhong compared monthly LME aluminium cash prices for the previous investigation period (July 2010 to June 2011) with prices for the period August 2013 to July 2014, and showed that the LME prices for the more recent period were approximately 25 per cent lower than during the previous investigation period.

Jiangsu Yaozhong's application further submitted that in respect of the countervailable subsidy Program one - 'Aluminium provided by government at less than fair market value', benefits were not received during the review period because the actual prices paid by exporters in China (as reflected in Shanghai Futures Exchange prices for primary aluminium) were higher than the 'competitive' LME price benchmark.

In CON 263, the Commission stated that Jiangsu Yaozhong's application provided sufficient grounds for the Commission to investigate whether there were changes in relation to the variable factors affecting normal values and the value of subsidy Program 1.

2.3.2 Countervailable subsidies

Jiangsu Yaozhong claimed in its application that it did not receive any countervailable subsidies during the review period.

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In CON 263 the Commission observed that Jiangsu Yaozhong submitted statements which indicated it did not receive subsidy benefits under countervailable subsidy programs (excluding consideration of Program 1) and hence there were sufficient grounds on which to establish the amount of benefit is zero for the purposes of initiation.

2.3.3 Export prices

Jiangsu Yaozhong's application asserted that Jiangsu Yaozhong exported ARWs to Australia at higher prices than the export prices established during the previous investigation. Jiangsu Yaozhong provided commercial documents for an example export sales made to Australia in July 2014, in support of this claim.

The Commission considered this claim and stated, in CON 263, that Jiangsu Yaozhong did not provide sufficient information to establish an amount by which the export price had changed. As such, the Commission found that, in respect of export price, Jiangsu Yaozhong had not provided the information required under subs. 269ZB(2)(c)(ii) of the Act.

Irrespective of the above finding, the Commission has established export prices for the review period in order to establish dumping margins (or in relation to Jiangsu Yaozhong, a floor price) for this review (as detailed in **Appendix A** of this report).

2.4 Concurrent reviews

2.4.1 Accelerated reviews into ARWs

The Commission has recently undertaken accelerated reviews in relation to new exporters of ARWs from China to Australia, as detailed below.

Name of applicant	Date of initiation	Date of finalisation	Comments
Shangdong Hengyu Auto Parts Co., Ltd	4 July 2014	13 October 2014	Applicant was provided with an individual dumping and countervailing margin on completion of the review.
Inovit (Suqian) Corp Ltd	7 November 2014	4 March 2015	Review was terminated due to non-cooperation by applicant.

Table 1: Concurrent ARWs accelerated reviews

2.4.2 Review of anti-dumping measures applying to aluminium extrusions

On 12 June 2014, the Commissioner initiated a review of the anti-dumping measures in respect of aluminium extrusions exported from China. The review examined whether there have been changes to the variable factors relevant to the anti-dumping measures imposed on aluminium extrusions exported from China. The review period for the aluminium extrusions review is from 1 April 2013 to 31 March 2014.

The findings in the aluminium extrusions review of measures have implications for this review, because the production of both ARWs and aluminium extrusions relies on the use of aluminium as a major raw material input. Similarly to this review into ARWs, the aluminium extrusions review of measures considered whether or not aluminium has been acquired by Chinese exporters at less than adequate remuneration.

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The SEF into aluminium extrusions was released on 29 May 2015. As part of this review into ARWs, the Commission has considered relevant findings made in the aluminium extrusions SEF – particularly in relation to whether a market situation applied to the aluminium extrusions market in China – and has cross-referenced any pertinent findings within this report.

The final report for the aluminium extrusions review was provided to the Parliamentary Secretary on 13 July 2015, with a decision due by 12 August 2015.

2.5 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,⁶ or the Parliamentary Secretary may request that the Commissioner conduct,⁷ a review of those measures if one or more of the variable factors has changed. The Parliamentary Secretary may initiate a review at any time. However, a review application may not be lodged earlier than twelve months after publication of the notice imposing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.⁸

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the anti-dumping measures.⁹ Within 110 days of the initiation, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.¹⁰

In making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:¹¹

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

⁶ Subs. 269ZA(1).

⁷ Subs. 269ZA(3).

⁸ Subs. 269ZA(2)(a).

⁹ Subs. 269ZDA(1).

¹⁰ Subs. 269ZD(1).

¹¹ Subs. 269ZDA(3)(a).

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The Commissioner may also have regard to any other matter considered to be relevant to the review.¹²

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value;
- the non-injurious price (NIP); and
- the amount of countervailable subsidy received in respect of the goods.

At the conclusion of the review, in respect of the dumping duty notice and the countervailing duty notice, the Commissioner must provide a final report that makes a recommendation to the Parliamentary Secretary that the dumping duty notice and the countervailing duty notice:¹³

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally, or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice advising interested parties of the decision.¹⁴

2.6 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base their final recommendations to the Parliamentary Secretary.

This SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

The final report will recommend that the dumping duty notice and the countervailing duty notice:

- (a) remain unaltered; or
- (b) have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

¹² Subs. 269ZDA(3)(b).

¹³ Subs. 269ZDA(1)(a).

¹⁴ Subs. 269ZDB(1)

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The Commissioner must have regard to submissions received in relation to this SEF within 20 days of the SEF being placed on the public record in making his final report to the Parliamentary Secretary.

Responses to this SEF should be received by the Commissioner no later than 19 August 2015. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.¹⁵

The Commissioner must report to the Parliamentary Secretary on or before 13 September 2015.

Submissions should preferably be emailed to operations4@adcommission.gov.au.

Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director Operations 4
Anti-Dumping Commission
PO Box 1632
MELBOURNE VIC 3001
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available at the Anti-Dumping Commission's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available online at www.adcommission.gov.au or alternatively the public record may be inspected by request in hard copy in Melbourne (phone (03) 8539 2416 to make an appointment).

Documents on the Public Record should be read in conjunction with this SEF.

¹⁵ Subs. 269ZDA(4)

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commission remains satisfied that an Australian ARWs industry produces like goods to ARWs imported from China.

3.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are produced in Australia. Subsection 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with s. 269T(3) of the Act, for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

3.3 The goods

The goods the subject of the current anti-dumping measures (the goods), as defined in the previous investigation, are:

Aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers, in diameters ranging from 13 inches to 22 inches.

For clarification, the goods include finished or semi-finished ARWs whether unpainted, painted, chrome plated, forged or with tyres and exclude aluminium wheels for go-carts and All-Terrain Vehicles.

3.4 Tariff classification

The goods subject to the measures may be classified to the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

8708.70.91/ 78	Road wheels of a kind used as components in passenger motor vehicles
8708.70.99/ 80	Road wheels other than of a kind used as components in passenger motor vehicles
8716.90.00/ 39	Road wheels for trailers and caravans

Table 2: Tariff classifications relevant to ARWs

3.5 Australian industry

In the previous investigation, the then ACBPS found that there was an Australian industry producing like goods, comprised primarily of one main manufacturer (Arrowcrest). Arrowcrest was found to have represented more than 95 percent of ARW production during the investigation period.

The then ACBPS further identified that there were two other Australian manufacturers of ARWs during the investigation period, Performance Wheel Nominees Pty Ltd and Dragway Performance Engineering Pty Ltd (Dragway). However, the ACBPS did not

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verify these manufacturers because they were estimated to only produce in small volumes.

The Commission remains satisfied that “like” goods are produced in Australia. This position is based on:

- the analysis undertaken during the previous investigation in which the then ACBPS determined that the Australian ARWs industry produced goods which had physical, commercial, functional and production likeness to ARWs exported from China; and
- data obtained from the Australian industry during the course of this review which shows it still manufacture like goods.

4 VARIABLE FACTORS – DUMPING DUTY NOTICE

4.1 Finding

The Commissioner finds that all variable factors relevant to the determination of duties payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), have changed.

The Commissioner proposes to recommend to the Parliamentary Secretary that the variable factors of export price and normal value be altered.

4.2 Approach to considering variable factors

In considering whether there has been a change in the variable factors relevant to the dumping duties imposed on ARWs exported to Australia from China, the Commission has sought to be consistent with the approaches undertaken in the previous investigation.

However, the Commission has departed from the previous methodologies in circumstances where the Commission has received additional information which has shown major changes in exporters' practices since the previous investigation, or has identified risks associated with exporter data.

4.3 Exporter verification

The Commission determined after conducting a risk assessment that, in recognition of the verification work undertaken during the previous investigation, it would not undertake on site verification visits with any selected exporters. The decision not to undertake verification visits was documented and a file note was placed on the public record for this review. As at the date of release of this SEF, no responses have been received in regards to this file note.

During the previous investigation, the then ACBPS undertook verification visits to three companies:

- CITIC Dicastal;
- Pilotdoer; and
- Jinfei Kaida

and conducted an off-site verification for Yueling.

The Commission has conducted an analysis of selected exporters' data submitted as part of this review, to ensure that it would be satisfied that exporters' data was sufficiently reliable for the purposes of this review. This included:

- analysis of exporters' spreadsheets to identify outliers and anomalies;
- cross-referencing key variables with findings from the previous investigation and with external information (such as aluminium benchmark prices) where needed; and
- seeking clarification from exporters on any matters of concern, including through requesting source data, revision of spreadsheets, or further information from exporters.

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The Commission further determined it was suitable to release selected, residual and uncooperative exporters' dumping margins through the SEF as part of this review, rather than through dedicated dumping margin reports for each selected exporter. This approach reflects the substantial verification work undertaken in the previous investigation, and the fact that the market situation findings to be released as part of this SEF will directly impact the dumping margins determined in this SEF.

CITIC Dicastal raised concerns that including dumping margins in the SEF meant that interested parties were denied sufficient opportunity to make submissions pertaining to the methodologies used to calculate dumping and subsidy margins. The Commission notes that interested parties have the opportunity to make submissions in response to the SEF, including in relation to the methodologies used to calculate dumping and subsidy margins. Pursuant to subs 269ZDB(3)(a)(iv) of the Act, the Commissioner, in deciding on the recommendation to be made to the Parliamentary Secretary in the Final Report, must have regard to submissions received in response to the SEF within 20 days of the SEF being placed on the public record. The Commission has nevertheless sought to liaise with exporters prior to the release of the SEF to notify them of any major departures from previous methodologies used to determine dumping and subsidy margins, as shown in the visit reports and Final Report issued as part of the previous investigation. The Commission also liaised with selected exporters prior to the release of this SEF, to also ensure that no confidential information was released. Exporters also have 20 days to respond to the SEF, should they have any concerns regarding their dumping or subsidy margin calculations.

4.4 Categorisation of exporters

4.4.1 Exporter sampling

Following initiation of this review, the Commission identified a very large number of possible Chinese exporters of ARWs over the review period (641 in total). The Commission determined that it was not practical to send exporter questionnaires to all 641 exporters, and instead sent out preliminary information requests (PIRs) to assess levels of interest amongst exporters in cooperating with the investigation. Thirty-eight exporters responded to the PIR requests and, as a result, the Commission deemed it could not practically examine the information submitted by such a large number of exporters as part of this review.

In view of the large number of exporters interested in cooperating with the review, the Commission decided to analyse the data of a small sample of 'selected exporters', to determine dumping and countervailing margins for those selected exporters, as well as all other exporters of ARWs from China. The exporters which were initially included in this 'selected exporters' category were the largest exporters (by volume) of ARWs during the review period that provided a response to the PIR. This approach is permissible under s. 269TACAA of the Act.

Exporters other than the five 'selected exporters' were classified as either:

- residual exporters; or
- uncooperative exporters.

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Only companies considered by the Commission to be ‘exporters’ of the goods are addressed in the above exporter categories. The Act does not provide a definition of ‘exporter’. The Commission’s Dumping and Subsidy manual identifies an ‘exporter’ as being:

- a principal in the transaction located in the country of export from where the goods were shipped and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.¹⁶

Detailed information about the exporter sampling process used for this investigation is included in the Sampling Report on the Commission’s Public Record (accessible at <http://www.adcommission.gov.au/>).

4.4.2 Selected exporters

The Commission has investigated data submitted by five ‘selected exporters’ as part of this investigation, which are as follows:

SELECTED EXPORTERS
CITIC Dicastal
Pilotdoer
Jinfei Kaida
Zhejiang Yueling
Jiangsu Yaozhong

Table 3: Selected exporters

These five exporters submitted Exporter Questionnaires to the Commission, which included information about the companies’ Australian sales, domestic sales, cost to make and sell the goods, and subsidies received during the review period.¹⁷ The Commission analysed the information submitted by these companies, and calculated individual dumping and subsidy¹⁸ margins for each of these exporters, in accordance with the methodologies discussed in sections 4 and 5, and the Appendices in this report.

¹⁶ For more information, refer to the Dumping and Subsidy Manual (accessible at http://adcommission.authprod.ind/accessadsystem/Documents/DumpingandSubsidyManual-December2013_001.pdf).

¹⁷ CITIC Dicastal did not provide information pertaining to subsidies received, as the countervailing investigation in relation to the company was terminated as part of the previous investigation.

¹⁸ No subsidy margin was provided for CITIC Dicastal as the countervailing investigation in relation to that company was terminated as part of the previous investigation.

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Changes to selected exporters since Sampling Report 263

There have been some changes to the companies identified as selected exporters in Sampling Report 263, as follows:

- Jiangsu Yaozhong was initially identified in Sampling Report 263 as a residual exporter. As Jiangsu Yaozhong was the applicant and has since submitted a completed Exporter Questionnaire to the Commission, the Commission has extended the review to include Jiangsu Yaozhong, pursuant to subs. 269TACAA of the Act.
- One manufacturer– Zhejiang Dicastal Hongxin Technology Co., Ltd – was initially identified as a selected exporter in Sampling Report 263. However, the company did not respond to a request by the Commission that it submit a completed exporter questionnaire. Therefore, Zhejiang Dicastal Hongxin Technology Co., Ltd did not provide information considered to be relevant to the review within a reasonable period and will be treated as an uncooperative exporter for the purposes of this review (refer to **Appendix A** for information regarding uncooperative and all other exporters).

4.4.3 Residual exporters

Subsection 269T(1) of the Act defines a residual exporter as an exporter whose exportations were not examined as part of the investigation and the exporter was not an uncooperative exporter.

‘Residual’ exporters are, for the purpose of this review, companies that:

- submitted PIRs to the Commission by the deadline;
- indicated in their PIRs that they were willing to cooperate with the investigation; and
- were considered an ‘exporter’ in accordance with the definition detailed at **Appendix A**;

but were not deemed to be a selected cooperating exporter for the purposes of this review. These residual exporters are as follows:

RESIDUAL EXPORTERS
Lianyungang City Gemsy Wheel Import & Export Co., Ltd
Lioho Light Metal (Kunshan) Co., Ltd
Shandong Hengyu Auto Parts Co., Ltd
SUMEC Wheels Co., Ltd
YHI Advanti Manufacturing (Suzhou) Co., Ltd
Zhejiang Autom Aluminium Wheel Co., Ltd
Zhejiang Tailong Aluminium Wheels Co., Ltd
Zhejiang Xinghui Aluminium Wheels Co., Ltd
YHI Manufacturing (Shanghai) Co., Ltd.

Table 4: Residual exporters

Dumping and subsidy margins were calculated for all residual exporters in accordance with the methodologies discussed in Sections 4 and 5 of this SEF.

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Changes to residual exporters since Sampling Report 263

The following changes have been made to the 'residual exporter' category since the release of Sampling Report 263:

- YHI Manufacturing (Shanghai) Co., Ltd. (YHI Manufacturing (Shanghai)) was not initially listed as a residual exporter because the Commission preliminarily determined the company was an intermediary in the exportation of ARWs. Following the release of the Sampling Report, YHI Manufacturing (Shanghai) submitted evidence which showed it was a manufacturer of the goods (as opposed to an intermediary). The Commission subsequently determined the company should be treated as a residual exporter for the purposes of this review of measures.

4.4.4 Uncooperative and all other exporters

An uncooperative exporter is defined as an exporter that did not provide information considered to be relevant to the review within a reasonable period, or an exporter that significantly impeded the review (subs. 269T(1)).

All exporters not listed as 'selected' or 'residual' exporters are considered to fall within the 'uncooperative and all other' category.

This includes any exporters of the goods which either:

- did not submit a PIR to the Commission in accordance with the Commission's deadline for receipt of PIRs; or
- submitted a PIR which indicated they would not be willing to cooperate with the review; or
- commenced exporting after the review period.

For uncooperative and all other exporters, given that these exporters have not provided relevant information as requested, the Commission has determined export prices, normal values, the amount of countervailable subsidy received in respect of the goods and dumping and subsidy margins having regard to all available relevant information. Refer to Sections 4 and 5 for a detailed discussion of the methodologies used to determine dumping and subsidy margins for these exporters.

4.4.5 Intermediaries

The Commission received 13 PIR responses from entities which identified themselves as intermediaries in the exportation of ARWs to Australia (for example, traders or distributors). These parties will typically provide services such as arranging transportation, conducting price negotiations, arrange contacts with the producer, etc.

As dumping and countervailing duty rates are applied to 'exporters' of the goods, intermediaries are not eligible to receive a dumping and countervailing duty rates in their own right. This means that any intermediaries that are not also 'exporters' of the goods are not eligible to qualify for the dumping margins specified for selected, residual or all other exporters.

4.5 Export price

4.5.1 Selected exporters

For selected exporters, export prices were determined where possible under subs. 269TAB(1)(a) using quarterly weighted average export prices, excluding any part of that price that related to post-exportation charges.

Where the Commission is unable to determine export prices under subs. 269TAB(1)(a), it will calculate export prices under or subs. 269TAB(1)(b) or (c) of the Act.

Where these legislative provisions were unable to be used because the goods were exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter, export prices have instead been determined under subs. 269TAB(3), having regard to all relevant information.

The following table summarises the methods used to determine export prices for selected exporters.

Exporter	Method to determine export prices	Legislative basis	Comments
CITIC Dicastal	<i>Sales to unrelated importers:</i> quarterly weighted average export prices, excluding post-exportation charges	subs. 269TAB(1)(a) of the Act	The Commission is satisfied that these sales were to an unrelated importer under arm's length conditions.
	<i>Sales where the exporter and importer are the same entity:</i> the price of sale from the importer to the unrelated Australian customer, less deductions relating to costs incurred by the importer after the point of export	subs. 269TAB(1)(c) of the Act	Could not establish export prices under: <ul style="list-style-type: none"> subs. 269TAB(1)(a) of the Act due to the sales being non-arm's length transactions. subs. 269TAB(1)(b) as the exporter and importer were the same entity, and therefore the goods had not been exported to Australia otherwise than by the importer.
Pilotdoer	Quarterly weighted average export prices, excluding post-exportation charges	subs. 269TAB(1)(a) of the Act	The Commission is satisfied that during the review period, all Pilotdoer's Australian sales were made to unrelated importers under arm's length conditions.
Jinfei Kaida	Quarterly weighted average export prices, excluding post-exportation charges	subs. 269TAB(1)(a) of the Act	The Commission is satisfied that during the review period, all Jinfei Kaida's Australian sales were made to unrelated importers under arm's length conditions.
Zhejiang Yueling	All relevant information, specifically the lowest weighted average export price for review period recorded for CITIC Dicastal, Jinfei Kaida or Pilotdoer, excluding post-exportation charges.	subs. 269TAB(3) of the Act	The Commission determined that it was unable to rely on sales data provided by Zhejiang Yueling as the Commission was not satisfied with the accuracy of Zhejiang Yueling's sales data, and hence did not have sufficient information to calculate an export price under ss. 269TAB(1)(a), (b) or (c) of the Act.

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Exporter	Method to determine export prices	Legislative basis	Comments
Jiangsu Yaozhong	Based on all relevant information, the Commission has determined that export prices equate to normal values	subs. 269TAB(3) of the Act	The Commission determined that Jiangsu Yaozhong did not export any goods to Australia during the review period and hence did not have sufficient information to calculate an export price under ss. 269TAB(1)(a), (b) or (c) of the Act.

Table 5 – Methods for determining export prices for selected exporters

A detailed discussion regarding the methodologies used to determine export prices, normal values and dumping margins for selected exporters is included at **Appendix A**.

Selected exporters' calculations for export price are included at **Confidential Attachment 1**.

4.5.2 Residual exporters

As there was insufficient information to establish an export price under the preceding subsections, export prices for residual exporters were determined pursuant to subs. 269TAB(3) having regard to all relevant information. Export prices were determined using the weighted average export price for the entire investigation period recorded for CITIC Dicastal, Jinfei Kaida and Pilotdoer,¹⁹ excluding any part of that price that relates to post-exportation charges.

This export price was not less than the weighted average of export prices for like goods of selected exporters, as required under subs. 269TACAB(2)(c) of the Act.

Residual exporters' calculations for export price are at **Confidential Attachment 1**.

4.5.3 Uncooperative and all other exporters

Export price for uncooperative and all other exporters were established under subs. 269TAB(3) in accordance with subs. 269TACAB(1)(d). The Commission used the lowest weighted average export price for the entire investigation period recorded for CITIC Dicastal, Jinfei Kaida and Pilotdoer²⁰, excluding any part of that price that relates to post-exportation charges.

Uncooperative exporters' calculations for export price are included at **Confidential Attachment 1**.

¹⁹ Zhejiang Yueling was excluded from residual and uncooperative/all other exporters' export price calculation because Zhejiang Yueling's data was deemed unsuitable for the purpose of determining dumping margins as part of this review. Jiangsu Yaozhong's export price was also excluded because Jiangsu Yaozhong did not export goods during the review period and hence the Commission was unable to ascertain an export prices for Jiangsu Yaozhong.

²⁰ Ibid.

4.6 Determination of Normal Values

4.6.1 Applicable legislation

Subsection 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for sufficient volumes of like goods sold domestically in the ordinary course of trade in arm's length transactions.

However, subs.269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subs. 269TAC(1) where the Parliamentary Secretary is satisfied that:

...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).

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction (subs.269TAC(2)(c)) or third country sales (subs.269TAC(2)(d)).

4.6.2 Market situation assessment

4.6.2.1 Finding in previous investigation

The previous investigation determined that the price of ARWs sold in China was likely to have been influenced by:

- directly, lower input costs; and
- more generally, changes in the determinants of supply in both the ARWs and upstream industries

in significant part due to the Government of China (GOC) influence in the upstream aluminium industry. As a result of this determination, the then ACBPS determined it was unable to determine normal values using selected exporters' domestic sales prices, as provided under s.269TAC(1) of the Act.²¹

4.6.2.2 Determination for this review

The Commission considers that a market situation continued to affect the domestic prices of ARWs in China during the review period such that domestic ARW sales are not suitable for use in determining normal values under subs. 269TAC(1).

In making its market situation assessment for China, the Commission finds that:

- the GOC continues to influence the upstream Chinese aluminium industry via broad macroeconomic policies, as well as implementing policies and taxation initiatives;

²¹ Refer to REP 181.

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- this influence is likely to have materially distorted competitive conditions and both directly affected the price and supply of the main raw material used in the manufacture of ARWs (primary aluminium and aluminium alloys A356 and A356.2);
- as the primary and alloyed aluminium markets are upstream to the ARWs market, the aluminium costs incurred by Chinese ARW manufacturers during the review period do not reasonably reflect competitive market costs in terms of subs. 43(2)(b)(ii) of the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation).

This finding is consistent with the market situation finding made in the previous investigation, and reflects the recent findings made in the aluminium extrusions review SEF regarding the influence in the primary aluminium market.

The implications of the market situation finding in relation to the determination of normal values is discussed at section 4.6 below.

A detailed discussion around this market situation assessment is provided at **Non-Confidential Appendix B**.

4.6.3 Methods for determining normal values

Following the finding that a market situation exists, domestic sales of like goods during the review period were unable to be used for the purpose of determining normal values in accordance with subs. 269TAC(1) of the Act.

Where domestic sales prices are unable to be used to determine normal values, the normal value may be determined on the basis of a cost construction (under subs. 269TAC(2)(c)) or third country sales (under subs. 269TAC(2)(d)). Where sufficient information had not been furnished, or was not available to enable the normal value of goods to be ascertained under subs. 269TAC(2)(c) or (d), the normal value can be determined having regard to all relevant information (subs. 269TAC(6)). For uncooperative exporters, the normal value was established in accordance with subs. 269TAC(6) in accordance with subs. 269TACAB(1)(e).

Third country sales were not a viable option for this review, due to the finding that exporters' aluminium costs do not reflect competitive market costs (refer to section 4.6.4). Hence the Commission has, where sufficient information was available, sought to construct normal values for selected exporters under subs. 269TAC(2)(c), and in accordance with ss. 43, 44 and 45 of the International Obligations Regulation.

The constructed normal values are based on:

- the cost to make of exported goods;
- sales and general administrative expenses incurred through the domestic sale of like goods; and
- profit applicable to the domestic sale of like goods sold in the ordinary course of trade (OCOT).

In instances where there was insufficient information on which to construct normal values, normal values have been determined with reference to all relevant information as permitted under subs. 269TAC(6).

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4.6.4 Aluminium cost substitution

As a result of the Commission's finding that GOC interventions in the Chinese primary and alloyed aluminium markets led to distortions in the price and supply of those products during the review period, the Commission determined that constructed normal values should not include the actual aluminium costs as incurred by exporters²² in the cost to make and sell component of exporters' constructed normal values.

The Commission has thereby replaced the costs of aluminium as submitted by each selected exporter²³ with a more competitive benchmark cost substitute. The components used to determine this cost substitute are detailed at **Appendix B**, and summarised as follows:

- three month contract prices of primary aluminium on the LME;
- an upwards adjustments to reflect trading fees, based on the Major Japanese Port premium fees;
- (where applicable) an upwards adjustment to reflect the additional cost to produce alloys; and
- (where applicable) an upwards adjustment to reflect domestic delivery costs, based on exporters' aluminium purchase price data.

To apply the substitute benchmark prices to selected exporters' normal values, the Commission compared the difference in value between the actual prices paid for aluminium and/or aluminium alloy with the benchmark aluminium and/or aluminium alloy prices established through the method above. A percentage difference between the actual prices paid and the benchmark prices was calculated, and this percentage was then applied to exporters' cost to make (CTM), or a proportion of the CTM represented by aluminium, to construct normal values.

In all cases, applying this benchmark resulted in an uplift to exporters' aluminium costs.

A detailed discussion of the construction and legislative basis for the use of the aluminium cost substitute is included in **Appendix B**.

4.6.5 Determination of profit

Subsection 45(2) of the International Obligations Regulation requires that, where reasonably possible, profit for normal values constructed under subs. 269TAC(2)(c) must be worked out 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.

Accordingly, for all selected exporters whose normal values were constructed under subs. 269TAC(2)(c) (except Pilotdoer), the Commission calculated a weighted average net profit, measured as a percentage mark-up on full cost to make and sell, for each selected

²² Exporters reported their actual aluminium costs in aluminium purchases spreadsheets, which were submitted as part of completed exporter questionnaires.

²³ Each selected exporter submitted to the Commission an aluminium purchases spreadsheet which showed the exporter's aluminium purchases during the review period.

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exporter. The Commission based this calculation on the exporters’ actual cost to make and sell data (i.e. prior to substitution of aluminium costs) and verified domestic selling prices from sales made in OCOT during the investigation period.

