



CUSTOMS ACT 1901 - PART XVB

REPORT NO. 237

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

AND

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

7 May 2015



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ABBREVIATIONS

\$	Australian dollars
ACBPS	Australian Customs and Border Protection Service
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
The applicant	Simcoa Operations Limited
CBSA	Canada Border Services Agency
Commission	Anti-Dumping Commission
the Commissioner	The Commissioner of the Anti-Dumping Commission
CTMS	Cost to make & sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free On Board
GAAP	Generally accepted accounting principles
GOC	The Government of China
Guizhou Linan	Guizhou Liping Linan Silicon Industry Co. Ltd
Hua'an Linan	Hua'an Linan Silicon Industry Co. Ltd
Linan Group	For the purpose of this investigation, the collective term for the three entities Hua'an Linan Silicon Industry Co. Ltd, Guizhou Liping Linan Silicon Industry Co. Ltd and Xiamen K Metal Co. Ltd
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
SASAC	State-owned Assets Supervision and Administration Commission of the State Council (China)
SCM Agreement	World Trade Organization Agreement on Subsidies and Countervailing Measures
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
SIE	State invested enterprise
Simcoa	Simcoa Operations Limited
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
USP	Unsuppressed Selling Price



1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This investigation is in response to an application by Simcoa Operations Limited (Simcoa) in relation to the allegation that dumped and subsidised silicon metal exported to Australia from the People's Republic of China (China) has caused material injury to the Australian industry producing like goods.

This report sets out the findings of the Commissioner of the Anti-Dumping Commission (the Commissioner) and recommendations by the Commissioner to the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary) in relation to the application.¹

1.2 Recommendation

The Commissioner has found that silicon metal exported from China was exported at dumped and subsidised prices during the period 1 January 2013 to 31 December 2013 (the investigation period). The Commissioner further found that the volumes of dumped and subsidised goods were not negligible and that those exports caused material injury to the Australian industry producing like goods.

Based on these findings, the Commissioner recommends that the Parliamentary Secretary publish:

- a dumping duty notice in respect of all exports of silicon metal from China; and
- a countervailing duty notice in respect of all exports of silicon metal from China.

If the Parliamentary Secretary accepts the Commissioner's recommendations, to give effect to the decision, the Parliamentary Secretary must sign the relevant notices and schedules, under subsections 269TG(1), 269TG(2), 269TJ(1) and 269TJ(2) of the *Customs Act 1901*² (the Act), and sections 8 and 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act). These notices and schedules form **Non-confidential Attachment 1** to this report.

¹ The Minister for Industry and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this investigation.

² A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.



1.3 Application of law to facts

1.3.1 Authority to make decision

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

1.3.2 Application

On 10 January 2014, Simcoa lodged an application requesting that the Parliamentary Secretary publish a dumping duty notice and a countervailing duty notice in respect of silicon metal exported to Australia from China.

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application³.

1.3.3 Initiation of investigation

After examining the application, the Commissioner was satisfied that:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods.⁴

The Commissioner decided not to reject the application, and notice of the initiation of this investigation was published on 6 February 2014⁵.

1.3.4 Statement of Essential Facts and Preliminary Affirmative Determination

On 23 February 2015, the Anti-Dumping Commission (the Commission) publicly released a combined Statement of Essential Facts (SEF) and Preliminary Affirmative Determination (PAD) for this investigation (collectively referred to as 'SEF 237' for the purposes of this report).

SEF 237 set out the facts on which the Commissioner proposed to base recommendations to the Parliamentary Secretary regarding this investigation, subject to any submissions received in response to the SEF.

³ Section 269TB

⁴ Subsection 269TC(1)

⁵ Subsection 269TC(4)



SEF 237 set out that the Commissioner, after having regard to the application, submissions and any other matters he considered relevant, was satisfied that there were sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of silicon metal exported to Australia from China⁶, and the Commissioner made a PAD to that effect.

The Commissioner thus decided to require and take securities⁷ in respect of any interim dumping duty and interim countervailing security that may become payable in respect of the goods from China that were entered into home consumption on or after 23 February 2015.

Interested parties were invited to lodge responses to SEF 237 within 20 days of the SEF being placed on the public record. Non-confidential versions of all submissions received are available on the public record for this investigation.

1.3.5 Report 237

Within 155 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows⁸, the Commissioner must give the Parliamentary Secretary a final report in respect of the goods the subject of the application (this report).

Following extensions granted by the Parliamentary Secretary to the due date for the Statement of Essential Facts to be placed on the Public Record, this report was due to the Parliamentary Secretary on or by 7 April 2015. The Parliamentary Secretary granted an extension to the timeframe for the provision of the final report such that it was due on or by 7 May 2015. This report was provided to the Parliamentary Secretary on that date.

1.4 Findings and conclusions

The Commissioner has made the following findings and conclusions based on available relevant information.

1.4.1 The goods and like goods (Chapter 3 of this report)

Locally produced silicon metal is like to the goods the subject of the application.

1.4.2 Australian industry (Chapter 4 of this report)

There is an Australian industry producing like goods, comprising of one Australian producer of silicon metal, Simcoa.

⁶ Section 269TD

⁷ Section 42

⁸ The date on which the SEF was placed on the Public Record was extended. This extended the date that this final report is due to the Parliamentary Secretary by a corresponding period.



1.4.3 Market (Chapter 5 of this report)

The Australian market for silicon metal is predominately supplied by imported silicon metal from China, with a small volume of imports from other countries and a small quantity supplied by the Australian industry.

1.4.4 Dumping investigation (Chapter 6 of this report)

Silicon metal exported to Australia from China during the investigation period was dumped. The volume of dumped goods, and the dumping margins, were not negligible.

The Commissioner found the following dumping margins:

Exporter / Manufacturer	Dumping margin
The Linan Group	18.3%
Uncooperative and all other exporters	27.0%

Table 1 - Dumping margins

1.4.5 Subsidy investigation (Chapter 7 of this report)

Following the Commission's investigation into 44 alleged countervailable subsidy programs, the Commissioner has found that 38 programs are countervailable subsidies in relation to silicon metal.

Subsidy margins determined for Chinese exporters are:

Exporter / Manufacturer	Subsidy margin
The Linan Group	6.3%
Uncooperative and all other exporters	37.6%

Table 2 - Product subsidy margins

1.4.6 Economic condition of the industry (Chapter 8 of this report)

The Commissioner is satisfied that the Australian industry suffered material injury in the form of:

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



1.4.7 Have dumping and subsidisation caused material injury? (Chapter 9 of this report)

The Commissioner has found that dumping and subsidisation of silicon metal exported from China caused material injury to the Australian industry (Simcoa) producing like goods.

1.4.8 Will dumping, subsidisation and material injury continue? (Chapter 10 of this report)

The Commissioner is satisfied that dumping, subsidisation and material injury will continue if interim dumping and countervailing duties are not imposed in relation to silicon metal exported to Australia from China.

1.4.9 Non-injurious price

As the Commissioner is satisfied that:

- there is a situation in the market that makes domestic selling prices of silicon metal in China unsuitable for the purpose of determining normal value;
- the goods have been in receipt of countervailable subsidies; and
- China, the country in relation to which the subsidy has been provided, has not complied with its requirements under Article 25 of the SCM Agreement for the compliance period.

Given these circumstances, the Commissioner notes that the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser amount of duty due to the operation of subsections 8(5BAAA)(a) and (c) and subsections 10(3DA)(a) and (c) of the Dumping Duty Act. However, this does not prevent the Parliamentary Secretary from considering and applying the lesser duty rule, if considered appropriate.

The Commissioner recommends that the full dumping and subsidy margins determined in this report be applied to any interim dumping duty and interim countervailing duty taken in relation to silicon metal exported to Australia from China. The Commissioner notes that notwithstanding his recommendation the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty.

1.4.10 Form of duty (Chapter 12 of this report)

The Commissioner recommends that the interim dumping duty and interim countervailing duty imposed be the:

- ad valorem rate of countervailable subsidisation; plus



- the ad valorem rate of dumping, minus an amount for the subsidy rate applying to subsidy Program 1 (where this has been received by the exporter or group of exporters).



2 BACKGROUND

2.1 Application and initiation

On 10 January 2014, Simcoa lodged an application requesting that the Parliamentary Secretary publish a dumping duty notice and countervailing duty notice in respect of silicon metal exported to Australia from China.

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

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

Public notification of initiation of the investigation was made on 6 February 2014 in *The Australian* newspaper.

As required by section 269ZJ, the Commissioner established a Public Record for the investigation on the date of initiation. 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.

The Public Record is available online at <http://www.adcommission.gov.au/>.

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

Anti-Dumping Notice (ADN) No. 2014/08 provides further details of the investigation and is available on the Commission's website at www.adcommission.gov.au, and on the Public Record.

The investigation period for the purpose of assessing dumping was notified as 1 January 2013 to 31 December 2013. The injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry was notified as being from 1 January 2010.

2.2 Previous cases

On 9 February 2005, the then Minister for Justice and Customs (the Minister) accepted the Australian Customs and Border Protection Service's (ACBPS') recommendations



made in Trade Measures Report No. 81. Simcoa was the applicant for the dumping duty notice.

On 16 February 2005, the Minister published a dumping duty notice imposing measures on primary and secondary grade silicon metal exported from China to Australia.

In March 2005, Comalco Aluminium Limited (Comalco) and Alcoa Australia Rolled Products Pty Ltd (Alcoa) separately lodged applications with the Trade Measures Review Officer (TMRO) for a review of the Minister's decision to publish a dumping duty notice in respect of silicon metal exported from China to Australia.

The TMRO accepted the applications and on 15 April 2005, a public notice of his intention to conduct a review was published.

On 11 August 2005, the Minister accepted the recommendations following a review by the TMRO and subsequently wrote to the Chief Executive Officer of ACBPS requiring him to reinvestigate ACBPS' findings in respect of:

- like goods;
- the assessment of material injury to the Australian industry;
- the assessment of normal values and dumping margins for other exporters;
- price underselling; and
- the injury analysis period.

Following the reinvestigation, ACBPS affirmed its original findings in respect of:

- material injury;
- dumping margins;
- price underselling; and
- the injury analysis period.

ACBPS did find, however, that Australian produced primary use silicon metal was not like goods to secondary use silicon metal imported from China.

ACBPS recommended that the Minister sign a notice under subsection 269ZZM(1)(b) of the Act revoking his original findings insofar as it related to like goods, and substitute a new decision.

The Minister revoked the existing notice specifying both secondary use silicon metal and primary use silicon metal and substituted a new notice which specified primary use silicon metal only.

The anti-dumping measures expired on 17 February 2010.



2.3 Preliminary affirmative determination and securities

The Commissioner may, at any time not earlier than 60 days after the date of initiation of an investigation, make a PAD in respect of goods the subject of an application.

In order to make a PAD, the Commissioner must be satisfied that:

- a) there appears to be sufficient grounds for the publication of such a notice; or
- b) it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods.

On 23 February 2015, the Commissioner issued the combined SEF 237 and PAD 237 advising that there appeared to be sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods exported to Australia from China⁹.

At that time, the Commissioner was satisfied that it was necessary to apply, under section 42 of the Act, securities to the goods subject to the application in order to prevent material injury occurring to the Australian industry while the investigation continued.

Securities were taken in accordance with the preliminary dumping and subsidy margins for the exporters of the goods, in relation to goods entered for home consumption on or after 23 February 2015.

2.4 Statement of Essential Facts 237 (SEF 237)

ADN 2014/08 (the ADN notifying of the initiation of the investigation) advised that SEF 237 was due to be published on the Commission's public record on or before 27 May 2014.

However, due to the complexities of the investigation, the Parliamentary Secretary granted the Commissioner three separate extensions to the date by which SEF 237 had to be placed on the Public Record. The details of these extensions are tabulated below.

Date notified (ADN number)	SEF 237 date extended to	Final report extended to
28 May 2014 (2014/45)	25 August 2014	9 October 2014
25 August 2014 (2014/76)	24 October 2014	8 December 2014
24 October 2014 (2014/108)	21 February 2015	7 April 2015

Table 3 – Extensions granted to SEF 237

⁹ The reasons for this decision are detailed in SEF 237, which is available on the Commission's Public Record (<http://www.adcommission.gov.au>).



On 23 February 2015, the Commission placed on the Public Record SEF 237, on which the Commissioner proposed to base his recommendation to the Parliamentary Secretary concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF 237 within 20 days of the placement of SEF 237 on the Commission's Public Record. Non-confidential versions of all submissions received are available on the Public Record for this investigation.

2.5 Report 237

Within 155 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows, the Commissioner must give the Parliamentary Secretary a final report in respect of the goods the subject of the application (this report).

As outlined above, the Parliamentary Secretary granted three extensions of time for SEF 237 to be placed on the public record, which consequently extended the due date for the final report to the Parliamentary Secretary.

In addition, the Parliamentary Secretary granted one extension of time for the final report to be provided to the Parliamentary Secretary. This report's due date for provision to the Parliamentary Secretary is 7 May 2015. This report was provided to the Parliamentary Secretary on that date.

In formulating this report to the Parliamentary Secretary, the Commissioner must have regard to:

- the application;
- any submissions concerning publication of the notice to which the delegate of the Commissioner has had regard for the purpose of formulating SEF 237;
- SEF 237 itself;
- any submission in response to SEF 237 received by the Commission within 20 days after the day that statement was placed on the Public Record; and
- the Commission may also have regard to any other matters considered relevant.¹⁰

The due date for submissions in response to SEF 237 was 15 March 2015. In accordance with subsection 269TEA(4), the Commissioner is not obliged to have regard to submissions received after that date if doing so would delay the timely preparation of this report to the Parliamentary Secretary.

¹⁰ subsection 269TEA(3)



The following submissions were received in response to SEF 237:

Party	Submission title	Date received
Pacific Aluminium	Response to SEF 237	13 March 2015
Linan Group	Response to SEF 237	16 March 2015
Simcoa	Response to SEF 237	16 March 2015
Simcoa	Response to Pacific Aluminium submission	20 March 2015
Government of China	Response to SEF 237	30 March 2015
Simcoa	Response to Government of China submission	15 April 2015
Simcoa	Addressing claims regarding Simcoa supply of silicon metal	15 April 2015
Linan Group	Response to revised dumping and subsidy margins	5 May 2015

Table 4 – Submissions received in response to SEF 237

Non-confidential versions of the above submissions are on the public record.

As a consequence of reviewing the submissions listed above, the Commission sought and was provided with further, clarifying information from Simcoa and the Linan Group. The nature of this information was confidential (relating to financial data and sales information) and as such it has not been placed on the public record.

As set out above, following a request by the Commissioner the Parliamentary Secretary granted a 30-day extension to the due date for provision of a final report. This extension of time has enabled the Commissioner to have regard to all submissions set out in Table 4 above in making the findings and recommendations set out in this report.



3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that locally produced silicon metal is like to the goods the subject of the application.

3.2 The goods

The goods the subject of the application are:

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

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

The goods the subject of the application include all forms and sizes of silicon, including off-specification silicon such as silicon metal with high percentages of other elements, such as aluminium, calcium, iron, etc.

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

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

3.3 Tariff classification

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

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

3.4 Like goods legislation and framework

Subsection 269TC(1)(b) of the Act requires that the Commissioner must reject an application for a dumping duty notice and/or a countervailing duty notice if, inter alia, the



Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for relief from material injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations, in line with the established policy and practice outlined in the Commission’s *Dumping and Subsidy Manual*:¹¹

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.5 Like goods assessment

Silicon metal is produced in various grades. The grades represent the chemical composition of the product and the maximum allowed levels of the impurities of iron, aluminium and calcium. To meet the specified grade, the product should have no more than the specified amount of impurities of each of the above mentioned elements relevant to that grade.

Information gathered from Simcoa showed that it produced seven different grades of silicon metal during the investigation period. Six of the seven grades of silicon metal are used by primary aluminium smelters. Those six grades contain low iron, calcium and phosphorus levels. The remaining grade is usually sold to secondary aluminium producers. Simcoa also produces silicon metal for chemical use; however each user requires a specific chemical composition that is made to order. The grade of the raw

¹¹ Available online at http://www.adcommission.gov.au/accessadsystem/Documents/DumpingandSubsidyManual-December2013_001.pdf.



material input, quartz, determines the resulting silicon metal grade, which can then be further refined by additional processing.

Data gathered from importers and exporters during the investigation shows that a number of grades of silicon metal were imported during the investigation period. One of the major cooperating importers, Pacific Aluminium, submitted that during the investigation period it shifted some of its silicon metal needs from the more purified grades to a grade known as 441. Pacific Aluminium claimed that the switch allows it to produce its product in a more cost effective way by not over loading products with high specification inputs where it isn't required.

Pacific Aluminium advised that generally there is no significant quality difference between the imported silicon metal and locally produced silicon metal *in equivalent grades*. However it submitted that Simcoa does not produce a like good to grade 441 silicon metal and therefore it should be excluded from the investigation.

In a submission to the investigation prior to SEF 237¹², Simcoa submitted that it is able to supply domestically produced silicon metal for all aluminium alloy requirements in Australia. Simcoa did not manufacture grade 441 during the investigation period.

3.5.1 Submission to SEF 237

In submissions to SEF 237, both Pacific Aluminium and the Linan Group disputed the Commission's finding that the Australian industry produced like goods to grade 441.

Pacific Aluminium noted that in SEF 237 the Commission had stated that Pacific Aluminium was unable to supply evidence that it had sought a quote from Simcoa for grade 441. Pacific Aluminium supplied new correspondence with its submission to SEF 237 in which Simcoa advised Pacific Aluminium that it had 'no interest' in silicon grades 553 and 441 as Simcoa didn't produce them. Pacific Aluminium states that on this basis it 'had no choice' but to import grade 441.

The Linan Group submitted that Simcoa does not produce or offer to supply grade 441, both domestically and for export and as such grade 441 should be 'excluded from the scope of this investigation'.

Simcoa made two submissions in response to Pacific Aluminium's and the Linan Group's claims, on 20 March 2015 and 14 April 2015. It claimed that the timing of the correspondence between Pacific Aluminium and Simcoa was important because it was prior to the plant expansion, following which Simcoa could and did supply other grades that are similar to grade 441.

¹² Dated 25 September 2014



3.5.2 Commission's assessment

The Commission considers that Simcoa has provided confidential evidence that it can supply grades that are like goods to grade 441. Pacific Aluminium is a business division of Rio Tinto. The Commission understands that during the investigation period, purchasing for Rio Tinto's operations in Australia was managed by Rio Tinto's procurement centre in Singapore. Simcoa provided evidence of the sale of a lower quality grade for export to Canada via Rio Tinto Singapore, which occurred during the investigation period but after the email exchange referred to above wherein Simcoa did not offer supply of grades 553 and 441 to Pacific Aluminium. On this basis, Rio Tinto (and thereby Pacific Aluminium) would have been aware – during the investigation period – that Simcoa was able to supply varying grades of silicon metal that would meet Pacific Aluminium's requirements following the expansion of its plant.

3.6 Like goods conclusion

The Commission is satisfied that Simcoa manufactures like goods to the imported goods the subject of the investigation. At the grade level some of the products manufactured by Simcoa during the investigation period are identical to the imported goods. In relation to grade 441 (which was imported during the investigation period), the Commission considers Simcoa's silicon metal is physically, commercially and functionally like to grade 441 and is produced in the same manner as grade 441.

Based on the verified information, the Commission is satisfied that the Australian industry produces like goods to the goods the subject of the application, as defined in subsection 269T(1) and notes the following:

i. Physical likeness:

- the primary physical characteristics of the imported goods and locally produced goods are similar;

ii. Commercial likeness:

- the goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market;

iii. Functional likeness:

- the goods and locally produced goods are functionally alike as they have a similar range of end-uses; and

iv. Production likeness:

- the goods and locally produced goods are manufactured in a similar manner.





4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commissioner has found that:

- there is an Australian industry consisting of Simcoa that produces like goods in Australia; and
- these like goods were wholly manufactured in Australia.

4.2 Legislative Framework

In order to publish a dumping duty notice and/or a countervailing duty notice, the Parliamentary Secretary must be satisfied that the “like” goods are in fact 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. Subsection 269T(3) of the Act specifies that in order 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.

4.3 Production process

Silicon is manufactured from inputs including quartz or silica, charcoal, coal and wood chips involving a high endothermic process.

The production process is the same regardless of the form of silicon metal (e.g. lump, granules, fines) required for the end product. Further processing to refine the product creates differences in the chemistry of the final product.

Simcoa provided a production flow diagram which the Commission examined, together with conducting a tour of the production facilities at both the Australian industry’s premises and the exporter’s manufacturing plant. The flow of production can be summarised as follows:

1. Raw materials are prepared.
2. Raw materials are put into the furnace.
3. A high electrical current is passed through electrodes contained within the furnaces creating extreme heat.
4. The heat causes the raw materials to combine into a liquid silicon metal.
5. The liquid silicon metal is poured into moulds to cool and set.



6. The solid silicon metal is broken down into lumps, granules or fines for sale.
7. The silicon metal is packed for sale.

Based on the above, the Commission is satisfied that silicon metal is wholly manufactured in Australia.

Having undertaken a verification visit to Simcoa's factory, as well as to an importer of silicon metal, the Commission is satisfied that Simcoa is the sole producer of silicon metal in Australia. Accordingly, the Australian industry consists of Simcoa alone.



5 AUSTRALIAN MARKET

5.1 Findings

The Commission estimates that in the investigation period the size of the Australian market for silicon metal was approximately 8,000 tonnes. Analysis shows that the market share of Australian product versus imports has declined over the injury analysis period whilst imports from China have increased overall. The total size of the Australian market has decreased overall by approximately 60 per cent over the injury analysis period.

5.2 Background

Silicon metal is sold to primary aluminium and secondary aluminium end-users. Silicon metal used in primary aluminium applications is combined with other elements to produce foundry and extrusion alloys which are used in the manufacture of goods such as car and truck wheels, window frames and door frames. Silicon metal used in these applications requires higher purity levels.

Silicon metal used in secondary aluminium applications generally requires lower quality requirements and is used in the manufacture of die casting alloys used in car parts, including manifolds, crank cases and other engine components.

5.3 Market structure

5.3.1 Supply and structure

Silicon metal is sold and distributed across Australia. There is no geographic segmentation for silicon metal, nor is there product segmentation other than identifying whether product is sold to primary or secondary aluminium applications. Silicon metal is purchased by aluminium producers and sourced either from imports or from Simcoa.

The Commission performed a search of the ACBPS import database and identified importers of silicon metal.

The Commission visited Pacific Aluminium's head office in Brisbane. Its imports account for around 80 per cent of silicon metal imported from China in the investigation period.

The visit examined records of the following three entities managed by Pacific Aluminium:

- Rio Tinto (Bell Bay) Company Ltd,
- Boyne Smelters Ltd and
- Tomago Aluminium Co. Ltd.

A visit report for Pacific Aluminium that incorporated the above importers can be found on the electronic public record available on the Commission website at <http://www.adcommission.gov.au>.



5.3.2 Demand variability

Simcoa advised that demand for silicon metal has been impacted by the global economic slowdown in the automotive, housing and solar panel industries. The flow on effect of the contraction of these industries is reduced demand for aluminium products and thereby reduced demand for silicon metal.

5.4 Market size and share

The Commission considers the data in ACBPS' import database, which was cross checked during the importer and exporter verification visits, and the verified sales data provided by Simcoa provide a reasonable estimate of the Australian market.

The following graph depicts the Commission's estimate of the Australian market size for silicon metal using data from ACBPS' import database and Simcoa's sales data by calendar year. The Commission estimates that in the 2013 calendar year, being the investigation period, the size of the Australian market for silicon metal was approximately 8,000 tonnes.

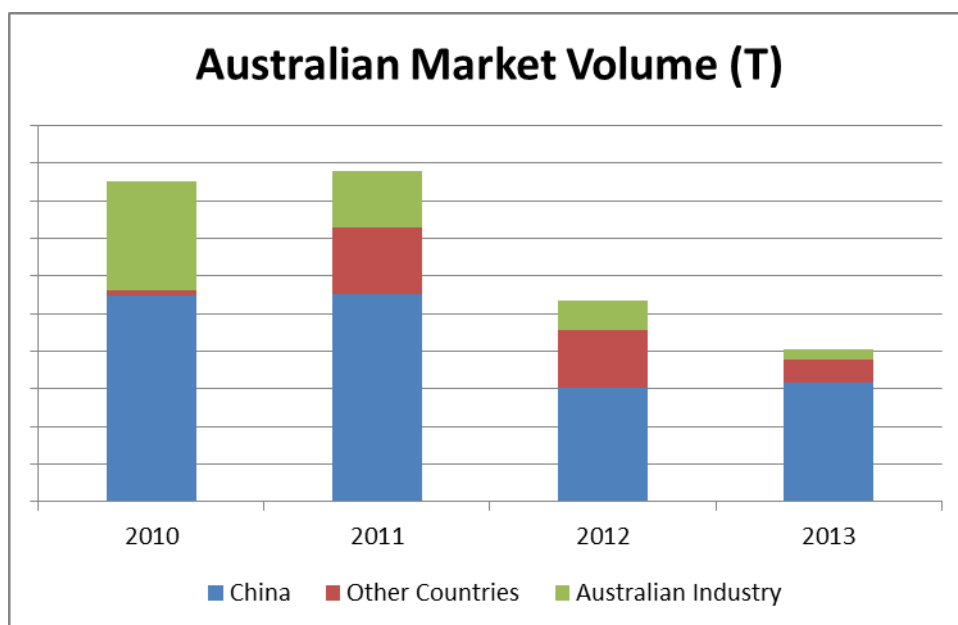


Figure 1 – Australian market for silicon metal (T)



6 DUMPING INVESTIGATION

6.1 Finding

The Commissioner has found that silicon metal exported to Australia from China during the investigation period was dumped and that the volume of dumped goods was not negligible.

The Commission's calculations of export prices, normal values and dumping margins in respect of silicon metal are at **Confidential Appendix 1**.

6.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC of the Act respectively.

This chapter explains the results of investigations by the Commission into whether silicon metal was exported from China at dumped prices during the investigation period.

6.3 Exporters

At the commencement of the investigation, sixteen potential exporters of silicon metal from China were identified. Questionnaires were forwarded to all these exporters. Of the sixteen potential exporters, two identified themselves as traders of the goods and provided contact details for the manufacturers. One advised that it was not an exporter of the goods, and the remaining companies did not respond.

Initially four entities indicated that they would cooperate with the investigation and provided a response to part 1 of the exporter questionnaire (REQ). Subsequent to that, only three entities completed the entire REQ and the fourth advised it no longer wished to participate.

The Commission received questionnaire responses, which were assessed by the Commission as being substantially complete, from:

- Xiamen K Metal Co., Ltd (K Metal);
- Hua'an Linan Silicon Industry Co., Ltd (Hua'an Linan); and
- Guizhou Liping Linan Silicon Industry Co., Ltd (Guizhou Linan).

Based on the information in the REQs and gathered at verification visits the Commission determined that these three entities were related and accordingly prepared an exporter visit report incorporating the findings for all three. The three entities collectively are referred to in this report as the Linan Group.



The verification visit report for the Linan Group is available at the Commission's website <http://www.adcommission.gov.au> and provides additional detail to what is discussed below.

Exporters of silicon metal to Australia from China during the investigation period that did not respond to the questionnaire are considered uncooperative exporters. An 'uncooperative exporter' is defined under subsection 269T(1) of the Act as an exporter who did not provide the Commissioner information considered relevant to the investigation within a period the Commissioner considered reasonable, or an exporter that significantly impedes the investigation. Exporters that did not submit responses to the Exporter Questionnaire were deemed to be uncooperative.

For uncooperative exporters, given that these exporters have not provided relevant information via a response to the Exporter Questionnaire, the Commission has used all relevant information and reasonable assumptions to calculate dumping margins.

6.4 Market situation assessment

6.4.1 Simcoa's claims

In its application, Simcoa referred to the findings of the Canada Border Services Agency (CBSA) into silicon metal exported to Canada from China¹³. In the finding of 5 November 2013, CBSA found that Government of China (GOC) measures significantly influence "*the Chinese ferroalloy sector, which includes silicon metal.*" Further, CBSA was satisfied that "*domestic prices are substantially determined by the GOC, and there is sufficient reason to believe that the domestic prices for silicon metal are not substantially the same as they would be in a competitive market*"¹⁴.

Simcoa referred to measures found within that report to support its claim of market situation. Simcoa claim the measures impacting the Chinese silicon metal industry include:

- **GOC export control measures**

This includes the now repealed (with effect from 1 January 2013) 15 per cent export tax, the absence of a rebate of the 17 per cent VAT on export of silicon, the maintenance of minimum silicon export prices by the GOC, and the use of export quotas on silicon.

¹³ CBSA Statement of Reasons concerning the making of final determinations with respect to the dumping and subsidizing of certain silicon metal originating in or exported from the People's Republic of China, 4214-39 AD/1400, 4218-37 CVD/136, 5 November 2013 (at Non-Confidential Attachment B-3.1.1 to Simcoa's application).

¹⁴ *Ibid*, P. 25.



- ***Government influence on the price of inputs used in the production of silicon metal***

CBSA was satisfied that the GOC exercises “substantial influence” over key raw material inputs in the silicon manufacturing process, including electricity and coal that account for 70 per cent of silicon production costs. The cost of electricity and coal in the total production cost of silicon metal account for 55-60 per cent and 8-10 per cent, respectively. The Canadian industry was able to demonstrate to CBSA that the electricity cost for silicon producers in Yunnan province (that accounted for 20 per cent of China’s silicon production) was 32 per cent below the rates in other provinces. In respect of coal, the GOC exercises control of the industry through “*the use of policies, laws, regulations, production caps and production ceilings*” to control the volume of coal produced and sold in China.

- ***GOC policies and regulations directed at production levels and participants***

The Canadian industry claimed that the GOC’s industrial policies regulated the Chinese silicon industry, including prices in the industry. The CBSA referred the claims and identified the 12th Five Year Plan to the GOC for comment, however, the GOC failed to respond to the CBSA’s request for information.

Simcoa claims that the extent of the GOC’s influence on production levels within China is extensive and limits the decisions enterprises may take according to free market principles.

- ***Government Restrictions on the Use and Supply of Inputs***

CBSA was able to identify GOC restrictions on inputs in silicon metal production in the Yunnan government’s “Opinions Concerning Promoting Industrial restructuring of Industrial Silicon”.

- ***Chinese domestic selling prices for silicon***

The CBSA examined domestic prices in the US market for silicon as reported by Metal Bulletin, Platts Metals Week, Ryan’s Notes and CRU and contrasted these with published Chinese domestic prices. On average, CRU prices indicated that Chinese domestic prices were 37 per cent below US domestic prices during the period of investigation (i.e. 2012).

Simcoa submitted that the CBSA’s finding that the GOC influences the domestic selling prices of silicon metal in China is consistent with recent findings by the Commission into hollow structural sections and galvanised steel and aluminium zinc coated steel exported from China. In these cases the GOC was assessed as influencing domestic selling prices in China due to a range of factors including the elimination of backward production capacity and the range of GOC’s plans and policies for the steel industry, the same GOC policies and plans influence domestic silicon metal prices in China.



6.4.2 Applicable legislation

Subsection 269TAC(1) 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, subsection 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (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 (subsection 269TAC(2)(c)) or third country sales (subsection 269TAC(2)(d)).

6.4.3 The Commission's assessment in SEF 237

The Commission sent a questionnaire to the GOC requesting, inter alia, the following information in relation to the silicon metal market in China:

- identification of the names of the government departments, bureaus or agencies that are responsible for the administration of any GOC measures concerning the silicon metal industry;
- details of all manufactures/traders of silicon metal in China including location, whether they are a State Invested Enterprise (SIE), production quantity and whether there is GOC representation in the business;
- a detailed description of the domestic Chinese silicon metal industry and the relevant upstream industries, including quartz, charcoal, coal, petroleum coke and wood chip industries;
- quarterly import and export data (volume and value)
- details about the operation of the *Price Law of the People's Republic of China*; and
- identification of any GOC initiatives and/or policies that affect the silicon metal industry, including raw materials used in its manufacture.

The GOC did not provide a response to any of the questions related to an assessment of market situation.

In the circumstances the Commission relied on evidence relied on by the CBSA in its inquiry, evidence provided by Simcoa in support of its claims and evidence gathered independently by the Commission.

Non-confidential Appendix 1 summarises the factors and evidence relied on by the CBSA in its examination of the silicon metal market in China, and considered by the Commission in this investigation. The main factors considered by the CBSA are:

- GOC export control measures



- Government influence on the price of inputs
- Government policies and regulations
- Government restrictions on the use and supply of inputs
- Domestic silicon price analysis

The Australian industry supplied the Commission with some of the evidence referred to in the CBSA investigation in order for the Commission to independently examine that evidence.

SEF 237 set out the Commissioner's view that the GOC has had substantial influence on the silicon metal market in China, evidenced by the information set out in Non-confidential Appendix 1 to SEF 237. As a result the Commissioner considered there was a situation in the Chinese domestic market for silicon metal that rendered domestic selling prices for silicon metal unsuitable for determining normal value.

6.4.4 Submissions in response to SEF 237

The GOC submission in response to SEF 237 made the following claims:

- a) In the Australian investigation authority's investigation in 2004, it found that market conditions prevailed in the Chinese market for silicon;
- b) the Commission has applied the incorrect legal test to the determination of a 'particular market situation'. The GOC relies on Article 2.2 of the *World Trade Organization Anti-Dumping Agreement* (AD Agreement), which states that '...when, because of the particular market situation..., **such sales do not permit a proper comparison**, the margin of dumping shall be determined...' [emphasis added]. The GOC claims that the analysis in SEF 237 does not set out conditions that would differentiate conditions applicable to a producer's decision to sell domestically or for export. It also claims that the AD Agreement provides a self-correcting mechanism for circumstances where domestic selling prices do not recover production costs with the recourse to constructing a normal value based on the cost of production; and
- c) the evidence presented by the Commission to support its conclusion on particular market situation do not constitute 'facts available'.

6.4.5 Commission's assessment

The GOC's claim in respect of the findings of the previous Australian investigation into the dumping of silicon metal exported from China are refuted on the basis that those findings were made, as acknowledged by the GOC, in 2004. More recent information has been obtained during the course of the CBSA investigation, and provided by Simcoa to this investigation, that supports the Commission's current view of the domestic market for silicon metal in China.

In respect of the GOC's claim at b) above, whilst subsection 269TAC(2)(a)(ii) of Australia's does not specifically refer to 'proper comparison' as reflected in Article 2.2 of the AD Agreement, the Commission accepts that it is an integral concept in the determination of normal values.



A WTO Panel has previously come to the view that:

‘the wording of Article 2.4 made it clear that the test for having any such recourse was not whether or not a "particular market situation" existed per se. A "particular market situation" was only relevant insofar as it had the effect of rendering the sales themselves unfit to permit a proper comparison. In the Panel's view, therefore, Article 2.4 specified that there must be something intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison.’¹⁵

The Commission considers that any assessment of whether a situation in the domestic market has rendered those sales unfit for proper comparison should not be limited to individual analysis of the relevant domestic and export prices. More importantly, and ultimately central to that consideration, is an understanding of the characteristics of the respective markets into which those sales are made.

In this case, the Commission considers that the domestic selling prices of Chinese producers and exporters of silicon metal are made within the context of the collective GOC policies and measures for the domestic silicon industry (as set out in Non-confidential Appendix 1) and the distorting and suppressing impact on selling prices. This compares to prices of Chinese exports of silicon metal into the Australia market, which are not subject to such distortions.

In respect of item c) above, the Commission disagrees with the GOC's claim that the evidence set out in SEF 237 does not represent facts available to the Commission. The GOC acknowledges that the Commission is entitled to rely on secondary information if it is the best available information. The GOC's claim that the information from the CBSA investigation does not represent facts available due to the different time period of its investigation, and the different legal test applied by the CBSA, is without basis. The Commission has not applied the test used by the CBSA under its *Special Import Measures Act* to arrive at its view in respect of particular market situation. Rather, the Commission has had regard to the information and evidence gathered by the CBSA, in addition to evidence supplied by the Australian industry, to form its own view as to whether a particular market situation, in the context of subsection 269TAC(2)(a)(ii) of the Act, exists. The Commission acknowledges that the investigation period for the CBSA investigation was the twelve months prior to the investigation period for the current investigation, however due to the absence non-cooperation by the GOC the Commission considers the information used by the CBSA to be the best information available to it.