In relation to Pilotdoer, the Commission was not able to calculate profit under subs. 45(2) of the International Obligations Regulation due to insufficient sales within the Chinese market of like goods in the ordinary course of trade. This also made it impossible for the Commission to calculate Pilotdoer’s profit under subs. 45(3)(a) of the International Obligations Regulation. The Commission was further unable to establish Pilotdoer’s rate of profit under subs. 45(3)(b) of the International Obligations Regulation, because the Commission was unable to identify the weighted average profit for all other selected exporters, because it was unable to establish a rate of profit for Zhejiang Yueling. Pilotdoer’s profit was thereby calculated under subs. 45(3)(c) of the International Obligations Regulation with reference to all relevant information. This involved using the average net profit from domestic sales made in the ordinary course of trade by the other selected exporters. This approach is discussed further at **Appendix A**.

In instances where normal values were calculated under subs. 269TAC(6), the Commission calculated profit with reference to all relevant information.

4.6.6 Normal values for selected exporters

As mentioned at section 4.6.2 of this report, the Commission has sought to construct normal values for selected exporters under subs. 269TAC(2)(c).

In instances where there was insufficient information on which to construct normal values, normal values have been determined under subs. 269TAC(6) of the Act, with reference to all relevant information.

All normal values calculations reflected the replacement of exporters’ actual primary and/or alloyed aluminium costs with the cost substitute discussed at section 4.6.4 above.

The methods used to determine normal values by selected exporter is discussed in detail at **Appendix A**, and summarised below.

Exporter	Method to determine normal values	Legislative basis	Reason for not using constructed normal value method (if applicable)
CITIC Dicastal	For ARWs where CTMS data was available: constructed normal values	Subs. 269TAC(2)(c)	N/A
	For ARWs where CTMS data was not available: All relevant information	Subs. 269TAC(6)	Subs. 269TAC(6) of the Act was used in the absence of CTM data for these products. Normal values were calculated using: <ul style="list-style-type: none"> • sourcing price data as provided by CITIC Dicastal, plus an aluminium cost uplift; • domestic SG&A costs; and • profit applicable to the sale of like goods sold domestically.
Pilotdoer	Constructed normal value	Subs. 269TAC(2)(c)	N/A

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Exporter	Method to determine normal values	Legislative basis	Reason for not using constructed normal value method (if applicable)
Jinfei Kaida	All relevant information	Subs. 269TAC(6)	Subs. 269TAC(6) of the Act was used as the company exported purchased goods, but was unable to provide CTM data for those goods. Normal values were calculated using: <ul style="list-style-type: none"> • the CTM of self-manufactured goods; • domestic SG&A costs; and • profit applicable to the sale of purchased and self-manufactured goods sold domestically.
Zhejiang Yueling	All relevant information	Subs. 269TAC(6)	Subs. 269TAC(6) of the Act was used as the Commission determined Zhejiang Yueling's data was unreliable, and therefore sufficient information was not available to enable the normal value of the goods to be ascertained under the preceding subsections. Normal values were determined using the highest weighted average normal value for the review period (inclusive of an aluminium cost substitute) from other selected exporters except Jiangsu Yaozhong.
Jiangsu Yaozhong	All relevant information	Subs. 269TAC(6)	Subs. 269TAC(2)(c) of the Act couldn't be used as the company only manufactured goods for export to Australia during one quarter of the review period. Normal values were calculated using: <ul style="list-style-type: none"> • the CTM of goods sold domestically (inclusive of an aluminium cost substitute); • domestic SG&A costs; and • profit applicable goods sold domestically.

Table 6 – Methods for determining normal values for selected exporters

The Commission has also made adjustments to normal values to ensure that normal values are directly comparable with export prices. These adjustments are also discussed in **Appendix A**.

Selected exporters' normal value calculations are at **Confidential Attachment 1**.

4.6.7 Residual exporters

As there was insufficient information available to use the preceding provisions, normal values for residual exporters were determined in accordance with subs. 269TAC(6) of the Act, having regard to all relevant information. Normal values for residual exporters were established using the weighted average normal value for like goods established for CITIC Dicastal, Jinfei Kaida and Pilotdoer.²⁴

The normal value does not exceed the weighted average of normal value for like goods of cooperative exporters, as required under subs. 269TACAB(2)(d) of the Act.

Residual exporters' normal value calculations are at **Confidential Attachment 1**.

4.6.8 Uncooperative exporters

²⁴ Zhejiang Yueling was excluded from residual and uncooperative/all other exporters' normal value calculations because Zhejiang Yueling's data was deemed unreliable by the Commission.

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A normal value for uncooperative exporters was established with reference to all relevant information, under subs. 269TAC(6) of the Act.²⁵ Specifically, the Commission used the highest weighted average normal value for the review period (inclusive of an aluminium cost substitute) from CITIC Dicastal, Jinfei Kaida or Pilotdoer.²⁶

This is consistent with the approach taken in the previous investigation and reflects the fact that information obtained from cooperating exporters is the most directly relevant and therefore best information on which to determine dumping margins for uncooperative exporters.

Uncooperative exporters' normal value calculations are at **Confidential Attachment 1**.

4.7 Dumping margins

The methodologies used to calculate exporters' dumping margins are in the table below.

Company	Methodology	Legislative basis	Dumping margin
CITIC Dicastal	Weighted average export prices and weighted average corresponding normal values were compared for the review period.	Subs. 269TACB(2)(a) of the Act	15.1%
Pilotdoer	As above	Subs. 269TACB(2)(a) of the Act	25.6%
Jinfei Kaida	As above	Subs. 269TACB(2)(a) of the Act	11.5%
Zhejiang Yueling	Weighted average export prices for CITIC Dicastal, Pilotdoer and Jinfei Kaida were compared with corresponding weighted average normal values for the review period.	Subs. 269TACB(2)(a) of the Act	51.6%
Jiangsu Yaozhong	As Jiangsu Yaozhong's export has not exported the goods, the Commission has determined that the company's weighted average normal value will be treated as a floor price.	Subs. 5(5) of the Anti-Dumping Regulations	N/A
Residual exporters	Weighted average export prices for CITIC Dicastal, Pilotdoer and Jinfei Kaida were compared with corresponding weighted average normal values for the review period.	Subs. 269TACB(2)(a) of the Act	14.1%
Uncooperative and all other exporters	Weighted average export prices for CITIC Dicastal, Pilotdoer and Jinfei Kaida were compared with corresponding weighted average normal values for the review period.	Subs. 269TACB(2)(a) of the Act	51.6%

Table 7: Dumping margins for all exporters

A detailed discussion regarding the methodologies used to determine dumping margins for selected exporters is at **Appendix A**.

Exporters' dumping margin calculations are also included in **Confidential Attachment 1**.

²⁵ Subs. 269TACAB(1)(e) of the Act directs the Commission to establish normal values for uncooperative exporters under subs. 269TAC(6) of the Act.

²⁶ Refer to footnote 28.

5 VARIABLE FACTORS – COUNTERVAILING NOTICE

5.1 Finding

Countervailable subsidies were received in respect of aluminium extrusions exported to Australia from China during the review period. The Commission is satisfied that the amount of countervailable subsidy has changed since the previous investigation.

5.2 Programs investigated by subsidy program

The Commission examined 39 subsidy programs as part of this review. This includes the 32 programs deemed to be countervailable subsidies received by exporters in respect of ARWs during the previous investigation,²⁷ as well as seven additional subsidy programs which the Commission examined as part of this review after receiving information from selected exporters.

In order to consider these 39 subsidy programs, the Commission obtained information from all selected exporters via exporter questionnaires and requests for further information regarding the subsidies they received during the review period. The Commission also obtained information from the GOC in relation to each program, via responses to a Government Questionnaire (GQ) and Supplementary Government Questionnaire (SGQ). Non-confidential versions of all questionnaires and responses to requests for information are accessible via the public record for this investigation (<http://www.adcommission.gov.au>).

5.3 Findings by subsidy program

After assessing all relevant information available, the Commission has found that that ARWs producers received financial contributions that conferred a benefit²⁸ in respect of the goods via countervailable subsidy programs.

Findings in relation each investigated program are summarised in the below table.

Prog no.	Program name	Program type	Countervailable in respect of ARWs?
1	Aluminium provided by government at less than fair value	Provision of goods	Yes
4	Preferential Income Tax for hi-tech enterprises	Tax	Yes
5	Preferential Tax Policies for Western Development “Go West” strategy	Tax	Yes
6	Preferential tax policies for FIEs established in the coastal economic open areas and in the economic and technological development zones	Tax	No
7	Reduced tax rate for productive FIEs scheduled to operate for a period not less than 10 years	Tax	No
8	Preferential tax policies for FIE export enterprises whose annual output value of all export products amounted to 70% or more	Tax	No

²⁷ The Commission considered 56 programs in total during the previous investigation.

²⁸ Refer to subs. 269TACC(1).

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Prog no.	Program name	Program type	Countervailable in respect of ARWs?
9	Preferential tax policies for FIEs which are technology-intensive and knowledge-intensive	Tax	No
11	Preferential tax policies for FIEs in State high- or new-technology industrial development zones, and for advanced technology enterprises invested in and operated by FIEs	Tax	No
13	Preferential tax policies for enterprises transferring technology	Tax	Yes
14	Preferential tax policies for enterprises making little profits	Tax	Yes
21	Grants for encouraging the establishment of headquarters and regional headquarters with foreign investment	Grant	Yes
22	Preferential tax treatments for new hi-tech enterprises (NHTEs) in special economic zones	Tax	No
29	Patent award of Guangdong Province	Grant	Yes
31	Exemption of tariff and import VAT for imported technologies and equipment's	Tax	Yes
32	Full refund of VAT to FIEs on purchasing unused domestic equipment with currency in China	Tax	No
35	Matching funds for international market development for SMEs	Grant	Yes
36	Innovative Experimental Enterprise Grant	Grant	Yes
37	Special Support Fund for non-State owned enterprises (NSOEs)	Grant	Yes
38	Venture Investment Fund for Hi-Tech Industry	Grant	Yes
39	Superstar Enterprise Grant	Grant	Yes
40	One-time awards to enterprises whose products qualify for "Well-Known Trademarks of China" or "Famous Brands of China"	Grant	Yes
41	Technology assist	Grant	Yes
42	Export subsidies	Grant	Yes
43	SME Assist	Grant	Yes
44	Assistance for closing down small thermal power units in Zhejiang Province	Grant	Yes
46	Government Incentive for the Top Taxpayer of the Year – Qinhuangdao City	Grant	Yes
47	Financial Support from China Postdoctoral Science Foundation	Grant	Yes
48	Foreign Trade Public Service Platform Development Fund	Grant	Yes
50	Patent Application Fee Subsidy	Grant	Yes
51	Enterprise Development	Grant	Yes
53	New product Trial Production	Grant	Yes
56	Patent grants	Grant	Yes
57 #	Government quality award	Grant	Yes
58 #	Award to open economy	Grant	Yes
59 #	Assistance to importer & exporter fair trade program	Grant	Yes
60 #	Assistance fund for import	Grant	Yes
61 #	Award for the growth of local income tax	Grant	Yes
62 #	Refund of local water conservancy fund	Grant	Yes
63 #	Award for IPO	Grant	Yes

Table 8: Findings in relation to countervailable subsidies.
denotes programs not previously countervailed in relation to ARWs.

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In some instances, the Commission has found that certain programs which were investigated in the previous investigation are no longer countervailable, as the legislative bases for these programs had expired prior to the review period.

Detailed analysis in relation to the countervailable subsidy programs shown above is at **Non-confidential Appendix C**.

5.4 Subsidy margins

5.4.1 Selected exporters

Selected exporters reported receiving various subsidy programs examined as part of this investigation. Exporter-specific subsidy margins have been calculated for each selected cooperative exporter with reference to the specific programs that conferred a benefit on each exporter.

The table below shows a collective summary of programs received by all selected exporters.

Exporter	Subsidy margin	Applicable programs
Pilotdoer	11.0%	1, 4, 31, 41, 42, 44, 50, 51, 53, 56-63
Jinfei Kaida	5.4%	
Zhejiang Yueling ²⁹	23.4%	
Jiangsu Yaozhong ³⁰	4.5%	

Table 9: Selected exporters' subsidy margins and programs received.

The Commission has collated this information (rather than reporting programs applicable to individual exporters) in recognition that this information may be confidential to exporters. Each selected exporter has only received subsidy margins in relation to the programs they actually benefited from.

5.4.2 Residual exporters

The Commission requested, via the GQ and SGQ, that the GOC list all Chinese companies which produced or exported ARWs during the review period that applied for, accrued, or received benefits under the 39 programs considered as part of this review. In the responses to the GQ and SGQ, the GOC only provided information pertaining to benefits conferred to selected cooperating exporters.

In the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commission determined subsidy margins for the residual exporters based on the weighted average countervailable subsidisation determined for all cooperative exporters (except in relation

²⁹ The Commission was unable to using the Zhejiang Yueling's sales data for the purpose of calculating the company's subsidy margins, because of the Commissions concerns regarding the accuracy of that data. Hence the Commission allocated subsidy margins for program 1 and any other programs Zhejiang Yueling reported receiving based on weighted average values and volumes submitted by other exporters.

³⁰ Ibid.

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to Program 59 – which was found to not be countervailable in respect of residual exporters).

Exporter	Subsidy margin	Applicable programs
Residual exporters	11.1%	1, 4, 31, 41, 42, 44, 50, 51, 53, 56-58, 60-63

Table 10: Residual exporters' subsidy margins and programs received.

5.4.3 Uncooperative exporters

In the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commission has had regard to the available relevant facts when determining uncooperative exporters' countervailing margins, including:

- information submitted by the GOC via the GQ and SGQ;
- information submitted in Exporter Questionnaires submitted by selected exporters; and
- findings made in relevant investigations, such as the previous investigation, or recent countervailing investigations.

The Commission has determined that uncooperative exporters received financial contributions that have conferred a benefit under 32 programs found to be countervailable in relation to ARWs.

Exporter	Subsidy margin	Applicable programs
Uncooperative and all other exporters	64.8%	1, 4-6, 13, 14, 21, 22, 29, 31, 32, 35-44, 46-48, 50, 51, 53, 56-58, 60-63

Table 11: Subsidy programs received by uncooperative/all other exporters

6 NON-INJURIOUS PRICE

6.1 Finding

The Commissioner proposes to recommend to the Parliamentary Secretary that:

- the NIP be altered; and
- the Parliamentary Secretary have regard to the desirability of imposing a NIP as part of this review.

6.2 Lesser Duty Rule

Under s. 8 of the *Customs Tariff (Anti-Dumping) Act 1975*³¹ (the Dumping Duty Act), the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury.

Under s. 10 of the Dumping Duty Act³², the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of countervailing duty is not greater than is necessary to prevent injury or a recurrence of the injury.

Subsections 269TACA(a) and (c) of the Act defines the NIP as the minimum price necessary to remove the injury caused by the dumping and subsidisation.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to the relevant level of trade in Australia.

6.3 Approach in this review

For the purpose of this review, the Commission has proposed a single NIP applicable to both original equipment manufacturer (OEM) and aftermarket goods.

This decision has been taken in view of the Federal Court of Australia judgment, dated 4 September 2013,³³ which found that in respect of aluminium extrusions the then Attorney-General had no power to impose anti-dumping measures for aluminium extrusions by finish. The Commission views this similarly prohibits applying different measures by product segment (i.e. OEM and aftermarket).

³¹ S. 8(5BA) of the *Customs Tariff (Anti-Dumping) Act 1975*.

³² S. 10(3C) of the *Customs Tariff (Anti-Dumping) Act 1975*.

³³ *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

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As the Commission has had to calculate one singular NIP for the purpose of this review, the Commission determined the NIP by:

- Establishing NIPs for both OEM and aftermarket segments.
- Setting the NIP at the highest value of these two NIPs. The Commission views that using the higher value NIP allows the Commission to most effectively remedy any injurious dumping and subsidisation of ARWs from China.

The methodology used to calculate the OEM and aftermarket NIPs used in this analysis is below.

- **Aftermarket products:** The USP was calculated using Arrowcrest's cost to make and sell aftermarket ARWs (submitted as part of this review), and the rate of profit for aftermarket goods as submitted by Arrowcrest in the previous investigation. Importers' post-exportation costs, SG&A and profit as determined in the Final Report for the previous investigation were then deducted from the USP.
- **OEM products:** The USP was based on the CTMS for OEM wheels (submitted by Arrowcrest as part of this review), and the rate of profit for OEM goods as submitted by Arrowcrest in the previous investigation. Importers' SG&A and profit was not deducted from this figure as OEM wheels are delivered directly to the end user.

ARWs sold in the aftermarket segment had a higher NIP when compared to the NIP for OEM products. The Commission has thereby used the NIP calculated for the aftermarket for the purpose of this review.

The Commission found that the NIP was operative when compared to the export prices for three exporters / exporter categories – CITIC Dicastal, Zhejiang Yueling and uncooperative and all other exporters. This is reflected in the combined rate of duties calculated for these exporters in chapter 8.

NIP calculations are at **Confidential Attachment 3**.

6.4 Submissions received

One importer (Jagur International (Australia) Pty Ltd (Jagur International)) submitted that the Commission should impose the lesser duty rule when reconsidering levels of dumping and countervailing duties as part of this review. Jagur International claimed the imposition of measures on ARWs had a particularly adverse effect on importers, particularly those that purchased goods from exporters considered non-cooperative in the original investigation.³⁴

6.5 Conclusion – NIP

The Commission's focus in conducting this review is to consider whether variable factors have changed – and if so, the Commission is further required to consider the impact of

³⁴ Refer to submission dated 28 October 2014, accessible at <http://www.adcommission.gov.au/cases/Documents/009-Submission-JagurInternationalAustPtyLtd.pdf>.

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these changes on the anti-dumping measures imposed on exporters of ARWs in the previous investigation. The Commission views that consideration of the impact of anti-dumping measures (and by extension, the impact of using a lesser duty rule) on exporters and importers of the goods is outside the Commission's remit and hence irrelevant to the Commission's consideration regarding whether to impose the lesser duty rule as part of this review.

The Commission notes that due to recent legislative changes there are also certain circumstances (pursuant to subs. 8(5BAAA) and 10(3DA) of the Dumping Duty Act) where the Parliamentary Secretary is not required to have regard to have mandatory consideration to the lesser duty rule. However, these legislative changes are not applicable to this review.

The Commission intends to recommend that the Parliamentary Secretary consider imposing a NIP as part of this review.

7 OTHER MATTERS

During a meeting with a representative of CITIC Dicastal dated 5 June 2015, CITIC Dicastal submitted that the OEM market should be exempt from measures. CITIC Dicastal argued that due to the long lead time required to develop OEM products, and the impending closure of the remaining Australian passenger vehicle producers, goods exported from China under OEM contracts were unlikely to be causing injury to the Australian industry.³⁵

In response to this submission, Arrowcrest submitted that measures should continue to apply to OEM goods through to 2017 as:

- Arrowcrest is supplying ARWs to the OEM industry until 2017; and
- There is a high probability that aftermarket goods would be channelled to Australia under the guise of OEMs.

Arrowcrest further submitted that any request for an exemption of OEM goods from measures should not be made via this review process anyhow, as exemption applications can be made to the Parliamentary Secretary in accordance with subs. 8(7)(a) and (e) and subs. 10(8)(a) and (d) of the Dumping Duty Act.³⁶

The recommendations that the Commissioner can make in a report to the Parliamentary Secretary as a result of a review of measures under Division 5 of Part XVB are set out in subs 269ZDA(1) of the Act. The Commissioner cannot make recommendations to the Parliamentary Secretary about injury or exemption from duty in this report because it is a review of measures under Division 5 of Part XVB of the Act. Furthermore, the Commissioner cannot make recommendations to the Parliamentary Secretary about whether the measures should be revoked in this particular review in relation to aluminium road wheels, because this review is only considering whether the variable factors relevant to the taking of the measures in relation to all exporters have changed.³⁷

As the issues of injury analysis and revocation of measures and exemption from duty are out of scope for this review, the Commission has disregarded both the above submissions to the extent that they discuss irrelevant matters for the purpose of this review of measures.

³⁵ The file note summarising this meeting is accessible at <http://www.adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20263/036-Note%20for%20file-Meeting%20with%20representatives%20from%20CITIC%20Dicastal-Case%20263.pdf>.

³⁶ Refer to Arrowcrest's submission dated 6 July 2015.

³⁷ Refer to ADN 2014/86 made under subs. 269ZC(4).

8 EFFECT OF THE REVIEW

The Commissioner finds that, in relation to exports to Australia of certain ARWs exported from China during the review period, there have been changes to the normal values, export prices, NIP and amount of countervailable subsidies received.

The Commissioner intends to recommend in the Final Report to the Parliamentary Secretary that measures on ARWs exported from China be varied by altering the original notice so that it has effect in relation to exporters as if different variable factors had been ascertained.

The available methods for calculating interim dumping duty when implementing or varying anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* (Anti-dumping Regulations) and include:

- combination of fixed and variable duty method (combination method);
- floor price duty method;
- fixed duty method (\$X per tonne); or
- ad valorem duty method (i.e. a percentage of the export price).

The method used to calculate interim dumping duty currently applied to ARWs is the combination method pursuant to subs. 5(2) of the Anti-dumping Regulations. The Commissioner proposes to recommend that this form of duty continues to apply to exports of ARWs from China, for all exporters except Jiangsu Yaozhong. In relation to Jiangsu Yaozhong, the Commissioner proposes to recommend that a fixed duty method apply to Jiangsu Yaozhong's exports of ARWs

Consistent with the current form of measures, the Commissioner intends to recommend that the collective interim dumping duty and interim countervailing duty imposed on the exporters subject to the combination method in relation to ARWs exported from China to be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rates calculated, less an amount for the subsidy rate applying to Program 1 (where this has been received by the exporter or exporter category).

This approach avoids any overlap or double-counting that may arise from the circumstances of this case where there are domestic subsidies and a constructed normal value that includes a major cost component that is based on surrogate data.

The below table shows the rate of combined duty that would be effective if the Parliamentary Secretary were to impose measures based on the dumping and countervailing margins, and the NIP included in this SEF, for all exporters except Jiangsu Yaozhong.

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Exporter	Preliminary dumping duty	Preliminary countervailing duty	Preliminary effective rate of duty
CITIC Dicastal	15.14%	N/A	14.0%
Pilotdoer	25.6%	11.0%	27.1%
Jinfei Kaida	11.5%	5.4%	12.7%
Zhejiang Yueling	51.6%	23.4%	55.8%
Residual Exporters	14.1%	11.1%	20.1%
Uncooperative and all other exporters	51.6%	64.8%	69.8%

Table 12 – Combined dumping and countervailing duty

For CITIC Dicastal, Zhejiang Yueling and uncooperative and all other exporters, the preliminary dumping and countervailing duties reflect that the NIP is operational for these exporters.

For Jiangsu Yaozhong, the Commission was unable to apply a percentage-based combined dumping and subsidy rate as a floor price was established in place of Jiangsu Yaozhong's dumping margin. As the Commission did not apply any subsidy margins to Jiangsu Yaozhong (except in relation to subsidy program 1), Jiangsu Yaozhong's fixed floor price is – being inclusive of an aluminium cost substitute – considered to comprehensively reflect the dumping and subsidy findings made in relation to Jiangsu Yaozhong. Hence Jiangsu Yaozhong's dumping and countervailing duties are equal to the floor price established as part of this review.

APPENDICES AND ATTACHMENTS

Non-Confidential Appendix A	Export price, Normal Value and Dumping Margin Methodologies for Selected Exporters
Non-Confidential Appendix B	Market situation assessment
Non-Confidential Appendix C	Countervailable subsidies assessment
Confidential Attachment 1	Dumping margin calculations for all exporters
Confidential Attachment 2	Subsidy margin calculations for all exporters
Confidential Attachment 3	Non-injurious price calculations
Non-Confidential Attachment 4	Benchmark Aluminium Price calculation

APPENDIX A: EXPORT PRICE, NORMAL VALUE AND DUMPING MARGIN METHODOLOGIES FOR SELECTED EXPORTERS

1 CITIC Dicastal

1.1 Export price

For certain sales, the Commission considers that CITIC Dicastal was the exporter of these goods and on-sold these goods to an unrelated Australian importer. The Commission's assessment is based on its analysis of CITIC Dicastal's exporter questionnaire, and the findings made in the previous investigation regarding the arm's length nature of the relationship between CITIC and this Australian importer.

For all other exports, CITIC Dicastal exported these goods via an Australian-based subsidiary. The Commission considers that for export sales following this distribution channel:

- CITIC Dicastal and its Australian-based subsidiary were considered to be one exporter;
- the goods were not exported to Australia otherwise than by the importer, CITIC Dicastal and its Australian-based subsidiary; and
- the transactions between these related parties were not arms length transactions.

This determination is based on information submitted by CITIC Dicastal in its Exporter Questionnaire, and the findings made in the previous investigation in which exportations that occurred in accordance with the above distribution process were determined to not be arm's length transactions.

In accordance with the above findings, CITIC Dicastal's export prices were thereby determined using a combination of two methods:

- **For goods sold directly to an unrelated Australian importer:** export prices were determined to be the price invoiced by CITIC Dicastal less 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, in accordance with subs. 269TAB(1)(a) of the Act.
- **For goods sold to Australian customers via a related party importer:** export prices were unable to be determined under subs. 269TAB(1)(a) of the Act, because the goods have not been exported to Australia otherwise than by the importer of the goods, and the transactions between these related parties were not arm's length transaction. Hence the Commission has determined export prices for these sales under ss. 269TAB(1)(c) of the Act, by establishing the price at which the goods sold from the importer to an unrelated Australian customer, less appropriate deductions of costs incurred in relation to those goods by the importer after the point of export.

Deductions made to these export sales are as follows:

- Australia importation expenses;

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- Australian warehousing expenses;
- Australian inland freight;
- ocean freight;
- marine insurance;
- commission fees applicable to costs incurred by the related party importer; and
- other appropriate deductions.

Sources of ARWs exported to Australia

CITIC Dicastal submitted that during the review period, it exported ARWs to Australia from a variety of sources. CITIC Dicastal clearly differentiated between these alternative sources of ARWs in its Australian sales spreadsheet.

The Commission accepts that CITIC Dicastal is the exporter of all the ARWs shown in its Australian sales spreadsheet – irrespective of the source of the ARWs. This was because only CITIC Dicastal was aware of the final destination of the ARWs, and CITIC Dicastal was responsible for managing the sale and distribution process for the export of the ARWs regardless of their source.

As discussed in section 1 of this appendix, in including ARWs from alternative sources in CITIC Dicastal's dumping margin, the Commission has departed from the methodology used in the previous investigation, which included only ARWs manufactured by CITIC Dicastal itself. This shift in approach was taken because:

- ARWs sourced by CITIC Dicastal from alternative sources represents a significant proportion of CITIC Dicastal's Australian sales, and hence dumping margins will be much more accurate if they reflect sales of ARWs from all such sources; and
- in order to achieve consistency amongst the dumping margin methodologies, noting another exporter's dumping margin also will be inclusive of ARWs sourced from alternative sources.

1.2 Normal values

As discussed above, the Commission has included ARWs sourced from alternative sources in CITIC Dicastal's dumping margin calculations. The normal value for one category of ARWs has been constructed pursuant to subs. 269TAC(2)(c). As the CTM of ARWs from other sources was not provided, the Commission was unable to construct normal values under ss.269TAC(2)(c), and hence determined normal values under subs. 269TAC(6).

As noted in section 4.6.3, constructed normal values are determined based on:

- the cost to make of the exported goods;
- sales and general administrative expenses incurred through the domestic sale of like goods; and
- profit applicable to the domestic sale of like goods sold in OCOT.

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While CITIC Dicastal submitted cost to make and sell data for ARWs manufactured by CITIC Dicastal, it advised it was unable to obtain and provide data relating to the CTM of ARWs sourced from other sources.