In respect of item c) the GOC also set out specific objections to certain elements presented in Non-confidential Appendix 1. The claims and the Commission's response are as follows:

¹⁵ ADP/137 – EC Imposition of anti-dumping duties on imports of cotton yarn from Brazil (July 1995). The Commission notes the reference to the then Article 2.4, which although similar to the current Article 2.2, is not identical.



- Export taxes – the Commission acknowledges an error in the body of SEF 237 whereby it contained a statement that the export tax on silicon metal was removed at the end of the investigation period. The export tax ceased to apply with effect from 1 January 2013, the beginning of the investigation period. This is correctly indicated in the table at Non-confidential Appendix 1 to SEF 237;
- Export controls on coke – the GOC claims that the Commission is wrong to rely on a WTO Panel Report in relation to the existence of export controls, taxes and coke in 2011 and 2012, due to the difference in time period. In the absence of other information provided by the GOC, the Commission considers this to be the best available information. The GOC also claims, in relation to this point, that it advised that there were no export quotas applicable to *silicon metal*. The WTO Panel Report findings were referred to in SEF 237 in the context of *coke*, a relevant factor in the cost of coal, which is an input to the production of silicon metal. The GOC did not provide any information to the Commission in respect of export controls on coke during the investigation period.
- General policy statements in 12th Five Year Plan – the GOC claims that the documents referred to in Non-confidential Appendix 1 to SEF 237 in relation to the issue of government policies and regulations pre-date the investigation period by three years. In the absence of other information provided by the GOC, the Commission considers this to be the best available information.
- Other factors – the GOC claims that the measures referred to in Non-confidential Appendix 1 to SEF 237 (under ‘Government restrictions on use and supply of inputs’) are *‘nothing more than environmental measures which any government is entitled and should be entitled to introduce to protect the health and welfare of its people and sustainability of its industries.’* The GOC also claims that the excerpts from a silicon industry conference in 2010 cannot be considered evidence for the present investigation. The Commission again emphasises that in the absence of full cooperation by the GOC it has relied on the best available information. The measures and documents referred to by the GOC in its submission are part of the broad consideration by the Commission of the domestic market for silicon metal in China. The Commission considers the information as a whole supports the view that the Chinese Government has influenced the domestic market for silicon metal. In addition, the purpose or intention behind a particular government policy does not necessarily exclude it from having an effect on price that makes domestic selling prices under subsection 269TAC(1) unsuitable.

In conclusion, the Commission considers that the range of influences and measures set out in Non-confidential Appendix 1 to this report, including the imposition and removal of export taxes, no VAT refund for exports, export quotas and other industry policies, would have served to depress and/or suppress already low domestic prices, which were brought about by over-supply. The provision of preferential rates for electricity, which represents around 50 per cent of the cost to make silicon metal, offered further advantage to domestic producers to enable domestic prices to remain low.

The Commission considers that this depression and/or suppression of prices constitutes a particular market situation, pursuant to subsection 269TAC(2)(a)(ii) of the Act that renders



domestic selling prices of silicon metal unsuitable for the purpose of determining normal value.

6.5 Establishing normal values – third country sales or construction

Following the above finding that domestic sales are not suitable for use in determining normal value due to a situation in the market, the Commission has examined the possibility of establishing normal value using either:

- sales of silicon metal to third countries by Chinese exporters (subsection 269TAC(2)(d)); or
- constructing normal values (subsection 269TAC(2)(c)).

In its responses to the Exporter Questionnaire, the Linan Group provided:

- aggregate third country sales data (not split into model or in line-by-line detail); and
- detailed domestic and export (to Australia) cost to make and sell (CTMS) data, split into month and model-level detail.

The Commission assessed the suitability of using third country sales of silicon metal by the Linan Group in determining normal values under subsection 269TAC(2)(d). The Commission determined that third country sales were not a viable option for determining normal values in relation to the goods due to its consideration that the exporter's cost of electricity does not reflect a competitive market cost (refer to section 6.7). This would in turn have affected the exporter's prices to third countries making them unsuitable for use in determining normal value.

Consequently, the Commission has undertaken the construction of normal values under subsection 269TAC(2)(c) of the Act, and has done so in accordance with the conditions of sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation)¹⁶, relevant aspects of which are outlined below.

6.6 Constructed normal values – outline

6.6.1 Applicable legislation, policy and practice

Subsection 269TAC(2)(c) provides that:

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

¹⁶ As required by subsections 269TAC(5A) and 269TAC(5B). From 1 April 2015, the *Customs (International Obligations) Regulation 2015* replaced certain provisions of the *Customs Regulations 1926* relating to Australia's international obligations. In particular, sections 43, 44 and 45 of the Regulation replace regulations 180, 181 and 181A of the *Customs Regulations 1926*, respectively.



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

The construction of normal values under subsection 269TAC(2)(c) is required to be undertaken in accordance with the conditions of sections 43, 44 and 45 of the Regulation¹⁷.

To determine costs of manufacture or production, subsection 43(2) of the Regulation requires that if:

- an exporter or producer of like goods keeps records relating to the 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 Parliamentary Secretary must work out the cost of production or manufacture using information set out in the exporter or producer's records.

It is the Commission's policy and practice that, where the conditions of subsection 43(2) of the Regulation are not met, 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.

6.7 Reasonableness of costs in constructing normal values

6.7.1 Introduction

As outlined above, in addressing the normal value of the goods, Simcoa's application focussed on allegations that a particular market situation exists in the Chinese silicon metal market and that normal values should be constructed as a result.

Simcoa asserted that this construction of normal values should take account of the fact that the cost of electricity reflected in the records of Chinese exporters does not reasonably reflect a competitive market cost for that input and should be substituted.

¹⁷ As required by Sections 269TAC(5A) and 269TAC(5B)



6.7.2 Commission's position in SEF 237

As outlined above, section 43(2) of the Regulation requires that if an exporter keeps records in accordance with the appropriate GAAP, and those records reasonably reflect competitive market costs associated with the production of like goods, then the cost of production must be worked out using the exporter's records.

The Commission's assessment of exporters' data found that the records of Chinese exporters of the goods have been kept in accordance with the relevant GAAP.

However, the Commission's view set out in SEF 237 was that electricity costs have been affected by preferential rates provided by SIE electricity providers for industries in the silicon manufacture sector, and hence do not reasonably reflect competitive market costs, and should be replaced by a competitive market substitute.

The Commission determined that the most reasonable option available for a benchmark is the tariff rate for 'Other Large Industry' as indicated on the schedule of tariff rates provided by the GOC. This is considered the most reasonable benchmark as it represents a competitive market cost in China for all other industries in the relevant provinces, that is, those where the cooperating exporter conducts its manufacturing activities.

6.7.3 Submissions to SEF 237

In response to SEF 237, the GOC submitted that:

- a) the Commission's finding in respect of 'competitive market costs' represents an incorrect implementation of the AD Agreement;
- b) there is no evidence of uncompetitive market costs; and
- c) in the context of the Commission's assessment of whether electricity costs reasonably reflect competitive market costs, alleged subsidies should be dealt with under the *World Trade Organization Agreement on Subsidies and Countervailing Measures* (SCM Agreement) and not the AD Agreement.

6.7.4 Commission's assessment

In respect of item a) above, as noted by the GOC it has previously submitted to the Commission that subregulation 180(2) of the *Customs Regulations 1926*¹⁸ reflects an incorrect interpretation of Article 2.2.1.1 of the AD Agreement. Relevantly, Article 2.2.1.1 does not contain the words 'competitive market' in reference to the costs reflected in an exporter's records. The Commission considers it has applied the relevant test, being that set out in subsection 43(2) of the Regulation.

¹⁸ As noted earlier, regulation 180 of *Customs Regulations 1926* has been replaced with section 43 of the Regulation.



In support of its claim at item b) above, the GOC refers to electricity pricing of an electricity retailer in Western Australia, which demonstrates different rates for 'large business demand users' and 'schools, churches, shops, factories, office blocks, hotels, sporting complexes'. The submission also refers to the fact that customers in Western Australia can seek supply competitively from different electricity providers. As set out in Part III(i) of Non-confidential Appendix 3 to this report (the Commission's consideration of whether electricity providers are public bodies), the electricity was supplied to the cooperating exporter by a State Invested Enterprise (SIE). The Commission has concluded that there is evidence to show that the GOC exercises meaningful control over the SIE electricity provider. The Commission considers this distinguishes the circumstances of electricity supply to Chinese manufacturers of silicon metal in China to those applying to provision of electricity by a private retailer in Australia. No evidence has been provided to the Commission to demonstrate that Chinese manufacturers of silicon metal can seek competitive supply of electricity from a number of providers.

In respect of item c) above, the Commission is unable to discern the GOC's meaning. The Commission has made a finding of a subsidy in the form of the provision of electricity by a public body for less than adequate remuneration, and separately made a finding that the electricity costs reflected in the records of Chinese exporters of silicon metal do not reflect competitive market costs (which impacts the construction of a normal value using cost of production). The Commission acknowledges there is some overlapping effect of these findings in the calculation of the combined dumping and countervailing duties, but has accounted for this by removing the effect of the electricity subsidy from the dumping margins.

The Commission maintains its view that the cost of electricity in the records of the exporter does not reasonably reflect competitive market costs.

6.7.5 Calculation of uplift

To determine the competitive market costs for electricity, the Commission compared the benchmark tariff rate to tariff rates actually incurred by the Linan Group. The benchmark tariff rate was multiplied by the kWh actually used by the two manufacturing entities in the Linan Group during the investigation period, as verified by the Commission. This uplifted electricity cost was substituted for the actual cost of electricity verified by the Commission.

As set out in section 6.9.2 below, the calculation of the amount of the uplift applied to the Linan Group's costs was amended following SEF 237 due to the provision of additional information.

6.8 Determination of profit for constructed normal values in China

Subsection 45(2) of the Regulation¹⁹ – the primary provision – requires that, if reasonably practicable, profit for constructed normal values must be worked out using data relating to

¹⁹ Subsection 45(2) of the Regulation replaces subregulation 181A(2) of the *Customs Regulations* 1926.



the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

Accordingly, the Commission has calculated a weighted average net profit, measured as a percentage mark-up on full cost to make and sell, for the Linan Group, before performing the abovementioned amendment to the recorded costs incurred in relation to electricity.

6.8.1 Submission to SEF 237

The Linan Group submitted that the Commission's profit rate was overstated and differed to its own calculation of the net profit for Hua'an Linan and Guizhou Linan.

Firstly, the claim made by the Linan Group in relation to the actual profit rate applied in the Commission's calculation is incorrect. The submission refers to the profit for Hua'an Linan only as being the profit applied by the Commission to the overall constructed cost to make and sell. A weighted average profit, being a factor of both Hua'an Linan's and Guizhou Linan's profit, was applied by the Commission. This weighted average profit is significantly lower than the profit for Hua'an Linan alone.

Secondly, the Linan Group's calculation of profit is not in accordance with the legislative provision regarding determination of profit in a constructed normal value. In accordance with subsection 45(2) of the Regulation, the Commission conducted an ordinary course of trade test on all domestic sales of Hua'an Linan and Guizhou Linan. This test showed that greater than 20 per cent by volume of domestic sales of a number of grades were at a loss. The Commission has excluded these from its profit calculation and has only included sales in the ordinary course of trade. The Linan Group's calculation includes all sales and costs of the entities.

Lastly, the Linan Group's calculation of profit appears to be profit after tax. It is not appropriate to deduct tax when calculating the profit to be applied in determining normal values.

6.8.2 Commission's assessment

The Commission considers the profit rate it used for determining normal values in SEF 237 is appropriate and accurate. It has maintained the same rate of profit to calculate the dumping margin in this report.

6.9 Dumping margin assessment – the Linan Group

Export Prices

Export prices for the Linan Group were established under subsection 269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.



Normal Value

The Commission found that Hua'an Linan and Guizhou Linan sold silicon metal grades on the domestic market that were identical to grades exported to Australia.

Normal values were established in accordance with subsection 269TAC(2)(c) of the Act using Hua'an Linan's and Guizhou Linan's quarterly weighted average cost to make the goods exported to Australia (revised for electricity cost uplift) and domestic selling costs, by model, plus an amount for profit determined as outlined in Section 6.8 above. The following adjustments were made to the normal value in accordance with subsection 269TAC(9):

- Inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;
- Export fees and charges – it was found that export sales incur certain fees and charges that are not incurred on domestic sales. An upwards adjustment to the normal value was made for handling and other charges, harbour service fees and terminal handling charges;
- Trader SG&A – sales made through K Metal to the Australian market incurred additional SG&A costs that are not associated with domestic sales. An upwards adjustment was made for the additional SG&A expenditure to normal values for Hua'an Linan and Guizhou Linan based on K Metal's SG&A costs; and
- Non-refundable VAT – an upwards adjustment of 17 per cent was applied to the constructed normal value to account for the fact that the exporter was not entitled to any VAT rebate in relation to its exports of silicon metal.

The dumping margin was determined by comparing the weighted average export price over the whole of the investigation period with the weighted average normal value over the whole of the investigation period. The dumping margin for the Linan Group is 18.3 per cent.

6.9.1 Submission to SEF 237

The Linan Group submitted that there should be no uplift to its electricity costs. It claimed that over the whole of the investigation period Guizhou Linan actually paid more than the Commission's benchmark rate for electricity costs.

The submission by the Linan Group is captured under a heading 'Normal Value', although the Commission assumes that the Linan Group is claiming the Commission has incorrectly applied its findings on electricity to both the uplift to the normal value and the calculation of the subsidy benefit. The submission contains the following statements:



'Factually the situation is that 'Guizhou' actually paid,...more than the Commission's applied Tariff rate which when offset against the Hua'an applied Tariff rate increase of..., results in there being no subsidy benefit to the relevant production.'

And

'There should be no...uplift for any electricity benefit as the producers actually paid more than the bench [sic] rate applied and Normal Values should be adjusted accordingly.'

6.9.2 Commission's assessment

During the investigation the Commission visited the manufacturing premises of Hua'an Linan, but not Guizhou Linan, in order to verify the data contained in the questionnaire response. Hua'an Linan's data was verified to source documents and the data for Guizhou Linan was accepted at face value. Following the submission by the Linan Group to the SEF, the Commission sought copies of all Guizhou Linan's electricity invoices for the investigation period in order to verify the claim that it had paid more than the Commission's determined benchmark rate. The Excel table of electricity payments provided by Guizhou Linan in its questionnaire response indicated that in some months/periods the actual tariff rate per watt of electricity consumed was above the Commission's benchmark tariff rate.

Upon reconciling the invoices to the Excel table the Commission detected a number of discrepancies. The main ones were:

- for some payments, the total watts represented electricity consumed in one month however the total RMB amount included invoices for two months. This resulted in an incorrect high unit amount per watt paid for that period; and
- in each month, one of the invoices²⁰ included a separate charge represented in 'KVA' rather than watts. The Commission understands this to be a charge unrelated to electricity actually consumed, but related to a supply fee. The unit rate for this KVA charge was around 50 times higher than the tariff rate per unit of electricity consumed. Inclusion of these amounts in the electricity purchases table resulted in unduly high unit amounts per watt paid.

After correcting for these errors the Commission calculated that Guizhou Linan paid below the benchmark electricity tariff rate in each month of the investigation period for the consumption of electricity. The uplift to the Linan Group's electricity costs was accordingly re-calculated. The Commission re-calculated the dumping margin for the Linan Group using the revised uplift and the dumping margin for the Linan Group is assessed as 18.3 per cent (compared to 14.1 per cent in SEF 237).

²⁰ There were a number of invoices for electricity in each month of the investigation period.



Given the increase in the dumping margin (and subsidy margin) for the Linan Group, the Commission emailed the Linan Group on 29 April 2015 and attached its revised calculation. The Commission sought comment from the Linan Group on the new analysis as soon as possible, bearing in mind the deadline for provision of this report of 7 May 2015.

The Linan Group provided a response to the Commission on 5 May 2015. That response has been placed on the public record for the investigation. While the submission focusses on the revision to the subsidy rate, because it disputes the Commission's new finding in relation to electricity costs it is relevant to discuss in this section of the report.

The Linan Group claims that:

'...the best information available to the Commission is the verified, evidence based acceptable [sic], and independently audited accounting records of the Linan Group of companies of which 'Guizhou' is a member company...

'The Commission's verification visit findings in relation to the supply of electricity...were based on the actual money price paid and significantly, those factual electricity payments exceeded the so called GOC subsidy Tariff rate for the supply and consumption of electricity.

...

'Given the very purpose of a verification visit we consider it only reasonable to claim that the verification visit in July 2014 would be given far more weight than the producer's initial response in the [C]ommission's questionnaire...in this instance the amount actually paid by 'Guizhou' for the supply of electricity did not, and has not changed...

'Evidenced actual money price paid [sic], in our opinion, also 'outweighs' any consideration of invoices received.'

The above comments by the Linan Group appear to misconstrue the chain of events relating to the Commission's assessment of information provided to it by the companies in the Linan Group. To summarise:

- Guizhou Linan and Hua'an Linan, both manufacturers of silicon metal exported to Australia, completed individual exporter questionnaires;
- the Commission determined that Guizhou Linan and Hua'an Linan were part of the same group;
- the Commission made a decision to verify onsite at the premises of Hua'an Linan only. The content of Guizhou Linan's questionnaire response was accepted at face value;
- the outcome of the Commission's verification in relation to electricity as set out in the Commission's visit report refers only to verification of Hua'an's invoices and payments against the information in the questionnaire response;



- in order to address a submission to the SEF by the Linan Group, the Commission sought copies of all the Guizhou Linan's electricity invoices for the investigation period;
- in reviewing those invoices the Commission found discrepancies between the amounts on the invoice and the amounts provided in Guizhou Linan's questionnaire response, which was relied on by the Commission to calculate the dumping and subsidy margins in SEF 237.

Accordingly, the Commission has used data relating to costs actually incurred by Guizhou Linan (based on the invoices) in making its determination. If the Linan Group is claiming that the invoices are not a reflection of the actual amount paid, then no such evidence has been provided to the Commission. In the absence of such evidence the Commission considers the invoices to be primary evidence of the cost incurred by Guizhou Linan for electricity.

The Linan Group also claims that it understands that the separate charge for 'KVA' is based on the rate of consumption. As stated in the submission, the rate charged for 'KVA' is RMB 30 per unit. This compares to the tariff rate for the provision of electricity (as provided by the GOC in its questionnaire response) of around RMB 0.50 per unit. This latter rate aligns to the range of tariff rates the Commission observed in Guizhou Linan's electricity invoices for what the Commission considers is the consumption of electricity. It is clear the 'KVA' rate relates to some other type of supply. It is not relevant to the Commission's determination of whether Guizhou Linan has paid above or below the benchmark in relation to its electricity consumption.

Lastly, the Linan Group claims that the amount paid for electricity and consumption included 17% VAT and that the Commission has not taken this into consideration. This is incorrect. The electricity invoices provided to the Commission clearly show the watts consumed, the tariff rate, an amount in RMB that is the watts multiplied by that tariff rate and then the VAT is added after that. The Commission has used the VAT exclusive amount in its calculation. In any event, if the amount that was used by the Commission included VAT this would understate rather than overstate the electricity benefit (and similarly overstate the amount by which actual electricity costs are above the benchmark).

6.10 Dumping margin assessment – uncooperative and all other exporters

Uncooperative and all other exporters did not provide information on export price or normal value to the investigation. These exporters did not make themselves known to the Commission and did not respond to the Exporter Questionnaire.

Export Prices

Export prices for uncooperative and all other exporters were established under subsection 269TAB(3) having regard to all relevant information. The export prices were obtained from the ACPBS import database at the FOB level.



Normal Value

The Commission examined and considered a range of options for determining normal value for uncooperative and all other exporters, including:

- normal value data from the application; and
- normal value data from the Linan Group.

The normal values submitted in the application were constructed based on information that Simcoa obtained from a company that is claimed to be an independent authority on cost economics for, amongst others, the silicon industry. This report contains cost economics data for silicon manufactured in the key provinces in China on an annual basis. The Silicon Cost Data report states that Yunnan province in China contains the highest volume of silicon metal output. Simcoa used costs relating to this province in its constructed normal value. Because the report does not include the cost of interest on fixed capital, depreciation, amortization, profit, income taxes, corporate overhead, research and development, Simcoa added these costs based on its own costs in 2012/13. Simcoa added a profit of 5 per cent on the basis that the CBSA found that Chinese domestic profit in the silicon industry is low.

While these normal values were found by the Commission to be suitable for initiation purposes, it has since undertaken verification of exporter data in China supplied by the cooperating exporter. As explained in the Commission's *Dumping and Subsidy Manual*, the Commission considers that where there are cooperating and uncooperative exporters, the most directly relevant and therefore best information would be that obtained from those cooperating.

After having regard to all relevant information, normal values for all uncooperative and all other exporters were established in accordance with subsection 269TAC(6). Specifically, the Commission used the normal value established for the Linan Group.

6.10.1 Submission to SEF 237

Pacific Aluminium submitted that the Commission's calculation of the dumping margin for uncooperative exporters was erroneous. In support of its claim it set out what it considered was the weighted average export price 'verified by the ADC' in relation to the Linan Group. It also provided a calculation of the weighted average export price for a particular uncooperative exporter.

Pacific Aluminium calculates that the difference between these two weighted average export prices is only 0.76 per cent so if the normal value for the Linan Group was used for uncooperative exporters then the dumping margin for uncooperative exporters could not be 6.4 per cent different to that for the Linan Group.

6.10.2 Commission's assessment



The Commission observes that the data supplied by Pacific Aluminium in relation to the weighted average export price for the uncooperative exporter is unverified. The data set out in Confidential Attachment 8 to Pacific Aluminium's submission does not align with data obtained from the ACBPS import database.

In addition, as set out above, a weighted average export price for uncooperative exporters was established using data from the ACPBS import database. This data included exports from suppliers/exporters other than the exporter that was the focus of Pacific Aluminium's submission.

6.10.3 Dumping margins

The dumping margin for uncooperative and all other exporters from China was established in accordance with subsection 269TACB(2)(a), by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for uncooperative and all other exporters is 27 per cent²¹.

6.11 Volume of dumped exports

Pursuant to subsection 269TDA(3), the Commissioner must terminate the investigation if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as 3 per cent of the total volume of goods imported into Australia over the investigation period.

Based on the data from the ACBPS import database, the Commission is satisfied that, when expressed as a percentage of the total imported volume of the goods, the volume of dumped goods from China is greater than 3 per cent and therefore not negligible.

²¹ The dumping margin for uncooperative exporters in SEF 237 was assessed as 22.5%. The increase arises from the revised normal value established for the Linan Group in this report.



7 SUBSIDY INVESTIGATION

7.1 Findings

The Commission found that countervailable subsidies have been received in respect of silicon metal exported to Australia from China during the investigation period. The amount of the subsidies was not negligible.

The Commission found that the volume of subsidised goods exported to Australia during the investigation period was not negligible.

7.2 Investigated programs

Simcoa alleged in its application that Chinese producers of the goods benefited from a number of countervailable subsidies. These alleged subsidies referred to programs for the provision of electricity, grants, and beneficial taxation schemes.

7.3 Summary of countervailable programs

After assessing all relevant information available, the Commission has found that countervailable subsidies have been received in respect of silicon metal exported to Australia from China, under 38 countervailable subsidy programs.

The findings in relation each investigated program are outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Electricity provided by government at less than adequate remuneration	Remuneration	Yes
2	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Income Tax	No
3	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Income Tax	No
4	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Income Tax	No
5	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Income Tax	No
6	Preferential Tax Policies in the Western	Income Tax	Yes



Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
	Regions		
7	Land Use Tax Deduction	Income Tax	Yes
8	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	Yes
9	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff & VAT	Yes
10	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
11	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
12	Superstar Enterprise Grant	Grant	Yes
13	Research & Development (R&D) Assistance Grant	Grant	Yes
14	Patent Award of Guangdong Province	Grant	No
15	Innovative Experimental Enterprise Grant	Grant	Yes
16	Special Support Fund for Non State-Owned Enterprises	Grant	Yes
17	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Grant	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
20	Water Conservancy Fund Deduction	Grant	Yes
21	Wuxing District Freight Assistance	Grant	Yes
22	Huzhou City Public Listing Grant	Grant	Yes
23	Huzhou City Quality Award	Grant	Yes
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
25	Wuxing District Public List Grant	Grant	Yes
26	Anti-dumping Respondent Assistance	Grant	Yes
27	Technology Project Assistance	Grant	Yes
28	Capital injections	Equity	Yes
29	Environmental Protection Grant	Grant	Yes
30	High and New Technology Enterprise Grant	Grant	Yes



Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
31	Independent Innovation and High-Tech Industrialization Program	Grant	Yes
32	VAT Refund on Domestic Sales by Local Tax Authority	Tariff & VAT	No
33	Environmental Prize	Grant	Yes
34	Jinzhou District Research and Development Assistance Program	Grant	Yes
35	Grant for Industrial enterprise energy management centre construction demonstration project Year 2009	Grant	Yes
36	Key industry revitalization infrastructure spending in budget Year 2010	Grant	Yes
37	Provincial emerging industry and key industry development special fund	Grant	Yes
38	Environmental protection fund	Grant	Yes
39	Intellectual property licensing	Grant	Yes
40	Financial resources construction special fund	Grant	Yes
41	Reducing pollution discharging and environment improvement assessment award	Grant	Yes
42	Comprehensive utilization of resources - VAT refund upon collection	Tariff & VAT	Yes
43	Grant of elimination of out dated capacity	Grant	Yes
44	Grant from Technology Bureau	Grant	Yes

Table 5 – Assessment of subsidy programs

7.3.1 Submission to SEF 237

Simcoa questioned the Commission's finding that Programs 2, 3 and 32 were not countervailable in respect of the goods. Simcoa points to information on the website for investment in Yunnan province that indicates available investment incentives, including income tax exemptions for certain enterprises.

7.3.2 Commission's assessment

Previous investigations by the Commission determined that the legal basis for Programs 2 and 3 was the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991*. This was repealed and replaced by the *Enterprise Income Tax Law of the People's Republic of China 2008*.

The Commission considers Programs 2 and 3 were subsidy programs of the central government as opposed to regional or provincial government programs. It appears based on the information supplied in Simcoa's submission that the various incentives are offered by the government of Yunnan province. Incentives such as these would need to be



separately examined by the Commission to determine their legal basis, eligibility criteria, specificity and ultimately whether they were countervailable subsidies. The Commission considers the information presented in relation to these incentives was provided too late in the investigation (that is, following the publication of SEF 237) for the Commission to properly consider.

In relation to Program 32, the Commission found this program to be countervailable in the investigation of the subsidisation of aluminium zinc coated steel and galvanised steel. The Commission found that this program was specific because it was limited to enterprises that achieve timely targets for the production and export of automotive steel sheets. The Commission therefore considers this program not to be countervailable in respect of silicon metal.

7.4 Subsidy margins

7.4.1 Cooperating exporters

The Commission found that the Linan Group received financial contributions in respect of the goods that conferred a benefit under one program, being the provision of electricity at less than adequate remuneration.

7.4.2 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 and determines that uncooperative exporters have received financial contributions that have conferred a benefit under 38 programs found to be countervailable in relation to silicon metal.

7.4.3 Submission to SEF 237 and Commission's assessment

Pacific Aluminium submitted that the difference between the subsidy margin assessed by the Commission for the cooperating exporter and uncooperative exporters is excessive and that a more reasonable position would be for the Commission to conclude that uncooperative exporters received the same subsidies as the Linan Group.

Pacific Aluminium states that 'neither the ADC nor Simcoa, have produced evidence that supports the proposition that uncooperative exporters received all of the financial contributions contemplated'. The Commission provided all exporters, and the GOC, an opportunity to present evidence to it in respect of subsidies received. Uncooperative exporters chose not to avail themselves of that opportunity and as such the Commission has based its assessment on all available information.

As set out in Non-Confidential Appendix 3, the Commission considers that in the absence of cooperation by exporters or the GOC it is likely that uncooperative exporters meet the eligibility criteria for all these programs, have accessed these programs, and therefore received financial contributions under these programs.



7.4.4 Margins

Exporter / Manufacturer	Subsidy margin
Linan Group	6.3%
Uncooperative and all other exporters	37.6%

Table 6 below shows the Commission's individual subsidy margin calculations for the Linan Group and for uncooperative and all other exporters:

Table 6 - Subsidy margins for all exporters

The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Non-Confidential Appendix 3**.

The calculation of subsidy margins for the Linan Group and uncooperative exporters is at **Confidential Appendix 2**.



8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Findings

Based on an analysis of the information contained in the application and obtained and verified during the Commission's verification visit with Simcoa, the Commissioner is of the view that the Australian industry has experienced injury in the form of:

- lost sales volumes;
- reduced market share;
- reduced revenue;
- price depression;
- price suppression;
- reduced profit; and
- reduced profitability.

8.2 Introduction

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

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

8.3 Approach to injury analysis

The injury analysis detailed in this section is based on the verified financial information submitted by Simcoa and import data gathered from importers and from the ACBPS import database.

Simcoa provided production, cost and sales data for silicon metal (as covered by the goods description).

The Commission examined injury based on tonnes produced and sold by the Australian industry and tonnes exported to Australia. The range of products included in the investigation included different grades and finishes, being lump, granules and fines of silicon metal.



8.4 Volume effects

8.4.1 Sales volumes

The following graph demonstrates Simcoa's domestic sales volumes for silicon metal by calendar year over the injury analysis period. Figure 4 shows the consistent decline of Australian sales volumes over the injury analysis period.

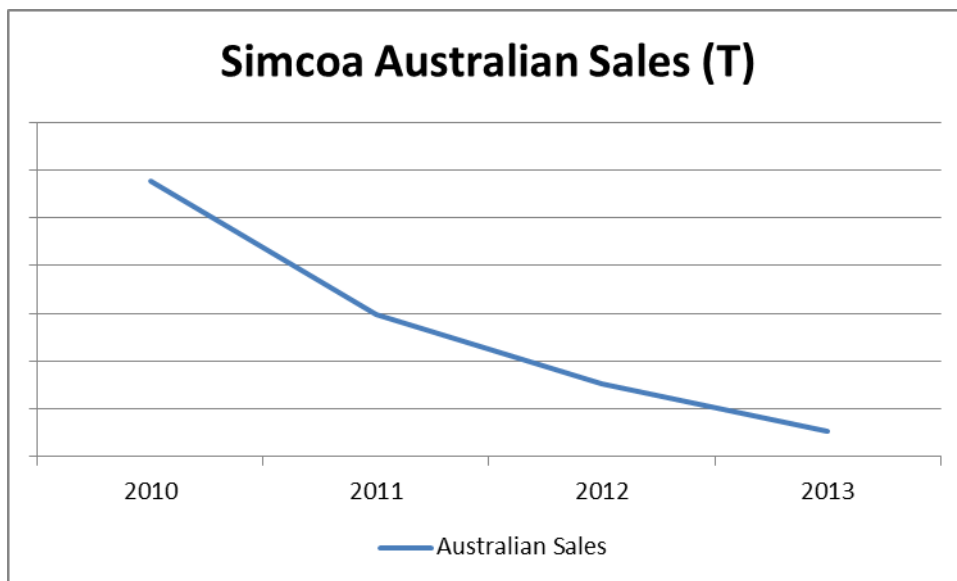


Figure 2: Australian Industry domestic sales volume (T)

8.4.2 Market Share

The following graph shows movements in market shares, including Simcoa's market share, in the Australian market for silicon metal for the 2010 to 2013 calendar years.

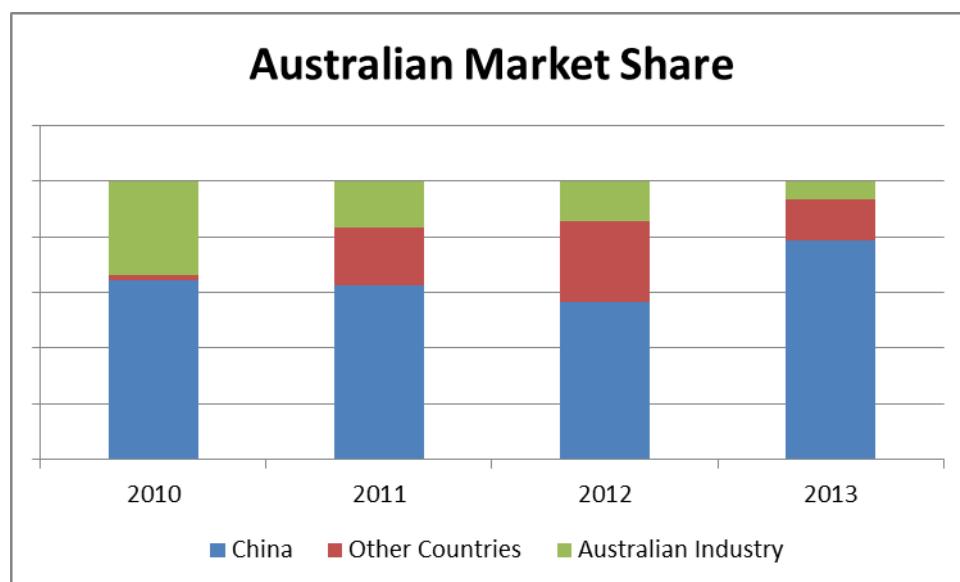


Figure 3 Australian market share (T)

Figure 3 demonstrates that Simcoa's share of the Australian market has constantly declined over the injury analysis period. Exports from China have fluctuated over the same period with a relatively large increase in market share occurring during the investigation period.

8.4.3 Market Size

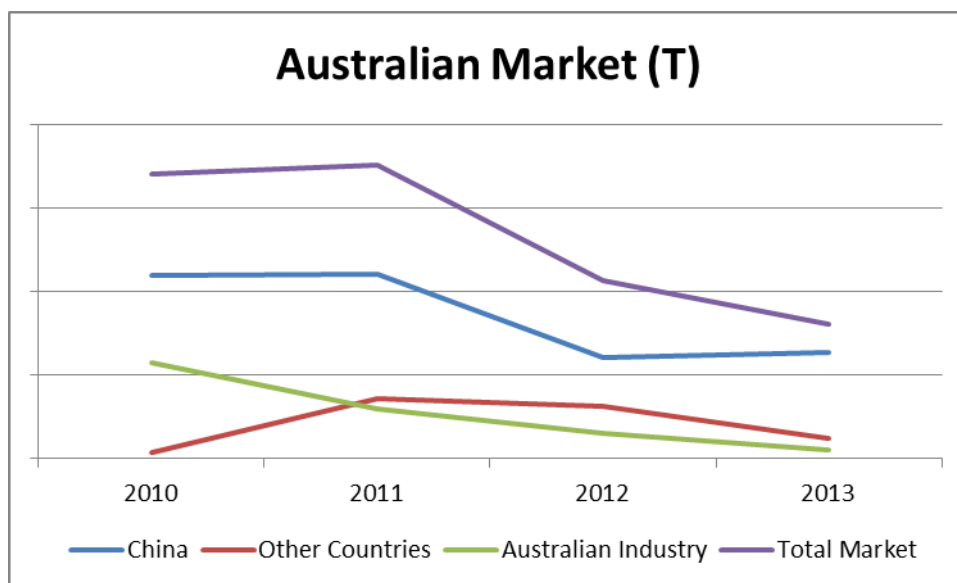


Figure 4: Australian market for silicon metal (T) by calendar year

Figure 4 shows the overall decline in the Australian market for silicon metal over the injury analysis period. Overall, the market decreased by approximately 53 per cent over the injury analysis period and decreased by approximately 24 per cent from 2012 to 2013.

Notwithstanding the overall market decline, exports from China increased their market share in the declining period between 2012 and 2013 while the Australian industry's market share decreased consistently over the entire injury analysis period.