CITIC Dicastal's normal values were thereby determined using a combination of two methods:

- **For exported ARWs where the CTM was available:** normal values were determined via a construction method, under subs. 269TAC(2)(c), using:
 - the CTM for these goods;
 - SG&A of like goods sold domestically; and
 - profit applicable to all ARWs sold domestically in OCOT.

- **For ARWs exported by CITIC Dicastal for which the CTM was not available:** normal values were determined with reference to all relevant information, as provided for under subs. 269TAC(6) of the Act, using:
 - the cost incurred by CITIC Dicastal in sourcing such ARWs exported to Australia;
 - SG&A of like goods sold domestically; and
 - profit applicable to all ARWs sold domestically in OCOT.

Cost to make and sell

For ARWs where the CTM was available: Quarterly weighted average production costs for exported goods were determined using the data CITIC Dicastal submitted in its exported CTMS spreadsheet. CTM costs were allocated by model (determined by production type and finish) and kilogram.³⁸

The Commission then uplifted the production costs to arrive at an uplifted CTM. In replacing CITIC Dicastal's aluminium costs, the Commission uplifted the proportion of CTM as represented by raw materials costs. This is consistent with the approach taken in the previous investigation.

The Commission also ensured that the aluminium uplift was inclusive of any additional costs used to purchase molten aluminium (noting that the aluminium cost substitute was based on primary and/or alloy aluminium ingot pricing).

To determine SG&A expenses, the Commission used quarterly weighted average SG&A costs based on CITIC Dicastal's domestic SG&A worksheet (submitted as part of the exporter questionnaire response).

³⁸ In the previous investigation, CITIC Dicastal argued that the most appropriate way to determine normal value is on a per kilogram basis, regardless of rim size. CITIC Dicastal asserted that this is because the weight of the wheel and therefore the weight of aluminium is the most important factor in determining price. After consideration of CITIC Dicastal's claims in the previous investigation, the Commission determined it was reasonable to determine normal values by kilogram rather than piece as part of this review.

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For ARWs where the CTM was not available: The Commission established weighted average monthly costs for these products, using data provided by CITIC Dicastal which showed monthly costs of sourcing these ARWs. CITIC Dicastal advised that the data in that spreadsheet was drawn from CITIC Dicastal's inventory management system, which enabled it to record the incomings of any such ARWs, as well as the model numbers and associated costs of these products.

While some such ARWs were sourced from related party suppliers, CITIC Dicastal claimed that there were no discounts applicable to ARWs sourced from related suppliers, nor did the Commission observe any major difference between the costs incurred in sourcing ARWs from related and non-related suppliers. Hence the Commission was satisfied that the unamended costs incurred by CITIC Dicastal in sourcing such ARWs, as submitted by CITIC Dicastal, were reflective of arms length transactions.

The use of sourcing costs is not an ideal basis for determining normal values for these ARWs, however, in the absence of applicable cost to make data, the Commission views that it has used the most reasonable approach under the circumstances.

The Commission uplifted the full sourcing cost of these ARWs, to reflect the aluminium cost benchmark used in this review. The Commission has taken this approach in the absence of information regarding what proportion of such costs is represented by aluminium costs.

The Commission determined SG&A expenses using quarterly weighted average costs based on the costs reported in the company's domestic SG&A worksheet (submitted as part of the company's exporter questionnaire).

Profit

CITIC Dicastal's profit rate was calculated by comparing weighted average CTMS values for all ARWs (excluding an aluminium cost substitute) with the sales values of corresponding like goods (by product type and finish) as shown in CITIC Dicastal's domestic sales spreadsheet, under subs. 269TAC(2)(c)(ii) of the Act. This involved comparing, by quarter, the CTM of goods by finish and production type, with the domestic sales prices of products of the same finish and production type to derive a profit.

In doing so, the Commission excluded goods which appeared to be returns (i.e. sales with a negative value and volume), which did not have volumes allocated against them, or which were identified as free sample sales from its calculations.

The Commission also made some amendments to the CITIC Dicastal's domestic sales spreadsheet to ensure that all sales were calculated at the same delivery terms (and were thereby directly comparable with the delivery terms of CITIC Dicastal's CTMS data). CITIC Dicastal advised it was unable to ascertain delivery prices for ARWs for which the CTM was not available that were sold domestically, because these costs were not directly incurred by CITIC Dicastal but were incurred as part of the total cost of the supply of the ARWs to CITIC Dicastal. The Commission thereby used weighted average delivery and warehousing costs applicable to ARWs where the CTMS was available for this purpose.

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Adjustments

The Commission made two adjustments to CITIC Dicastal's constructed normal values, as follows.

Adjustment	Impact on normal value	Reason for adjustment
Export packaging	Reduction	Export packaging shown to be more expensive than domestic packaging. Needed to adjust packaging costs to reflect actual cost incurred for domestic sales.
Domestic packaging	Increase	Export packaging shown to be more expensive than domestic packaging. Needed to adjust packaging costs to reflect actual cost incurred for domestic sales.
Export commission	Increase	Use of an Australian agent for export sales.

Table 13: Adjustments to CITIC Dicastal's normal values.

1.3 Dumping margin

The dumping margin for CITIC Dicastal was established in accordance with subs. 269TACB(2)(a) of the Act, by comparing weighted average export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

CITIC Dicastal's dumping margin is 15.1 percent.

2 Pilotdoer

2.1 Export prices

For all the sales identified in Pilotdoer's export sales spreadsheet, the Commission considers that Pilotdoer was the exporter of these goods and sold these goods to an unrelated Australian importer.

Accordingly, Pilotdoer's export prices were calculated under subs. 269TAB(1)(a), by reference to the invoiced price from Pilotdoer to the unrelated Australian importer less 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.

Export prices were calculated at Free on Board (FOB) level, noting all Pilotdoer's exportations of the goods were set under FOB delivery terms.

The above approach is consistent with the means of determining export prices for Pilotdoer as undertaken in the previous investigation.

2.2 Normal values

For Pilotdoer, normal values were determined at Free on Board (FOB) level, using constructed normal values under subs. 269TAC(2)(c) of the Act. This approach is consistent with that used in the previous investigation.

SEF 263 - Aluminium Road Wheels - China

Cost to make and sell

The Commission has determined Pilotdoer's cost to make and sell data based on the information submitted in Pilotdoer's domestic sales spreadsheet.

This is somewhat of a departure from the previous investigation, in which the then ACBPS disregarded some of Pilotdoer's CTM costs (being labour and raw materials costs) with costs from other exporters, as Pilotdoer was unable to substantiate these costs during the previous verification.

In this review, the Commission analysed Pilotdoer's aluminium purchase prices as submitted in the company's exporter questionnaire, and benchmarked those prices against prices paid by other selected exporters during the review period. The Commission identified similarities in both the prices and trends for the cost of aluminium as claimed by Pilotdoer, when compared to other selected exporters. In addition, the Commission compared Pilotdoer's labour costs as a proportion of the cost to make against the proportions of labour noted by other selected exporters. The Commission determined that there was only a minor variance between Pilotdoer's labour costs as a proportion of CTM when compared when compared with the proportionate labour costs for other selected exporters (who supplied this data to the Commission).

The Commission determined SG&A costs under subs. 44(2) of the International Obligations regulation, using data submitted in Pilotdoer's CTMS spreadsheet.

As a result of the above analysis, the Commission has determined it is satisfied with Pilotdoer's labour and aluminium cost data as submitted as part of this review. Pilotdoer's CTMS was determined by finish and rim size.

Profit

In the previous investigation, the ACBPS did not use Pilotdoer's domestic sales for the purpose of determining the company's rate of profit. Instead, the then ACBPS determined Pilotdoer's rate of profit based on the weighted average of actual profits realised by other cooperating exporters from the sale of like goods in the domestic market (pursuant to what was then Regulation 181A(3)(b) of the *Customs Regulations 1926*). No adjustments were made.

The then ACBPS stated it took this approach because Pilotdoer's volume of domestic sales was too low to be considered reasonably reflective of domestic sales of like goods.³⁹

In analysing the data submitted by Pilotdoer as part of this review, the Commission has observed that Pilotdoer continues to be an export-oriented business, with only a very low volume of like goods sold on the domestic market. The Commission considers these sales insufficient for the purpose of determining Pilotdoer's rate of profit. The Commission

³⁹ Refer to REP181 for further information, accessible at <http://www.adcommission.gov.au/cases/Documents/181-ReporttoMinister.pdf>.

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was thereby unable to calculate profit under subs. 45(2) of the International Obligations Regulation. The insufficient volume of sales of like goods sold domestically in the ordinary course of trade also made it impossible for the Commission to calculate Pilotdoer's profit under subs. 45(3)(a) of the International Obligations Regulation.

The Commission was further unable to establish Pilotdoer's rate of profit under subs. 45(3)(b) of the International Obligations Regulation, because the Commission was unable to identify the weighted average profit for all other selected exporters, because it was unable to establish a rate of profit for Zhejiang Yueling. Pilotdoer's profit was thereby calculated under subs. 45(3)(c) of the International Obligations Regulation with reference to all relevant information. This involved using the average net profit from domestic sales made in the ordinary course of trade by the other selected exporters.

Adjustments

Two adjustments were made to Pilotdoer's normal values in accordance with subs. 269TAC(9) of the Act, as follows:

Adjustment	Impact on normal value	Reason for adjustment
Inland transport	Increase	To ensure normal values reflect an FOB level (noting export prices were determined at FOB).
Handling	Increase	As above

Table 14: Adjustments to Pilotdoer's normal values.

These adjustments were calculated as weighted averages using the data in Pilotdoer's Australian sales spreadsheet.

2.3 Dumping margin

The dumping margin for Pilotdoer was established in accordance with subs. 269TACB(2)(a) of the Act, by comparing weighted average export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

Pilotdoer's dumping margin is 25.6 percent.

3 Jinfei Kaida

3.1 Export prices

For all the sales identified in Jinfei Kaida's export sales spreadsheet, the Commission considers that Jinfei Kaida was the exporter of these goods and sold these goods to unrelated Australian importers.

This assessment was made following consideration of the company's claims in its Exporter Questionnaire response that it was not related to any of its Australian customers, as well as the findings made in the previous investigation (in which the then ACBPS determined that all Australian sales were to unrelated companies and at arm's length).

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Hence export prices for Zhejiang Jinfei Kaida have been calculated under subs. 269TAB(1)(a) of the Act, being the price paid by the importer less transport and other costs arising after exportation.

As delivery terms for Jinfei Kaida's exports to Australia were made using FOB and cost, insurance and freight (CIF) delivery terms, the Commission determined export prices at FOB level by using the invoiced price for FOB sales, or for CIF sales the invoiced price less shipping and marine insurance.

No discounts or rebates were included in the sales prices, and the Commission did not identify any evidence that any discounts or rebates were included. This finding is consistent with the findings made in the previous investigation.

In its Australian sales spreadsheet, Jinfei Kaida has included entries for returned goods (identified by negative quantities and net invoice values). For the purposes of establishing the export price, the returned goods entries have been excluded from the analysis as these transactions distort the price paid by Australian customers.

Purchased goods

Jinfei Kaida submitted that during the review period, it exported ARWs to Australia both goods that it had manufactured, as well as goods which it had purchased from a related party supplier.

Jinfei Kaida advised that it was the 'exporter' of both the purchased and self-manufactured goods, as the supplier of the purchased goods was not aware of the final destination of the goods and Jinfei Kaida was responsible for arranging delivery of the goods, sales processes and invoicing of all finished products. Jinfei Kaida was, however, unable to differentiate self-manufactured and purchased goods in its sales spreadsheets, because the company advised that its finance system was incapable of doing so.⁴⁰

The Commission accepts that Jinfei Kaida is the exporter of these purchased goods, in view of the above advice. The Commission thereby considers that the export prices and dumping margins determined as part of this review of measures will need to be reflective of all good exported to Australia, irrespective of whether they are purchased by Jinfei Kaida or self-manufactured.

3.2 Normal values

As discussed above, the Commission has determined that Jinfei Kaida's dumping margin should be inclusive of both purchased and self-manufactured goods. As a result, Jinfei Kaida's normal values have also been calculated inclusive of both purchased and self-manufactured products.

⁴⁰ Refer to Jinfei Kaida's response to a request by the Commission for further information, accessible at <http://adcommission.gov.au/cases/Documents/EPR%20263/031-Questionnaire-Exporter-Zhejiang%20Jinfei%20Kaida%20Wheel%20Co%20Ltd.pdf>.

PUBLIC RECORD

As Jinfei Kaida was unable to supply CTMS for purchased goods, and unable to differentiate between purchased and self-manufactured goods in relevant spreadsheets, the Commission did not have sufficient information to determine Jinfei Kaida's cost of production or manufacture. As a consequence, normal values could not be determined under subs. 269TAC(2)(c).

Jinfei Kaida's normal values were thereby determined with reference to all relevant information, as provided for under subs. 269TAC(6) of the Act.

The Commission views that as Jinfei Kaida submitted to the Commission relevant information, the Commission should refer to the information supplied by Jinfei Kaida for the purposes of determining normal values. Hence the Commission has determined normal values for Jinfei Kaida based on:

- the cost to make of self-manufactured goods exported to Australia;
- SG&A of like goods sold domestically;
- profit applicable to like goods sold domestically in OCOT; and
- relevant adjustments.

Cost to make and sell

The Commission has used the CTM data as reported in the Australian CTMS spreadsheet Jinfei Kaida submitted as part of its Exporter Questionnaire response in order to construct a normal value. Jinfei Kaida claimed its costs were actual (not standardised), and this advice was consistent with the findings made in the previous investigation.

In its domestic CTMS spreadsheets, Jinfei Kaida had four monthly entries where the cost data was recorded as negative. Jinfei Kaida claims that these negative entries represent goods that have been subsequently returned and 'written-off'. For the purposes of OCOT testing and constructing NVs, these negative transactions have been reversed to positive costs as these costs had been incurred on sold goods (regardless of whether they have subsequently been returned).

Weighted average export CTM costs were determined for each model (finish and rim size), by piece and quarter, consistent with the approach taken in the previous investigation.

Weighted average domestic selling expenses were determined using the SG&A costs included in Jinfei Kaida's CTM spreadsheets for self-manufactured goods (under subs. 44(2) of the International Obligations Regulation), and were allocated by piece and model.

Profit

As Jinfei Kaida's normal values were determined under subs. 269TAC(6) of the Act, the Commission calculated Jinfei Kaida's rate of profit with reference to all relevant information.

The Commission used Jinfei Kaida's domestic sales spreadsheet to determine whether goods were profitable and sold in the ordinary course of trade in the country of export.

PUBLIC RECORD

In doing so, the Commission has excluded goods sold by Jinfei Kaida to related domestic customers in determining the rate of profit applicable to Jinfei Kaida's normal values. In its response to the exporter questionnaire and subsequent correspondence, Jinfei Kaida claimed that it sold goods to related parties in the domestic market and identified these related party transactions in its domestic sales spreadsheet. The Commission compared the sales price of like goods sold to related parties with the prices of like goods sold to unrelated customers, and identified that the unit prices of goods sold to related customers was consistently lower than unit prices to unrelated customers. Based on this, the Commission determined it was reasonable to exclude related party transactions from Jinfei Kaida's profit calculations.

In addition, the Commission excluded sales to OEM customers from Jinfei Kaida's profit calculations. In the previous investigation, the then ACBPS determined that OEM domestic sales should be excluded from profit calculations because:

- the only sales made to Australian customers were to the aftermarket party, hence these sales were not directly comparable to Australian level of trade; and
- these products were sold domestically at a much lower price than aftermarket goods and subsequently resulted in a very low rate of profit compared to the profit applicable to aftermarket sales.

The Commission has accepted Jinfei Kaida submission that during the review period it only exported the goods to customers involved in aftermarket sales, and has hence determined Jinfei Kaida's profit rate exclusive of domestic OEM sales.

Further, returned goods entries and goods not sold in OCOT have also been excluded.

Adjustments

The following adjustments were made to the EXW constructed normal values:

Adjustment	Impact on normal value	Reason for adjustment
Inland transport	Increase	To ensure normal values reflect an FOB level (noting export prices were determined at FOB).
Handling	Increase	As above

Table 15: Adjustments to Jinfei Kaida's normal values.

These adjustments were calculated as weighted averages using the data in the Australian sales spreadsheet, consistent with the approach taken to making adjustments made during the previous investigation.

3.3 Dumping margin

The dumping margin for Jinfei Kaida was established in accordance with subs. 269TACB(2)(a) of the Act, by comparing weighted average export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

Jinfei Kaida's dumping margin is 11.5 percent.

4 Zhejiang Yueling

4.1 Commission's determination in relation to Zhejiang Yueling's data

The Commission considers that Zhejiang Yueling is a cooperative exporter, but has also found that Zhejiang Yueling's data is unreliable for the purposes of determining dumping margins.

Zhejiang Yueling cooperated with the Commission through providing relevant information in its Exporter Questionnaire and responses to various requests by the Commission for further information. However, the Commissioner has found inaccuracies in Zhejiang Yueling's data which makes that data unsuitable for the purposes of determining export prices, normal values and dumping margins. Accordingly, the Commissioner proposes to recommend to the Parliamentary Secretary to the Minister for Industry and Science, that she disregard the information provided by Zhejiang Yueling:

- for the purpose of establishing an export price pursuant to subs. 269TAB(4) of the *Customs Act 1901* (the Act); and
- for the purpose of establishing a normal value pursuant to subs. 269TAC(7) of the Act.

As a result, Zhejiang Yueling will continue to be identified as a 'selected exporter', but the Commission will determine dumping margins under subs. 269TACB(2)(a).

In practice, this will involve determining weighted average export prices and normal values, with reference to ss. 269TAB(3) and 269TAC(6) respectively; that is, having regard to all relevant information.

A non-confidential⁴¹ summary of the key factors which contributed to this decision are as follows:

- The Commission identified various inaccuracies in a key spreadsheet submitted as part of Zhejiang Yueling's exporter questionnaire, which (due to the nature and scope of these inaccuracies) could potentially lead to an inaccurate dumping margin. This included incorporating various data in the spreadsheet which could not be matched to source documents (even after a revised version of the spreadsheet was submitted), and which also indicated that the spreadsheet may be inaccurate. This has implications for the accuracy of Zhejiang Yueling's dumping margin.
- There was a lack of clarity around distribution arrangements relating to the goods exported to Australia, which would have led to difficulties in calculating an accurate normal value and export price for Zhejiang Yueling.

⁴¹ The Commission and Zhejiang Yueling have undertaken correspondence in relation to this matter prior to the release of this SEF. Zhejiang Yueling have indicated via this correspondence that it views as confidential the key concerns raised by the Commission in relation to the company's data, hence only a non-confidential summary of the Commission's considerations is suitable for inclusion in this SEF.

PUBLIC RECORD

Zhejiang Yueling raised via correspondence with the Commission that a decision by the Commission to deem the company's data as unreliable for the purpose of this review would be noncompliant with Article VI of the General Agreement on Tariffs and Trade 1994 (the Dumping Agreement) as the Commission has not provided Zhejiang Yueling with sufficient opportunities to remedy the situation.

The Commission disagrees with this assertion. The Commission notes that Zhejiang Yueling has had opportunities, through the submission of the Exporter Questionnaire, and in response to the Commission's requests for further information dated 1 May 2015 and 15 May 2015, to provide necessary and accurate information to the Commission within a reasonable period.

The Commission also notes that it has been unable to verify the information provided by Yueling in the exporter questionnaire to source documents provided. Accordingly, the Commission does not consider Yueling's information is 'verifiable'.

Due to the inaccuracies identified in relation to the data providing by Zhejiang Yueling, the Commission views that the information submitted by Yueling should be disregarded for the purpose of determining a normal value, and that normal values should thereby be calculated in accordance with subs 269TAC(6) by having regard to all relevant information because sufficient information is not available to enable the normal value of the goods to be ascertained under the preceding subsections.

Likewise, the Commission is of the view that the information submitted by Yueling should be disregarded for the purpose of determining an export price, and that export prices should instead be calculated in accordance with subs. 269TAB(3) by having regard to all relevant information because sufficient information is not available to enable the export price to be ascertained under the preceding subsections of s. 269TAB.

4.2 Export prices

As noted above, Yueling's export prices have been determined under subs. 269TAB(3) of the Act.

Specifically, export prices were determined using the lowest weighted average export price for review period recorded for CITIC Dicastal, Jinfei Kaida or Pilotdoer, excluding post-exportation charges.

4.3 Normal values

As noted above, Yueling's normal values have been determined under subs. 269TAC(6) of the Act.

Specifically, normal values were determined using the highest weighted average normal value for the review period (inclusive of an aluminium cost substitute) from CITIC Dicastal, Pilotdoer and Jinfei Kaida.

The Commission took this approach in recognition that the unreliability of Yueling's data has meant that there is not sufficient information on which to ascertain normal values through subs. 269TAC(2)(c).

4.4 Dumping margin

Yueling's dumping margin will be established under subs. 269TACB(2)(a), by comparing the export prices and normal values which were ascertained using the methodologies described above.

Yueling's dumping margin is 51.6 percent.

5 Jiangsu Yaozhong

5.1 Export price

Commission notes that Jiangsu Yaozhong did not export the goods during the review period and accordingly was unable to provide export sales data.

Jiangsu Yaozhong has only recorded a very small number of Australian sales transactions (five in total) in its Australian sales spreadsheet, and of these five sales none were invoiced during the review period.

As a result, sufficient information is not available to determine the export price of the goods using:

- the price paid or payable by the importer, as permitted under subs. 269TAB(1)(a);
- the price at which goods were sold by the importer to a person who is not an associate of the importer in Australia less prescribed deductions (deductive export price), as permitted under subs. 269TAB(1)(b); or
- the price having regard to all the circumstances of the exportation, as permitted under subs. 269TAB(1)(c).¹³

As sufficient information is not available to enable the export price to be ascertained under the preceding subsections, the Commission has therefore established an export price with reference to all relevant information, as permitted under subs. 269TAB(3) of the Act. The Commission has determined that an ascertained export price should be set at the normal value calculated for Jiangsu Yaozhong for the purposes of this review. In practice, this method results in setting a floor price with respect to future exports.

Submission by Jiangsu Yaozhong

Jiangsu Yaozhong submitted that the Commission should use the five sales listed in the company's Australian sales spreadsheet in order to establish an export price.

Jiangsu Yaozhong argued that while these five sales were invoiced outside the review period, all were subject to a contract dated within the review period (10 June 2014) which was not changed before completion of the transaction (and provided the associated sales contract as evidence of this claim).⁴² Jiangsu Yaozhong argued that the Commission's Dumping and Subsidy Manual permitted such an approach, referencing the discussion

⁴² Refer to Jiangsu Yaozhong's response to a request by the Commission for further information, accessible at <http://www.adcommission.gov.au/cases/Documents/EPR%20263/032-Questionnaire-Jiangsu%20Yaozhong-Public.pdf>.

PUBLIC RECORD

around “establishing the date of sale” within the Manual’s chapter regarding adjustments⁴³, in which it states:

...In establishing the date of sale, the Commission will normally use the date of invoice as it best reflects the material terms of sale....

Where a claim is made that an exporter claims a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided.

The Commission considers that the Manual’s date of sale references above were drafted to provide guidance regarding whether to make adjustments to normal values for sales at different times, rather than the broader issue of whether export prices should be determined based on sales invoiced outside a review or investigation period. This is reflected in the adjustments section of the Manual, which states:

“Using the contract date for export sale is most likely to have application in situations where the production process takes a long time - for example manufacturing items of heavy capital equipment, causing delivery to occur well after the sale had taken place.”

The Commission thereby considers that the guidance in the Manual regarding date of sale does not require it to accept Jiangsu Yaozhong’s Australian sales data, for the purpose of determining export prices.

The Commission also views that determining export prices and dumping margins based on such a small number of export sales (and which would occur in such limited quantities and during such a short timeframe at the end of the review period) would lead to a dumping margin which may not be representative of the company’s more recent export practices.

5.2 Normal values

As discussed in section 4.6.3, constructed normal values are determined based on:

- the cost to make of the exported goods;
- sales and general administrative expenses incurred through the domestic sale of like goods; and
- profit applicable to the domestic sale of like goods sold in the ordinary course of trade (OCOT).

For Jiangsu Yaozhong, normal values were unable to be constructed under subs. 269TAC(2)(c) because the Commission was unable to use the CTM data for exported goods as submitted by Jiangsu Yaozhong. This is because the company only submitted CTMS data for the goods in relation to one quarter during the review period, and the Commission views that this data is unsuitable for the purposes of determining normal values across the full review period.

⁴³ http://www.adcommission.gov.au/accessadsystem/Documents/DumpingandSubsidyManual-December2013_001.pdf

PUBLIC RECORD

As sufficient information is not available to enable normal value to be ascertained under the preceding subsections, Jiangsu Yaozhong's normal values were thereby determined with reference to all relevant information, as provided for under subs. 269TAC(6) of the Act, based on:

- the CTM and SG&A of like goods sold domestically (with the exporter's actual costs for aluminium replaced with a competitive cost substitute);
- profit applicable to like goods sold domestically in OCOT; and
- relevant adjustments.

Cost to make and sell

The Commission observed that as Jiangsu Yaozhong did not export goods to Australia until shortly after the end of the review period, there was only a small amount of cost to make data for the goods exported to Australia – and where costs were reported, they were only applicable to the final quarter of the review period. The Commission determined that using such a small sample of the CTM of exported goods may lead to the Commission to determine CTMs that were not representative of the company's more recent export costs.

The Commission thereby determined that it would instead use Jiangsu Yaozhong's domestic CTMS data, as the domestic CTM data canvassed the full review period, and Jiangsu Yaozhong claimed there is no cost difference between goods exported to Australia and that of goods sold in domestic market.⁴⁴ The Commission views this is relevant information for the purposes of determining normal value under subs. 269TAC(6) of the Act.

To determine Jiangsu Yaozhong's CTMS, the Commission drew directly upon the CTMS calculations reported in the company's CTM spreadsheet. Cost to make and SG&A were allocated for each model (determined by product code), by piece and quarter.

Profit

Jiangsu Yaozhong's profit rate was calculated under subs. 269TAC(6) of the Act, with reference to all relevant information. This involved comparing weighted average CTMS with the sales values of corresponding like goods (by finish) as shown in Jiangsu Yaozhong's domestic sales spreadsheet.

In doing so, the Commission removed from the exporter's domestic sales spreadsheet:

- all sample items which were not paid for by customers; and
- sales of 12-inch wheels, which were included by Jiangsu Yaozhong but do not fall within the goods description.

⁴⁴ Refer to Jiangsu Yaozhong's Exporter Questionnaire.

PUBLIC RECORD

The Commission did not observe any information in relation to Jiangsu Yoazhong's domestic sales that indicated:

- there is any consideration payable for or in respect of the goods other than their price; or
- 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.

Adjustments

The following adjustments to normal value were made to Jiangsu Yaozhong's normal value:

Adjustment	Impact on normal value	Reason for adjustment
Inland transport	Increase	To ensure normal values reflect an FOB level.
Export packaging & handling	Increase	As above

Table 16: Adjustments to Jiangsu Yaozhong's normal values.

These adjustments were made based on weighted average costs as reported by the exporter in its export sales spreadsheet. While the Commission determined that the sales in Jiangsu Yaozhong's export sales spreadsheet were unsuitable for the purposes of determining an export price, the Commission considers that it is preferable to use Jiangsu Yaozhong's actual data pertaining to sales made just outside the review period for the purposes of making adjustments to the normal value.

5.3 Dumping margin / floor price

As discussed above, the Commission has determined that an ascertained export price be set at the normal value calculated for Jiangsu Yaozhong for the purposes of this review. Hence there is no requirement to calculate a dumping margin for Jiangsu Yaozhong.

In accordance with subs. 5(5) of the Customs Tariff (Anti-Dumping) Regulation 2013, the Commission has determined that Jiangsu Yaozhong's normal value will constitute a floor price for the goods exported to Australia.

APPENDIX B: MARKET SITUATION

1 Findings

It is the Commission's view that a market situation exists in respect of ARWs such that sales in that market are not suitable for use in determining a normal value under subs. 269TAC(1) of the Act.

2 Australian legislation, policy and practice

Australia treats China as a market economy for anti-dumping purposes and the Commission conducts its investigation in the same manner for China as it does for other market economy members of the WTO.

Irrespective of the country the subject of investigation, the Australian anti-dumping framework allows for rejection of domestic selling prices in market economies as the basis for normal value where there is a 'market situation' making the sales unsuitable, as outlined below.

2.1 The Act

Market situation

Subsection 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold domestically in the country of export, in the ordinary course of trade in arm's length transactions.

However, subs. 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subs. 269TAC(1) where the Parliamentary Secretary is satisfied that:

'...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).'

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined using another method in s. 269TAC. Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

Subsection 269TAC(2)(c) provides that a cost construction of normal value comprises the sum of what the Parliamentary Secretary determines to be the cost of production or manufacture in the country of export, and (on the assumption the goods were sold domestically in the ordinary course of trade) the SG&A costs and a rate of profit associated with the sale of like goods.

Subsection 269TAC(2)(d) provides that where the Parliamentary Secretary directs that third country sales be used for normal value, it will be based upon the price paid or payable for like goods sold in the ordinary course of trade in arm's length transactions for exportation from the country of export to a third country.

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Determination of costs

In constructing normal value based on costs, costs of production or manufacture of goods under subs. 269TAC(2)(c)(i), subs. 269TAC(5A) provides that these costs must be worked out in accordance with the Regulations.

In terms of costs of manufacture or production, subs. 43(2) of the International Obligations Regulation requires that if:

- an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods

the Minister must work out the cost of production or manufacture using information set out in the exporter's records.

In terms of administrative, selling and general costs, subs. 44(2) provides that if:

- an exporter keeps records relating to like goods that are in accordance with GAAP in the country of export; and
- those records reasonably reflect the administrative, selling and general costs associated with the sale of like goods

the Minister must work out the cost of SG&A expenses using information set out in the exporter's records.

Where the conditions of subs. 43(2) and subs. 44(2) of the Regulations are not met, it is the Commission's position that the cost records kept by that exporter are not required to be used in working out their costs, and the Commission may resort to other information to calculate these costs.

2.2 Policy and practice

Market situation

In relation to market situation, the Commission's Dumping and Subsidy Manual states:

In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) of the Act because of the situation in the market of the country of export, the Commission may have regard to factors such as:

- *whether the prices are artificially low; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1).*

Government influence on prices or costs could be one cause of 'artificially low pricing'. Government influence means influence from any level of government.

PUBLIC RECORD

In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.⁴⁵

Subsection 269TAC(2)(a)(ii) requires the Commission to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes before rejecting actual selling prices'. It is considered that the assessment as to whether a market situation exists in a particular market constitutes a positive test. That is, before actual selling prices are rejected, the Commission needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes.

Although it is for the Commission to establish the nature and consequence of the 'market situation', including an evaluation of whether there is an impact on domestic prices, it is considered that the pricing effect does not necessarily have to be quantified.

Determination of costs

In relation to the determination of reasonableness of costs for the purpose of doing a cost construction, under subs. 43(2) and 44(2) of the Regulations, it must be assessed:

- whether the CTM is 'reasonably reflective of competitive market costs' associated with the manufacture of like goods; and,
- whether SG&A costs reasonably reflect costs associated with selling like goods (i.e. are these costs generally reasonable).

It is noted the Regulations specifically relate to the costs of like goods, rather than the price of the goods themselves (the sales price of these goods is what is examined for a market situation assessment).

The Commission considers it is possible that government influence on these costs can be such that these costs are not reasonably reflective of competitive market costs (costs of manufacture) or not generally reasonable (administrative, selling and general costs). Again, it is considered that this is a question of the degree of the influence.

2.3 Findings in previous investigation

In the previous investigation, the applicant (Arrowcrest) alleged that a particular market situation existed in the Chinese ARWs industry and certain raw material inputs that rendered sales in that market unsuitable for determining normal values of ARWs under subs. 269TAC(1). Arrowcrest's claim focussed on allegations that the GOC influenced the domestic ARWs industry in China through:

⁴⁵ Anti-Dumping Commission Dumping and Subsidy Manual, December 2013.

PUBLIC RECORD

- provision of ARW raw materials (primary aluminium and/or aluminium alloy 356 and 356.2) at less than adequate remuneration (alleged subsidy programs);
- the prevalence of SOEs involved in the manufacture of aluminium in China that receive benefits for the production of these materials resulting in artificially low raw material input prices for ARW manufacturers in China;
- reduced and/or subsidised electricity input prices in the manufacture of aluminium products (including aluminium alloy) and /or ARWs; and
- benefits received by ARW manufacturers from the GOC including reductions in taxes, exemptions on duties and value-added tax (VAT), the provision of grants, and concessional interest payments (i.e. government subsidies) that impact the selling prices for ARW manufactured in China.

In considering this allegation, the ACBPS found that the GOC influenced the domestic ARWs industry in China through:

- **Intervention in the upstream aluminium and aluminium alloy sectors.** The ACBPS found that the GOC imposed measures in the primary aluminium and aluminium alloy industry, through broad overarching policies and implementing measures, aimed at:
 - driving structural adjustment;
 - effecting technological, efficiency and environmental development measures;
 - tariffs, taxes, rebates and licences; and
 - subsidisation of encouraged practices and products.

The ACBPS specifically found that the reduced price of bauxite affected the price and supply of alumina, which in turn had flow-through effects of supply and price of aluminium, and ARWs.

- **Subsidisation of the ARWs sector.** The ACBPS found that Chinese ARWs exporters received countervailable subsidies from the GOC, and noted that evidence existed which suggested that upstream aluminium and alloy manufactures also potentially received subsidies.

The ACBPS found that in consideration of the above, the aluminium and aluminium alloy costs incurred by exporters did not reasonably reflect competitive market costs. As a result, the ACBPS determined that a market situation existed in the domestic market for ARWs that rendered prices of ARWS within the Chinese domestic market no longer suitable for determining normal values under subs. 269TAC(1).

The ACBPS thereby constructed normal values as part of the previous investigation under subs. 269TAC(2)(c) of the Act, in order to replace the costs of aluminium and aluminium alloy for each Chinese exporter. The substitute aluminium and aluminium alloy costs were constructed using LME primary aluminium prices (which were deemed to reflect competitive prices), along with (where applicable) uplifts for alloy and delivery costs.

For more information about findings made in the previous investigation, refer to Final Report 181 (accessible at <http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR181.aspx>).

2.4 Assessing market situation in this review

In the application for this review of measures, Jiangsu Yaozhong alleged that

“A comparison of LME official prices during the original investigation period... and the year-to-date... shows a significant change in prices between the periods.

Using the LME data published in REP 181, shows that the simple average price over the original investigation period was approximately \$2,385 per tonne. When compared to a simple average over the period August 2013 to July 2014 (\$1,779 per tonne)... contemporary LME prices are approximately 25% lower....

Therefore, Jiangsu Yaozhong considers that it is reasonable to expect that normal values have decreased by a minimum of 25%.⁴⁶

In view of the allegations made by Jiangsu Yaozhong above, the Commission has had to consider as part of this review whether normal values have varied since the previous investigation. In doing so, the Commission has considered as part of this review whether a market situation continued to apply to ARWs during the review period.

It is the Commission’s view that during the investigation period there was significant excess in both Chinese aluminium production capacity and supply, and that this excess resulted in a significant depression of domestic price for Chinese primary aluminium during the investigation period. It is the Commission’s view that its assessment of the state of the Chinese primary aluminium industry is well documented through independent information sources and official GOC documentation. These information sources used to form the Commission’s view are discussed in detail below.

2.5 Information considered

As part of its market situation assessment, the Commission has considered:

- Jiangsu Yaozhong’s application;
- Market situation findings made through relevant investigations (refer to sections 2.3 and 2.6 of this appendix);
- the responses to the Government Questionnaire (GQ) and Supplementary Government Questionnaire (SGQ) submitted by the GOC as part of this review; and
- various submissions from interested parties; and
- responses to the Chinese Exporter Questionnaires; and
- desktop research.

The Commission has sought to reference throughout its market situation analysis the evidentiary basis upon which any findings have been made.

⁴⁶ Jiangsu Yaozhong’s application is accessible at <http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR263.aspx>.

2.6 Investigation and Review of Measures for Aluminium Extrusions (REP 148 and SEF 248)

In addition to considering the findings made in the previous ARW investigation as part of this market situation assessment, the Commission has also considered findings made through the review into aluminium extrusions that overlap the same investigation period as this ARW review and also uses primary aluminium as the largest input component of the final product.

REP 148

ACBPS' 2009 investigation into aluminium extrusions from China (REP148) found significant evidence of GOC intervention in the primary aluminium market (the raw material for aluminium extrusions) in China, but limited evidence of GOC influence on the domestic market for aluminium extrusions.

In that investigation, ACBPS considered that market situation 'factors' were limited (or isolated) to the market for the raw material for aluminium extrusions, rather than the market for aluminium extrusions itself. ACBPS found that all other costs of production and SG&A costs of Chinese exporters of aluminium extrusions were reasonable. Other factors identified in the investigation included GOC regulations in the primary aluminium market for market entry and production efficiency, taxes and tariffs and State Reserve Bureau purchases of primary aluminium.

Consequently, ACBPS determined normal value by:

- substituting the cost of primary aluminium in the cost records of exporters with acceptable costs (in this case, the prevailing LME price for primary aluminium), and using domestic selling prices under subs. 269TAC(1) found to be in sufficient volumes in the ordinary course of trade after this test was performed using the substituted costs; or
- constructing normal value under subs. 269TAC(2)(c) using the substituted acceptable primary aluminium costs (again, the LME price) and all other costs recorded by exporters (as these were considered reasonable).

SEF 248

On 12 June 2014, the Commissioner initiated a review of the anti-dumping measures imposed in REP 148 in respect of aluminium extrusions exported from China. The review is examining whether there have been changes to the variable factors relevant to the anti-dumping and countervailing measures imposed on aluminium extrusions exported from China. The review period for the aluminium extrusions review is from 1 April 2013 to 31 March 2014.

The SEF for this review was released on 29 May 2015, and made a positive market situation finding (compared to the finding made in REP 148 that aluminium costs should be replaced, without having made a market situation finding).

SEF 248 found that:

- The GOC influenced the primary aluminium industry through various factors including through seeking to control aspects of the supply and demand of

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aluminium (including via aluminium export tariffs and aluminium stockpiling), and involvement of state-invested enterprises (SIEs) in the sector.

- This influence resulted in primary aluminium being sold to aluminium extrusion producers at a price lower than what would have been the case if the primary aluminium market operated without GOC influences and interventions.
- The impact of these GOC influences in the primary aluminium market are likely to have had a material impact on the domestic price of aluminium extrusions in the investigation period, such that prices of aluminium extrusions in that market are no longer suitable for determining normal value under subs. 269TAC(1).

The Commission thereby constructed normal values in SEF 248, replacing the actual aluminium costs incurred by aluminium extrusions producers with a construction based on:

- LME monthly cash prices for primary aluminium; plus,
- regional premium; plus,
- import costs; plus,
- inland transport.

Refer to SEF 248 for further information about the preliminary findings made during the review into measures applicable to aluminium extrusions (accessible at <http://www.adcommission.gov.au/cases/Documents/EPR%20248/057%20-%20SEF%20248%20Updated.pdf>).

2.7 Background to ARW production process and materials

ARWs are manufactured from an aluminium alloy, commonly A356 or A356.2. If a manufacturer alloys the material itself, pure aluminium ingot is purchased; melted and other alloying materials are then added. The molten alloy is then cleaned (flux) and degassed, and usually subjected to spectrometry testing to ascertain the correct metallurgy. Alternatively, manufacturers may purchase pre-alloyed material and melt it on-site.

The molten alloy aluminium is transferred to the die-casting machine, where it is kept molten. ARWs can be manufactured from a number of methods: low pressure die casting, gravity casting, flow formed or forged. After casting any unwanted cosmetic marks from the die-casting process are removed. The 'as-cast' wheels are subject to heat treatment to achieve a specific mechanical hardness. The wheels are then subjected to a number of tests including leak testing and wheel balance.

Wheels are then cleaned and a surface treatment applied before painting. An additional step may be included for re-machining a painted wheel, followed by washing and clear-coat painting to create a bright machined finish on the front face of the wheel.

3 ARW raw materials

As mentioned above, ARWs are manufactured from an aluminium alloy, commonly A356 or A356.2.

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The following description of the aluminium process is taken from the European Aluminium Association:

Primary aluminium is produced by electrolysis. Primary aluminium is produced in reduction plants (or "smelters"), where pure aluminium is extracted from alumina. The reduction of alumina into liquid aluminium is operated at around 950 degrees Celsius in a fluorinated bath under high intensity electrical current. This process takes place in electrolytic cells (or "pots"), where carbon cathodes form the bottom of the pot and act as the negative electrode. Anodes (positive electrodes) are held at the top of the pot and are consumed during the process when they react with the oxygen coming from the alumina.

At regular intervals, molten aluminium tapped from the pots is transported to the cast house where it is alloyed in holding furnaces by the addition of other metals (according to the user's needs), cleaned of oxides and gases, and then cast into ingots.

3.1 Aluminium alloy raw materials

As part of its examination of the Chinese ARW market, the then ACBPS also examined the Chinese markets for aluminium alloy, and the raw materials for this product.

For the purposes of this report, it is considered useful to briefly outline the process of making the raw material - alumina.

Alumina is recovered from the raw material, bauxite, using a chemical refining process. One common process is the Bayer process, which comprises four stages:⁴⁷

Digestion – the ore is finely ground and mixed with a hot, caustic soda solution that dissolves the alumina in the bauxite. Impurities are not dissolved.

Clarification – the solution passes into tanks where the solid impurities sink to the bottom. These are disposed of as waste products. The remaining alumina trihydrate is filtered to make it clearer.

Precipitation – the solution is cooled, concentrated and stirred in holding tanks until crystals form. Pure alumina is added to assist.

Calcination – the crystals are washed, filtered then heated to temperatures in excess of 1,000 degC to remove water molecules. This forms alumina – a fine, dry, white powder.

Around four tonnes of bauxite is required to produce two tonnes of alumina, which in turn produces one tonne of aluminium at the primary smelter.

⁴⁷ Information obtained from the website of Comalco, accessible at http://sales.riotintoaluminium.com/mm/02_fact_refining.htm.

4 GOC influence on the Chinese aluminium industry: macroeconomic policies and plans

4.1 Five year plans

Overview

The previous investigation found that the GOC develops and issues five year plans (FYPs) establishing a social and economic blueprint for Chinese policy. The GOC creates a set of targets and guidelines covering various social, economic and environmental issues that outline China's developmental direction. The first of these national FYPs was issued in 1953, and subsequent FYPs have been issued periodically since this time.

The ACBPS found that the GOC's National Development and Reform Commission (NDRC) led the development of these FYPs. The NDRC's website provides a detailed and comprehensive list of the NDRC's functions. The Commission observed, among other things, the following NDRC functions:

- To coordinate and address major issues in economic operation and adjust economic performance;
- To set and adjust the prices of important commodities that are regulated by the state;
- To push forward strategic economic restructuring; to organize the formulation of comprehensive industrial policies, coordinate key issues in the development of primary, secondary and tertiary industries as well as balance and coordinate industrial plans, major policies and plans for the national economic and social development;
- To maintain the aggregate balance and overall control of important commodities; and
- To formulate plans for the overall volume of import and export of important agricultural products, industrial products and raw materials, supervise the implementation of these plans and adjust them in accordance with the performance of the national economy.⁴⁸

Once the NDRC submits a draft FYP, it is debated and given final approval by the Central Committee of the Communist Party of China.

11th FYP (previous investigation)

During the previous investigation, the *Eleventh Five Year (2006 – 2010) Plan of the People's Republic of China for the National Economic and Social Development* (11th FYP) applied to the majority the investigation period and was therefore considered most relevant to the investigation into ARWs.

The ACBPS considered the 11th FYP and found it contained various references which demonstrated the GOC aimed to re-structure, develop and in some cases 'control' aspects of the domestic aluminium industry, and that these references displayed the

⁴⁸ NDRC website, accessible at <http://en.ndrc.gov.cn/mfndrc/>.

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importance placed by the GOC on the development of its aluminium industries. Reference was made to the 11th FYP which specified the following objective in relation to the aluminium industry specifically:

“Control the total quantity of electrolytic aluminium, moderately develop alumina, encourage the development of deep aluminium processing and new type alloy material and enhance the comprehensive utilization level of aluminium industrial resources.”

The ACBPS further found that significant evidence showed the aims, objectives and action items/measures in these policies were actively implemented and monitored by the GOC, and adhered to by Chinese aluminium enterprises (including through various implementing plans which will be discussed at section 5 of this appendix).

12th FYP (current investigation)

In relation to this review, a different FYP – the *Guidelines of the 12th Five-Year (2011-2015) Plan of the People’s Republic of China for the National Economic and Social Development*⁴⁹ (the 12th FYP) – is applicable to ARWs exported during the review period.

The GOC submitted as part of its GQ response a copy of the 12th FYP, which has been analysed for the purpose of considering whether the GOC actively intervenes in the primary and/or alloyed aluminium sectors. The key areas and objectives in the 12th FYP which the Commission considers applicable to the aluminium sectors are shown below.

Section	Strategic objective	Specific aims relevant to aluminium
Section 1, Chapter 9	Promotes the restructuring of key industries.	“The automobile industry should strengthen the R&D capability of complete vehicles, realize the technical autonomy of key parts, and improve the level of energy conservation, environmental protection and security technology.” “The smelting and building material industries should control overall volume expansion strictly, optimize variety structure, and make new progress in product R&D, integrated resources utilization, energy conservation and emission reduction based on domestic demand.”
Section 2	Promoting orderly relocation of urban enterprises for non-ferrous metals.	Key industries should follow the orderly relocation of urban enterprises, such as those relating to non-ferrous metals. Factories should be “clustered” to create “advanced manufacturing bases with international competitiveness”.
Section 4	Plan for mergers and reorganisation of enterprises.	To encourage “alliance, cross-regional merger and reorganization, and increase industry concentration with focus on ...electrolytic aluminium...industries”.
Section 5	Promoting the development of SMEs.	Supporting the extended application of cutting-edge smelting technologies, including in the non-ferrous metals manufacturing, sector.

Table 17: Sections from the 12th FYP with relevance to the aluminium sector

The GOC indicated in its GQ response that within the 12th FYP, references to the aluminium sector are only minor in volume and importance, as the 12th FYP was not aimed at controlling the Chinese aluminium industry. The GOC submitted:

⁴⁹ GOC response to the GQ, Attachment 21.

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“...the element of “control” mentioned in the 11th Five Year Plan clearly and fundamentally contributed to the Commission’s particular market situation finding.

...the 12th FYP has only one reference to aluminium (“electrolytic aluminium”) and that the reference makes no mention of controlling quantities (of primary aluminium) at all....”

[The 12th FYP’s emphasis is on] *“...increase industry concentration with focus on automobile...electrolytic aluminium.*

...The emphasis on maintaining market-based operations is clear, as is the GOC’s desire to achieve macro-economic and institutional reforms, to allow enterprises to have full play in the market, and to encourage the development of more efficient and more environmentally sustainable industries out of the presently fragmented and environmentally inefficient industry situations in a number of sectors.

The GOC has to presume that the lack of any reference to “control” of the quantity of primary aluminium in the 12th Five Year Plan – indeed, the change from a specific reference to “control” to the omission of that reference - is of fundamental importance to the Commission’s considerations in relation to the review period.”

While the 12th FYP may not specify any government aims to “control” the total quantity of aluminium, the Commission views that the relevant sections in Table 17 above apply to the aluminium industries specifically and indicate a continued commitment by the GOC to developing overarching policies and objectives aimed at exercising influence and in some cases control over aluminium or other sectors.

In particular, the 12th FYP contains in chapter 1 references to the “smelting” industry, noting this is a key industry. Further references are made to the “non-ferrous” metals sector throughout the 12th FYP. The Commission considers the aluminium sector would be affected by the 12th FYP’s references to the “smelting” and “non-ferrous” metals sectors and indicates that the GOC views the aluminium sector as a ‘key industry’.

It is the Commission’s view that the five year plans provides clear guidance to all levels of government as to which industries, enterprises and products are to be supported or restructured with government direction or assistance. It is the Commission’s view that there is sufficient evidence that the objectives and targets identified in the FYPs been articulated and implemented through various GOC policy directives, regulatory decisions and programs. These are described below.

4.2 Guidelines for Accelerating the Restructuring of the Aluminium Industry

During the previous investigation the then ACBPS considered the NDRC-issued *Guidelines for Accelerating the Restructuring of the Aluminium Industry* (the Guidelines). The ACBPS found that the Guidelines note the importance of aluminium as a fundamental raw material for the development of the national economy. The aluminium industry comprises three sectors: alumina, electrolytic aluminium and processed aluminium.

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The Guidelines noted the achievements made in restructuring the aluminium industry, including in relation to mergers and restructures, elimination of backwards production techniques, measures that have reduced pollution or increased production capacity, and adjustments to relevant taxation and trade arrangements in relation to alumina and aluminium.

The Guidelines also stated various objectives summarised in the below table.

Chapter		Objectives
Chapter 2	Primary principles and objectives of the structural adjustment of aluminum industry	<ul style="list-style-type: none"> • Achieve domestic production of alumina of 14 million tons in 2010; • spread the Bayer mineral processing approach more widely; • change the product mix by 2010 to higher value products; • improve all equipment and facilities; • reduce energy consumption down to 900 kilograms of standard coal per tonne or less; • balance supply and demand for electrolytic aluminium; • support good enterprises and eliminate inferior ones through the market; • encourage good enterprises to increase their production up to 75% out of entire production of the whole industry; • encourage the adoption of the 160KA smelting technique of the large-scale rebaked anode aluminium reduction cell; and • increase the proportion of highly-added-value products.
Chapter 3	Primary measures and policy to accelerate structural adjustment for aluminum industry	<ul style="list-style-type: none"> • Enhance the concentration of the industry; • strengthen coordination between credit and industrial policy; • enforce the regulation that capital invested in the electrolytic aluminium construction projects is proportioned by 35% or more; • financial departments should continue providing financial support to the alumina and electrolytic aluminium enterprises which conform to state industrial policy, credit policy and the industrial access conditions; • regulation of the reform by departments and governments at various levels to prevent enterprises from taking the chance of reform to evade bank debts; • handle the examination and approval procedures to grant exploration permission and exploitation permission for newly-built bauxite mining; • encourage the use of overseas bauxite resources; • strengthen the coordination and monitoring over the import of alumina; • control the export of electrolytic aluminium; • improve the mechanisms of power price formation and power supply; • export rebate rules do not apply to the electrolytic aluminium export products; • prohibition of the trade of alumina process; • improve the price mechanism for electrolytic aluminium; and • formulation of the new electricity price policy by taking into account of voltage grade, loading rate, and other electricity characteristics or factors.

Table 18: Summary of objectives in *Guidelines for Accelerating the Restructuring of the Aluminium Industry*

5 GOC influence on the Chinese aluminium industry: implementing measures

The Commission identified a series of GOC measures that it considers go towards meeting at least some of the objectives mentioned in the GOC's macroeconomic policies in relation to the domestic aluminium industry.

The most prominent of these are discussed below:

5.1 Nonferrous Metals Five Year Plans

Precursor plan considered in previous investigation

During the previous investigation, the then ACBPS considered the *Nonferrous Metal Industry Adjustment and Revitalization Plan* (Nonferrous Plan)⁵⁰ to be a key implementing measure.

The Nonferrous Plan was issued by the State Council in 2009, and aimed to achieve various objectives by 2011 including to stabilise and expand the domestic market, control the volume and eliminate backward production capacity, strengthen technological innovation, promote enterprise restructuring and focus on promotion of non-ferrous metals industrial restructuring and upgrading.

In the GQ response submitted as part of this review, the GOC stated that the Nonferrous Plan expired in 2011. The GOC did not provide any information regarding whether a replacement plan was in force during the review period.

Nonferrous Metals Five Year Plan, 2012

As part of the SEF released during the review of measures into aluminium extrusions, the Commission noted that the Ministry of Industry and Information Technology (MIIT) published the Nonferrous Metals Five Year Plan (Nonferrous Metals FYP) on 30 January 2012.⁵¹

The Commission views that given the fact that the Nonferrous Plan expired at the end of 2011 and the Nonferrous Metals FYP commenced immediately afterwards, it is likely that the Nonferrous Plan has been succeeded by the Nonferrous Metals FYP.

The Commission found in the aluminium extrusions SEF that the 2012 Nonferrous FYP sets out to:

- Accelerate the construction of nonferrous mines and promote mining exploration overseas;
- Encourage the development of alumina refineries in a number of regions that are thought to be rich in bauxite;

⁵⁰ Refer to the GOC's GQ (Attachment A47) submitted as part of the previous investigation.

⁵¹ www.crugroup.com/about-cru/cruinsight/chinanonferrousmetalsFiveYearPlan, "Implications from China's 12th nonferrous metals Five Year Plan", 24 April 2012.

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- Promote the ‘circle economy’ or use of recycled materials, such as the recovery of alumina from power generation coal ash;
- Establish guidelines that sees the movements of aluminium smelters from Eastern and Central China to Western China to encourage development in Western China; and
- Set absolute production targets.

The Nonferrous Metals FYP specifically seeks to increase bauxite processing capacity to increase its production of alumina to 8 million tonnes by 2015. Alumina is a semi-finished product used to make primary aluminium. The Nonferrous Metals FYP also seeks to provide “encouragement” to the development of the aluminium sector, including the manufacture of auto aluminium sheet, heat treated aluminium plate, and high strength aluminium extrusions

While the Nonferrous Metals FYP aims to increase bauxite processing and alumina production and to encourage the development of the aluminium sector, it seeks to curb the expansion of smelters in the production of nonferrous metals like copper and aluminium. The nonferrous metals FYP sets a national annual aluminium output cap at 24 million metric tons by 2015.

5.2 The Directory Catalogue on Readjustment of Industrial Structure and the Interim Provisions on Promotion Industrial Structure Adjustment

In the previous investigation, the ACBPS considered the *Directory Catalogue on Readjustment of Industrial Structure and the Interim Provisions on Promotion Industrial Structure Adjustment* (Directory Catalogue). The Directory Catalogue was initially promulgated in 2005, however the version as at 2011 was considered by the Commission in the previous investigation.

The ACBPS found that the 2011 Directory Catalogue specified the non-ferrous metals industry as an encouraged industry. This entitled the sector to receive preferential treatment, such as in the form of credit loans, exemptions from customs duties and import value added taxes in the importation of equipment.

The GOC submitted that as part of this review that the 2011 Directory Catalogue had expired and was succeeded by an update as at 2013. The Commission has compared the 2013 version of the Catalogue with the 2011 and 2005 catalogues and has found that there are no major areas of divergence.