8.4.4 Conclusion – volume effects

Based on this analysis, there are sufficient grounds to support the claim that the Australian industry has lost sales volume and market share.

8.5 Price suppression and depression

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

The following graphs show movements in Simcoa's total and unit revenues and costs in respect of domestic sales of silicon metal for calendar years 2010 to 2013. The first graph depicts total net revenues and total CTMS, while the second shows unit prices and unit CTMS for domestic sales of silicon metal.

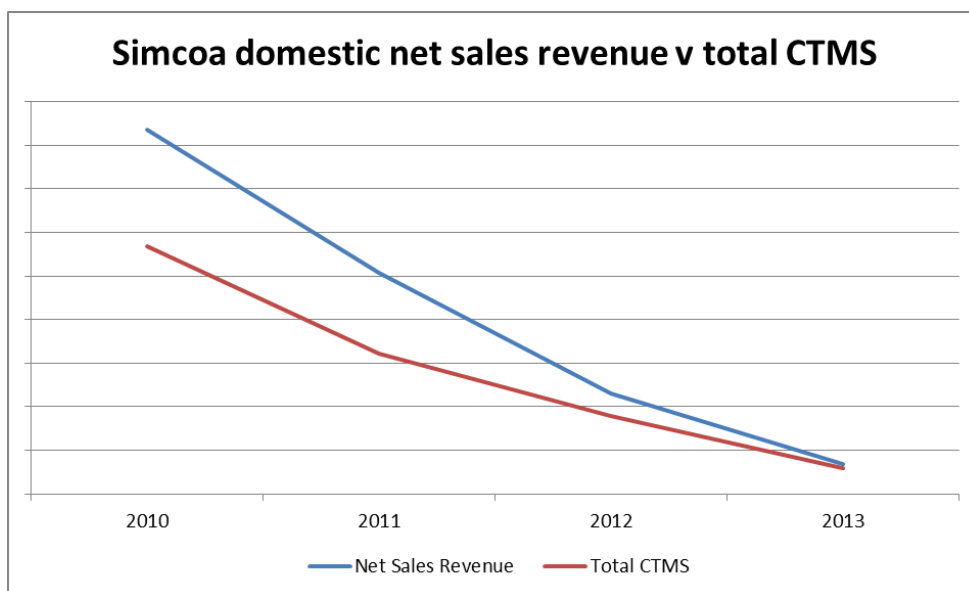


Figure 5: Simcoa total domestic sales revenue v total CTMS

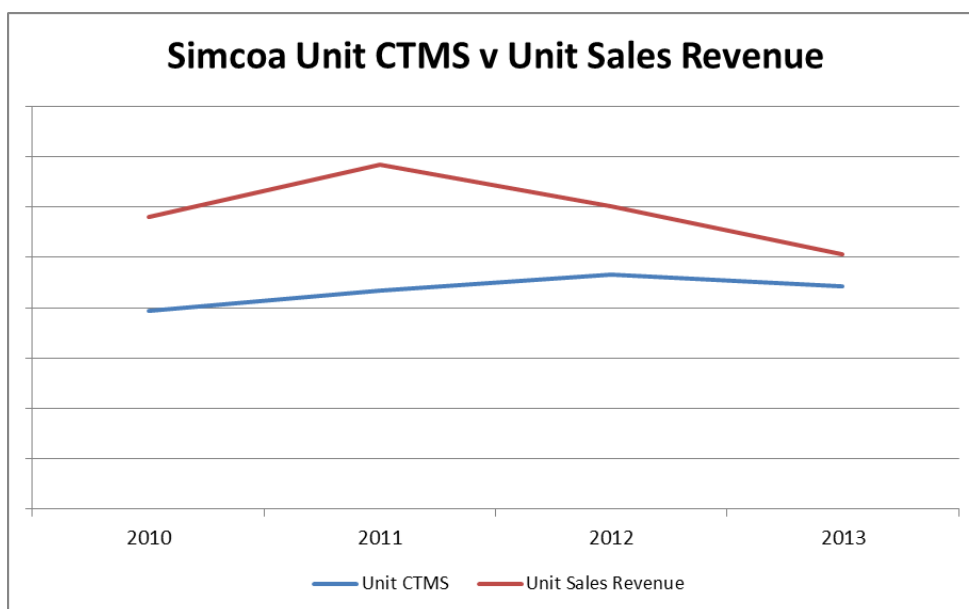


Figure 6: Simcoa unit CTMS v unit sales revenue

The graphs show that unit prices, after an initial increase in 2011, have declined overall during the injury analysis period while total net revenues have fallen. Unit costs have increased overall and total costs have decreased but at a lesser rate than revenues.

8.5.1 Conclusion – price effects

Based on the analysis outlined in Figures 5 and 6 above, there are sufficient grounds to support the claim that the Australian industry has suffered price depression and price suppression.

8.6 Profits and profitability

The following graph shows movements in Simcoa's total profits and profitability (profits measured as a percentage of revenue) for domestic sales of silicon metal from calendar year 2010 to 2013.

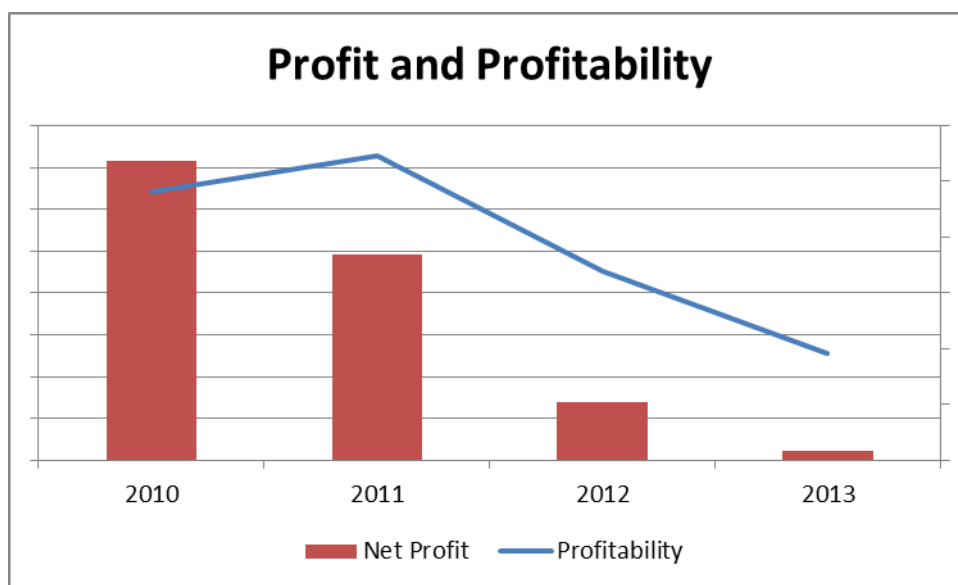


Figure 7: Simcoa's domestic sales profit and profitability

The graph shows significant decreases in profits together with a steady decline of profitability from 2011.

8.6.1 Conclusion – profit and profitability

Based on analysis of Simcoa's operations, there are sufficient grounds to support the claim that the Australian industry has experienced declines in profit and profitability.

8.7 Other economic factors

Simcoa completed an Appendix A7 as part of its application for silicon metal from calendar years 2010 to 2013. Simcoa claims that it has experienced injury in respect of other economic/injury factors. The Commission has reviewed Confidential Appendix A7 and identified the following trends for other injury factors in respect of sales of silicon metal.

8.7.1 Assets

The value of assets increased each calendar year 2010-2013 substantially over the four year period. Accordingly the Commission found no injury has occurred in the form of reduced assets.



8.7.2 Capital investment

Capital investment in silicon metal fluctuated over the calendar years 2010-2013 with a major increase occurring in 2011. However there has been a reduction in capital investment overall.

8.7.3 Revenue

Revenue from silicon metal products increased overall, that is including both domestic and export sales, from calendar years 2010 to 2013. Revenue from domestic sales of silicon metal consistently decreased throughout the period.



9 HAVE DUMPING AND SUBSIDIES CAUSED MATERIAL INJURY?

9.1 Findings

The Commissioner finds that the silicon metal exported to Australia from China at dumped and subsidised prices caused material injury to the Australian industry producing like goods.

9.2 Introduction

In the case of concurrent dumping and subsidisation, where it is established that the exported goods are both dumped and subsidised, there is no need to quantify separately how much of the injury being suffered is the result of dumping or subsidisation. The Commissioner has examined whether the exports of silicon metal from China to Australia, at dumped and subsidised prices, have caused material injury to the Australian industry producing like goods.

The Commissioner has established that during the investigation period exports of silicon metal were dumped and subsidised and that the Australian industry has suffered injury.

9.3 Dumping

The Commissioner found that silicon metal exported to Australia from China was dumped, with dumping margins from 18.3 per cent to 27 per cent.

9.4 Subsidy

The Commissioner found that all silicon metal exported to Australia from China was subsidised during the investigation period. The subsidy margins ranged from 6.3 per cent to 37.6 per cent.

9.5 Price effects

Following an increase in unit price in 2011, Simcoa's domestic selling price of silicon metal decreased significantly in 2012 and 2013. Based on data from the ACBPS import database, the FOB export prices of silicon exported from China followed a similar trend.

The Commission calculated the weighted average into store unit price for imports by the Pacific Aluminium group (the predominant purchaser of silicon in the Australian market) during the investigation period and found that it undercut Simcoa's selling price by around 6.5 per cent.



9.5.1 Submission to SEF 237

Pacific Aluminium submitted that 'it is difficult to draw any clear conclusion on price suppression/depression from the graphs' because:

- Revenue depends on the mix of customers, where they are located and the terms on which it is delivered; and
- The cost to make and sell may have been influenced by Simcoa's commissioning of new capacity.

9.5.2 Commission's assessment

The Commission is satisfied that the analysis set out in respect of price suppression and depression is not affected by the customer mix and delivery terms, or the commissioning of new plant. These factors have been accounted for by the Commission in its analysis. In particular the increase in unit cost to make and sell is impacted more by Simcoa's declining domestic sales volume than any cost impacts arising from the commissioning of the new plant.

9.6 Volume effects

Simcoa's biggest domestic customer historically is the Pacific Aluminium group comprising Rio Tinto's Bell Bay, Boyne and Tomago smelters. One of Simcoa's other significant customers at the commencement of the injury analysis period was Hydro Kurri Kurri.

Pacific Aluminium

Pacific Aluminium's purchases represented the majority of the Australian market for silicon metal in 2013.

In 2010, Pacific Aluminium sourced a significant portion of its silicon metal requirements from Simcoa. In 2011 this decreased significantly however Simcoa's sales appear to have been replaced by imports from countries other than China. In 2012, Simcoa's share of Pacific Aluminium's business was replaced by imports from both China and other countries. In 2013, Pacific Aluminium sourced a greater portion of its requirements, which itself had decreased in volume since 2010, from China.

At the visit to Pacific Aluminium it stated that in 2013, as a result of research and development, it considered that a large proportion of its silicon requirements could be met using a lower grade of silicon, grade 441. Pacific Aluminium claimed that it approached Simcoa to provide a quote for this grade but was advised that Simcoa could not make this grade. It provided evidence of a quote being provided for a higher grade, which it also required, and which it ultimately sourced from China as well as communication with Simcoa about grades 441 and 553.

Simcoa states that due to the quality of the raw material it can source for silicon production it is a high quality producer of silicon generally. It claims that it can produce



whatever grade is required by a customer but that it is naturally of higher quality than might be produced in China. Simcoa claims that the only reason Pacific Aluminium decided to purchase Grade 441 silicon from China is that Simcoa was unable to compete with the dumped and subsidised prices being offered by Chinese manufacturers.

Hydro Kurri Kurri

At the commencement of the injury analysis period Hydro Kurri Kurri was a significant customer in terms of Simcoa's domestic sales of silicon.

Hydro Aluminium closed the Kurri Kurri aluminium plant in 2012, causing purchases from this customer to cease. This loss of sales volume is therefore not attributable to dumped or subsidised imports.

Other domestic customers

After Pacific Aluminium and Hydro Aluminium, Simcoa's remaining domestic sales volume is made up of a number of small purchasers. The total sales volume to these customers in 2010 has decreased only marginally in 2013.

9.6.1 Submission to SEF 237

Pacific Aluminium submitted that it would be erroneous for the Commission to conclude that Simcoa had suffered lost sales volume on the basis of grade 441. Pacific Aluminium disputes the Commission's finding that Simcoa produces a 'like good' to grade 441.

Pacific Aluminium also analyses Simcoa's overall revenue and profitability (ie from both domestic and export sales) and states that revenue has increased between 2010 and 2013.

9.6.2 Commission's assessment

The Commission's position in relation to grade 441 is set out at section 3.5.2. The Commission considers Simcoa is able to supply goods that are like to the imported grade 441. Further, as set out in section 9.7 below, the Commission has established that even if it was assumed that not all of Pacific Aluminium's requirements could be met by Simcoa (a conclusion not made by the Commission), the loss of other volume to Pacific Aluminium's purchases of dumped and subsidised imports still caused material injury to Simcoa.

9.7 Materiality of injury

9.7.1 Analysis

Given that the loss of sales volume to Hydro Aluminium cannot be attributed to dumped and subsidised imports the Commission has assessed whether the loss of volume to Pacific Aluminium has caused material injury to Simcoa. While interested parties have disputed that the lost volume is attributable to dumping and subsidisation based on claims



about the grades produced by Simcoa and required by Pacific Aluminium, the analysis of materiality has been conducted on the basis that the entirety of the lost volume can be linked to dumping and subsidisation.

The Commission has firstly assessed the potential lost profit to Simcoa assuming that it was able to obtain the entirety of Pacific Aluminium's custom in 2013. This assumption is not without flaw given that Pacific Aluminium has historically purchased some of its silicon requirement from imports, including the period prior to when Simcoa claims dumping and subsidisation commenced.

On the assumption that Pacific Aluminium purchased all its silicon metal from Simcoa in 2013, the Commission has calculated the potential lost profit as follows:

- Multiplied the lost volume to Pacific Aluminium by the unit profit Simcoa actually achieved on its domestic sales in 2013; and
- Accounted for the lower margin achieved on export sales that would not have been incurred if that volume of sales was diverted from export to domestic sales. This is based on the fact that Simcoa was operating at full capacity in 2013.

This analysis shows that the loss of profit represented around 20 per cent of Simcoa's actual profit in 2013.

As stated above the Commission considers there is reason to doubt whether Simcoa could expect to achieve 100 per cent of Pacific Aluminium's business in the absence of dumping and/or subsidisation given Pacific Aluminium's historical purchasing pattern. The Commission has calculated an alternative measure of the materiality of any injury assuming that Pacific Aluminium would have purchased from Simcoa in 2013 in the same proportions that it purchased in 2010, the commencement of the injury analysis period. Applying the same methodology as above, the analysis shows that the loss of profit still represents around 10 per cent of Simcoa's actual profit in 2013.

The Commission considers the above analysis demonstrates that the lost volume, and consequent lost revenue and profits, represents material injury to Simcoa.

9.7.2 Submission to SEF 237

Pacific Aluminium queried whether the Commission had given too much weight to domestic sales as opposed to total sales when analysing Simcoa's profit and profitability. It also disputed the Commission's calculation of lost profit based on an assumption that Pacific Aluminium would purchase its entire requirement from Simcoa in the absence of dumping and subsidisation.

9.7.3 Commission's assessment

The analysis set out at section 9.7.1 above shows that the even if it was assumed that not all of Pacific Aluminium's requirements could be met by Simcoa (a conclusion not made by the Commission), the loss of other volume to Pacific Aluminium's purchases of dumped and subsidised imports still caused material injury to Simcoa in terms of lost



profit of around 10 per cent. This analysis was conducted using Simcoa's total profit, ie including both domestic and export sales.

9.8 Injury caused by factors other than dumping and subsidisation

Under subsection 269TAE(2A) of the Act, the Parliamentary Secretary must consider whether any injury to an industry is being caused or threatened by a factor other than the exportation of those goods. Any such injury must not be attributed to the dumping and subsidisation.

The Commissioner has considered all factors outlined in subsection 269TAE(2A) and provides the following summary of relevant provisions.

9.8.1 Volume and prices of like goods that aren't dumped and subsidised – subsections 269TAE(2A)(a) and (b)

In its application, Simcoa identified China as a major source of supply of silicon metal. The Commission's assessment of ACBPS import data has shown that no other countries represent significant sources of supply of silicon metal to Australia during the investigation period such that prices or volumes from those countries would impact the Australian industry's economic condition.

9.8.2 Contractions in demand or changes in patterns of consumption – subsection 269TAE(2A)(c)

As set out earlier in this report, the Australian market for silicon metal decreased significantly over the injury analysis period. One of Simcoa's key customers closed its plant and this loss of volume has not been attributed by the Commission to dumped and subsidised imports.

A key change in the pattern of consumption during the injury analysis period is the change to the mix of grades purchased by Pacific Aluminium (as discussed in section 9.6). As set out in that section, the Commission considers that while Pacific Aluminium altered its requirements in terms of grade, Simcoa was able to produce and supply like goods to the goods ultimately imported by Pacific Aluminium at dumped and subsidised prices.

It is therefore considered that contractions in demand or changes in patterns of consumption do not displace the injury experienced by Simcoa during the examined period that is found to have been caused by dumping and subsidisation.

9.9 Conclusion

The Commissioner has established a connection between imports of silicon metal from China at dumped and subsidised prices and the fact that prices of silicon metal at dumped and subsidised prices sold in Australia undercut the Australian industry prices.



The price undercutting and associated price pressures have contributed to loss of volume as well as price depression and suppression for the Australian industry, which has resulted in lower profitability.

The Commissioner considers that there aren't any other possible causes of injury that detract from the assessment that dumping and subsidisation have caused material injury to the Australian industry.

The Commissioner finds that dumped or subsidised imports of silicon metal imported to Australia from China have caused material injury to the Australian industry producing like goods.

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10 WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?

10.1 Findings

The Commissioner finds that exports of silicon metal from China in the future may be at dumped and subsidised prices and that continued dumping and subsidisation may cause further material injury to the Australian industry.

10.2 The Commissioner's assessment

10.2.1 Will dumping continue?

The Commission's dumping analysis shows that silicon metal exported to Australia from China during the investigation period were at dumped prices, with dumping margins ranging from 18.3 per cent to 27 per cent.

The Commission notes that Pacific Aluminium's imports have a significant share and influence in the Australian market hence importations of the goods from China are likely to continue. Taking into account the established routes to market, the Commission considers that dumping will continue if anti-dumping measures are not imposed.

10.2.2 Will subsidisation continue?

The Commission found that silicon metal exported to Australia from China during the investigation period were subsidised, with subsidy margins ranging from 6.3 per cent to 37.6 per cent.

The Commission considers that no evidence exists to show that countervailable subsidisation of Chinese products will cease in its entirety in the future and it is therefore considered that silicon metal exporters will likely continue to receive financial contributions under at least some of the identified countervailable subsidy programs. In particular, it is considered the existence and accessing of Program 1 (electricity at less than adequate remuneration) will continue in future and is thus likely to benefit silicon metal exporters. This program is the program under which the majority of benefit to the cooperating silicon metal exporter has been observed during the investigation period.

It is therefore considered that subsidisation will continue in the future.

10.2.3 Will material injury continue?

The Commissioner has reviewed the Australian industry's performance over the injury analysis period and has made a finding that silicon metal exported at dumped and subsidised prices has caused material injury to the Australian industry.



The Commissioner considers that a continuation of price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact on the Australian industry. The Commission considers that this impact may be particularly evident in price undercutting and reduced volume, revenue, profits and profitability.

Based on the available evidence, the Commission finds that exports of silicon metal from China in the future may be at dumped or subsidised prices and that continued dumping or subsidisation may cause further material injury to the Australian industry.



11 NON-INJURIOUS PRICE

11.1 Findings and recommendations

The Commissioner is satisfied that:

- there is a situation in the market that makes the domestic selling price of silicon metal in China unsuitable for the purpose of determining normal value under subsection 269TAC(1) of the Act²²;
- the goods have been in receipt of countervailable subsidies; and
- the country in relation to which the countervailable subsidy has been provided has not complied with Article 25 of the *SCM Agreement* for the compliance period²³.

Accordingly, the Commissioner considers that subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act apply and therefore, the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser rate of duty under subsections 8(5BA) and 10(3D) of the Dumping Duty Act.

The Commissioner therefore recommends that the Parliamentary Secretary:

- exercise the discretion applying under subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act to not have regard to the desirability of fixing a lesser rate of duty; and
- apply the full dumping and subsidy margins determined in this report to any interim dumping duty and interim countervailing duty imposed in relation to silicon metal exported to Australia from China.

The Commissioner notes that notwithstanding this recommendation the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty.

11.2 Relevant legislation

Duties²⁴ may be applied where the Parliamentary Secretary is satisfied that dumped or subsidised exports of the goods to Australia have caused or threatened to cause material injury to the Australian industry producing like goods.

²² In terms of subsections 8(5BAAA)(a) of the Dumping Duty Act in relation to dumping duty and subsection 10(3DA)(c) of the Dumping Duty Act in relation to countervailing duty.

²³ In terms of subsections 8(5BAAA)(c) of the Dumping Duty Act in relation to dumping duty and subsection 10(3DA)(a) of the Dumping Duty Act in relation to countervailing duty.

²⁴ In the form of a dumping duty notice under subsection 269TG(1) or (2) of the Act and a countervailing duty notice under subsection 269TJ(1) or (2) of the Act.



Under section 269TACA of the Act, the non-injurious price of the goods exported to Australia is the minimum price necessary to prevent material injury caused, or threatened to be caused, to the Australian industry by dumping or subsidisation of the goods.

Where the Parliamentary Secretary is required to determine both interim dumping duty and interim countervailing duty, subsection 8(5BA) of the Dumping Duty Act applies. Subsection 8(5BA) requires the Parliamentary Secretary, in determining the interim dumping duty payable, to have regard to the 'lesser duty rule' which requires consideration of the desirability of fixing a lesser amount of duty that does not exceed the non-injurious price. That is, a duty that is less than the full amount of the dumping margin but is sufficient to prevent material injury to Australian industry.

Similarly, in relation to the determination of interim countervailing duty, subsection 10(3D) of the Dumping Duty Act is applicable and requires the Parliamentary Secretary to have regard to the lesser duty rule in relation to interim countervailing duty.

However, pursuant to subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Parliamentary Secretary is not required to have regard to the lesser duty rule where one or more of the following circumstances apply²⁵:

- where the normal value of the goods has not been established in accordance with subsection 269TAC(1) of the Act due to the finding of a market situation under subsection 269TAC(2)(a)(ii) of the Act;
- the Australian industry in respect of like goods consists of at least two small-medium enterprises; and
- where countervailable subsidies have been received in respect of the goods, the country in relation to which the subsidy has been provided has not complied with Article 25 of the SCM Agreement for the compliance period.

Article 25 of the SCM Agreement requires that WTO members are to notify the WTO of any specific subsidies (as defined in Articles 1 and 2) that are granted or maintained within their territories.

The Annual Report of the Committee on Subsidies and Countervailing Measures (the Committee) includes, in separate annexures to the Report, the status of notifications by Members for relevant reporting periods on a biennial basis (reflecting the above decision of the Committee that new and full notifications should be submitted every two years). These reports are the primary source of information for the Commission in making determinations regarding compliance with the subsidy notifications.

²⁵ Subsections 8(5BAAA)(a) to (c) of the Dumping Duty Act in relation to the calculation of dumping duty and subsections 10(3DA)(a) to (c) of the Dumping Duty Act in relation to the calculation of countervailing duty.



The Committee's Report dated 3 November 2014 indicates that China has not submitted new and full subsidy notifications since 2011.

11.3 Final assessment of NIP

As outlined in Chapter 6 and Non-confidential Appendix 1, the Commission has found a market situation exists in relation to domestic sales of silicon metal in China and for this reason normal value cannot be determined under subsection 269TAC(1). In addition, the Commissioner is satisfied that the country in relation to which the subsidies were provided has not complied with Article 25 of the SCM Agreement for the compliance period.

Accordingly, in this investigation, the Commissioner considers that subsections 8(5BAAA)(a) and (c), and subsections 10(3DA)(a) and (c) of the Dumping Duty Act apply and as a result, the Parliamentary Secretary is not required to consider the lesser duty rule under subsections 8(5BA) and 10(3D) of the Dumping Duty Act.

In this case, the Commissioner recommends that the full dumping and subsidy margins determined in this report be applied to any interim dumping duty and interim countervailing duty taken in relation to silicon metal exported to Australia from China. Given this recommendation a NIP has not been calculated.



12 ANTI-DUMPING MEASURES

12.1 Proposed measures

12.1.1 Form of measures

The forms of duty available when implementing measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* 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).

In SEF 237 the Commission recommended that interim dumping duty and interim countervailing duty be calculated ad valorem (i.e. a proportion of export price).

Submission to SEF 237

Simcoa submitted that the combination method of fixed and variable duty is the most effective measure 'in a market of falling export prices (as is currently the case)'. It also states that '(w)here the measures are not significant (in quantum), it is relatively easy for the exporter to further reduce export prices by the amount of the determined dumping margin'.

Commission's assessment

The combined dumping and countervailing duty payable (after accounting for the double count of Program 1) based on the Commission's findings in this report ranges between 18.3 per cent and 58.3 per cent. The Commission considers this significant enough in quantum such that exporters are unlikely to artificially reduce export prices in order that importers will pay less duty.

Simcoa advised the Commission at its verification visit that global supply and demand determine the major variance in the price of silicon metal over time. The Commission considers the implementation of a fixed and variable method of duty will unduly penalise exporters in an environment of genuinely falling prices due to the impacts of demand and supply.

12.1.2 Combined measures

Noting the recommendation that the lesser duty rule not be applied, the Commission recommends that the level of interim countervailing duties proposed for silicon metal exported from China be the full margin of countervailable subsidisation in the case of all exporters.



In relation to interim dumping duties, the Commission notes that in the case of silicon metal, the calculation of combined dumping and countervailing duties is not simply a matter of adding the reported dumping and subsidy margins together for any given exporter, or group of exporters. This is due to the fact that the Commission has recommended that:

- the normal value of silicon metal exported to Australia from China be constructed under subsection 269TAC(2)(c) and that, as part of this construction, an uplift for electricity costs incurred by Chinese exporters of those goods should be applied to ensure that these costs are reasonably representative of competitive market costs (refer to Chapter 6); and
- Program 1 - Electricity Provided by the Government at Less than Fair Market Value, is a countervailable subsidy received by certain exporters, the benefit for which has been determined by establishing the difference between the electricity tariff actually paid by Chinese exporters of the goods and the tariff benchmark used in determining costs for constructed normal values (see Chapter 7).

Consequently, the Commission recommends that the collective interim dumping duty and interim countervailing duty imposed in relation to silicon metal exported from China 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 group of exporters).

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 benchmark data.

12.2 Imposition of dumping duties retrospectively

Dumping duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to dumping duties, the Commissioner has had to regard to whether:

- the importer knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and by that reason thereof material injury would be caused to Australian industry (subsection 269TN(4)(a)); OR
- the goods are of a kind the exportation of which to Australia on a number of occasions has caused material injury to Australian industry, or would have caused material injury but for the publication of a notice under section 269TG (i.e. the goods are of a kind which have previously been found to be dumped in Australia) (subsection 269TN(4)(b));



AND

- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (subsection 269TN(3)(a)); and
- material injury, arising from dumping, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (subsection 269TN(3)(b)); and
- publication of a retrospective notice is necessary to prevent the serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice (subsection 269TN(3)(b)).

The Commission has determined that it will not recommend the Parliamentary Secretary impose retrospective dumping duties on the importation of silicon metal from China.

The Commission did not receive or observe any evidence to show that Chinese exporters of the goods had increased importations of silicon metal from China in large volumes following the commencement of this investigation.

12.3 Imposition of countervailing duties retrospectively

Countervailing duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to countervailing duties, the Commissioner has had to regard to whether:

- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (subsection 269TN(5)(a)); and
- material injury which is difficult to repair, arising from countervailable subsidies, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (subsection 269TN(5)(b)); and
- publication of a retrospective notice is necessary to prevent the recurrence of the injury (subsection 269TN(5)(b)).

The Commission thus does not recommend the Parliamentary Secretary impose retrospective subsidy duties on the importation of silicon metal from China. The Commission has arrived at this determination for the same reasons outlined in Section 12.2 in relation to the imposition of retrospective dumping duties.



13 RECOMMENDATIONS

The Commissioner is satisfied that the dumping and subsidisation of silicon metal exported to Australia from China has caused material injury to the Australian industry producing like goods.

The Commissioner recommends that the Parliamentary Secretary impose:

- dumping duties on silicon metal exported to Australia from China; and
- countervailing duties on silicon metal exported to Australia from China.

The Commissioner recommends the Parliamentary Secretary be satisfied:

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of silicon metal exported to Australia from China by the category of 'uncooperative and all other exporters' be determined under subsection 269TAB(1)(a), (b), or (c);
- in accordance with subsection 269TAC(2)(a)(ii), 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 269TAC(1), the normal value of goods exported to Australia from China cannot be determined under subsection 269TAC(1) in relation to all exports;
- in accordance with subsection 269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under subsection 269TAC(1), (2), (5C) or (5D) for the category 'uncooperative and all other' exporters;
- in accordance with subsection 269TG(1) the amount of the export price of silicon metal that has been exported to Australia from China is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with subsection 269TG(2) the amount of the export price of silicon metal already exported to Australia from China is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from China in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with subsection 269TJ(1), countervailable subsidies have been received in respect of silicon metal that has been exported to Australia from China, and because of that, material injury to the Australian industry producing like goods



has been, or is being caused;

- in accordance with subsection 269TJ(2), countervailable subsidies have been received in respect of silicon metal already exported to Australia from China, and may be received in respect of like goods that may be exported to Australia from China in the future and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with subsection 269TJA(1), that as to silicon metal that has been exported to Australia from China:
 - the amount of the export price of the goods is less than the amount of the normal value of the goods; and
 - a countervailable subsidy has been received in respect of the goods; and
 - because of the combined effect of the difference between the export price and the normal value and the amount of subsidy referred in the two points above, material injury to the Australian industry producing like goods has been and is being caused
- in accordance with subsection 269TJA(2), that as to silicon metal that has already been exported to Australia from China:
 - the amount of the export price of the goods is less than the amount of the normal value of the goods and the amount of the export price if the goods exported to Australia in the future may be less than the normal value of the goods; and
 - a countervailable subsidy has been received in respect of the goods and may be received in respect of like goods that may be exported to Australia in the future; and
 - because of the combined effect of the difference between the export price and the normal value and the amount of subsidy referred in the two points above, material injury to the Australian industry producing like goods has been and is being caused

The Commissioner recommends the Parliamentary Secretary determine:

- in accordance with subsection 269TAAD(4), the amounts for the cost of production or manufacture of goods in the country of export and the administrative, selling and general costs associated with the sale of those goods;
- in accordance with subsection 269TAB(3), the export prices for the categories of 'uncooperative and all other' exporters be determined having regard to all relevant information;
- in accordance with subsection 269TAC(2)(c), the cost of production or manufacture of the goods in the country of export, and the administrative, selling and general costs associated with the sale and the profit on that sale;



- in accordance with subsection 269TAC(6), normal values for the categories of ‘uncooperative and all other’ exporters be determined having regard to all relevant information;
- in accordance with subsection 269TACB(1), by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of silicon metal from China were dumped; and
- in accordance with subsections 269TACC(1) and (3), that financial contribution, received in respect of the goods, of a kind that is other than that referred to in subsection 269TACC(2), has conferred a benefit.

The Commissioner recommends the Parliamentary Secretary compare:

- in accordance with subsection 269TACB(2)(a), the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The Commissioner recommends the Parliamentary Secretary declare:

- in accordance with subsection 269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to:
 - the goods exported by all exporters from China to the extent permitted by section 269TN; and
 - like goods that were exported to Australia by all exporters from China after the Commissioner made a PAD under section 269TD on 23 February 2015 but before publication of the notice, to the extent permitted by section 269TN;
- in accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, after the date of publication of the notice;
- in accordance with subsection 269TJ(1), by public notice, that section 10 of the Dumping Duty Act applies to:
 - the goods exported by all exporters from China to the extent permitted by section 269TN; and
 - like goods that were exported to Australia by all exporters from China after the Commissioner made a PAD under section 269TD on 23 February 2015 but before publication of the notice, to the extent permitted by section 269TN;



- in accordance with subsection 269TJ(1), by public notice, that section 10 of the Dumping Duty Act applies to:
 - the goods exported by all exporters from China to the extent permitted by subsection 269TN; and
 - like goods that were exported to Australia by all exporters from China after the Commissioner made a PAD under s. 269TD on 23 February 2015 but before publication of the notice, to the extent permitted by subsection 269TN;
- in accordance with subsection 269TJ(2), by public notice, that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China after the date of publication of the notice.



14 APPENDICES AND ATTACHMENTS

Non-confidential	
Non-confidential Attachment 1	Parliamentary Secretary notices and schedules
Non-confidential Appendix 1	Assessment of market situation
Non-confidential Appendix 2	Assessment of reasonableness of electricity costs in China and determination of a competitive market substitute price
Non-confidential Appendix 3	Assessment of the countervailability of subsidy programs
Confidential	
Confidential Appendix 1	Calculations of export prices, normal values and dumping margins
Confidential Appendix 2	Calculations of countervailable subsidisation



NON-CONFIDENTIAL APPENDIX 1 – ASSESSMENT OF MARKET SITUATION

PART I BACKGROUND

The GOC did not fully cooperate with the Commission's government questionnaire that sought information about the silicon metal market in China and conditions relating to certain inputs to its manufacture. The Commission has therefore had regard to other publicly available information to assess the domestic market.

A document issued by the Yunnan Government in China in 2011, which was relied upon by the CBSA and provided to the Commission by the Australian industry, provides the following basic information about the silicon metal market in China:

- The total production capacity was 3.2 million tonnes however the actual output was 1.4 million tonnes;
- The domestic demand was less than 600,000 tonnes;
- The Yunnan province accounted for around one third of China's capacity and output for silicon metal; and
- Industry concentration was low with the average production capacity of individual enterprises around 14,000 tonnes.

PART II APPLICABLE LEGISLATION, POLICY AND PRACTICE

I(i) THE ACT

Section 6.4 of this report introduced the provisions of subsection 269TAC(2)(a)(ii), which provides that 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 Section (1)

the normal value for goods exported to Australia cannot be ascertained under subsection 269TAC(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 construction²⁶ or third country sales.²⁷ Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

²⁶ subsection 29TAC(2)(c)

²⁷ subsection 269TAC(2)(d)



I(ii) POLICY AND PRACTICE

In relation to market situation, the *Dumping and Subsidy Manual* states:

In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) 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.

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.

One example of government influence distorting competitive conditions and leading to artificially low prices may be the presence of government owned enterprises in the domestic market. The presence of government owned enterprises, of itself, may not lead to the conclusion that sales are unsuitable. Rather, market conditions will no longer be said to prevail when the number of government owned enterprises, together with any unprofitable sales by those same enterprises, has caused a significant distortion to the prices received by private enterprises.

Prices may also be artificially low or lower than they would otherwise be in a competitive market due to government influence and distortion of the costs of inputs. Again the mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. Rather, the Commission looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices.

Thus, a range of conditions concerning the sales themselves may have the effect of rendering those sales prices as being unsuitable for use in determining prices under s. 269TAC(1).

The assessment as to whether a market situation exists in a market constitutes a positive test. That is, before actual selling prices are rejected, the Commission needs to be



satisfied that there is a 'market situation' that renders the sales of like goods in the domestic market not suitable for normal value purposes. Where there is influences in the market, but the sales of like goods in that market are not considered to be rendered unsuitable for determine subsection 269TAC(1) normal values, then subsection 269TAC(2)(a)(ii) does not apply.

PART III ASSESSMENT

In the CBSA's investigation into the dumping of silicon metal from China it conducted a Section 20 inquiry and found that domestic prices for silicon metal in China were not substantially the same as they would have been if determined in a competitive market. The findings were released in November 2013 so are considered reasonably contemporaneous.