Similar to the 2011 version, the 2013 Directory Catalogue describes the non-ferrous metal industry as an encouraged industry. The Directory Catalogue appears to encourage mining for relevant resources, newer and more efficient technologies, and the increased use of renewable resources.

5.3 Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities

In the previous investigation, the ACBPS considered the *Notice on Strengthening Work on the Elimination of Backward Production Capacity* (Backward Capacities Notice) issued by the GOC in 2010 was another example of an implementing measure.

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The Backward Capacities Notice focuses on the elimination of backward production capacities 'on schedule' by:

"...focusing on such industries as electricity, coal, aluminium, cement, nonferrous metal, coke...in accordance with the scopes of and requirements for elimination of backward production capacities as prescribed in such documents as the Decision of the State Council on Promulgating and Implementing the Interim Provisions on Promoting the Industrial Restructuring (No. 40 [2005] of the State Council) [the Interim Provisions]...Catalogue for Guiding Industrial Restructuring [the Directory Catalogue] and the plans for restructuring and revitalizing industries including aluminium, nonferrous metal, light industry, textile, etc."

The ACBPS considered these 'plans' for restructuring and revitalising the aluminium industry include the Guidelines and the 11th National FYP.

The Backwards Capacities Notice outlines how this goal is to be achieved, through measures such as:

- strengthening the 'Policy Constraint Mechanism' – controlling market access, strengthening the 'economic and legal means', 'intensifying' law enforcement and punishment (including revising the Directory Catalogue);
- improving policy incentives – strengthening fiscal support of backwards capacity elimination, resettling employees, supporting the transformation of enterprises (science and technology upgrading);
- improving the 'supervision and inspection mechanism' – including each region and the central MIIT producing an annual list of enterprises with '*backward production capacities to be eliminated, the backward technologies and equipment, the deadlines for elimination and the overall progress*' and the monitoring and reporting on the progress of the elimination of backward production capacities;
- strengthening GOC organisation and leadership of the elimination of backward production capacities;
- supporting competitive enterprises in elimination of backward production capacities through merger, acquisition or restructuring of enterprises with a backward production capacity;
- relevant GOC agencies and government levels shall '*earnestly work out implementation plans, divide the objectives and tasks among cities and counties, assign them to specific enterprises, and timely submit lists of to-be-eliminated enterprises with a backward production capacity to the Ministry of Industry and Information Technology and the National Energy Administration*';
- improving the regulation and control of land use plans, and prohibiting land supply for construction projects of backward production capacities and in industries with severe overcapacity;
- giving '*full play to the role of pricing mechanisms, such as differential prices for electricity and reform of prices for resource products, in eliminating backward production capacities... and raise the costs for energy, resources, environment and land used by enterprises and projects with a backward production capacity*'.

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The Backwards Capacities Notice further outlines that, if an enterprise fails to eliminate its backward production capacities before the prescribed time limit:

- its pollutant discharge permit shall be revoked;
- no banking financial institution shall provide any form of new credit support to it;
- the investment management department shall not examine and approve new investment projects of the enterprise;
- the land and resources management department shall not approve new land for use by the enterprise; and
- the relevant management department shall not issue any production license for it or shall withdraw any production license or production safety permit previously issued.

The Backwards Capacities Notice further provides for enterprises that do not eliminate backward production capacities according to the relevant provisions to be closed down.

The GOC submitted in its GQ response that the Backwards Capacities Notice was effective during the review period, and hence it's the Commission's view that the findings made in 2012 remain applicable to this review period.

5.4 Market entry criteria and industry operating conditions

In the previous investigation, the ACBPS found the NDRC-introduced *Requirements on Entry into the Aluminium Industry* (Entry Requirements Policy),⁵² dated 29 October 2007, were another example of an implementing measure.

The aims of the Entry Requirements Policy were to speed up structural reform of the aluminium industry and regulate investment behaviour, in addition to achieving environmental goals. The Entry Requirements Policy stated that all departments should conform to the policy when they, inter alia, conduct reviews of approval of investment proposals, business registrations, financing concerning bauxite mining, smelting, processing and utilisation of regenerated aluminium projects.

The GOC submitted during this review that the Entry Requirements Policy was replaced by the Normalization Criteria on Aluminium Industry (Normalization Criteria) introduced on 18 July 2013 by MIIT. The Normalization Criteria specifies various measures targeted at new enterprises including through imposing requirements associate with:

- the layout, location, and production scales for bauxite, alumina, electrolytic and secondary aluminium new enterprises;
- [for newly-built electrolytic aluminium projects] surety of alumina and electricity supply and transportation and other external conditions;
- quality assurance and capacity to meet established national standards;
- energy efficiency, including through meeting energy standards;
- consumption and utilisation of raw materials for newly-built electrolytic aluminium projects;

⁵² Refer to Attachment 6 of the GQ response submitted as part of the previous investigation.

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- imposing measures to meet national environmental standards;
- occupational safety; and
- monitoring and administration by the MIIT.

The Normalization Criteria further specified that the criteria apply to all bauxite mines, alumina, electrolytic aluminium and secondary aluminium in China.

In relation to market entry requirements, the GOC also stated in its GQ response that:

“Any proposal for the adding of capacity in the primary aluminium (electrolyte aluminium) sector during the review period was subject to a process of review by the competent authority. This process is initiated by the making of an application, such as a letter of notification, providing general information about the project concerned such as the name of the investor, the nature of the project, the investment scale and location, etc.

The project will go forward if it is consistent with the requirements of sustainability, resource use, and location as provided by relevant laws and regulations. If these would be exceeded, or if legal requirements would not be met (such as environmental conditions), the competent authority can decline the project application.”

5.5 Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy

In the previous investigation, the ACBPS found that the *Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy* (the Redundancy Circular) promulgated in 2006 was another implementing measure.⁵³

The Redundancy Circular aimed at promoting economic restructuring aimed at preventing inefficient expansions of industries, which was a result of “blind expansion”. The Redundancy Circular singles out the aluminium industry as one particularly affected by this problem, and outlined the ‘requirements and principles’ and ‘key measures’ to accelerate the restructuring of sectors with production capacity redundancy.

In relation to the aluminium industry, the Redundancy Circular states the GOC should intensify the implementation of industrial policies related to this sector, ‘strengthen the examination thereof and improve them in practice as well’.

The ACBPS found in the previous investigation that the measures discussed in the Redundancy Circular were adverse with the functions of a competitive market.

The GOC submitted in its GQ response that the Redundancy Circular remained in force during the review period. Hence the Commission views the findings made in the previous investigation as applicable to this review.

⁵³ Refer to Attachment A20 of the GQ submitted as part of the HSS investigation.

5.6 Taxation and tariff policies

In the previous investigation, the ACBPS found that:

- GOC tax policies (with 0 percent import tariffs) encourage import of raw materials (such as bauxite and primary aluminium) used in the production of ARWs in preference to import of finished aluminium products;
- the GOC appears to use export tariffs on bauxite and primary aluminium to either increase or restrict supply of aluminium in China;
- the GOC used VAT export rebates to either restrict or increase supply in various industries, with the VAT export rebates of 17 percent applicable to processed aluminium products used to encouraged exports of ARWs (compared to 0 percent rebates on bauxite); and
- when the GOC’s taxation and tariff policies are assessed collectively, the GOC appeared to use these policies to minimise exports of primary aluminium and encourage exports of processed aluminium products – hence increase in supply and associated reduction in price of primary aluminium in China.

In relation to this review, the GOC submitted the various schedules relating to VAT rates applicable to ARWs, primary aluminium, aluminium alloy and ARWs, and the relevant legislation⁵⁴ under which these taxes and tariffs operate. The various rates applicable to the review period are shown in the table below.

Tariff / taxation measure	ARWs	Primary aluminium	Aluminium alloys	Bauxite
Import tariff duty	10%	Some varieties 0%, others 15%	7%	0%
Export tariff duty	0%	Some varieties 0%, others 15%	2013: 0% 2014: 15%	0%
VAT rebate	17%	0%	0%	0%

Table 19: GOC’s import and export tariffs and VAT rebates applicable to aluminium products.

The information submitted by the GOC submitted shows that there have been some changes to the taxation and tariff policies since the previous investigation. For example, there have been some changes during the review period to the export tariffs applicable to aluminium alloys (with there being no tariff applicable in 2013, and a 15 percent rate applicable in 2014).

Although there have been some changes to the taxation and tariff policies, the Commission’s view is that these changes are not significant enough to depart from the findings made in 2012. The Commission views the lack of VAT export rebates in relation to primary aluminium and aluminium alloys, and the GOC’s continuing reliance on export tariffs for certain types of primary aluminium products and (for half of the review period) aluminium alloy products are indicative that the GOC’s taxation measures would have overall increased the domestic supply of primary and alloyed aluminium within China.

⁵⁴ The GOC submitted the *Regulations of the People’s Republic of China on Import and Export Duties (2003)* and the *Interim Regulation of the People’s Republic of China on Value Added Tax (2008)* in its GQ.

Impact on primary aluminium

Reflecting on the previous investigation's finding that suggests these policies are designed to minimise exports of primary aluminium, the Commission has compared the export volumes of primary aluminium to the national output volumes between June 2011 and June 2014, as included in the GQ response submitted as part of this review.

When compared to the figures provided in the previous investigation, between June 2011 and June 2014, China exported 2.1 million tonnes of primary aluminium. The total volume exports equates to 3.4 per cent of the national output of 62 million tonnes over the same period. The Commission views that as a proportion of national output this is a relatively small rate of exports, and views that the imposition of export tariffs on certain types of varieties of primary aluminium has contributed to this low rate. The Commission views that the continued lack of VAT rebates for primary aluminium or bauxite are also likely to discourage the exportation of these products.

Hence the Commission continues to view that the GOC's export tariffs and taxation policies have cumulatively led to increased supply and associated reduced prices of primary aluminium in China. The finding that supply remained high during the review period is supported by news articles published just prior to the review period which suggested that:

- In May 2013, the State Council issued a new plan to tackle overcapacity in a number of industries. The news article also suggested that previous efforts in curbing overcapacity had not succeeded due to the "...growth-obsessed local governments, which had encouraged rapid capacity expansions with subsidies, access to credit and favourable oversupply".⁵⁵
- In July 2013, the GOC issued further directions in its attempts to control China's "bloated" aluminium sector.⁵⁶

Impact on aluminium alloy

In relation to aluminium alloy, the Commission notes that there is a 7 percent import tariff duty on these products, and an export tariff in place during part of the review period. There was no VAT rebate for these products during the review period.

From July 2008 and June 2014, China exported 279.82 MT of alloyed aluminium. In comparison, Chinese producers manufactured 608.3 MT during the review period alone. This means that, when the total exporters from 2008 to 2014 are averaged on an annual basis, 46.6 MT was exported a year which, which represents only 5.9 percent of the total volume of exports made during the review period. Again, the Commission views that as a proportion of national output of alloy this is a relatively small rate of exports. Hence it is likely that the continued lack of a VAT rebate for aluminium alloy had the effect of reducing the exportation of aluminium alloy during the review period.

⁵⁵ Reuters, "China to ban new projects, strengthen market in new overcapacity plan", 1 May 2013, accessible at <http://www.reuters.com/article/2013/10/15/us-china-overcapacity-idUSBRE99E05620>.

⁵⁶ Reuters, "China sets stricter rules to rein in bloated aluminium sector", 24 July 2015, accessible at <http://www.reuters.com/article/2013/07/24/china-restructuring-aluminium-idUSL4N0FU0IZ20130724>.

5.7 Stockpiling policies

In the investigation into aluminium extrusions (REP 148), the ACBPS found that the China State Reserve Bureau's (CSRB's) intervention in the primary aluminium market through the purchase and stockpiling of large quantities of primary aluminium from the Chinese domestic market impacted domestic aluminium prices. REP 148 stated that in relation to aluminium purchasing and stockpiling policies:

“...irrespective of the motivation for two such interventions, the apparent outcomes were that aluminium prices responded; in the first instance by stabilising and even increasing from a falling trend; and in the second instance by further increases in prices.”⁵⁷

In the SEF released as part of the review of measures applicable to aluminium extrusions, the Commission understood that the State Bureau of Material Reserve (SBMR) (formerly known as the CSRB), situated within the NDRC, continues to exert influence on the Chinese primary aluminium market.

As the government unit responsible for managing strategic material reserves, it continues to purchase and sell aluminium when it considers necessary. For example in March 2013, the SBMR announced that it would buy up 300,000 tonnes of aluminium for delivery between 1 April and 31 May 2013.⁵⁸ The industry article suggested that the government's buy to buy excess aluminium in the market “perpetuate[d] the oversupply situation”. It further observed that the GOC's decision to intervene in the market was “designed solely to support China's domestic market”.

The SBMR's role is not limited to purchasing aluminium due to the widely-perceived glut in the Chinese aluminium market. At times, the SBMR has also been known to sell aluminium to ease supply shortages. For example, in November 2010, the SBMR sold 117,000 tonnes of aluminium ingot reserves in order to address supply shortages resulting from the government's policies of limiting aluminium production.⁵⁹

The Commission views that this program may, when assessed in isolation, result in a decrease in supply (which, in isolation, would in theory result in an increase in the price of aluminium). However, the Commission views that an assessment of the cumulative impact of all the policies and implementing measures discussed above would have led to an overall increase in the supply of primary aluminium, and an associated drop in the cost of aluminium products. This is evidenced by the sale of aluminium at below cost (discussed further at section 7 of this appendix).

⁵⁷ Refer to page 36 of REP 148.

⁵⁸ Aluminium International Today, 22 March 2013, accessible at www.aluminiumtoday.com/news/view/china-state-reserves-bureau-buys-300kt.

⁵⁹ “State Reserve Bureau to sell aluminium ingot reserves”, 18 November 2010, accessible at www.worldal.com/news/china/2010-11-18/12900422583.

5.8 Evidence of implementing measures by SIEs

The Commission also notes that there is evidence of SIEs involved in the aluminium and ARWs sectors implementing GOC policies and measures. This is discussed in **Appendix C**.

6 Findings – macroeconomic policies and implementing measures

After reviewing the identified GOC macroeconomic policies in relation to the aluminium industry, and related implementing measures, the Commission views that the GOC continues to play a significant role in the aluminium industry in China. It is the Commission's view that the GOC actively intervening in the Chinese aluminium industry during the review period has significantly contributed to the distortion of the domestic market.

The Commission notes that the GOC has claimed in its GQ response that that the broad macroeconomic policies are “aspirational” in nature and that the existence of these policies/plans does not necessarily mean that the GOC intends to actively implement or monitor these objectives.

However, in contrast to the claim by the GOC, the Commission notes that – as identified in the previous investigation – various documents (and particularly the Guidelines) are written in such a way that indicates their importance and binding nature. The Guidelines, for example, state that enterprises that do not conform to the industrial policy shall not be provided financial support by financial departments, while the Normalization Criteria state that projects must comply with state-led industrial policy and planning requirements.

The GOC further alluded to the implementation of these policies when it stipulated in its exporter questionnaire response that:

“During the review period, the GOC has required any new production capacity investment in primary aluminium to take place only in accordance with state-of-the-art production technology. Please refer to the Guidelines for Accelerating the Restructuring of the Aluminium Industry...”

Irrespective of the intent of the Guidelines, the Commission views that they indicate that the GOC has at a minimum an expectation that they will be implemented by affected enterprises.

In addition, the Commission views that the consistent aims and objectives contained within the policies and plans discussed above indicate that the GOC aims to implement these broad macroeconomic objectives via the implementing measures. Consistent themes that arose in the plans and measures related to:

- elimination of backwards capacity;
- control of production levels;
- encouraging mergers, restructuring and relocation;
- promote technological and product quality improvement; and
- implement and encourage environmental measures.

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These macroeconomic plans further highlight the overall importance of the industry to the Chinese economy. As stated above the Guidelines identify the aluminium industry as fundamental to the development of the national economy.

The Commission recognises that some of the objectives of the GOC's policies and plans are likely to have resulted in an increase in the production of primary aluminium. In a competitive market without GOC intervention, it is the Commission's view that production levels and prices would be determined by normal market forces of supply and demand.

The Commission notes that the previous investigation found that some of the GOC's measures for market entry and industry operation for the aluminium industry were reasonably considered to be focussed on environmental improvements, and that the GOC has stipulated that this was also the case as part of this review. However, irrespective of the intent of these measures (or the net impact they may have on aluminium prices when assessed in isolation – noting some measures may be aimed at restricting supply), the Commission still views that these measures are indicative of GOC policies and measures which are implemented in relation to the aluminium sector specifically.

7 Impact on price of aluminium

7.1 LME and SHFE prices

The previous investigation and the investigation into aluminium extrusions (REP 148) previously referred to the LME and Shanghai Futures Exchange (SHFE) in assessing the impact of government influence on the price of aluminium.

In the previous investigation, the ACBPS observed that SHFE prices for primary aluminium were lower than LME prices. This observation was a significant factor in explaining the impact of the GOC influence on primary aluminium prices. The ACBPS replaced the exporters' cost of primary aluminium with costs that reasonably reflected those under normal market conditions for the production or manufacture of aluminium extrusions.

In this review, the applicant claims that a comparison of LME prices from the original investigation period to the year to date ending March 2014 shows a drop in prices of approximately 25 percent.

The Commission considers that the significant GOC influence and intervention (as described in detail in this appendix) has resulted in domestic aluminium prices that are materially distorted and therefore, unsuitable for normal value purposes.

In the circumstances, the Commission considers that it would not be reasonable to compare the LME, an open global market, to the SHFE, a closed exchange that is restricted to Chinese nationals only, because the SHFE is affected by the distorted aluminium market in China.

The Commission refers to relevant findings made in the United States Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada (Softwood Lumber case). The Commission notes that this investigation also casts doubt over the use of a benchmark price where that price was affected by market distortion. In this case, the

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Import Administration inquired whether the Canadian provincial government's stumpage programs conferred a benefit on Canadian softwood lumber producers. The Import Administration applied its regulations in considering three categories of comparison benchmarks for determining whether a government good or service is provided for less than adequate remuneration⁶⁰. The Import Administration concluded that there were market-based internal Canadian benchmarks. It referred to the preamble to the relevant regulations in stating its reasons:

*"Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it."*⁶¹

While the Softwood Lumber case focused on a government's provision of service, rather than primary aluminium or ARWs, the analysis is relevant to the Commission's consideration of an appropriate benchmark in determining the GOC's influence on the price of aluminium. The Commission considers that the significant examples of GOC control and management of the aluminium industry renders the primary aluminium prices in the Chinese market, including the SHFE prices, materially distorted. Like in the Softwood Lumber case, using the SHFE as a benchmark for comparative analysis, would render the analysis "...circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect".⁶²

7.2 Production of aluminium and smelters' costs

The Commission considers that the smelters' cost of production of aluminium provides a meaningful illustration of the situation in the Chinese market for primary aluminium. In a detailed submission provided by Capral to the Commission during the current review into measures applicable to aluminium extrusions, Capral wrote:

"China accounts for over 40% of global production of primary aluminium, yet the average cash cost to produce primary aluminium in China is around 30% higher than the rest of the world, primarily due to the higher cost of alumina and energy. For example, in the March quarter of 2014 the cash cost in China was USD 2,097 per metric tonne (MT), compared to an average for USD 1,573 per MT for the rest of the world, and this was driven by higher alumina and energy costs (USD 210 and 388 per MT higher respectively). For this same period analysis shows that 100% of

⁶⁰ Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada, 67 FR 15545, 2 April 2002.

⁶¹ *Ibid*, p32.

⁶² *Ibid*.

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*China's aluminium production is unprofitable (on a cash cost basis), compared to only 6% for the rest of the world.*⁶³

In support of its submission, Capral relied on data obtained from an independent analysis performed by Harbor Aluminium Intelligence Unit (Harbor Aluminium). Harbor Aluminium provides industry expert analysis and consultancy services, including strategic aluminium industry and outlook reports. It provides specific reports on the Chinese aluminium industry and in-depth cost curves analysis in aluminium smelting, aluminium refining and bauxite mining. Capral sourced the smelting cost data through its commercial subscription with Harbor Aluminium.⁶⁴

Relying on Harbor Aluminium's 'aluminium smelting cost curve analysis' reports, Capral submitted that SHFE prices were lower than the estimated cash cost of production across all quarters of the investigation period. Capral submitted that Chinese domestic aluminium prices are below the estimated cost of production.

Further, Capral relied on Harbor Aluminium's "Summary of Unprofitable Aluminium Operating Capacity by Smelter", which shows that all 23,894 Chinese smelters, after casting, are unprofitable and are operating at a loss. The Commission understands that Harbor Aluminium has estimated these costs of production based on costs that are unsubsidised. The smelting cost data is the cash cost of production and does not include depreciation, sustained capital expenses, working capital and amortisation. The cash cost is exclusive of VAT of 17 percent which is paid by Chinese smelters for raw materials, energy and services.

The Commission contacted Harbor Aluminium in order to gain a better understanding of how Harbor Aluminium calculated its smelter costs and is satisfied as to the reasonableness and independence of its data. Noting that Harbor Aluminium has a commercial incentive to provide accurate, impartial information to its subscribers, and as a result of the Commission's verification of Harbor Aluminium's data, the Commission considers that the data from Harbor Aluminium is reliable.

The Commission views that Harbor Aluminium's analysis shows that, when the various influences exerted by the GOC over the primary aluminium sector are taken into account, there is a downwards price impact on the price of primary aluminium (as shown in the sale of primary aluminium at below cost price).

The Commission compared SHFE data (which tracked closely with primary aluminium purchase prices by selected exporters), and found that the SHFE prices were below production costs during the review period.

⁶³ Submission, Australian industry – Capral Ltd, EPR 248, no 038 (accessible at <http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR248.aspx>). Analysis by independent market intelligence company Harbor Aluminium Intelligence Unit.

⁶⁴ *Ibid*

Other evidence supporting that Chinese smelters are operating at a loss

Other information before the Commission is consistent with the findings of the Harbour Aluminium analyses that: (1) domestic aluminium is sold at below the cash cost of production; and (2) Chinese smelters are operating at a loss. As set out in Part II of this Appendix, the non-ferrous metals industry's status, as an "encouraged industry", allows aluminium producers to receive more favourable rates and charges from local and provincial government. For example, electricity tariff data for 2013 available on the public record from the US Countervailing Investigation into Boltless Steel Shelving Units Pre-packaged for Sale from China shows that the primary aluminium, or electrolytic aluminium, industry receives preferential tariffs that are lower than the rates generally available to large industry.⁶⁵

7.3 Flow-through impact to aluminium alloy sector

The GOC has claimed, via its GQ response and submission dated 1 July 2015, that even if the GOC was influencing the price of primary aluminium, this would not necessarily impact industry which produces the aluminium alloy used to manufacture ARWs, because these are two different sectors and should be treated as such. The GOC submitted that:

*"Aluminium alloy is a downstream processed product of aluminium billet. There is far greater diversity and intellectual property in its composition and use. Its production and sale is subject to a host of different considerations and market factors to that of aluminium billet."*⁶⁶

The Commission has thereby considered the flow-on impact that the sale of primary aluminium at below cost may have on the sale of aluminium alloys used to produce ARWs (A356 and A356.2).

The Commission observed that during the review period, when comparing the price of primary aluminium within the Chinese domestic market (as represented by the SHFE) with the price of aluminium alloy within China (as represented through the Changjiang River Exchange⁶⁷ (also referred to in the previous review as the Yangtze River Exchange), there was an overall similarity in price trends within these two sectors.

⁶⁵ US ITA Case C-570-019 Countervailing Duty Investigation of Boltless Steel Shelving Units Pre-packaged for Sale from the People's Republic of China: Preliminary Benchmark Memorandum, 23 January 2015.

⁶⁶ GOC submission dated 1 July 2015 is accessible at <http://www.adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20263/038-Submission-Foreign%20Government-Governement%20of%20China.pdf>.

⁶⁷ The Changjiang River Exchanges is a nonferrous metal spot market within China. The Changjiang River Exchange's aluminium alloy prices were obtained from <http://Ometal.com>.

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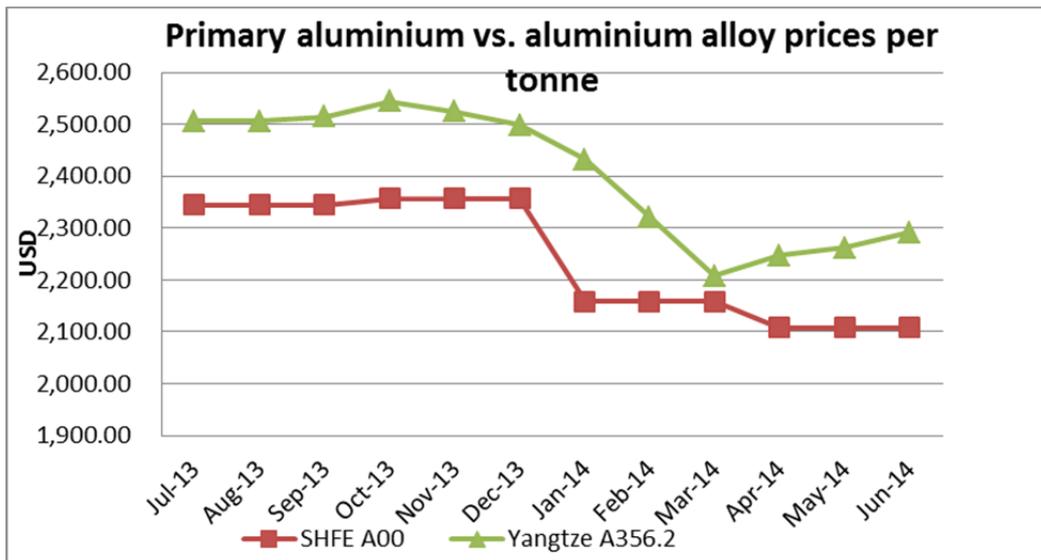


Figure 1: Chart showing the difference between primary aluminium and alloyed aluminium during the review period.

The above chart shows that across the review period, the price of aluminium alloy follows the pricing trends set by primary aluminium. The A356.2 price was on average 7 percent higher than primary aluminium prices during the review period. While there are instances where alloy prices deviated to a notable level from the annual average (with alloy being 12.7 percent higher than primary aluminium in January 2014, and only two percent higher in March in 2014), these instances are minimal as alloy was between six percent and nine percent higher for all other months in the review period.

This above analysis shows a clear correlation between the price trends in the primary and alloyed aluminium markets. The Commission thereby considers the macroeconomic policies, plans and guidelines outlined in this Appendix, combined with their implementing measures such as tariffs, taxes, rebates and subsidies, exert downward pressure on the price of aluminium and – by extension – the aluminium alloys within China.

The Commission further observes that the aluminium alloy sector would also likely be subject to various measures relating to the non-ferrous metals industry which were specified in the various implementing measures discussed previously and were found to have influenced the primary aluminium market.

8 Economics of supply: flow-through impact to ARWs sector

As discussed above, during the previous investigation the ACBPS has found that the price of aluminium and aluminium alloy in China was below world prices (represented by the LME) throughout the investigation period.

Direct intervention by the GOC in the form of taxes, tariffs, export licences and other measures for the primary and alloyed aluminium sectors, are likely to have impacted the supply and price of ARWs through the reduction of input prices through the impact of the reduced price of aluminium, which is the main cost of production. Reduced costs of production would, all other things being equal, lead to increased supply in the market as producers are able to supply more product at any given price. In this case, the market

price would be lower than without the distortionary government policies that depressed primary aluminium prices.

9 The Commission's conclusion

It is the Commission view that primary and alloyed aluminium prices in China are lower than they would otherwise be compared with if markets operated in a competitive environment without GOC intervention. As primary and alloyed aluminium is a major cost component in ARWs (averaging 61 percent across all selected exporters), the Commission considers that this understated aluminium cost would likely have an impact on the end cost of ARWs.

The Commission further views that the subsidies provided to the aluminium and ARWs sectors (discussed in detail at Appendix 3 below) would likely impact the costs of factors of production associated with ARWs through:

- improving the technology used by ARW manufacturers, decreasing the cost of production, as well as affecting the supply and hence price of aluminium producing enterprises (and upstream industries that are also likely to have received subsidies);
- decreasing the cost of inputs of aluminium and ARWs through the encouraged structural adjustment of aluminium and upstream industry entities; and
- directly reducing input prices of products at each stage of production if the subsidies are passed on by the recipient enterprises.

The Commission thereby finds that GOC influence in the primary aluminium, alloyed aluminium and ARWs sectors have resulted in significantly different ARW prices to what would have been the case if the relevant markets operated without significant GOC intervention.

The Commission recognises that the impact of these GOC influences on supply are extensive, complex and manifold, and their resulting impact on the price of ARWs is not able to be easily quantified. However, available information and the Commission's analysis indicates that these influences are likely to have had a material impact on the domestic price of ARWs in the investigation period, such that prices of ARWS in that market are no longer suitable for determining normal value under s.269TAC(1).

The Commission therefore considers that GOC influences in the Chinese aluminium industry have created a 'market situation' in the domestic ARW market.

10 Use of pricing benchmark

In view of the finding of a market situation in the ARW market, the Commission has determined that normal value should be established either under subs. 269TAC(2)(c) or 269TAC(6). In constructing the normal value, the Commission replaced the costs of aluminium and aluminium alloy for each Chinese exporter, as recorded by these exporters, with a reasonably competitive market cost for these inputs when constructing normal values for these exporters.

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The Commission used a benchmark costs based on LME data, plus an adjustment for trading fees, and alloy manufacture and delivery where appropriate (benchmark cost). This benchmark was used as it is considered to be a reasonable reflection of competitive market costs for aluminium and aluminium alloy in a market not influenced by the GOC. In each case, application of this benchmark resulted in an uplift to exporters' aluminium and/or alloy costs.

The Commission constructed variations of this benchmark to reflect the various delivery terms and product types which were actually purchased during the review period.

Benchmark type	Costs			
	LME primary aluminium 3 month contract price	Alloy uplift (based on Changjiang exchange data)	Trading fee (based on Major Japanese Ports premium)	Inland transport (based on exporter data)
Primary aluminium, EXW	✓	✗	✓	✗
Primary aluminium, delivered	✓	✗	✓	✓
Alloyed aluminium, EXW	✓	✓	✓	✗
Alloyed aluminium, delivered	✓	✓	✓	✓

Table 20 – Aluminium cost substitute benchmark by delivery and product type

Each of the discrete components that were used to construct each benchmark type are discussed below, and shown in detail in **Non-Confidential Attachment 4**.

10.1 LME primary aluminium price

Similar to the previous investigation, the Commission used LME primary aluminium prices as the basis for its aluminium cost substitute. This data was sourced from the Department of Industry and Science.

The Commission used three monthly contract prices (compared to the cash costs used in the previous investigation), as opposed to the cash prices used in the previous investigation and review into measures applicable to aluminium extrusions. The Commission took this approach after considering a submission made by Arrowcrest as part of this review, which argued that 3 month contract prices are more applicable to the ARWs sector than LME cash costs.

The Commission understands that the 3 month contract price is offered by LME to brokers buying and selling commodities in the LME futures market. In accepting three month contract to purchase aluminium, an aluminium buyer has agreed to receive the aluminium purchased 3 months from the date of transaction, based on a futures price which is determined by:

- the commodity's spot price;
- the risk free rate and time to maturity of the contract; and
- any costs associated with storage or convenience.

This compares to the spot market, in which buyers and sellers agree to buy or sell a set amount of aluminium for delivery on a fixed date at a price agreed at the date of contract.

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The Commission understands that the benefits of using 3 month or other futures contract prices include:

- reduced risks associated with price fluctuations;
- more certainty regarding the availability of aluminium stock in future periods ;
- reduced storage costs associated with having a large surplus of aluminium stocks on hand; and
- adjusted production of aluminium to match buyers' demand and reduce costs from excess capacity.

The Commission understands that buyers from aluminium demand industries – such as ARWs producers and producers of the aluminium alloys A356 and A356.2 – would be more likely to purchase aluminium via 3 month contracts (as opposed to spot prices) due to the above considerations. This is reflected in the fact that futures contracts (of up to 12 months) are available in China via the SHFE.

In having the added price and stock security associated with three month contracts, manufacturers can better negotiate future contracts with customers and have better capacity to set prices for forward contracts. In addition, through forward planning to align aluminium purchases with upcoming production requirements, manufacturers would also benefit from lower storage costs for aluminium.

10.2 Alloy uplift

The Commission, similar to the previous investigation, calculated an alloy uplift based on the difference between:

- the price of primary aluminium as shown via the SHFE; and
- the price of aluminium alloy A356.2, as shown in the Changjiang River Exchange.

This data was sourced from the Department of Industry and Science.

10.3 Major Japanese Ports premium

For the purposes of this review, the Commission is applying the published Major Japanese Ports (MJP) regional premium.⁶⁸ The Commission recognises this premium was not applied to the aluminum cost benchmark in the previous investigation; however the Commission has chosen to apply it as part of this review because it reflects a legitimate cost associated with the act of physically obtaining aluminum purchased via the LME.

The Commission determined that a premium applies to purchases of aluminium through the LME in light of information submitted by an interested party as part of the review into measures applicable to aluminium extrusions. In that review, the Australian industry producing aluminium extrusions (Capral Ltd; Capral) submitted that an aluminium cost benchmark should be indicative of the actual price that would be incurred if a customer was to obtain the physical delivery of aluminium in a competitive market, noting that in

⁶⁸ Metal Prices Pty Ltd

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markets not influenced by GOC intervention a premium is always payable for to physically obtain aluminium from either LME warehouses or smelters.⁶⁹

Capral referenced a recent judgement of the England and Wales High Court (Administrative Decisions) which explained the price of physical aluminum as purchased from the LME does not reflect the actual costs associated with the buyer physically receiving the aluminium. The Commission observed that in the High Court's judgement, His Honour, Mr Justice Phillips wrote:

"The LME is an on-exchange forwards market. This means that LME contracts are based on physical settlement by the transfer of ownership of metals stored in LME approved warehouses. Although only a very small proportion of LME trades actually result in physical settlement, the possibility of physical delivery (out of one of more than 700 LME approved warehouses worldwide) results in price convergence between the LME price and the price of physical metal, so that the LME price is truly reflective of supply and demand"....

"The LME price, which is used as the global benchmark for physical contracts, is a price for metal traded 'in---warehouse'. This entails that the additional costs associated with making delivery of "free metal" outside the constraints of the LME system are not reflected in the LME price, with the result that the physical market price for aluminum will be higher than the LME price. The physical market price of aluminum, known as the "all in" price, is therefore made up of the LME price plus a premium"....

"...because of the impediments to arbitrage caused by queues, the value of warranted metal in LME warehouses concerned is lower than it would otherwise be in relation to the value of metal physically delivered".⁷⁰

Capral submitted that any constructed aluminium pricing benchmark used as part of the review into aluminium extrusions should thereby include costs reflecting the premium applicable to physically obtaining aluminium via the LME. Capral further submitted that the MJP premium would be a suitable benchmark premium upon which these costs should be based as the MJP is used in major regional markets including Japan and Australia.

In considering the applicability of Capral's submission to this review, the Commission has undertaken research into whether additional 'premium' costs are indeed applicable to purchases of primary aluminium via the LME, and whether similar premiums would apply to Chinese domestic purchases of aluminium via Chinese futures exchanges.

The Commission found that, as claimed by Capral, premiums are payable in addition to LME prices, in order to physically obtain goods purchased via futures exchanges. The

⁶⁹ Refer to Capral's submission to the aluminium extrusions review of measures, accessible at <http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR248.aspx>.

⁷⁰ *United Company Rusal Plc v The London Metal Exchange* [2014] EWHC 890 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2014/890.html> at paragraph 13

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Commission has observed a presentation on aluminium warehousing, premiums and prices, by Marco Georgiou of the metals-focused business intelligence company CRU, which stated that premiums are payable in addition to LME cash prices. Mr Georgiou further stated that these premiums are driven by a range of factors including:

“Supply, demand, freight, rental, withdrawal and trading costs...”⁷¹

The Commission also understands that within the Chinese market, it is likely that similar premiums would be incurred as part of physically obtaining goods purchased via Chinese futures exchanges. The SHFE, trades in aluminium as well as other metals, specifies in its trading rules that trading and delivery fees are applicable to the settlement of its sales via the SHFE.⁷² Other Chinese futures exchanges appear to employ similar trading fees.⁷³ Given the SHFE’s predominance in Chinese metals trading, the Commission considers it reasonable to assume that other Chinese trading houses selling aluminium and aluminium alloy to Chinese customers would impose fees of a similar nature.

Recognising that there are additional costs associated with physically obtaining primary aluminium via the LME, and the similarity in these costs to those that would be incurred within China’s domestic trading market applicable to primary and alloyed aluminium, the Commission views that it is reasonable to apply a premium to its aluminium cost substitute to reflect the actual cost incurred to physically obtain aluminium purchased via a futures exchange.

In the absence of specific data pertaining to the trading and delivery fees applicable to the purchase of primary aluminium or aluminium alloys A356 and A356.2 via Chinese domestic futures exchanges, the Commission views that it is reasonable to use MJP regional premiums for the purpose of ensuring its aluminium cost substitute.

Inclusion of importation costs in MJP

The Commission recognises that including MJP costs in its aluminium price benchmark has meant that some costs associated with the importation of aluminium⁷⁴ have been

⁷¹ Presentation by Marco Georgiou of the Centre for European Political Studies dated October 2013, accessible at http://www.eurocapitalmarkets.org/system/files/Presentation_Marco_Georgiou_CRU.pdf/.

⁷² The SHFE’s trading rules are accessible at <http://www.shfe.com.cn/en/Rules/SHFERules/TradingRules/>.

⁷³ The China Securities Regulatory Commission identified trading fees had been reduced at four trading exchanges, but did not specify the trading houses which had reduced their fees nor did the CSRC identify the amount of the fees that would be applicable by commodity type. Refer to http://www.csrc.gov.cn/pub/csrc_en/newsfacts/release/201205/t20120508_209699.html for more information. Another example of Chinese futures exchange applying trading fees includes the Dalian Commodity Exchange (which does not trade in aluminium but does trade in other commodities); refer to <http://www.dce.com.cn/portal/cate?cid=1272429141100> for more information.

⁷⁴ The Commission has observed information relating to MJP premiums with delivery terms being made on a Cost, Insurance and Freight basis or on a Cost and Freight basis. The Commission recognizes that the MJP is inclusive of all costs associated with transporting the goods from the country of export to the destination port except for those cost relating to inland transport from the port of arrival to the final destination and port of arrival charges.

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included in the aluminium cost substitute used in this review. Where possible, the Commission seeks to ensure that any cost substitutes reflect the cost associated with domestic market transaction (i.e. are exclusive of all importation costs or costs not applicable to the domestic market). Hence the Commission would, if able, remove any importation costs from the MJP before incorporating MJP costs into its aluminium cost substitute. The Commission is, however, unable to remove importation costs from the MJP, because it has not been able to obtain data which breaks the MJP down into discrete cost categories associated with the cost drivers discussed above.

10.4 Delivery prices

Consistent with the previous investigation, the Commission calculated domestic delivery prices based on data submitted by selected exporters.

11 Submissions

11.1 Government of China

The Commission made its determinations in relation to the existence of a market situation applicable to ARWs in view of submissions made by the GOC via its GQ response and submission dated 1 July 2015. These submissions argued that there was no basis for the positive market situation finding in the previous investigation, nor should there be any basis on which to find a particular market situation applicable to this review period.

The GOC's position is based primarily on the argument that China is a fully functioning and competitive market economy and should be treated as such by the Commission. The GOC claims that China's market economy is demonstrated in the increased competitiveness in the ARWs markets in China, in addition to increased competition and deregulation amongst the upstream primary aluminium and alloy markets, since the previous investigation.

A summary of the specific claims made by the GOC, and the Commission's response to those specific claims, is included in the table below.

GOC claim	Commission's response
China's domestic automotive industry and competition in the road wheels markets from non-aluminium products has created a highly competitive environment amongst Chinese ARW manufacturers. ⁷⁵	The Commission's analysis of GOC's policies and plans in relation to the primary and alloyed aluminium sectors, and subsidisation of the primary aluminium, aluminium alloy and ARWs sectors shows that the GOC exerts influence over these sectors which result in ARWs being sold at less than adequate remuneration thereby creating a situation in the market that makes sales prices unsuitable for determining normal value. Refer to the above sections for more detailed information.
China's market economy status means that the International Obligations Regulation prohibits the Commission	Subs. 269TAC(2)(a)(ii) of the Act allows the Commission to reject the use of domestic selling prices as the basis for normal value, where there is a 'market situation' making the sales

⁷⁵ Refer to the GOC's GQ submitted as part of this investigation.

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GOC claim	Commission's response
from applying Article 15 of China's WTO Accession Protocol against China. ⁷⁶	unsuitable. This legislation applies irrespective of the country subject to an investigation (or review) or the status of that country's economy.
Market situation findings can't be made by simply inferring GOC involvement in the aluminium sector, as the AD Agreement and the Act imply a particular market situation is something that affects the comparability of export prices and price-based normal values. The Commission is thereby also unable to replace actual costs for aluminium under the AD Agreement, and subs. 43(2) of the International Obligations Regulation.	As noted in the analysis above, the Commission has determined that the GOC influence in the primary aluminium market has had the effect of increasing supply and thereby depressing the price for primary aluminium. This in turn has impacted the pricing of alloyed aluminium, and in turn the price of ARWs, thereby making the prices of ARWs unsuitable for determining a normal value under subs. 269TAC(1).
Some of the evidence used by the Commission and, previously, the ACBPS, to demonstrate GOC involvement in the aluminium sector contradicts previous market situation findings made on the basis that aluminium has been sold at less than adequate remuneration. ⁷⁷	<p>The Commission agrees with the GOC's assertion that some of the policies and practices assessed by the Commission might result in contradictory price impacts for aluminium. The GOC rightly points out that policies which reduce aluminium supply – such as aluminium stockpiling or reduction of aluminium production for environmental reasons – would likely result in increased aluminium costs, due to their likelihood to reduce aluminium supply.</p> <p>After considering the various programs and policies supported by the GOC holistically rather than in isolation, the Commission's view is that the mere existence of such programs when viewed in isolation undermine possible findings in relation to market situation. When assessed holistically, the Commission views that GOC policies (whether state or local government level) which promote supply and/or price reductions of aluminium have a greater impact on the domestic supply of aluminium and domestic sales price of aluminium, when compared to the programs that restrict supply and/or increase aluminium prices. This is reflected in the above assessment that aluminium is sold below cost price.</p>
Primary aluminium has been removed from the class of restricted projects under the <i>Catalogue of Readjustment of Industrial Structure</i> since 2013.	The Commission agrees that primary aluminium was removed from the class of restricted projects under the <i>Catalogue of Readjustment of Industrial Structure</i> since 2013. However, the Commission notes that the <i>Catalogue of Readjustment of Industrial Structure</i> still indicates that the non-ferrous metals sector is an encouraged industry and that (as discussed in the above sections) this would lead to the GOC providing benefits

⁷⁶ Refer to the GOC submission, dated 1 July 15 (accessible at <http://www.adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20263/038-Submission-Foreign%20Government-Government%20of%20China.pdf>).

⁷⁷ The GOC claimed in its submission dated 1 July 2015 that the SEF released as part of the aluminium extrusion review (SEF 248) provides one such example, as it noted the GOC's involvement stockpiling primary aluminium (which would in theory increase aluminium prices) whilst also making a finding that aluminium had been sold at less than adequate remuneration. The GOC further noted in the same submission that previous findings in relation to GOC involvement in the aluminium sector via environmental policies aimed at restricting aluminium production provided a further example of inconsistency in the Australian government's market situation findings pertaining to aluminium.

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GOC claim	Commission's response
	to the aluminium industry.
The deep drawn stainless steel sinks investigation made a negative market situation finding, because the raw material comprised around 45-55% of the total CTM. This is similar to the proportion of alloyed aluminium as represented in the CTM for ARWs (around 48%), hence there should be a negative market situation finding in this review.	The Commission's own analysis of costs submitted by selected exporters ⁷⁸ found that aluminium or aluminium alloy costs represented between 53 and 72 percent of CTM costs, by each selected exporter, for the review period. When averaged out, aluminium or aluminium alloy costs represented 61% of the CTM for all exporters (and is thereby distinguishable from the sinks investigation). The Commission thereby views that this aluminium and aluminium alloy costs represent a significant cost component meaning that the impact of GOC intervention in the aluminium and aluminium alloy markets will have flow-through impacts to the ARWs sector.

Table 21: GOC submissions regarding market situation, and Commission responses.

11.2 Australian industry

The Australian industry made various submissions in relation to market situation. These submissions, and the Commission's responses are shown in the below table.

Party	Submission	Commission response
Arrowcrest	An aluminium cost substitute should be based on LME three month contract prices should be used as the base LME cost, as three month contract terms would better reflect the purchasing processes of ARWs manufacturers.	As discussed previously, the Commission agreed that LME three month contract prices should be used as the basis of its aluminium cost substitute.
	Delivery prices should be based on the prices associated with the Main Japanese Premium (MJP), because Arrowcrest did not have access to Chinese inland transport costs.	The Commission agrees that local delivery terms should be included in the cost construction, but found it was more suitable to base delivery fees on actual exporter data, consistent with the approach used in the previous investigation and the approach for determining the cost of production or manufacture as set out in subs. 43(2) of the Regulations. The Commission notes that MJP does include some freight costs, however as noted above, the Commission is unable to accurately remove these costs to remove these costs from the MJP.
	Delivered costs of alloy fell at a lower rate during the review period (7% in financial year 2012 and 11% in financial year 2013) than the rate claimed by the applicant (25%).	The Commission obtained independent data from the Department of Industry and Science to determine a suitable alloy uplift rate and considers this to be the most fair and reasonable approach in the circumstances.
Dragway Performance Engineering (Dragway) and	Whilst aluminium prices were lower during the review period when compared to the previous investigation, LME primary aluminium prices (and aluminium alloy prices) have since	Dragway and Arrowcrest referred to price trends outside the review period, hence this claim has been disregarded.

⁷⁸ CITIC Dicastal did not break down the cost to make into discrete categories, such as raw materials and labour costs. Hence the Commission has not included the company's data in its analysis regarding the

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Party	Submission	Commission response
Arrowcrest	recovered to levels similar to those analysed during the initial investigation. ⁷⁹	

Table 22: Australian industry submissions regarding market situation, and Commission responses.

⁷⁹ Refer to Dragway submission dated 23 October 2015 (<http://www.adcommission.gov.au/cases/Documents/007Submission-AustralianIndustry-DragawayPerformanceEngineering.pdf>), and Arrowcrest submission dated 2 June 2015 (<http://www.adcommission.gov.au/cases/Documents/006Submission-Arrowcrest-AustralianIndustry-ArrowcrestGroupPtyLtd.pdf>).

APPENDIX C: Countervailing findings

1 Summary of findings

After assessing all relevant information available, the Commission has found that financial benefits⁸⁰ were conferred to ARWs producers in respect of the goods via countervailable subsidy programs.

The names of each program are discussed in section 5 of this SEF.

2 Programs investigated

The Commission examined 39 subsidy programs as part of this review. This includes the 32 programs deemed to be countervailable subsidies received by exporters in respect of ARWs during the previous investigation.⁸¹ In addition, there were seven additional subsidy programs which the Commission examined as part of this review after receiving information from selected exporters.

In order to consider these 39 subsidy programs, the Commission obtained information from all selected exporters via exporter questionnaires and requests for further information regarding the subsidies they received during the review period. The Commission also obtained information from the GOC in relation to each program, via the GQ and SGQ. Non-confidential versions of all questionnaires and responses to requests for information are accessible via the public record for this investigation (<http://www.adcommission.gov.au>).

3 Relevant legislation

Section 269T of the Act defines a 'subsidy' as follows:

"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

⁸⁰ Refer to subs. 269TACC(2)(a) and (b).

⁸¹ The Commission considered 56 programs in total during the previous investigation.

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(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.

This reflects Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).

S.269TAAC defines a countervailable subsidy as follows:

(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

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(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.

S. 269TACC of the Act directs how the Parliamentary Secretary determines whether a financial contribution or income or price support confers a benefit and the amount of this benefit.

Under s. 269TJ(1) of the Act, one of the matters that the Minister must be satisfied of to publish a countervailing duty notice is that a countervailable subsidy has been received in respect of the goods.

4 Information considered by the Commission

4.1 Information provided by selected exporters

In assessing the alleged subsidy programs, the Commission has considered information provided Exporter Questionnaire responses or responses to requests for information. This includes information provided by exporters regarding whether the exporters were in receipt of any previously investigated or new countervailable subsidies – and, if so – the value of any benefits received.

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4.2 Information provided from the Government of China

The Commission has relied upon information provided by GOC in assessing the alleged subsidy programs. This includes information provided in the:

- GQ response submitted on 27 February 2015, which included comprehensive responses to requests for information regarding the 32 subsidy programs found to be countervailable in the previous investigation. The GOC also provided views regarding the potential existence of a market situation in relation to ARWs sold within China during the review period;⁸²
- SGQ response submitted on 8 June 2015, which included comprehensive responses to the Commission's request for information regarding subsidy programs 57 to 63;⁸³ and
- submission made by the GOC dated 1 July 2015 regarding matters pertaining to the Commission's considerations regarding market situation and program one.⁸⁴

4.3 Other relevant information

The Commission also considered, where relevant, desktop research and findings from other subsidy investigations conducted by the Commission as part of this countervailing assessment.

5 Methodologies used to determine subsidy margins

The method through which benefits were calculated and attributed varied by exporter. The table below summarises the approach taken to determine subsidy margins for each exporter.

Exporter	Method of allocation	Applicable legislation
Pilotdoer and Jinfei Kaida	The amount of the subsidy was determined using the actual amount of benefit received as shown in each exporter's exporter questionnaire. For program 1, benefits were established by calculating the difference between the actual prices paid by exporters and the aluminium cost substitute benchmark. Where other subsidies were actually received by exporters during the review period, the Commission determined the value of subsidies (in line with the above methodologies) based on the actual values of benefits received by those selected exporters. In relation to taxation-related	subs. 269TACD(1)

⁸² Refer to the GOC's GQ.

⁸³ Refer to the GOC's SGQ.

⁸⁴ The GOC submission dated 1 July 2015 is accessible at <http://www.adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20263/038-Submission-Foreign%20Government-Gouvernement%20of%20China.pdf>.

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Exporter	Method of allocation	Applicable legislation
	subsidy programs, the value of the subsidy is determined to be the amount of tax revenue forgone by the GOC. Benefits were attributed using the applicable turnover values as submitted by each of these selected exporters.	
Zhejiang Yueling ⁸⁵	For all programs except program 1, the value of the subsidy was determined using the actual amount of benefit received by the exporter as shown in exporter questionnaires. Benefits were attributed using the lowest weighted average export price and the lowest relevant turnover figures for other selected exporters. For program 1, the value of the subsidy was determined using the highest unit benefit received by other selected exporters. Benefits were attributed using the lowest weighted average export price and the average relevant turnover figure for other selected exporters who received benefits under subsidy programs.	ss. 269TACD(1) and (2)
Jiangsu Yaozhong ⁸⁶	For all programs except Program 1, the value of the subsidy was determined using the actual amount of benefit received by the exporter as shown in Jiangsu Yaozhong's exporter questionnaire. Benefits were attributed to the goods using the aggregate turnover volumes of other selected exporters. For program 1, the value of the subsidy was determined using the aggregate benefits received by other selected exporters. Benefits were attributed using the aggregate turnover volumes of other selected exporters.	ss. 269TACD(1) and (2)
Residual exporters	The value of the subsidy was determined using an aggregate of the subsidy margins applicable to other selected exporters.	ss. 269TACD(1) and (2)
Uncooperative and all other exporters	The value of the subsidy was determined using the maximum unit subsidy value received by the selected exporters in the review period, or maximum unit subsidy value received by exporters during the previous investigation, and attributed using the lowest weighted average export price for selected exporters.	ss. 269TACD(1) and (2)

Table 23: Methodologies for determining subsidy margins, by exporter

⁸⁵ Zhejiang Yueling's sales and aluminium price data was unable to be used for the purpose of calculating countervailing margins, due to the Commission's concerns about the accuracy of the company's data.

⁸⁶ Jiangsu Yaozhong's sales and aluminium price data was unable to be used for the purpose of calculating countervailing margins, because the company did not export goods to Australia during the review period.

6 Category One: Aluminium provided by the government at less than fair market value

6.1 Background

The ACBPS found in the previous investigation that Chinese ARWs exporters benefited from the provision of aluminium by the GOC at less than adequate remuneration. In particular it was found that primary aluminium was being produced and supplied by government owned enterprises at less than adequate remuneration.

Under this program, a benefit to the exporter of aluminium extrusions is conferred by primary aluminium being provided by the GOC at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment), nor is it aware of any WTO notification of this program.

Consistent with the original investigation, the Commission sought information from the exporters to establish the quantity and cost of primary aluminium purchases, the form (ingot or billet), origin of product, identify of the supplier (trader or original manufacture) and if the supplier was a state-owned enterprise (SOE) or SIE.

The exporters from whom the Commission received questionnaire responses reported purchases of both primary aluminium and aluminium alloy during the review period from a mixture of SOE and SIE smelters, traders and privately owned firms.

In determining whether the provision of goods at less than fair market value was a financial contribution that conferred a benefit to exporters of ARWs during the review period, the Commission has had regard to the guidelines set out in subs. 269TACC(3) of the Act.

6.2 Analysis - Primary aluminium costs

Evidence of the presence of GOC influence is illustrated in information provided to the aluminium extrusions review in relation to Chinese smelting costs. In the aluminium extrusions review, a member of the Australian aluminium extrusions industry submitted a report by independent market intelligence company Harbour Aluminium which showed the estimated cost to produce primary aluminium in China, exclusive of GOC subsidies.⁸⁷

When the Commission compared this cost data with the prices paid in China for primary aluminium purchased via the SHFE, the Commission found that the SHFE price was below the cash cost of production for primary aluminium during the review period.

⁸⁷ Refer to EPR Item 38 on the public record for the review into aluminium extrusions. The Commission notes that the cost to make data upon which the Commission made its preliminary findings as part of the review into aluminium extrusions provided annual cost to make prices for 2013 and 2014. Hence the Commission views that the data is suitable to this review as it pertains to this review period.