The following table assesses the factors relevant to assessment of the domestic market for silicon metal in China by reference to the findings in the CBSA inquiry. The Commission's comment on those factors is also included.

Category	Factor	Evidence relied on by CBSA	Commission's comment
GOC Export Control Measures	Export tax of 15%	Fact	Repealed on 1 January 2013 (start of investigation period)
	Zero refund of VAT on exports	2005 notice by Chinese Ministry of Finance and the State Administration of Taxation	Confirmed in response to GOC questionnaire
	Direct price control on exports	'Confidential information obtained'	No access to information relied on by CBSA
	Export quotas and licence restrictions	Research report published by Hong Kong securities firm (February 2012) Article published by Platts in December 2012	The Commission has obtained a copy of this document. It states: <i>"To ensure ample supply in the home market, China has imposed export quotas on nine minerals, e.g.....silicon metal..."</i> States that the Chinese government has issued 255 export licenses for various ferroalloys, including ferrosilicon. (http://www.platts.com/latest-



Category	Factor	Evidence relied on by CBSA	Commission's comment
			news/metals/hongkong/china-approves-255-companies-for-ferroalloy-export-6961009)
Government influence on price of inputs	Electricity <ul style="list-style-type: none"> - 90% of electricity production is owned by SIEs - Rates in Yunnan province 32% lower than rates in other regions - one exporter (MSSI) purchased electricity at lower rate than other enterprises in same prefecture 	Information contained in complaint Information in questionnaire response by MSSI	No access to information relied on by CBSA From verification of the Linan Group in the Commission's investigation energy represents around 50 per cent of the cost of manufacture. From the GOC's response to the Commission's questionnaire: <ul style="list-style-type: none"> • Tariff rate for ferroalloy producers in Guizhou province around 2% lower than rate for other 'Large industry', which itself is around 29% lower than rate for 'Non-industrial and general industrial' • Tariff rate for crystalline silicon production in Fujian province (in wet season) around 9% lower than rate for other 'Large industry', which itself is around 24% lower than rate for 'Non-industrial and general industrial'
	Coal at less than fair value <ul style="list-style-type: none"> - GOC policies, laws, regulations, production caps 	Information contained in complaint 12 th Five Year Plan (2011-2015) – caps in coal production and capacity, restrict	No access to information in complaint The Commission has obtained a copy of this document.



Category	Factor	Evidence relied on by CBSA	Commission's comment
		<p>number of companies, mergers</p> <p>WTO panel report – MOFCOM limited coal exports in 2011 and 2012, domestic price of coke controlled by GOC, coke subject to export controls, export tax of 40% on coke</p>	<p>The Commission has obtained a copy of the WTO panel report and confirmed this information.</p> <p>From verification of the Linan Group in the Commission's investigation coal represents approximately 8% of the cost to manufacture.</p>
Government policies and regulations	<p>12th Five Year Plan</p> <ul style="list-style-type: none"> - No specific reference to silicon - Elimination of backward technology - Volume expansion in smelting industries should be controlled - Relocation of urban non-ferrous metal enterprises carried out in orderly fashion - Supporting cutting edge smelting technologies - Energy conservation and recycling of energy and waste 	<p>12th Five Year Plan</p> <p>List of enterprises to eliminate backward production capacity of MIIT (2010) – China Silicon Industry Branch webpage</p> <p>List of enterprises to eliminate backward production capacity of MIIT (2011) – China Silicon Industry Branch webpage</p>	<p>See above – the Commission has obtained a copy of this document.</p> <p>The Commission has obtained a copy of <i>Technological Progress and Structural Adjustment of Chinese silicon industry</i>, delivered by MIIT at conference in Yunnan:</p> <ul style="list-style-type: none"> - "Promote industrial restructuring and upgrading - speed up industrial restructuring to accelerate the elimination of out-dated production capacity and to accelerate the elimination of small silicon furnaces - transfer the industry from high consumption of energy to high efficiency of production, from raw material production to value added fine material production. - enterprises should press on merging, in order to



Category	Factor	Evidence relied on by CBSA	Commission's comment
			<p><i>form a number of enterprise groups, to consolidate their assets, resources and products.</i></p> <p>- <i>Only when silicon enterprises are bigger and stronger, then can the competitiveness of the silicon industry can be improved. In that way, we can resolve the price discrimination in the international market."</i></p>
	<p>Yunnan Government</p> <ul style="list-style-type: none"> - All silicon furnaces less than 12.500KVA will be phased out by 2015 - Restructured or new facilities must have capacity of 2 x 25,000KVA or above - Silicon capacity of 4 regions restricted to ensure total capacity less than 1.4 million tonnes - No other states or municipalities allowed to add new capacity 	<p>Document issued by Yunnan government outlining plans relating to silicon – 'Document of the Office of the People's Government of Yunnan Province (Yun Zheng Ban Fa [2012] No. 236)' – Mangshi Sinice Silicon Industry</p>	<p>The GOC declined to provide the document but it was provided by the Australian industry in submission dated 25 September 2014.</p> <p>Cooperating exporters were not located in Yunnan province (Fujian and Guizhou) but major uncooperative exporter is.</p> <p>Fujian government website mentions closing down a 6300kva and a 3200 kva silicon furnace.</p> <p>Guizhou government website refers to eliminating outdated production capacity in a range of industries, including non-ferrous metals. Light on detail however other than eliminating by the end of 2010 more than 50 million kilowatts of small coal-fired power generators and 8,000 small coal mines. This could impact electricity generation.</p>



Category	Factor	Evidence relied on by CBSA	Commission's comment
	Restricting access	MIIT Notice No. 15 of 2012 – China Nonferrous Metals Industry Association Webpage	See ‘*’ below this table for information from silicon industry conference in 2010. The Australian industry provided this document in submission dated 25 September 2014. It provides a ‘list of companies that meet the ferroalloy industry access conditions (the industrial silicon)’. There are 22 companies listed.
	Limiting capacity expansion through land policies – silicon possibly/appears to be a prohibited project	Articles about Ministry of Industry verification of silicon enterprises – China Silicon Industry Branch Webpage	The Australian industry provided this document in submission dated 25 September 2014.
		Restrictions prohibit the land for the project directory (2012) – China Nonferrous Metals Industry Association Webpage	The Australian industry provided this document in submission dated 25 September 2014.
		Document issued by Yunnan government outlining plans relating to silicon – ‘Document of the Office of the People’s Government of Yunnan Province (Yun Zheng Ban	As above – the Australian industry provided this document.



Category	Factor	Evidence relied on by CBSA	Commission's comment
		Fa [2012] No. 236' – Mangshi Sinice Silicon Industry	
Government restrictions on use and supply of inputs	Yunnan Government <ul style="list-style-type: none"> - Restrict energy consumption per unit of silicon - Restrict carbonaceous reducing agents consumption per unit - Achieve minimum recycle and waste heat utilization rates - Realise waste water recycling and complete recycling of dust - Limit use of charcoal to promote high grade silicon - Restrictions on use of carbon based reducing agent for producers of grades 441 and 553 	Document issued by Yunnan government outlining plans relating to silicon – 'Document of the Office of the People's Government of Yunnan Province (Yun Zheng Ban Fa [2012] No. 236)' – Mangshi Sinice Silicon Industry	See above – the Australian industry provided this document. The cooperating exporters are not located in this province but the major uncooperative exporter is.
Domestic silicon price analysis	Chinese domestic selling prices lower than normal values (using US selling prices from Metal Bulletin) and South African domestic selling prices	Information gathered during inquiry	The Commission has no access to the information relied on by the CBSA, however little weight has been placed on this factor.

*** Excerpts from silicon industry conference in 2010:**

(at <http://www.siliconchina.org/2010/0426/3339.html>)

- "Vice President of China Nonferrous Metals Industry Association, Zhao Jiasheng pointed out that with the rapid development of the national economy, the development



of silicon metal industry is growing rapidly. However, due to various historical reasons, China's silicon metal industry is small in scale, low in technical level and outmode in equipment. It is easy to enter into the silicon production. The business depends largely on export. We must promote the healthy and stable development of silicon industry, improve the competitiveness of the whole industry”

- Raw material division head Zhang Fengkui of Ministry of Industry and Information Technology (MIIT) attended the meeting and he stressed that at present there is overcapacity of silicon metal production; “We shall actively eliminate outmoded production capacity, speed up technological advancement, reduce energy consumption and emissions, improve resource utilization and stabilise the export of the products, prohibit cut-throat competition within the industry in order to protect the healthy and sustainable development of enterprises.”
- The following consensus was formed:
 - First, improve the industrial policy to promote the healthy development of the industry. Set up a clear time table for industrial restructuring industrial upgrading. Keep on reviewing the process.
 - Second, to strengthen the management of silicon metal export, prevent cut-throat competition. At present, more than 50 per cent of Chinese silicon metal is for export.
 - Third, to set up a unified standard for silicon products and production equipment. There is no uniform standard for silicon metal industry. National silicon industry standard should be introduced as soon as possible. The standard should include silicon metal products and electrodes standards.
 - Fourth, to promote the use of silicon dust. Government should adopt a policy requesting cement in infrastructure project must contain certain proportion of silicon dust. In this way, the demand for silicon dust will be expanded.
 - Fifth, strengthen the communication within the industry to enhance technology exchange.
 - Sixth, strengthen the role of industry associations.

PART IV CONCLUSION

Based on the information available to it, the Commission has determined that the GOC has exerted numerous influences on the Chinese silicon metal industry, which have substantially distorted competitive market conditions in the industry in China. These were in the form of broad, overarching GOC macroeconomic policies and plans that outline aims and objectives for the Chinese silicon industry, in addition to various taxes, VAT refund policies and export quotas applicable to both silicon metal itself and the cost inputs in the production of the finished goods under investigation. The Commission considers these combined factors have led to a distortion in the domestic selling prices of silicon metal.

The Commission’s assessment and analysis of the available information indicates that prices of silicon metal in the Chinese market are not substantially the same as they would have been without the influences by the GOC. The Commission considers that GOC



influences in the silicon metal industry have created a 'market situation' in the domestic market, such that sales of silicon metal in China are not suitable for determining normal value under subsection 269TAC(1) of the Act.



NON-CONFIDENTIAL APPENDIX 2 – ASSESSMENT OF REASONABLENESS OF ELECTRICITY COSTS AND DETERMINATION OF A COMPETITIVE MARKET SUBSTITUTE PRICE

PART I OVERVIEW

As outlined in Chapter 6, in determining the cost of manufacture for exporters of the goods when constructing normal values under subsection 269TAC(2)(c), regard must be had to subsection 43(2) of the Regulation, which provides where:

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

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

This assessment necessarily involves examining the costs incurred by manufacturers of the goods, and assessing their reasonableness in the context of a competitive market and compliance with the applicable GAAP.

PART II ASSESSMENT OF COMPLIANCE WITH GAAP

During this investigation, the Commission has assessed that the accounting records of the cooperating exporter, the Linan Group, have been kept in accordance with the Chinese GAAP (with reference to the auditor's opinions in each company's audited financial statements).

PART III ASSESSMENT OF COSTS REASONABLENESS – ELECTRICITY

III(i) SIMCOA'S CLAIMS

Simcoa asserts that, when normal values are constructed under subsection 269TAC(2)(c), the cost of electricity in the records of Chinese manufacturers of the goods are understated.

In making these claims, Simcoa submits that the reasonableness of the cost has been impacted by state-owned electricity authorities providing lower tariff rates for silicon metal manufacturers than for other industry members.



Simcoa did not suggest an alternative measure of electricity costs, although pointed to the CBSA's finding that electricity costs in Yunnan province (that is responsible for 20 per cent of China's domestic output of silicon metal) were 32 per cent lower than electricity costs in other regions.

III(ii) GOC CLAIMS

Following initiation of the investigation, the Commission wrote to the GOC outlining Simcoa's allegations, and requesting the GOC complete a Government Questionnaire to assist the Commission's investigation into the alleged favourable treatment to manufacturers of silicon metal in relation to electricity prices. The Government Questionnaire also requested information from the GOC relevant to the Commission's assessment of countervailable subsidisation.

The GOC responded to the Government Questionnaire but in doing so declined to provide direct responses to the questions posed in Parts A and B, which are considered particularly relevant to the assessment of the alleged particular market situation in the Chinese silicon metal market and the assessment of the reasonableness of the cost of electricity incurred by Chinese exporters of the goods.

Instead, the GOC stated its general opposition to the Commission's (and its predecessor, ACBPS) approach to determining the existence of a particular market situation in China in relation to goods previously subject to anti-dumping investigations.

Section 6.7.3 sets out the claims of the GOC contained in a submission to SEF 237.

III(iii) COMMISSION'S ASSESSMENT

In light of the GOC's failure to provide direct responses to Parts A and B of the Government Questionnaire, the Commission considers that it must rely on all information reasonably available to it in order to make an assessment as to the reasonableness of exporters' incurred costs.

As part of its subsidy investigation (refer Non-confidential Appendix 2) the Commission determined that SIE electricity providers were public bodies as there is evidence of the exercise of meaningful control by the government in the provision of electricity and the regulation of prices. The regulation of prices includes the ability to set different tariff rates for different types of consumers.

In addition, as part of its response to the Commission's questionnaire the GOC provided schedules of electricity tariff rates for the two provinces where the only cooperating exporter, the Linan Group, has its manufacturing facilities. These schedules show preferential rates of electricity offered to ferroalloy and/or silicon manufacturers in both regions. These rates are lower than the rates for other 'large industry' users in the respective provinces.

III(iv) CONCLUSION



In these circumstances, the Commission considers the costs incurred by silicon metal manufacturers in China for electricity used in the investigation period do not reasonably reflect competitive market costs in terms of subsection 43(2) of the Regulation.

PART IV DETERMINING A REASONABLY COMPETITIVE MARKET COST SUBSTITUTE FOR ELECTRICITY

After determining that the cost of electricity incurred by Chinese exporters of the goods is not a reasonably competitive market cost for the purposes of Regulation 180(2), the Commission has sought to establish an appropriate benchmark for electricity, having regard to the guidelines set out in subsections 269TACC(4)(d) and (5) of the Act, and Article 14(d) of the SCM Agreement.

There are no specific provisions in the Act or the Regulation that direct how a reasonably competitive market price should be determined for costs considered to not be reasonable for the purposes of subsection 43(2) of the Regulation.

However, the Commission considers that, in the case of electricity incurred by Chinese exporters of the goods, it is reasonable to apply the same 'benchmark' price considered to be representative of 'adequate remuneration' for the purposes of determining a benefit under Subsidy Program 1 - Raw Materials Provided by the Government at Less than Fair Market Value.

This 'benchmark' has been established from the tariff rates provided by the GOC as part of their response to the government questionnaire. The relevant tariff rate applied by the Commission is the rate for 'other large industry'.



NON-CONFIDENTIAL APPENDIX 3 – ASSESSMENT OF COUNTERVAILABILITY OF SUBSIDIES

PART I OVERVIEW

I(i) INTRODUCTION AND SUMMARY OF FINDINGS

This appendix details the Commission's assessment of the 44 subsidy programs investigated in relation to silicon metal exported from China.

The 44 investigated programs, and the Commission's assessment of the countervailability of each in relation to silicon from China, is outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Electricity provided by government at less than adequate remuneration	Remuneration	Yes
2	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Income Tax	No
3	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Income Tax	No
4	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Income Tax	No
5	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Income Tax	No
6	Preferential Tax Policies in the Western Regions	Income Tax	Yes
7	Land Use Tax Deduction	Income Tax	Yes
8	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	Yes
9	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff & VAT	Yes
10	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
11	Matching Funds for International Market Development for Small and Medium	Grant	Yes



Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
	Enterprises		
12	Superstar Enterprise Grant	Grant	Yes
13	Research & Development (R&D) Assistance Grant	Grant	Yes
14	Patent Award of Guangdong Province	Grant	No
15	Innovative Experimental Enterprise Grant	Grant	Yes
16	Special Support Fund for Non State-Owned Enterprises	Grant	Yes
17	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Grant	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
20	Water Conservancy Fund Deduction	Grant	Yes
21	Wuxing District Freight Assistance	Grant	Yes
22	Huzhou City Public Listing Grant	Grant	Yes
23	Huzhou City Quality Award	Grant	Yes
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
25	Wuxing District Public List Grant	Grant	Yes
26	Anti-dumping Respondent Assistance	Grant	Yes
27	Technology Project Assistance	Grant	Yes
28	Capital injections	Equity	Yes
29	Environmental Protection Grant	Grant	Yes
30	High and New Technology Enterprise Grant	Grant	Yes
31	Independent Innovation and High-Tech Industrialization Program	Grant	Yes
32	VAT Refund on Domestic Sales by Local Tax Authority	Tariff & VAT	No
33	Environmental Prize	Grant	Yes
34	Jinzhou District Research and Development Assistance Program	Grant	Yes
35	Grant for Industrial enterprise energy management centre construction demonstration project Year 2009	Grant	Yes
36	Key industry revitalization infrastructure spending in budget Year 2010	Grant	Yes



Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
37	Provincial emerging industry and key industry development special fund	Grant	Yes
38	Environmental protection fund	Grant	Yes
39	Intellectual property licensing	Grant	Yes
40	Financial resources construction special fund	Grant	Yes
41	Reducing pollution discharging and environment improvement assessment award	Grant	Yes
42	Comprehensive utilization of resources - VAT refund upon collection	Tariff & VAT	Yes
43	Grant of elimination of out dated capacity	Grant	Yes
44	Grant from Technology Bureau	Grant	Yes

I(ii) 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

(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 access to the subsidy:

(a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

(c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) Despite the fact that access to a subsidy is established by objective criteria, 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.



Section 269TACC of the Act directs how it is to be determined whether benefits have been conferred by a subsidy and the amount of this benefit.

Under Section 269TJ 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.

PART II INFORMATION CONSIDERED BY THE COMMISSION

II(i) INFORMATION PROVIDED BY EXPORTERS

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by the cooperating exporter group in the Exporter Questionnaire responses, as well as information provided during the verification visit.

II(ii) INFORMATION PROVIDED BY THE GOVERNMENT OF CHINA

The Commission included questions relating to each program in a Government Questionnaire that was sent to the GOC on 5 March 2014.