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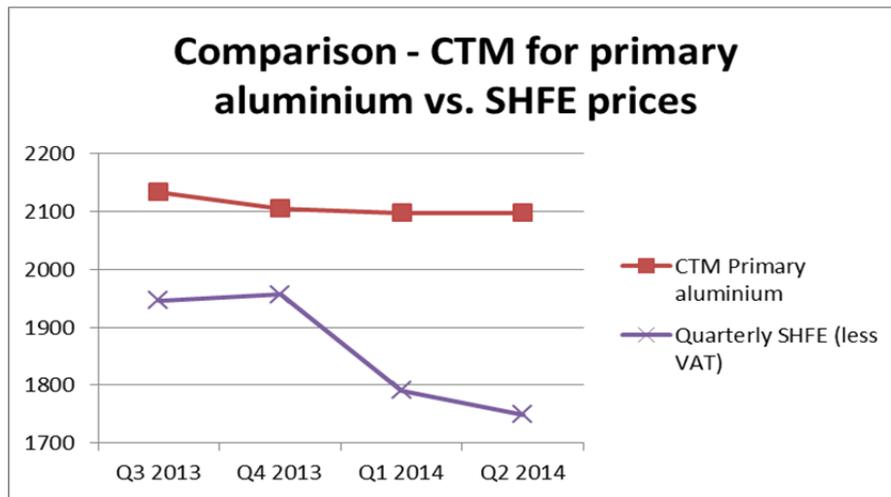


Figure 2: Comparison of cost to make primary aluminium in China (excl. subsidies) with SHFE prices.

Various submissions made by the Australian industry (Arrowcrest) during this review also supports this finding.⁸⁸ Arrowcrest submitted:

- An article from the *International Aluminium Journal* which assessed that the whole aluminium smelting industry was operating at a loss during 2014, due to drops in aluminium prices which exceeded reductions in production costs achieved during previous years.⁸⁹
- An article from the *Financial Times* which suggested the Aluminium Corporation of China (Chalco) operated at a loss in 2014 and was likely to continue to operating at a loss through to 2016.⁹⁰

Information obtained by the Commission as part of the review into aluminium extrusions also suggests that the primary aluminium industry receives local and provincial government assistance for electricity. The Commission found that electricity was reported to represent at least 40 percent of the CTM for primary aluminium.

Analysis of selected exporter data revealed that all selected exporters paid less for aluminium than a 'fair market price' (i.e. the cost to make aluminium in China). The Commission's examination of the cooperating exporter's primary aluminium purchases in this review illustrates that all selected exporters paid less than the CTM for primary aluminium as shown in Harbor Aluminium's report.

⁸⁸ The Commission has not considered a submission made by Arrowcrest dated 1 April 2015 as part of this finding, as the submission did not provide any evidence specifically relating to the review period. This submission is accessible at <http://adcommission.gov.au/cases/Documents/Australian%20Industry%20-%20Arrowcrest%20Group%20Pty%20Ltd.pdf>.

⁸⁹ Refer to Arrowcrest's submission dated 6 July 2015, accessible at <http://adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20263/039-Submission-Australian%20Industry-Arrowcrest%20Group%20Pty%20Ltd-Case263.pdf>.

⁹⁰ Refer to Arrowcrest's submission dated 23 March 2015, accessible at <http://adcommission.gov.au/cases/Documents/026-Submission-AustralianIndustry-ArrowcrestGroupPtyLtd.pdf>.

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The Commission further observed that of the five selected exporters subject to this countervailing investigation, three submitted that they purchased aluminium from traders or directly from manufacturers who were SIEs or SOEs. Of these selected exporters, two submitted that they solely purchased aluminium from SIEs or SOEs, and the remaining exporter purchased a large proportion of aluminium from SIEs or SOEs.

The Commission finds that the SIEs involved in the primary aluminium sector are governments or public bodies with regard to the criteria in the definition of subsidy in 269T(1). Consistent with the original investigation, the Commission continues to hold the view that prices of primary aluminium supplied by SOEs or SIEs are likely to have influenced domestic primary aluminium prices generally. The large proportion of SOE and SIE sourced primary aluminium production in China is considered to drive prices down generally and influencing the prices of privately owned smelters such that their prices are also below the CTM for primary aluminium.

The Commission has thereby found that the provision of aluminium at less than the cost to make and sell by the GOC is a financial contribution that confers a benefit on the selected exporters because the aluminium is provided for less than adequate remuneration (under subs. 269TACC(3)(d)).

As set out in **Appendix B**, the Commission has also taken into account the following factors which indicate the GOC's involvement in the domestic aluminium market and the distorting effects on domestic prices:

- export taxes on primary aluminium;
- significant ownership of smelting capacity by SOE and SIE;
- preferential treatment provided to the aluminium smelting and non-ferrous metals industries; and
- GOC policies that treat the non-ferrous metals industry as an encouraged industry.

6.3 Flow-through to aluminium alloy prices

The Commission finds these artificially low prices of primary aluminium are likely to have flowed through to the cost to make the aluminium alloy used to produce ARWs. As mentioned in Appendix 2, the Commission identified similarities in the price trends between primary and alloyed aluminium which reflected that the cost of primary aluminium is a key determinant in the cost of aluminium alloys. The Commission also noted in Appendix 2 that the aluminium alloy sector would have likely benefited from various policies and implementing measures which related to the aluminium smelting and non-ferrous metals industries. The Commission views that these benefits would have further contributed to aluminium alloys A356 and A356.2 being sold to ARWs producers at less than adequate remuneration.

The Commission sought to assess this by calculating an uplifted CTM price for aluminium alloy, based on the CTM for primary aluminium uplifted by 7 percent (which was the annual average difference in price between primary aluminium and aluminium alloys 356 and A356.2). The Commission found that exporters had also paid less than the constructed CTM for aluminium alloy across the review period.

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As mentioned in Appendix 2, the Commission identified that the cost of primary or alloyed aluminium represents on average 61 percent of the CTM for ARWs manufactured in China. The Commission considers that this is a significant proportion of the CTM for ARWs and hence that ARWs producers benefited from the subsidies provided by the GOC to the aluminium sector.

6.4 Is this a subsidy program?

Based on analysis of the information above, the Commission considers that this program involves a financial contribution that involves the provision of aluminium, at less than adequate remuneration under subs. 269TACC(3)(d).

6.5 Is there a subsidy by a public body?

Legislative framework

The definition of a subsidy under subs. 269T(1) of the Act requires the financial contribution to be provided by a government, public body or a private body entrusted by that government or public body to carry out a government function.

The SIEs involved in the primary aluminium sector in China are not considered by the Commission to be part of the GOC, nor are they private bodies entrusted or directed by the GOC in order to carry out governmental functions. The Commission's focus on considering whether aluminium has been sold at less than fair market value will thereby focus on considering whether these SIEs are acting as a 'public body'.

The term 'public bodies', is not expressly defined under the Act, or the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).

The previous investigation's findings were made in view of the determinations made in relation to public bodies through the *WTO Appellate Body in United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, dispute DS379.⁹¹

Further guidance on the meaning of public bodies was provided by the WTO Dispute Settlement Body (DSB) in *United States – Countervailing Measures (China)*, dispute DS437 and *United States – Carbon Steel (India)* dispute DS436.

DS379 and DS436 findings

In its findings report, the Appellate Body stated:

... the determination of whether a particular conduct is that of a public body must be made by evaluating the core features of the entity and its relationship to government in the narrow sense. That assessment must focus on evidence

⁹¹ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R

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*relevant to the question of whether the entity is vested with or exercises governmental authority.*⁹²

[Emphasis added]

The Appellate Body provided further guidance on this point as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):⁹³

Indicia 1 - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;

Indicia 2 - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and

Indicia 3 - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Appellate Body considered⁹⁴ that the existence of *mere formal links* (i.e. majority government ownership) between an entity and government was not sufficient to establish the necessary possession of governmental authority.

The Appellate Body further advised that in all cases, an investigating authority must give due consideration to all relevant characteristics of the entity and avoid focussing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant⁹⁵.

The Appellate Body went on to acknowledge (in the context of examining SOEs in China) that:⁹⁶

“...determining whether an entity is a public or private body may be a complex exercise, particularly where the same entity exhibits some characteristics that suggest it is a public body, and other characteristics that suggest that it is a private body.”

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

Findings in previous investigation

In the previous investigation, the ACBPS examined the three indicia outlined in DS379 (described above) and made the following findings:⁹⁷

- indicia 1 – the ACBPS found that a particular enterprise (CHALCO) was vested with some government authority in relation to imposing state mandated pricing policies on its subsidiaries, but did not identify any legal instruments which expressly vested government authority in any aluminium-producing SIEs.⁹⁸
- indicia 2 - the ACBPS found that CHALCO was exercising governmental functions, and that Chinese aluminium industry SIEs, including those that produce aluminium and/or alloy, played a leading and active role in implementing GOC policies and plans and these SIEs were therefore exercising governmental functions.
- indicia 3 - the ACBPS found that the GOC employed policies and implementing measures which enabled the GOC to exercise meaningful control over Chinese SIEs that produce aluminium and/ or aluminium alloy.

ACBPS concluded that at least Indicias 2 and 3 were met and hence aluminium SIEs should be considered ‘public bodies’.

Reinvestigation and findings by the Trade Measures Review Officer

In response to the previous investigation, interested parties appealed to the then TMRO to review certain findings made in REP 181. This included the finding that there is a countervailable subsidy of the type described as ‘Program 1’.

The TMRO’s review concluded that as aluminium producers were not public bodies and that there was no evidence that their sale prices led to less than adequate remuneration, the finding that there was a countervailable subsidy of the type described as Program 1 should be reinvestigated.

The TMRO found that:

- The ACBPS correctly applied the Indicia 1 test.
- In relation to Indicia 2, the ACBPS’ interpretation of the test was accurate, however the application of the test fell short in establishing that the SIEs in the aluminium sector exercised governmental control or authority over third persons, or with the power to control, compel, direct or command private bodies and persons.
- In relation to Indicia 3, this test should not have been met as the evidence failed to establish that the enterprises are exercising governmental authority.⁹⁹

Following the TMRO’s review, the ACBPS reinvestigated the findings made in the previous investigation, and reaffirmed the findings made in the initial investigation that

⁹⁷ ACBPS Report to the Minister No. 181, Appendix B, pp. 9-31.

⁹⁸ ACBPS was at this time the administrative authority responsible for anti-dumping matters.

⁹⁹ The then TMRO’s findings are accessible via the Anti-Dumping Review Panel’s website, at <http://www.adreviewpanel.gov.au/PastReviews/Pages/20120917AIRoadWheelsPRChina.aspx>.

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Indicia 2 and 3 were met and, as such, a countervailable subsidy was received by ARWs exporters under Program 1. The Minister accepted this finding on 8 May 2013.¹⁰⁰

Public bodies test

Indicia 1: The existence of a ‘statute or other legal instrument’ which ‘expressly vests government authority in the entity concerned’

Similar to the previous investigation, the Commission is not aware of any statute or other legal instrument which expressly vests government authority in any SOEs or SIE producing aluminium and/or alloy.

In the previous ARWs investigation, the ACBPS noted that the GOC submitted in the HSS investigation that the two main laws governing the establishment and operation of SIEs are:

- the *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (HSS investigation, GQ Attachment 15) for wholly-state-owned enterprises (the SOA Law); and
- the *Company Law* in relation to the other three categories of SIEs.

The GOC, as part of its response to the GQ submitted the Company Law and other related laws and regulations ensure that the GOC could not unilaterally exert or exercise state power over the operation of SIEs. The GOC argued:

“In short, State share ownership does not confer any special rights on State shareholders other than the rights of an ordinary shareholder under the Company Law.”¹⁰¹

The GOC explained in the previous investigation that the term capital contributor is a legal notion that indicates the shareholding body comprising the State. The GOC stated that the National State-Owned Assets Supervision and Administration Commission (SASAC) and/or the provincial or local equivalents perform the role of capital contributor on behalf of the State Council or local people's government respectively.¹⁰²

The Commission further views that the SOA Law is, to its best knowledge, still effective and would still effect the operation of SIEs and SOEs in China. The previous investigation noted that Article 6 of the SOA Law states that the capital contributors' functions in wholly-owned SIEs¹⁰³ must be carried out:

¹⁰⁰ Refer to the public record for reinvestigation 204, accessible at <http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR204.aspx>.

¹⁰¹ Refer to the GOC GQ submitted as part of this review.

¹⁰² Refer to the GOC GQ response submitted in previous investigation (question D2.7(b)).

¹⁰³ The Commission notes that the previous investigation referred to “SIEs” in its public bodies assessment. The Commission views that the previous investigation's public bodies findings pertained to both state-invested and state-owned enterprises (SIEs and SOEs), recognising that the investigation made determinations that CHINALCO (an SOE) exercises influence over its subsidiary CHALCO (an SIE).

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...based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

In addition, Article 15 of the SOA Law further requires the capital contributor to act as a market participant.

The evidence above indicates that the capital contributor is, expressly through legislative means, prevented from exercising government functions in the performance of its duties.

However, similar to the findings made in the previous investigation, the Commission observes that these legislative provisions relate to the role of the capital contributor specifically, and do not expressly prevent SOEs or SIEs themselves from being vested with government authority or exercising government functions (though, as mentioned above, no statute or other legal instrument has come to light that appears to vest this authority).

CITIC Group, an organisation wholly owned by the GOC and which counts CITIC Dicastal as one of its subsidiaries, noted in its 2013 annual report that:

“For state-owned enterprise reform, the government proposed that management of state-owned asset be improved by strengthening supervision of state assets through managing state capital.”¹⁰⁴

The Commission views this statement as indicative that the GOC may, at either the state or local government level, be actively involved in the management of CITIC Group (and therefore CITIC Dicastal). As CITIC Group’s annual report states that CITIC Dicastal is the world’s biggest aluminium wheels company by volume, GOC influence over CITIC Group would clearly have flow-on effects to CITIC Dicastal and – being the largest aluminium wheels company in the world – the Chinese ARWs industry generally.

The Commission views that in all likelihood, the GOC has continued to influence prices of primary and alloyed aluminium during the review period.

The Commission notes that the *Price Law of the People’s Republic of China* (Price Law) indicates that pricing as a general rule should be determined by market mechanisms. The Commission further notes that the GOC announced efforts during the review period to promote more market-based pricing amongst SOEs during the review period. CITIC Group’s 2013 Annual Report stated that the GOC will:

“...establish and improve the market-based pricing regime; relax market access for investment and expedite the building of free trade zones; pursue countercyclical regulations through taxation reform and promote economic restructuring; liberalise

¹⁰⁴ CITIC Group’s 2013 Annual Report, accessible at <http://group.citic/iwcm/UserFiles/File/AnnualReport2013.pdf>.

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interest rates, and develop inclusive finance and internet finance; and persist in regulating the housing market.”¹⁰⁵

While the above statement could be interpreted as an indication that the GOC had begun to implement market-based pricing reforms amongst SOEs and SIEs during the review period, the Commission views that this statement is more indicative of broader strategic objectives by the GOC which were unlikely to have been realised during the review period.

The Commission observes that there has been a long history of overarching GOC policies aimed at incremental reforms of the SOE sector, and that the reforms alluded to by CITIC Group’s Annual Report were the most recent reforms implemented by the State Council (agreed by the State Council in May 2013) in relation to supporting ongoing reforms in SOEs.

However, the Commission notes that various observers have recognised that previous strategic level reforms aimed market-based reforms of SOEs have had limited success in their implementation. The Commission refers to an article dated December 2013, which analysed the success of GOC reform policies in relation to SOEs and SIEs, which found:

“...industrial SOEs... except a very few, report to provincial and local governments. These very few (currently at 113) are under the direct supervision of the State-owned Assets Supervision and Administration Commission (SASAC), set up by the State Council in 2003 to represent the state through its rights and responsibilities as a major or sole shareholder, with the objective of allocating state assets into the 'right' sectors and growing their value. The central SOEs are all conglomerates, clustered around China's 'strategic', 'emerging' and 'pillar' industries, and are also the largest overseas investors....

Despite years of reforms to free SOEs from government interference, China's current institutional settings continue to provide the government with multiple channels to influence SOEs. SOEs are also in a strong position to influence the process of policy making. The SOE-government nexus has, in varying degrees, entrenched the economic distortions that favour SOEs.

Their stake in the success of local SOEs means that local governments have an incentive towards industrial favouritism, rather than promoting the market economy through greater competition and enhanced consumer protection.... Central government agencies, particularly SASAC, have been making some progress in reining in these types of government interference through more centralised supervisions and coordination. However, progress is slow, often hampered by strong and differing local interests.

While China's leadership appears determined to push forward market-oriented SOE reforms, the delivery of these reforms will continue to rely on the existing system, institutions, and policy making process, in which SOEs have a strong voice....

¹⁰⁵ CITIC Group’s 2013 Annual Report.

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Moreover, SOE reforms cannot proceed alone, but are interdependent with other key major reforms, including those of the administrative and fiscal (particularly transfers) systems, and capital and other factor markets. Together, these reforms are the major steps that the government must take to withdraw from being a direct player in the economy....”¹⁰⁶

The Commission understands the SOA Law and its pricing mechanisms are still in place, and as the most recent round of SOE reforms discussed above only occurred two months prior to the review period, the Commission views these reforms were unlikely to have effected SOE practice during the review period.

Indeed, the Commission views that (in the absence of any information to the contrary) SOEs and SIEs continue to be subject to Article 36 of the SOA Law, which requires;

A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

This is evidenced by the GOC involvement in the operations of the Aluminium Corporation of China (CHINALCO, an SIE) and its subsidiary CHALCO.

CHINALCO describes itself as “a key state-owned enterprise directly supervised by the central government”,¹⁰⁷ while CHALCO states on its website that it is China’s largest alumina and primary aluminium producer and the world’s second largest alumina producer. CHINALCO is identified as CHALCO ‘s main shareholder.¹⁰⁸

The previous investigation found that various agreements referred to in CHALCO’s annual report ‘vested’ CHINALCO with the authority to impose on its subsidiaries (including the CHALCO group of companies) state-prescribed pricing policies:

- General agreement on Mutual Provision of Production Supplies and Ancillary Services;
- Provision of Engineering, Construction and Supervisory Services Agreement;
- Mineral Supply Agreement;
- Comprehensive Social and Logistics Services Agreement; and
- Mutual Supply Agreement.

The ACBPS determined in REP 181 that many transactions are covered by the same conditions as the Comprehensive Social and Logistics Services Agreement, which subjects transactions to the following pricing policy hierarchy:

¹⁰⁶ Dong Zhang and Owen Freestone, “China’s Unfinished state-owned Enterprise Reforms” (December 2013), accessible at <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2013/Economic-Roundup-Issue-2/Economic-Roundup/Chinas-unfinished-SOE-reforms>.

¹⁰⁷ CHINALCO’s website, accessible at <http://www.chalco.com.cn/zgluen>.

¹⁰⁸ CHALCO’s website, accessible at <http://www.chalco.com.cn/zlgfen/>.

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- adoption of prices prescribed by the Chinese Government (state-prescribed price);
- in the absence of a state-prescribed price, then adoption of a 'state-guidance price';
- if there is neither a state-prescribed price, nor a state-guidance price, then adoption of the market price (being the price charged to and from independent third parties); and
- If none of the above are available, then adoption of a contractual price (being reasonable costs incurred in providing the relevant services plus not more than five percent of such costs).

The previous investigation further found that transactions for the supply of specialist or specific goods and services are subject to the following pricing prescriptions:

- utility services, including electricity, gas, heat and water, are supplied at the state prescribed price;
- engineering, project construction and supervisory services are covered by the Provision of Engineering, Construction and Supervisory Services Agreement, which prescribed the state-guidance price or prevailing market price;
- purchases of key and auxiliary materials (including bauxite, limestone, carbon, cement, coal) from the CHINALCO Group are covered by the General Agreement on Mutual Provision of Production Supplies and Ancillary Services and the Mineral Supply Agreement, with the effect that the pricing policy set out in the pricing hierarchy above is prescribed; and
- social services and logistics services provided by the CHINALCO Group were covered by the Comprehensive Social and Logistics Services Agreement, which prescribes the pricing hierarchy above.

The ACBPS thereby determined in the previous investigation that the above agreements vest CHINALCO with government authority to impose state mandated pricing policies on its subsidiaries.

The Commission observes that in the 2013 CHALCO Annual Report submitted by the GOC in the GQ responses, that (with the apparent exception of the Mutual Supply Agreement) all the above policies appear to continue to apply to CHALCO. The Commission views that CHINALCO continues to be vested with GOC government authority to impose state mandated pricing policies on its subsidiaries. This conclusion is based on the continuation of the overarching pricing policies applicable to CHALCO during the review period.

Given the large production volumes of primary aluminium generated by SOEs as a proportion of national output,¹⁰⁹ the Commission is of the view that the power the GOC vests in its SIEs leads to those SIEs to sell primary aluminium at less than fair market value, and that this has flow-on effects which reduce the price of aluminium amongst private entities which sell aluminium, as well as aluminium alloy producers.

¹⁰⁹ The Commission's finding is based on analysis of production volumes submitted by the GOC in its GQ response.

Indicia 2: Evidence that an entity is, in fact, exercising governmental functions

The Commission has not encountered direct evidence to suggest that aluminium and/or alloy-producing SIEs in China have expressly been granted the authority to exercise governmental functions (e.g. provided for in the entity's article of association, etc.).

However, the Commission observes that (as noted previously) Article 36 of the SOA Law explicitly requires SIEs to"

...comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

[Emphasis added]

The Commission finds, consistent with the previous investigation that this direction requiring SIEs to comply with national industrial policies, albeit related to investments in this instance, amounts to a direction that SIEs carry out a government function, namely the achievement of the GOC's national industrial policy objectives.

The Commission considers that there is a significant body of circumstantial evidence to suggest that SIEs play an integral and leading role in the implementation of various GOC policies and plans in relation to the aluminium industry.

Broad GOC policies and plans

In **Appendix B** the Commission examined the various policies, plans and implementing measures that relate to the aluminium industry.

These GOC documents comprehensively outline the GOC's aims and objectives for the aluminium industry in China (including manufacturers of aluminium and/or alloy). The Commission considers that the essential objective of these policies, plans and measures is to advance and improve the Chinese aluminium industry, which is clearly a government mandate and function.

Evidence of SIE role in policy compliance and implementation

In **Appendix B**, the Commission outlines evidence that the GOC actively implements and monitors the progress of its policies, plans and implementing measures. It is considered this activity is in line with Article 36 of the SOA Law.

The Commission observes that the previous investigation found that:

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- the *Guiding Opinions of the SASAC of the State Council about Promoting the Adjustment of State-owned Capital and the reorganization of State-owned Enterprises* (SASAC Guiding Opinion);¹¹⁰ and
- the *Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises* (the Interim Measures);¹¹¹

indicated that SIEs have played an integral role in implementing GOC policies and plans.

The GOC submitted in its GQ response that the SASAC Guiding Opinion was effective during the review period, and also indicated that provisions of the Interim Measures applied to the aluminium sector during the review period.

The previous investigation found the SASAC Guiding Opinion aimed to further economic reform through the adjustment of state-owned capital, reorganisation of state-owned enterprises as well as improvement of the mechanism of entry-withdrawal and rational movement of state-owned capital.¹¹²

The previous investigation found that this document indicates that SIEs have played an integral role in implementing GOC policies and plans, particularly those in relation to ‘execute(ing) the spirits of the Third and Fifth Plenary Sessions of the Sixteenth CPC Central Committee, and the Opinions of the State Council about Deepening the Economic System Reform, namely:

“...enhance the state-owned economy’s controlling power, influence, driving force, bring the leading role of state-owned economy into play...

...persist in strengthening supervision over state-owned assets, rigidly enforce the procedures for property right transactions and equity transfer, promote orderly flow, prevent the loss of state-owned assets and ensure the value maintenance and increase of state-owned assets

... persist in safeguarding the legitimate rights and interests of workers, protect the workers’ rights to enterprise reorganisation, restructuring and other kinds of reform, and fully mobilize and protect the initiatives of the vast majority of workers to participate in the reform and reorganisation of state-owned enterprises...

...promote state-owned capital to concentrate on major industries and key fields relating to national security and national economic lifelines... and accelerate the formation of a batch of predominant enterprises with independent intellectual property rights, famous brands and strong international competitiveness... [and]

...enhancing the controlling power of state-owned economy, and bringing its leading role into play.”

¹¹⁰ December 5, 2006, General Office of the State Council – provided in relation to REP148, and also the HSS investigation.

¹¹¹ The Interim Measures were referred to, but not included, in the GQ response submitted as part of the previous investigation. It was, however, provided as Attachment 170 to the HSS investigation.

¹¹² SASAC Guiding Opinion, preamble.

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The previous investigation found that the purpose of the Interim Measures is to establish a State-owned assets supervision and management system that suits the needs of a socialist market economy, to better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realise the preservation of, and increase in the value of State-owned assets.¹¹³

The previous investigation found that Article 14 of the Interim Measures vests as one of SASAC's main obligations the responsibility to:

(2) maintain and improve the controlling power and competitive power of the State economy in areas which have a vital bearing on the lifeline of the national economy and State security, and improve the overall quality of the State economy.

[Emphasis added]

In relation to the SASAC Guiding Opinion, in the HSS investigation the GOC submitted that this is not a legally binding document (rather having the status of a research and discussion paper), and cannot override current law.

Further, the GOC submitted in the previous investigation that the current law, as outlined in Article 7 of the Interim Measures, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

The previous investigation found that, in view of the above information, significant evidence exists to suggest that Chinese aluminium industry SIEs, including those that produce aluminium and/or alloy, play a leading and active role in implementing GOC policies and plans for the development of the aluminium industry.

This development is considered to be a 'governmental function', and it is therefore considered these SIEs are in fact exercising governmental functions.

The Commission views that as the key policies and implementing measures identified in the previous investigation in relation to this finding continued to apply during the review

¹¹³ Interim Measures, preamble

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period, the findings made in the previous investigation continue to apply to exports of ARWs during the review period.

Indicia 3: Evidence that a government exercises meaningful control over an entity and its conduct

Aluminium industry policy implementation

As discussed in **Appendix B**, the GOC has issued a multitude of plans, policies and implementing measures aimed at realising its overall policy aims in relation to the Chinese aluminium industry. Furthermore, evidence exists to demonstrate that SIEs are leaders in the implementation of these policies and plans.

The previous investigation found that the *Guidelines for Accelerating the Restructuring of the Aluminium Industry* (the Guidelines) are also considered evidence of the Chinese Government exercising meaningful control over primary aluminium producers and suppliers, whether or not they were enterprises with state investment. The scope and degree of this control, in the circumstances, amounts to evidence that primary aluminium producers and suppliers, possess governmental authority and exercise such authority in the performance of governmental functions, namely the achievement of the Chinese Government's industrial development policy.

The GOC submitted the Guidelines had not been subject to any amendments since the previous investigation. The Commission refers to the fact that, in the previous investigation, the government explained that the National Development and Reform Commission (NDRC) was responsible for the Guidelines, which were prescriptive in their policy direction. The Guidelines prescribe which aluminium industry participants should be supported by Chinese Government departments and entities, and were designed to achieve compliance by primary aluminium producers and suppliers, with the consequence of a withdrawal of support for non-compliance.

For the reasons outlined above, it is considered that the GOC is exercising meaningful control over aluminium and/or alloy producers.

Submissions

GOC submissions regarding functions and operations of SIEs

The GOC submitted in its GQ that, as stipulated in the *Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises*, there is a separation between the GOC and any entities in which it has an investment. The GOC argued that it:

"...does not believe that any imputations can be made about claimed non-commercial operation of State-invested enterprises simply because of their ownership. This proposition has been confirmed, in a different context, by WTO authority, and has been applied in Australia."¹¹⁴

¹¹⁴ Refer to the GOC's GQ submitted as part of this review.

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The GOC argued that this is reflected in the increased competition and reduction in the role of SIEs and SOEs in the aluminium sector. The GOC argued that:

“In the period since the GOC last responded to the Commission (then the ACBPS), the GOC has further liberalised the regime governing the activities of all enterprises doing business in China. This has equalised SIEs and private enterprises to an even greater extent than before, and facilitated greater competition between all companies in all sectors.”¹¹⁵

The Commission notes that GOC submissions and evidence suggest there is a certain degree of separation and independence of SIEs from the GOC, and that they are given certain freedoms to behave relatively independently. However, further evidence exists to show that these entities are still constrained by, and abiding by, GOC policies, plans and measures, as discussed in the previous section.

In noting this, the Commission considers that sufficient evidence exists to reasonably consider that, for the purposes of this review, SIEs that produce and supply aluminium and/or alloy should be considered to be ‘public bodies’, in that the GOC continues to exercise meaningful control over SIEs and their conduct.

The GOC also submitted that only a small proportion of aluminium alloy producers are SIEs or collective enterprises as:

“...non-SIE aluminium alloy supplier’s production volume increased from 45.81% in 2011 to 65.68% in the first half of 2014.”¹¹⁶

The Commission notes that the high level of SIE representation within the aluminium and alloy sector (approximately 35 percent) would likely mean that any GOC influence in SIEs within that sector would have flow-on impacts to the price of aluminium alloy.

Irrespective of this finding, however, the Commission views that the GOC is exercising meaningful control over the aluminium sector (including in relation to aluminium prices) via SIE participation in the sector, and this participation would have follow-on impacts for the aluminium alloy sector due to the impact that aluminium prices have on alloy prices (discussed further at **Appendix B**).

GOC submissions regarding ‘public bodies’ test

The GOC submitted that the Commission is incorrectly applying its public bodies test (i.e. Indicia 1, 2 and 3 test established in view of the findings made in DS379) because it is not provided sufficient evidence to show that SIEs are actually exercising or are vested with government authority.¹¹⁷

¹¹⁵ Refer to the GOC’s GQ submitted as part of this review.

¹¹⁶ Refer to the GOC submission dated 1 July 2015.

¹¹⁷ *Ibid.*

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The GOC referred to a finding made by the Appellate Body in DS379 that:

“...In our view, other than “the effective power to regulate, control, or supervise individuals, or otherwise restrain their conduct, through the exercise of lawful authority, it is not self-evident that all activities that involve a government in fact constitute “governmental functions”.”¹¹⁸

The GOC argued that the above finding required bodies to demonstrate evidence that SIEs are actually exercising or are vested with government authority, rather than simply listing SIE’s functions and inferring that these are indicative of SIEs acting as public bodies within the aluminium sector. The GOC argued that the Appellate Body established in DS379 that:

“...any form of government “control” will generally not be sufficient to find that an entity is a public body. The government must have meaningful control over the entity and its conduct. If the forms of “control” identified do not indicate that the entity exercises governmental authority, then it cannot be meaningful.”

The GOC submitted that this supports the finding made by the TMRO in the review of REP 181, and that the ACBPS incorrectly rejected the TMRO’s findings. The GOC argued that:

“Despite being an inferior administrative agency to the TMRO, Australian Customs decided not to accept the TMRO’s ruling that for an SIE to be a “public body” it must be invested with the power to control, compel, direct or command private bodies and persons....

...an analysis of whether an entity is a public body on the basis of “meaningful control” must be done on an entity-by-entity basis. It is not sufficient for the Commission to find that one entity has been meaningfully controlled, and then to generalise that finding to all other entities that can be classed in the same group...”¹¹⁹

In view of the above submission, the Commission notes that when the then ACBPS accepted recommendations by the TMRO to reinvestigate certain findings, the ACBPS’ role was to:

- make further investigation of the finding or findings, having regard only to the information and conclusions to which the TMRO was permitted to have regard;
- within a specified period, report the result of the further investigation to the Minister affirming the finding or findings; and
- set out any new finding or findings and the evidence or other material on which the new finding or findings are based and the reasons for that decision.

¹¹⁸ *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India – Report of the Appellate Body (WT/DS436/AB/R)*, para 4.37

¹¹⁹ GOC submission dated 1 July 2015.

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Division 9 of Part XVB of the Act empowered the Minister, after receiving the ACBPS' reinvestigation report, to either affirm the original decision or revoke and replace that decision.

The ACBPS and the Minister were thereby able to use their discretion to consider the then TMRO's findings alongside the findings made in the previous re-investigation and have done so.

The Commission views that the reinvestigation was the correct means through which to reassess the findings made in the previous investigation in view of the TMRO's findings, and the ACBPs sufficiently explained its findings in the reinvestigation.

The Commission further notes that in that reinvestigation, the ACBPS determined that there was evidence to show that CHALCO, an SIE, was acting with government authority to impose a state pricing policy between itself and its subsidiaries, and this reflected that SIEs in the aluminium sector were actually exercising or were vested with government authority (and hence were acting as 'public bodies').

The Commission thereby respectfully disagrees with the GOC's above assertion that in order to find that SIEs within the aluminium sector are exercising or vested with government authority, the Commission must assess each SIE individually. The Australian Government (nor any other anti-dumping authority) could not reasonably be expected devote such a large amount of time and resources to analysing the operations and functions of each individual SIE and SOE involved in the aluminium sector, or any other sector subject to investigation.

Submissions by the Australian industry

The Australian industry made various submissions to the Commission regarding the sale of aluminium within China at less than adequate remuneration. These submissions and the Commission's response to these submissions are discussed at **Appendix B**.

6.6 Commission's finding

The Commission considers that evidence exists to show that at least both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese aluminium and/or alloy manufacturers.

After determining that SIEs that produced and supplied aluminium and/or alloy in China are in fact 'public bodies' for the purposes of the Act, the Commission has determined that SIEs conferred a benefit in respect of the goods (i.e. goods were provision of aluminium and/or alloy was at less than adequate remuneration). As discussed above and in **Appendix B**, there are correlations between the prices of primary aluminium and aluminium alloys which indicate that the sale of primary aluminium at less than adequate remuneration leads to flow-on impacts on the price of aluminium alloy (to the extent that aluminium alloy has been sold at less than fair market value).

The Commission considers the sale of aluminium at less than fair market value to be a countervailable subsidy program. This financial contribution provided through this

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program is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of contributions from public bodies (in accordance with subs. 269TACC(2)(b)). As the criteria or conditions providing access to this subsidy favours Chinese manufacturers that purchase primary or alloyed aluminium, the program is considered to be specific (and the specificity of the subsidy is not excepted by reference to subs. 269TAAC(3)).

The Commission thereby considers that the findings made in REP 181 remain current, and that aluminium producers in China exercise governmental authority and are therefore public bodies within the meaning of subs. 269T(1) of the Act.

As Chinese exporters use primary and alloyed aluminium to produce ARWs, this financial contribution is considered to be made in respect of the production, manufacture or export of the goods.

The methodology for attributing subsidy margins under Program 1 (along with all other countervailable subsidy programs) is discussed earlier in this appendix.

7 Findings: Preferential tax programs

In the original investigation, the ACBPS found 10 preferential tax programs (4, 5, 6, 7, 8, 9, 11, 13, 14, and 22) were countervailable subsidies.

7.1 Program 6, 7, 8, 9, 11, 13 and 22 – preferential income tax policies for Foreign-Invested Enterprises (FIEs)

The Commission has not countervailed these programs as the transitional arrangements these programs previously operated under had expired prior to the review period.

During the previous investigation, the ACBPS found that Programs 6, 7, 8, 9, 11, 13 and 22 all operated under the auspices of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991*¹²⁰ (FIE Law) or associated implementing arrangements, which were due to operate until 2012.¹²¹

The finding accords with the Commission's findings made in relation to Program 7 (Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than

¹²⁰ The Commission views that references made in the previous investigation in relation to the *Income Tax Law of the Peoples Republic of China for Enterprises with Foreign Investment and Foreign Enterprise* and the *Enterprise Income Tax Law of the PRC* were intended to refer to the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991*.

¹²¹ Associated implementing arrangements include the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax*, the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law* (also referred to in the previous investigation as *Rules for the Implementation of the Foreign Enterprise Tax Law*), the *Circular of the State Administration of Taxation Concerning Enjoying the Preferential Taxation Policy of "the Two Intensive Enterprises" by Enterprises with Foreign Investment*, the *Circular of the State Administration of Taxation Concerning the Tax Preferential Policy Applicable to Enterprises with Foreign Investment with Regard to Technology-Intensive and Knowledge-Intensive Projects*.

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10 years: “Two years of exemption and three years fifty per cent reduction) as part of the deep drawn stainless steel sinks investigation. In that investigation, the GOC stated in its GQ response that:

“... the alleged program does not exist anymore as the relevant law, i.e. the Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991, which granted the subsidy has been repealed.... The Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax 2007... clearly provides that “enterprises enjoying the preferential policies in respect of enterprise income tax under the former tax law, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition” by which at the end of 2012 they will be subject to the normal tax rate of 25%....”¹²²

The Commission considered in the investigation into deep drawn stainless steel sinks that the GOC’s above advice provided persuasive evidence that program 7 did not operate beyond the end of 2012 and hence was not countervailed as part of that investigation.

In the final report released as part of the silicon metals investigation¹²³ and the SEF released as part of the review into aluminium extrusions¹²⁴, the Commission further found that the information submitted by the GOC offered persuasive evidence that any other programs which operated under the FIE Law were no longer operational.

The GOC’s GQ response did not specify as part of this review specifically that Programs 6, 7, 8, 9, 11, 13 and 22 had ceased operations before the review period.¹²⁵ However, the Commission considers that the information submitted by the GOC above provides sufficient evidence to show that these programs were not operable subsidies in respect of ARWs exported from China during the review period.

7.2 Programs 4 and 5 – income tax programs

The Commission considers Programs 4 (Preferential income tax for hi-tech enterprises) and 5 (Preferential tax policies for Western Development “Go west” strategy) to be countervailable subsidies received by selected exporters during the review period.

¹²² The GQ and other GOC documents submitted as part of the investigation into deep drawn stainless steel sinks are accessible at <http://www.adcommission.gov.au/cases/EPR238.asp>.

¹²³ Refer to REP 237, accessible at <http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR237.aspx>.

¹²⁴ Refer to SEF 248, accessible at <http://www.adcommission.gov.au/cases/Documents/EPR%20248/057%20-%20SEF%20248%20Updated.pdf>.

¹²⁵ The GOC’s GQ response only specified that no selected exporters reported receiving benefits under this program.

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In the previous investigation, the ACBPS found Programs 4 and 5 were countervailable subsidies under subs. 269T of the Act.¹²⁶

In relation to the Commission's consideration of Program 4 as part of this review, the Commission observed that two selected exporters received financial contributions under Program 4 during the review period. In addition, the GOC submitted in its GQ response that information provided in the previous investigation in relation Program 4 was still current. Hence the Commission is satisfied that this program constitutes a countervailable subsidy received in respect of ARWs during the review period.

The methodology used to determine subsidy margins for program four is discussed earlier in this appendix.

In relation to Program 5, the Commission did not observe the receipt of this program by any selected exporters but notes that the GOC did not provide any evidence to show that this program was not in operation during the review period. Hence the Commission is satisfied that this program constitutes a countervailable subsidy that may have been received by uncooperative and all other exporters in respect of ARWs during the review period.

Consistent with the previous investigation and the investigation into silicon metal¹²⁷, the Commission has calculated a zero amount of subsidy under Program 5 for residual and uncooperative and all other exporters, given the maximum subsidy benefit received via income tax programs has already been applied via Program 4.

7.3 Programs 31 and 32 – tariff and VAT exemptions on imported materials and equipment

In the previous investigation, Programs 31 (Exemption of tariff and import VAT for imported technologies and equipment's) and 32 (Full refund of VAT to FIEs on purchasing unused domestic equipment with currency in China) were considered to be countervailable subsidies received in respect of ARWs.

In considering Program 31 as part of this review, the Commission observed that:

- A selected exporter reported receiving a financial contribution under Program 31 during the review period.
- The GOC submitted that no selected exporters reported receiving benefits under program 31, but did not provide any information to show that the program did not exist during the review period.
- The Commission countervailed Program 31 as part of its review into aluminium extrusions, and found that program 31 would likely continue to operate until at least April 2019.¹²⁸

¹²⁶ Refer to REP 181, accessible at <http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR181.aspx> .

¹²⁷ Refer to REP 237.

¹²⁸ SEF 248

For these reasons the Commission considers that exporters of ARWs continue to receive a benefit under Program 31. Accordingly the Commission considers that Program 31 remains countervailable in respect of ARWs exported from China during the review period.

The methodology used to determine subsidy margins for Program 31 is discussed earlier in this appendix.

In relation to Program 32, the Commission did not observe the receipt of this program by any selected exporters but notes that the GOC did not provide any evidence to show that this program was not in operation during the review period.¹²⁹ Hence the Commission is satisfied that this program constitutes a countervailable subsidy that may have been received by uncooperative and all other exporters in respect of ARWs during the review period. However, the Commission has effectively calculated a zero amount of subsidy under Program 32 for residual and uncooperative and all other exporters; given the maximum subsidy benefit under this subsidy category has already been applied in under Program 31.

8 Findings: Grants

8.1 Grants considered in the previous investigation (Programs 21, 29, 35 to 48, 50, 51, 53 and 56)

In the previous investigation, these programs were found to be countervailable as these grants were received in respect of ARWs exported to Australia during the review period. The Commission also recently made positive countervailing findings into:

- Program 21 in the recent investigation of silicon metal;¹³⁰
- Program 29, in the SEF released as part of the review into aluminium extrusions;¹³¹ and
- Programs 36, 38, 39, 40, 50, and 56, in both the review of aluminium extrusions and investigation into silicon metal exported from China.

In considering as part of this review whether Programs 21, 29, 35 to 48, 50, 51, 53 and 56 and countervailable subsidies, the Commission observes that selected exporters reported receiving benefits under Programs 41, 42, 44, 50, 51, 53 and 56 during the review period. The Commission also observed that while the GOC stipulated that Programs 41 and 42, 50, 51, 53 and 56 were received by selected exporters, the GOC did not (with the exception of program 48 – refer below) advise whether previously investigated grant programs were no longer in operation or whether they were received by residual or

¹²⁹ The GOC's GQ response only specified that no selected exporters reported receiving benefits under this program.

¹³⁰ Refer to SEF 237.

¹³¹ Refer to SEF 248.

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uncooperative exporters during the review period.¹³² Hence the Commission is satisfied that this Programs 21, 29, 35 to 47, 50, 51, 53 and 56 constitute countervailable subsidy programs that may have been received by uncooperative and all other exporters in respect of ARWs during the review period.

In relation to Program 48, the Commission observed that the GOC advised that selected exporters received benefits under this program prior to the review period, and that the program was terminated in September 2013. The GOC also noted that companies may have been eligible to receive benefits for up to a year from that date. Hence the Commission considers that this program is countervailable in respect of the goods during the full review period – as it was received by a selected exporter – but whether this program should be countervailed needs to be countervailed should be considered closely in future investigations.

The methodology used to determine subsidy margins for these programs is discussed earlier in this appendix.

8.2 Grant programs not previously considered (programs 57 – 63)

The Commission finds that programs 57-63 are countervailable subsidies in respect of ARWs exported from China during the review period.

The methodology for determining subsidy margins for these programs is discussed in earlier in this appendix.

Detailed assessments of these programs are contained in the following table.

¹³² The GOC's GQ response only specified that no selected exporters reported receiving benefits under this program.

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
<p>Program 57 – Government quality award</p>	<p>The purpose of the program is to encourage and promote the outstanding quality of product, construction and services of enterprises operating in Wenling City, Zhejiang province.</p> <p>One selected exporter submitted that it had received a benefit under this program.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>In its questionnaire response, the GOC stated that 'there is no contractual agreement between the GOC and any company that receives assistance under this program' and has provided translated copies of the Announcement on Winners of Government Quality Award in 2012 in their Confidential Attachment.</p> <p>The GOC submitted that the program is administered by the Supervisory Bureau of Quality and Technology of Wenling City.</p>	<p>Eligibility is limited to enterprises registered and operating in Wenling City who meet those management and performance criteria</p> <p>The applicant must demonstrate the following :</p> <ul style="list-style-type: none"> - The applicant enterprise has been registered and operating in Wenling City for more than 3 years. - The applicant enterprise has obtained ISO9001 and ISO14001 quality certification. - The applicant enterprise has been a forerunner in its business performances in terms of turnover, profit tax payment and total value of assets among all enterprises in Wenling City and that the enterprise has not been unprofitable in the most recent three years. - The applicant has good credential and reputation with its customers. - The applicant is recommended by relevant local governmental 	<p>Enterprises registered and operate in Wenling City meeting the relevant eligibility criteria may apply for this award.</p> <p>Grants provided under this program are financial contributions by the Wenling municipal government, which involve a direct transfer of funds by the municipal government to the recipient enterprises in Wenling City.</p> <p>Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of funds from the municipal government (subs. 269TACC(3)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to ARWs, and these financial contributions would meet the definition of a subsidy under subs. 269T(1).</p> <p>The Commission notes that one selected exporter in the investigation reported receiving benefits under this program, and as such this program has been received in respect of the goods.</p>	<p>Any enterprise within the geographical region of the Wenling City granting authorities may apply if they meet the conditions of the program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to subs. 269TAAC(3).</p>	<p>Selected exporter(s) that received benefits under the program, residual exporters and uncooperative and all other exporters.</p>

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
			<p>departments of local community.</p> <ul style="list-style-type: none"> - The applicant has not been in breach of relevant industrial, environmental and/or quality requirements, among others. 			
<p>Program 58 – Award to open economy</p>	<p>The purpose of this program is to promote and encourage the development of open economy in Wenling City.</p> <p>One selected exporter submitted that it had received a benefit under this program.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>GOC has provided translated copies of the document under which assistance is granted; Decision of Wenling City Government on Award of Open Economy of 2012 in their Confidential Attachment.</p> <p>The GOC further submitted that the program is administered by the Supervisory Bureau of Commerce of Wenling City.</p>	<p>The eligible applicant must be registered and operate in its business in Wenling City, and must have participated in certain trade activities, such as participating in exhibition or trade fair abroad, filing patent request, clearing export shipment at the local branch of the China Customs etc.</p> <p>To qualify for grant under this program, the eligible applicant shall demonstrate participation in required export activities, such as participating in exhibition or trade fair abroad, filling patent request clearing shipment at local branch of the China Customs.</p>	<p>Enterprises registered and operate in Wenling City meeting the relevant eligibility criteria may apply for this award.</p> <p>Grants provided under this program are financial contributions by the Wenling City government, which involve a direct transfer of funds by the municipal government to the recipient enterprises in Wenling City.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of funds from the municipal government (subs. 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to ARWs, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one</p>	<p>Enterprises that are within the geographical region of the Wenling City granting authorities may apply if they meet the conditions of the program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to subs. 269TAAC(3).</p>	<p>Selected exporter(s) that received benefits under the program, residual exporters and uncooperative and all other exporters.</p>

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
				selected exporter in the investigation reported receiving benefits under this program, and as such this program has been received in respect of the goods.		
<p>Program 59 – Assistance to importer and exporter fair trade program</p>	<p>The purpose of this program is to promote a more stable volume and the optimal structure of trade by enterprises in the Zhejiang province.</p> <p>One selected exporter submitted that it had received a benefit under this program, due to its involvement in the previous investigation into ARWs exported to Australia.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>In its questionnaire response, the GOC reported two exporters receiving benefits under this program.</p> <p>The GOC stated that the program was terminated at the end of 2013.</p> <p>The Commission sought further information from a</p>	<p>In its questionnaire response, the GOC stated that 'there is no contractual agreement between GOC and the two recipient companies that received assistance under this program' and has provided translated copies of the Notice to Appropriate Assistance Fund for Fair Trade of 2012 in their Confidential Attachment.</p> <p>The GOC submitted that the program is jointly administered and operated by the Department of Commerce of Zhejiang province and the Department of Finance of Zhejiang province.</p>	<p>The eligible applicant must have participated in fair trade proceedings.</p> <p>The eligible applicant must have been registered and operating in Zhejiang province and must have participated in faire trade proceeding such as participating in anti-dumping or countervailing investigations.</p>	<p>Grants provided under this program are financial contributions by the Zhejiang province government, which involve a direct transfer of funds by the provincial government to the recipient enterprises in Zhejiang province.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of the goods to Australia by the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of funds from the provincial government (subs. 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to ARWs, and these financial contributions would meet the definition of a subsidy under subs. 269T.</p> <p>The Commission notes that two selected exporters in the investigation reported receiving benefits under this program, and as such this program has been received in respect of the goods. However, only one selected exporter actually received benefits in respect of the goods exported to Australia.</p>	<p>Any enterprise within the geographical region of the Zhejiang province granting authorities may apply if they meet the conditions of the program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to subs. 269TAAC(3).</p>	<p>The selected exporter found to have benefited from this program due to its involvement in the exportation of ARWs to Australia.</p> <p>No subsidy margin will be applied to the selected exporter found to have benefited from this program in relation to exportation of the goods to countries other than Australia, as benefits received under this program were not applicable to the goods.</p> <p>Subsidy margins will not be applied to residual exporters or uncooperative / all other exporters, because as no companies within these categories participated in the previous ARWs investigation, they would not have benefited from this program in respect of the goods.</p>

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
	<p>second selected exporter in relation to benefits received under this program, and determined that benefits were received due to that company's involvement in the exportation of goods to countries other than Australia</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>					
<p>Program 60 – Assistance fund for import</p>	<p>The purpose of the program is to encourage importation of advanced equipment or technology into Zhejiang province.</p> <p>One selected exporter submitted that it had received a benefit under this program.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>GOC stated that the program was terminated at</p>	<p>The GOC provided translated copies of the Notice to Appropriate Assistance Fund for Importation of 2012 in their Confidential Attachment.</p> <p>The GOC submitted in its SGQ documentation which stated that the program is jointly administered and operated by the Department of Commerce of Zhejiang province and the Department of Finance of Zhejiang province.</p>	<p>Enterprises registered and operate in Zhejiang province meeting the relevant eligibility criteria may apply for this award.</p> <p>An eligible applicant was required to demonstrate that it have imported certain advanced technologies and/or key equipment in order to qualify for a grant under this program.</p>	<p>Grants provided under this program are financial contributions by the Zhejiang province government, which involve a direct transfer of funds by the provincial government to the recipient enterprises in Zhejiang province.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of funds from the provincial government (subs. 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a</p>	<p>Any enterprise within the geographical region of the Zhejiang province granting authorities may apply if they meet the conditions of the program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to subs. 269TAAC(3).</p>	<p>Selected exporter(s) that received benefits under the program, residual exporters and uncooperative and all other exporters.</p>

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
	<p>the end of 2013.</p> <p>The Commission considers that it has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>			<p>grant under the program, this would therefore confer a benefit in relation to ARWs, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter in the investigation reported receiving benefits under this program, and as such this program has been received in respect of the goods.</p>		
<p>Program 61 – Award for the growth of local income tax</p>	<p>The purpose of the program is to promote transformation and upgrade of the industrial economy of Wenling City.</p> <p>One selected exporter submitted that it had received a benefit under this program.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not</p>	<p>GOC has provided translated copies of the Notice of Wenling City on Key Industrial Enterprises Concerning the Award for the Growth in local Portion of Income Tax in 2012 in their Confidential Attachment.</p> <p>The GOC submitted that the program is administered and operated by the Bureau of Economy and Informationisation and Bureau of Finance of Wenling City.</p>	<p>The applicant must demonstrate an increase in its income tax payment by at least 20% during the eligible year from the previous year.</p>	<p>Enterprises registered and operate in Wenling City meeting the certain conditions may apply for this award.</p> <p>Grants provided under this program are financial contributions by the Wenling City government, which involve a direct transfer of funds by the municipal government to the recipient enterprises in the Wenling City granting authority.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of funds from the municipal government (subs. 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to</p>	<p>Any enterprise within the geographical region of the Wenling City grant authorities may apply if they meet the conditions of the program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to subs. 269TAAC(3).</p>	<p>Selected exporter(s) that received benefits under the program, residual exporters and uncooperative and all other exporters.</p>

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
	<p>aware of any WTO notification of this program.</p>			<p>ARWs, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter in the investigation reported receiving benefits under this program, and as such this program has been received in respect of the goods.</p>		
<p>Program 62 – Refund of local water conservancy fund</p>	<p>The purpose of this program is to release some enterprises in Zhejiang province from the obligation to pay to the local fund for construction of irrigation systems.</p> <p>One selected exporter submitted that it had received a benefit under this program.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>The Commission considers that it has previously investigated this program</p> <p>The Commission considers that this program is the same as "Program 21 - Water Conservancy Fund</p>	<p>In its questionnaire response, the GOC stated that 'there is no contractual agreement between GOC and the company that receives the exemption/reduction under this program' and has provided translated copies of the Wenling Decision for Exemption of Payment to the Local Fund of Irrigation System in their Confidential Attachment.</p> <p>The GOC submitted that the program is administered and operated by the Bureau of Local Taxation and the Department of Finance of Zhejiang province and their counterparts at Wenling City, i.e. the Bureau of Local Taxation and the Bureau of Finance of Wenling City.</p>	<p>The applicant of the program must be a New and High Tech Enterprise in Zhejiang province.</p>	<p>Enterprises registered and operate in Wenling City meeting the certain conditions may apply for this award.</p> <p>Grants provided under this program are financial contributions by the Wenling City and Zhejiang province Government, which involve a direct transfer of funds by the municipal government to the recipient enterprises in Zhejiang province granting authority.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of funds from the municipal and provincial government (subs. 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to ARWs, and these financial contributions would meet the definition of a subsidy under s. 269T.</p>	<p>Any enterprise registered and operating in Wenling City may apply if they meet the conditions of the program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to subs. 269TAAC(3).</p>	<p>Selected exporter(s) that received benefits under the program, residual exporters and uncooperative and all other exporters.</p>

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
	<p>Deduction", investigated in the HSS investigation in 2012. The ACBPS determined in that investigation the program was a countervailable subsidy¹³³.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>			<p>The Commission notes that one selected exporter in the investigation reported receiving benefits under this program, and as such this program has been received in respect of the goods.</p>		
<p>Program 63 – Award for IPO</p>	<p>The purpose of the program is to encourage and reward public listing of companies in Wenling City.</p> <p>One selected exporter submitted that it had received a benefit under this program.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not</p>	<p>In its questionnaire response, the GOC stated that 'there is no contractual agreement between GOC and the company that receives the assistance under this program' and has provided translated copies of the Announcement to Award Initial Publicly Listing of the companies in Wenling City in their Confidential Attachment.</p> <p>The GOC submitted that the program is administered and operated by the Office of Finance and Bureau of Finance Wenling City.</p>	<p>Eligible applicants must succeed in an initial public listing or have been admitted as a candidate for publicly listing.</p>	<p>Grants provided under this program are financial contributions by the Wenling City government, which involve a direct transfer of funds by the municipal government to the recipient enterprises in the Wenling City granting authority.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of receipt of funds from the municipal government (subs. 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a</p>	<p>Any enterprise within the geographical region of Wenling City granting authorities may apply if they meet the conditions of the program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to subs. 269TAAC(3).</p>	<p>Selected exporter(s) that received benefits under the program, residual exporters and uncooperative and all other exporters.</p>

¹³³ Refer to HSS Final Report REP177 for further information.

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Program	Background and WTO notification	Legal basis and administrative authority	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Recipients of subsidy
	<p>investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>			<p>grant under the program, this would therefore confer a benefit in relation to ARWs, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter in the investigation reported receiving benefits under this program, and as such this program has been received in respect of the goods.</p>		

Table 24: Subsidy programs considered as part of this review but not considered during the previous investigation.