The GOC wrote to the Commission on 18 April 2014. It stated that in its opinion the exporters that cooperated with the investigation were well placed to respond to the Commission's requests. In relation to the questions about electricity prices, the GOC referred to previous investigations by the Commission where it had investigated electricity prices and concluded that the prices were competitive market prices. The investigations referred to were:

- Alleged dumping of sodium tripolyphosphate (2007); and
- Alleged dumping and subsidisation of aluminium road wheels (2013).

The GOC did not cooperate with the Commission's request for detailed information about any of the programs identified in the Government Questionnaire.

On 7 May 2014, the Commission wrote to the GOC and requested the provision of specific information and documents that were requested as part of the Government Questionnaire (GQ).

On 30 May 2014, the GOC responded to the Commission's request. It stated that it would respond to the Commission's first two questions in its 7 May 2014 request because they appeared to relate to the determination of subsidies. It did not respond to the remaining questions because, in its view, they were directed towards an inquiry into market situation. The GOC stated that it was strongly opposed to 'the practice' and accordingly it was inappropriate to respond to the questions.



The Commission had requested, in its 7 May 2014 correspondence, electricity tariff rates for all provinces in China. As part of its response the GOC provided the electricity tariff rates for the Guizhou Province and the Fujian province only because this was where it understood the cooperating exporters to be located.

II(iii) OTHER INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT

The Commission also considered as part of this assessment:

- the findings from the CBSA in relation to its investigations into the subsidisation of silicon metal exported to Canada (discussed within Simcoa's application and referenced earlier); and
- findings from other subsidy investigations conducted by the Commission.

PART III ASSESSMENT OF SUBSIDY PROGRAMS – CATEGORY ONE: PROVISION OF GOODS

III(i) PROGRAM 1: ELECTRICITY PROVIDED BY THE GOVERNMENT AT LESS THAN FAIR MARKET VALUE

BACKGROUND

Simcoa's application alleged that during the Investigation Period, Chinese exporters of the goods benefited from the provision of electricity by the GOC at less than adequate remuneration. In particular, it was claimed that electricity was being produced and supplied by GOC-owned (or partially-owned) enterprises in China at less than adequate remuneration. For the purposes of this report, these GOC-owned or partially owned entities will be referred to as 'state-invested enterprises (SIEs)'.

The definition of a subsidy under s.269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that provide electricity are public bodies, and that a financial contribution in the form of provision of raw material inputs at less than adequate remuneration by these SIEs to silicon metal producers constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs providing electricity constitute a public body in the meaning of s.269T(a)(ii) is discussed below.

Under this program, a benefit to exported silicon metal is conferred by electricity being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.



The Commission requested information from the cooperating Chinese exporter in relation to their electricity costs during the investigation period. The exporter was also asked to indicate whether the electricity providers were SIEs.

LEGAL BASIS

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).

WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving electricity at less than adequate remuneration.

IS THERE A SUBSIDY?

Financial contribution

Based on the information above, the Commission considers that this program involves a financial contribution that involves the provision of goods, at less than adequate remuneration.

By a government or public body?

Introduction

In order for this program to be considered to be a 'subsidy' the financial contribution noted above must be from a government, public body, or private body entrusted with governmental functions (see above).

In its application, Simcoa stated that SIEs are public bodies (for the purposes of s.269T), as was found by the CBSA in its investigation into silicon metal, which noted that SIEs were subject to "meaningful control" by the GOC to perform the government functions (of providing electricity at less than adequate remuneration), and exercise or were vested with government authority to do so.

The Commission requested exporters in their questionnaire responses to indicate whether the electricity provider was an SIE. Both manufacturers – Hua-an Linan and Guizhou Linan – indicated that all their electricity was provided by SIEs.



Previous consideration

The term ‘public body’ is not defined in the legislation or the SCM Agreement. It has been considered by the Commission in previous investigations and has been the subject of a number of WTO Appellate Body findings. To inform the Commission’s assessment of this issue in the present investigation the following documents are considered to be relevant:

- REP 177 – the Commission’s finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- REP 203 – the Commission’s reinvestigation of certain findings in REP 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- REP 193 – the Commission’s findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively ‘coated steel’) exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- REP 238 – the Commission’s finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- ADRP Report (15 November 2013) in relation to REP 193 – the ADRP disagreed with the Commission’s finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP’s finding in relation to this issue;
- *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379) – this Appellate Body finding considered the meaning of ‘public body’ in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- *United States – Carbon Steel (India)* (DS 436) – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- *United States – Countervailing Measures (China)* (DS437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to the latter document, DS437, while this decision is recent the Commission considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commission agrees with the views of the Panel in this dispute, and the Appellate Body in DS379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commission does not advocate such an approach in the present investigation.

In DS379 the Appellate Body provided guidance 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).²⁸

- **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 Commission, and more recently the Anti-Dumping Review Panel (ADRP), have used these indicia as the basis for its approach to determining decisions regarding whether entities subject to dumping and countervailing investigations should be considered to be public bodies.

Decisions of the Commission

In REP 177 the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met. However, evidence exists to show that 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 HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence ‘show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.’

The Commission’s finding was appealed to the Trade Measures Review Officer (TMRO), who directed the ACBPS to conduct a reinvestigation of the public body finding. The ACBPS’ reinvestigation report, REP 203, affirmed the findings in REP 177. It considered that ‘SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.’

In REP 193, relating to coated steel, the Commission relied on its findings in REP 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the

²⁸ Appellate Body report DS379 at [318]



ADRP. In disagreeing with the Commission's finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;
- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;
- Article 14 of the Interim Measures, which vests State-owned Assets Supervision and Administration Commission of the State Council (SASAC) with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;
- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and
- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.

Commission's consideration

The Commission considers that the ADRP's decision to direct a reinvestigation of the findings in REP 177 was, to a large extent, premised on the TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS379, "that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The Panel considered this issue in DS437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain' the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS379. It stated that:

'In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".'



The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS436, also released after the ADRP's findings, the WTO DSB further considered the issue of whether a government exercises 'meaningful control' over an entity. The Panel stated that 'to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is "meaningful".'

As part of the GQ, the GOC was requested to respond to a number of questions concerning electricity providers:

- provide the names of the government departments, bureaus or agencies that are responsible for the administration of any GOC measures concerning electricity, including industrial and policy guidance;
- identify any current GOC initiatives and/or policies affecting electricity providers
- state how the government regulates electricity prices at the national, provincial or local level;
- provide names of all the agencies in each region, province or special economic zone responsible for electricity price regulation; and
- state how the government's electricity policy applies to or promotes the silicon metal industry.

The GOC did not provide a response to these questions. In the absence of this information, the Commission has had regard to other relevant information that is in possession of, namely information provided by the GOC in response to questionnaires in other investigations conducted by the Commission.

During the Commission's investigation into the dumping and subsidisation of aluminium road wheels exported from China²⁹ the GOC provided the Commission, in response to a questionnaire, a copy of the Electric Power Law of the People's Republic of China³⁰ (Electric Power Law). The Electric Power Law contains, inter alia, the following provisions:

"Article 3 The electric power industry should meet the needs of the development of the national economy and the society and should therefore develop slightly ahead of the other sectors of the economy..."

...

²⁹ The findings and recommendations for this investigation are contained in REP 181.

³⁰ Non-confidential Attachment A43 to the GOC questionnaire response



Article 6 The electric power administration department under the State Council shall be responsible for supervision and control of the electric power industry throughout the country. The departments concerned under the State Council shall be responsible for supervision and control of the electric power industry within their own limits of authority.

The department in overall charge of the economy under the local people's government at or above the county level is the electric power administration department of that administrative region and shall be responsible for supervision and control of the electric power industry there. The departments concerned under the local people's government at or above the county level shall be responsible for supervision and control of the electric power industry within their own limits of authority.

...

Article 33 Power-supply enterprises shall calculate and collect electricity fees from the consumers according to the electricity rates that have been examined and approved by the State and the records of the electric meters...

...

Article 35...The rates of electricity shall be based on a centralized policy, fixed in accordance with a unified principle and administered at different levels...

...

Article 37 A principle of equal rates for equal quality of electricity supplied by the same power network shall be applied with regard to incorporation into a power network. Specific measures for its application shall be formulated by the State Council. Where different rates for incorporation into a power network are needed to be fixed for power-generating enterprises under special circumstances, specific measure shall be formulated separately by the State Council.

Article 38 With regard to the rates for incorporation into power networks spanning different provinces, autonomous regions, or municipalities directly under the Central Government, as well as for incorporation into provincial power networks, a plan shall be proposed through consultation by the enterprises engaged in power generation and in power network operation and shall be examined for approval by the department in charge of price control under the State Council.

With regard to the rates for incorporation into independent power networks, a plan shall be proposed through consultation by the enterprises engaged in power generation and in power network operation and shall be examined for approval by the authorized department in charge of price control.

For power generated by locally-funded enterprises that form independent power networks in different areas of a province or that generate power for their own use,



the rates shall be under the control of the people's government of the province, autonomous region or municipality directly under the Central Government.

Article 39 With regard to the rates of electricity mutually supplied between the networks spanning different provinces, autonomous regions or municipalities directly under the Central Government and independent power networks, or between provincial networks and independent networks, a plan shall be proposed through consultation by the two parties and shall be examined for approval by the department in charge of price control under the State Council or other department authorized by the said department.

...

Article 41 The State institutes two systems for fixing electricity rates: one is to set the rates according to different kinds of consumers; the other is to set the rates according to the different period of time that electricity is used. The criterion for classifying the consumers and the method for dividing the period of time shall be determined by the State Council...

Article 42 The standard rates to be paid by consumers for increased power capacity shall be determined by the department in charge of price control in conjunction with the electric power administration department under the State Council.

Article 43 No units may overstep their authority to set electricity rates. No power-supply enterprises may alter the electricity rates without authorization.

...

Article 45 Measures for control of electricity rates shall be formulated by the State Council in accordance with the provisions of this Law."

Also provided during the ARWs investigation was the *Catalog of Price Regulated by the State Development Planning Commission and Other Department under the State Council*³¹. This document states that electric power is one of the goods or services subject to price regulation.

The Commission considers the above to be evidence of a significant degree of meaningful control and authority by the Government over the provision of electricity and the regulation of prices.

Conclusion

The Appellate Body in DS379 observed that in some cases the features of an entity may be mixed and the challenge of determining whether an entity is a public body may be

³¹ Non-confidential attachment 18 to the GOC questionnaire response



complex. It stated that authorities 'are called upon to engage in a careful evaluation of the entity in question' and 'give due consideration to all relevant characteristics of the entity and...avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant.'

In the absence of further evidence requested of the GOC, and based on other information in the possession of the Commission, the Commission has determined that the GOC exercises meaningful control over the electricity providers and this serves as evidence that the relevant entity possesses governmental authority and is therefore a public body.

Conferral of benefit on the goods

As Chinese exporters use electricity in their production of silicon metal, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of the goods, the Commission considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by the Commission.

These benefit amounts are equal to the amount of the difference between the purchase price and the adequate remuneration.

Where exporters of the goods during the investigation period received a financial contribution under the program of electricity at less than adequate remuneration, it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under s.269T.

IS THE SUBSIDY A COUNTERAVAILABLE SUBSIDY (SPECIFIC OR PROHIBITED)?

As provided for in subsection 269TAAC(4)(a), the Parliamentary Secretary may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

Given that the tariff rates identify specific types of entity that receive a favourable rate of electricity (being ferroalloy or silicon producers) it is clear that only these enterprises would benefit from the provision of the input by the GOC at less than adequate remuneration.

For this reason the subsidy is determined to be specific.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Linan Group



The Commission found that the Linan Group received a financial contribution that conferred a benefit under this program during the investigation period, in accordance with subsection 269TACC(3)(d) of the Act.

In accordance with section 269TACC(4), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration, established having regard to the prevailing market conditions in China.

In accordance with section 269TACD(1), the amount of the subsidy has been determined as the difference between adequate remuneration (as established) and the actual purchase price paid for electricity incurred by the selected exporters in purchasing these goods from SIEs.

In accordance with section 269TACD(2), the amount of subsidy received in respect of silicon metal has been apportioned to each unit of the goods using the total sales volume of the relevant companies.

Uncooperative and all other exporters

For the uncooperative and all other exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

Pursuant to subsections 269TAACA(1)(c) and 269TAACA(1)(d) the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

Considering the fact that:

- all silicon metal exported from China would require electricity in its manufacture;
- all the Linan Group's purchases of electricity were from SIEs during the investigation period;
- at least one of the uncooperative exporters is located in the Yunnan province and the CBSA inquiry found subsidised electricity in that province,

it is considered likely that uncooperative and all other exporters purchased electricity from SIEs at subsidised rates and therefore received a financial contribution under this program.

In the absence of information that demonstrates the quantum of electricity purchased from SIEs by uncooperative and all other exporters, in accordance with section 269TACD(1), the Commission determines that uncooperative and all other exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of subsidy attributable to that benefit by



reference to the subsidy rate of the Linan Group (in the absence of other reliable information).

PART IV ASSESSMENT OF SUBSIDY PROGRAMS – ALL OTHER PROGRAMS

ASSESSMENT OF EXISTENCE OF COUNTERAVAILABLE SUBSIDY

Programs 2 to 44 have previously been investigated by the Commission (or its predecessor, ACBPS). The Commission has determined that the programs were countervailable subsidies. Details of the Commission's consideration of the legal basis, eligibility criteria and specificity can be found in the Commission's subsidy register. This is accessible at <http://www.adcommission.gov.au/reference-material/subsidies-register.asp>.

In relation to Program 3 (reduced tax rate for productive FIEs scheduled to operate for a period of not less than 10 years), the Commission has recently investigated this program as part of its investigation into the subsidisation of deep drawn stainless steel sinks exported from China. In response the GOC questionnaire for that investigation, the GOC responded:

"This program does not exist.

The GOC notes that in response to the government questionnaire in the hollow structural sections investigation (i.e. in relation to program 10), the GOC has pointed out that the alleged subsidy will be in operation until the end of 2012. The GOC reiterates 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 and superseded by the Enterprise Income Tax Law of the People's Republic of China 2008. (Attachment 4). The Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax 2007 (Attachment 5) 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%.

*Accordingly, the GOC believes that there is no evidence demonstrating that the alleged program exists."*³²

³² This text and the supporting GOC documents are available on the Public Record (www.adcommission.gov.au/cases/EPR237.asp).



The GOC has provided persuasive evidence to indicate that this program no longer exists. The Commission is not in possession of evidence to suggest that this program was operable during its investigation period.

The Commission considers the available evidence indicates that this program was not an operable subsidy in respect of silicon metal exported from China.

For the same reasons (i.e. changes to the income tax laws applicable to enterprises with foreign investment), the Commission considers it is reasonable to conclude that Programs 2, 3, 4 and 5 in this investigation were not operable subsidies during the investigation period.

ASSESSMENT OF RECEIPT

Linan Group

The Commission has verified that none of the entities in the Linan Group were in receipt of benefits from any of subsidy programs 6 to 44.

Uncooperative and all other exporters

Based on an assessment of the eligibility criteria for programs 6 to 44, gathered during previous subsidy investigations, the Commission considers that exporters of silicon metal to Australia would not have benefitted from the following programs:

- Program 14 (patent award of Guangdong province) – the Commission understands that to be eligible for this award enterprises must establish that the relevant product is ‘innovative with high creation and technical level’ or that ‘the industrial design has reached high level at shape, pattern and colour’³³. Based on the Commission’s understanding of silicon metal it is unlikely production of silicon metal would qualify for such awards; and
- Program 32 (VAT refund on domestic sales by local tax authority) – the Commission understands that this award was specifically designed for achieving timely targets for the production and export of automotive steel sheets³⁴. It is therefore not considered that this program would have benefitted exporters of silicon metal.

For uncooperative and all other exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under all other programs i.e. programs 6-13, 15-31 and 33-44).

³³ Refer to Program 16, Investigation 193

³⁴ Refer to Program 34, Investigation 193 – Subsidisation of aluminium zinc coated steel and galvanised steel.



It is noted that some of these programs are limited to enterprises in specific regions in China. The Commission requested the GOC provide information as to the location of all silicon metal exporters in China, but this was not provided.

ACBPS's import database does list 'supplier' addresses, but it is not certain for each 'supplier' whether they are in fact the exporter of the goods, and whether the supplier operates in more locations than the one listed (e.g. the listed location could represent a central or head office of an enterprise that operates silicon metal manufacturing facilities in multiple locations in China).

In the absence of the above relevant information, the Commission considers it is likely that uncooperative exporters meet the eligibility criteria for all these programs, have accessed these programs, and therefore received financial contributions under these programs.

It is considered that this financial contribution has been made in respect of all products of these exporters, including silicon metal products.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Programs 6 and 8 – income tax programs

Both Program 6 and Program 8 entitle the recipient to a reduced tax rate of 15 per cent. The Commission has calculated the amount of subsidy attributable to these benefits under subsection 269TACD(1) for Program 8 by using the taxable income of the entity in the Linan Group with the highest taxable income in 2013, on the assumption that it had benefitted from this program.

In attributing the amount of subsidy to each unit of silicon metal under subsection 269TACD(2), the benefit has been attributed using the turnover of the entity whose taxable income was used in the calculation of the subsidy amount.

The Commission has calculated a zero amount of subsidy under Program 6 for uncooperative and all other exporters (given the maximum subsidy benefit has already been applied for Program 8).

All remaining programs - Programs 7, 10-13, 15-31, 33-44

In calculating the amount of subsidy attributable to these benefits under section 269TACD(1), the Commission considers that:

1. where the legislative instrument that establishes the program specifies the maximum financial contribution that can be made under that program, that maximum amount be the amount determined to be the benefit for each program;
2. where the maximum financial contribution grantable under a program is not stipulated in its legal instrument (or where no known legal instrument exists), the



amount of the financial contribution shall be considered to be the maximum amount found in relation to point 1.

In attributing the amount of subsidy to each unit of silicon metal under section 269TACD(2), the benefit under each subsidy program has been attributed using the aggregate turnover of the two manufacturing entities in the Linan Group, in the absence of actual sales data for the non-cooperating exporters.